

JURISDICTION AND VENUE

4. This Court has jurisdiction over this dispute by virtue of Title 28 U.S.C. §1332 in that there is complete diversity of citizenship between the parties and the amount in controversy is in excess of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of costs.

5. Venue is properly laid in this Court by Title 28 U.S.C. §1391 and Local Rule 3.01 because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and division. AXA conducted the business of issuing an insurance policy covering insurable interests in this judicial district and division. Calhoun Mansion is deemed to reside and does business in this judicial district and division.

FACTUAL BACKGROUND

A. The Museum

6. Calhoun Mansion owns a licensed Gilded Age house museum located on Meeting Street in downtown Charleston.

7. Prior to the global pandemic virus COVID-19, the museum attracted more than 45,000 visitors per year, most of whom visited in the spring and early-summer months.

8. The museum typically sold more than 100 tickets per day for tours conducted every 30 minutes between 11AM to 5PM.

9. Calhoun Mansion operated the museum as a for-profit business that is responsible for paying employee salaries, operating expenses, a mortgage and other debts and liabilities, and taxes.

B. The Policy

10. For the purpose of protecting and insuring the museum, Calhoun Mansion purchased insurance from AXA.

11. The first policy AXA issued to Calhoun Mansion was executed by AXA on October

27, 2016.

12. That policy provided for “Historic Property” and “Contents” coverages, including a “Law or Ordinance Coverage,” with a limit of \$18,000,000, for a total premium of \$76,000.

13. Of particular relevance in this matter, the “Law or Ordinance Coverage” included a “virus” exclusion.

14. Four days later, that policy was amended by an endorsement executed by AXA on October 31, 2016.

15. The endorsement added “Business Interruption” coverages to the policy with a limit of \$500,000 and increased the total premium by \$910.

16. Calhoun Mansion specifically requested these additional coverages to protect its business from interruption and AXA drafted the endorsement amending the policy.

17. The “Business Interruption” coverages form drafted by AXA included “Business Income Coverage” and “Additional Coverages,” including “Civil Authority” coverage.

18. These “Business Interruption” coverages did not include a virus exclusion.

19. From year to year thereafter, the policy was renewed under the same terms for the same total premium.

20. This litigation arises out of that certain policy AXA sold to Calhoun Mansion, Policy No. 01-CIM-39-16-01049, covering the period between November 15, 2019, to November 15, 2020 (the “Policy”).

21. A copy of the Policy is attached hereto as Ex. A.

C. The Claim

22. Beginning at least as early as March 15, 2020, Calhoun Mansion’s museum business was interrupted by the global pandemic virus COVID-19.

23. Calhoun Mansion accordingly submitted a claim to AXA under the above-

described “Business Interruption” coverages.

24. In particular support of its claim, Calhoun Mansion reported to AXA that as of at least March 15, 2020, two of the museum’s nine employees were experiencing symptoms associated with the global pandemic virus COVID-19 and that the museum property was contaminated, or otherwise at risk of being contaminated with the virus by employees and visitors, requiring Calhoun Mansion to suspend and close its business.

25. In further support of its claim, Calhoun Mansion also reported to AXA that the necessity for Calhoun Mansion to suspend and close its business was additionally required by various actions of federal, state, and local civil authorities prohibiting travel and access to locations and properties that were contaminated with the global pandemic virus COVID-19, or were at risk of being contaminated with the virus.

26. Such actions taken by civil authorities in the United States began in January of 2020 and are ongoing as of the date of this filing.

27. Without limitation, such actions include orders issued in March of 2020 by civil authorities of the state of South Carolina and the City of Charleston requiring all non-essential businesses, including museums such as the Calhoun Mansion, to close.

D. The Denial

28. AXA did not conduct a physical investigation of the museum property to determine whether it was contaminated, or otherwise at risk of being contaminated with the virus.

29. Nor did AXA conduct any tests on Calhoun Mansion’s employees exhibiting symptoms of the virus, or otherwise attempt to arrange for such testing, if and when it became available.

30. Nor did AXA conduct any tests in any other locations and properties where contamination had been reported that led to the actions of the civil authorities requiring Calhoun

Mansion to suspend and close its business.

31. Instead, on April 14, 2020, AXA issued a denial letter to Calhoun Mansion (the “Denial Letter”).

32. A copy of the Denial Letter is attached as Exhibit B.

33. The Denial Letter took the objectively unreasonable positions that a virus could not trigger any coverages under the Policy; that consequential loss is excluded under the “Business Interruption” coverages; that the acts of a governmental body are excluded under the “Business Interruption” coverages; and that the contamination of the museum or other properties need not be investigated.

DAMAGES

34. Calhoun Mansion is entitled to benefits under the Policy up to the applicable coverage limit of \$500,000.

35. Additionally, and notwithstanding the applicable coverage limit, because of AXA’s failure to timely pay benefits and bad faith denial of coverage, Calhoun Mansion has suffered actual and consequential damages, including but not limited to damages resulting from terminating its employees, incurring debts and expenses, lacking financial resources to pay its liabilities and support and reopen the museum, losing the value of the museum property and the museum business, and incurring attorneys’ fees and costs in this litigation.

36. Additionally, and notwithstanding actual and consequential damages, because of AXA’s willful and reckless conduct, Calhoun Mansion is entitled to punitive damages.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

37. The allegations of the foregoing paragraphs are incorporated by reference as if fully stated herein.

38. The Policy is a binding contract between Calhoun Mansion and AXA.
39. AXA breached the Policy by denying coverage, as detailed herein.
40. Calhoun Mansion has been damaged by the breach, as detailed herein.

FOR A SECOND CAUSE OF ACTION

(Bad Faith)

41. The allegations of the foregoing paragraphs are incorporated by reference as if fully stated herein.

42. AXA acted in bad faith by willfully and recklessly failing to conduct an investigation of the museum, disregarding the particular facts and language of the Policy, and taking objectively unreasonable positions in its Denial Letter, as detailed herein.

DEMAND FOR JURY TRIAL

Calhoun Mansion demands a jury trial for purposes of determining damages.

PRAYER FOR RELIEF

WHEREFORE, Calhoun Mansion prays for this Court to award:

- a. judgment in favor of Calhoun Mansion's on all claims;
- b. actual and consequential damages;
- c. punitive damages;
- d. reasonable attorneys' fees and costs in this action;
- e. pre and post judgment interest at the legal rate;
- f. such other and further relief as the Court deems just and proper.

Dated: May 29, 2020

Respectfully submitted,

/s/ Jason S. Smith

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