

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JEFFREY M. DRESSEL, D.D.S., P.C. d/b/a
SOUTH BROOKLYN DENTIST,

Case No.

Plaintiff,

- against -

HARTFORD INSURANCE COMPANY OF
THE MIDWEST, INC.,

Defendant.

Plaintiff, Jeffrey M. Dressel, D.D.S., P.C. d/b/a South Brooklyn Dentist (“South Brooklyn Dentist”), hereby sues Defendant, Hartford Insurance Company of the Midwest, and alleges as follows:

PARTIES

1. Plaintiff South Brooklyn Dentist is a New Jersey corporation with an address at 1 Sentry Lane, Unit 427, Chester, New Jersey 07930 and a principal place of business at 62 2nd Place, Brooklyn, New York 11231.

2. Defendant, Hartford Insurance Company of The Midwest, Inc. (the “Hartford”), is a Fire and Casualty insurance company with a principal place of business in Hartford County, Connecticut. It provides, among other things, business, boat, home and automobile insurance to consumers and businesses.

INTRODUCTION

3. To protect his business and the income from the operation of that business, Plaintiff purchased from the Hartford a property insurance policy with a policy number 65 SBA TZ5964 DX (the “Policy”). The Policy is a bilateral contract. Plaintiff agreed to pay monthly

premiums to Defendant, in exchange for Defendant's promises to indemnify Plaintiff for certain losses.

4. Among other types of coverage, the Policy protects Plaintiff against the loss of business due to the suspension of South Brooklyn's operations. This type of coverage is often referred to as "business interruption coverage."

5. The Policy also provides what is often referred to as "extra expense" coverage, under which the Defendant promised to provide indemnity to minimize losses due to the suspension of business. The Policy provides "Civil Authority" coverage, under which Defendant promised to pay for loss of business income caused by the action of a civil authority prohibiting operation of the business.

6. Plaintiff duly complied with its obligations under the Policy, and paid all requisite premiums.

7. Beginning in March 2020, Plaintiff was forced to suspend business operations as a result of COVID-19. Related actions of civil authorities also prohibited access to, occupancy and operation of the business. The suspension, which is ongoing, has caused Plaintiff to suffer significant losses and incur significant expenses.

8. Under the Policy, Defendant promised to cover Plaintiff's losses and expenses. Defendant is obligated to pay. Unfortunately, in breach of its contractual obligations, Defendant has failed and refused to pay for the covered losses and expenses. Plaintiff has demanded coverage, and properly made claims for indemnity; however, Defendant has wrongfully denied the claim.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between the Defendant and the Plaintiff. The Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claims occurred within the district.

11. The Court has personal jurisdiction over the Defendant because Plaintiff's claims arise out of, among other things, Defendant's conduct in, engaging in, and/or carrying on business in New York; Defendant's maintenance of an office in New York; Defendant's breaching a contract in this State by failing to perform acts required by contract to be performed in this State; and Defendant's contracting to insure property in the State. Defendant purposely avails itself of the opportunity of conducting activities in New York by marketing their insurance policies, and services within this State. Defendant intentionally develops relationships with brokers, agents, and customers within New York to insure property within the State, all of which resulted in the policy at issue in this action.

FACTUAL BACKGROUND

12. Plaintiff obtained the Policy. The Policy has a period during which Defendant is obligated to indemnify the Plaintiff. That period runs from July 2019 to July 2020.

13. The Policy is an all-risk insurance policy. In an all-risk insurance policy, all risks of loss are covered unless they are specifically excluded.

14. Consistent with the all-risk nature of the Policy, Defendant specifically agreed to pay for all losses covered by loss of business income for twelve months.

16. Pursuant to the aforementioned section, Defendant promised to pay for loss of business income caused by a covered loss. Specifically, Defendant promised to pay for the loss of business income sustained due to the actual loss of business income due to the necessary suspension of operations.

17. Business income means the net profit that the business would have earned absent the suspension of operations, plus any continuing normal operating expenses, including payroll.

18. Under the Policy, suspension means, among other things, the partial slowdown or complete cessation of business activities.

19. In addition to promising to pay for loss of business income, under the Policy, Defendant also promised to pay for certain necessary expenses. Specifically, expenses related to minimizing the suspension of business.

20. The Policy also provides “Civil Authority” coverage. Under this type of coverage, Defendants promised to pay for the loss of business income and expenses that the Plaintiff sustained as a result of actual loss of business income when access to the business premises is specifically prohibited by order of a civil authority.

21. This Civil Authority provision is an independent basis for business interruption coverage. That is, this indemnity is triggered even when the standard business interruption coverage is not.

22. Plaintiff’s Policy does not contain any exclusion, which would apply to allow the Defendant to deny coverage for losses caused by COVID-19 and/or related actions of Civil Authorities taken in response to COVID-19.

23. Accordingly, because the Policy is an all-risk policy does not specifically exclude the losses that Plaintiff has suffered, those losses are covered.

24. On March 22, 2020, the Governor of the State of New York executed Executive Order 202.6 which prohibited Plaintiff from operating his business. That order remains effective and has no current date of expiration.

COUNT ONE
(for Breach of Contract)

25. Plaintiff repeats the foregoing statements as if set forth at length.

26. The policy is an insurance contract under which Plaintiff paid Defendant premiums in exchange for Defendant's promise to indemnify the Plaintiff for losses on claims covered by the Policy.

27. In the Policy, Defendant promised to pay for the loss of business income incurred as a result of perils not excluded under the Policy. Specifically, Defendant promised to indemnify Plaintiff for losses of business income sustained during the period of restoration.

28. COVID-19 caused direct physical loss of and damage to the Plaintiff's premises, resulting in the suspension of business operations. The suspension has caused Plaintiff to suffer losses of business income.

29. The suspension and loss obligated Defendant under the policy to indemnify the Plaintiff for lost business income.

30. Plaintiff has complied with all applicable provisions of the Policy, including payment of all premiums due.

31. Without justification, Defendant has refused to perform under the Policy. Accordingly, the Defendant is in breach of the Policy.

32. As a result of Defendant's breach of the Policy, Plaintiff has suffered damages for which Defendant is liable.

33. Further, the Policy obligates Defendant to indemnify the Plaintiff for lost business and certain expenses as a result of actions of civil authorities that prohibit access to the insured premises. Plaintiff was prohibited access to the insured premises pursuant to executive order of the Governor of New York, which obligates Defendant to indemnify Plaintiff for those losses under the Civil Authority coverage under the Policy.

COUNT TWO
(for Declaratory Judgment)

34. Plaintiff repeats the foregoing statements as if set forth at length.

35. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

36. The Policy obligates Defendants to indemnify Plaintiff as set forth above. Defendant was paid premiums in exchange for the promise to provide such indemnity.

37. In the Policy, Defendant promised to pay for losses of business income sustained as a result of perils not excluded under the policy. Specifically, Defendant's promise to pay for losses of business income sustained as a result of suspension of business operations during the period of restoration.

38. Further, as set forth above, Defendant promised to indemnify Plaintiff in the event that Plaintiff was prohibited by action of civil authority from accessing the insured premises.

39. Without justification, Defendant has refused to provide indemnity. Plaintiff seeks a declaratory judgment that its Policy provides coverage for the losses of business income as set forth above.

40. An actual case where conflict exists regarding Plaintiff. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Plaintiff demands judgment against the Defendants, as follows:

- a. Declaratory judgment;
- b. Compensatory damages;
- c. Punitive damages;
- d. Reasonable attorney's fees and costs;
- e. Such other and further relief as the Court deems necessary and just.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: June 23, 2020

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