

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

CASE NO.:

SPOTTSWOOD COMPANIES, INC.,
A Florida Corporation,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY, a New York Corporation,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW, the Plaintiff SPOTTSWOOD COMPANIES, INC. (“SPOTTSWOOD”), by and through undersigned counsel, hereby sues Defendant, ZURICH AMERICAN INSURANCE COMPANY (“ZURICH”) and states:

Allegations Common to all Counts

1. This is a claim for declaratory relief pursuant to 28 U.S.C. §2201 et seq. to construe the commercial all-risk insurance policy issued by ZURICH to SPOTTSWOOD and declare the rights, obligations, status, and privileges of the parties as the named insured and insurer.

2. Plaintiff, SPOTTSWOOD COMPANIES, INC (hereinafter “SPOTTSWOOD”), is a Florida Corporation with its principal place of business in the State of Florida. Spottswood specializes in real estate development, management and hospitality based out of 506 Fleming Street, Key West, Florida 33040.

3. Defendant, ZURICH AMERICAN INSURANCE COMPANY (hereinafter “ZURICH”), is a New York Corporation with its principal place of business located at 1299 Zurich Way, Schaumburg, IL 60196.

4. The amount in controversy exceeds the sum of \$75,000.00 exclusive of interest, attorney fees and costs. This Court has jurisdiction pursuant to diversity of citizenship, 28 U.S.C. §1332.

5. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §1391(a) because at least one party resides within the district and because a substantial part of the events giving rise to the claim occurred in the district.

6. SPOTTSWOOD owns and operates numerous hotels, timeshares, restaurants, marinas and commercial properties throughout Monroe County and is one of Monroe County’s largest private employers.

7. On December 1, 2019, SPOTTSWOOD purchased an “All-Risk” insurance policy with Defendant, ZURICH, with policy number ERP0272433-02 (“the All-Risk Policy”). The All-Risk Policy’s coverage period is December 1, 2019 through December 1, 2020. The All-Risk Policy covers all covered losses unless specifically excluded. Consistent with the all-risk nature of the policy, ZURICH specifically agreed to pay for all losses caused by “direct physical loss unless the loss is excluded or limited in this policy.” It was Plaintiff’s understanding that the “All-Risk” policy covered all losses other than flood and windstorm, which is precisely why the Plaintiff paid premiums in excess of \$216,000 for said “All-Risk” business policy.

8. The All-Risk Policy protects SPOTTSWOOD against a loss of business income due to a suspension of the company’s operations, coverage referred to as the “Time Element” loss. Pursuant to this coverage, ZURICH promised to pay for the actual Time Element loss

SPOTTSWOOD sustains that results from the necessary suspension of SPOTTSWOOD's business activities at the location(s) that suffered direct physical loss or damage. These provisions are as follows:

SECTION IV - TIME ELEMENT

4.01. LOSS INSURED

4.01.01. The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at an Insured Location. The **Suspension** must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at the **Location**, or as provided in Off Premises Storage for Property Under Construction Coverages.

The Company will also pay for the actual Time Element loss sustained by the Insured, during the Period of Liability at other Insured Locations. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at the other Insured Locations. Such other Location must depend on the continuation of business activities at the **Location** that sustained direct physical loss or damage caused by a **Covered Cause of Loss**.

4.02.03. EXTRA EXPENSE

The Company will pay for the reasonable and necessary Extra Expenses incurred by the Insured, during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**.

The Company will reduce the amount payable as Extra Expense by the fair market value remaining at the end of the Period of Liability for property obtained in connection with the above.

Extra Expenses mean that amount spent to continue the Insured's business activities over and above the expenses the Insured would have normally incurred had there been no direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**. Extra Expense does not include any Gross Earnings loss, the cost of permanent repair or replacement of property that has suffered direct physical loss or damage, or expenses otherwise payable elsewhere in the Policy.

9. The All-Risk Policy also provides "Civil or Military Authority" coverage. Under this type of coverage ZURICH promised to pay for the loss sustained by SPOTTSWOOD resulting from the necessary suspension in business activities caused by order of civil or military authority that prohibits access to its location.

5.02.03. CIVIL OR MILITARY AUTHORITY

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by order of civil or military authority that prohibits access to the **Location**. That order must result from a civil authority's response to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or

10. Thus, the All-Risk Policy affords coverage for:

a. "Gross Earnings" under which ZURICH promised to pay the actual loss sustained by SPOTTSWOOD;

b. "Extra Expense" under which ZURICH promised to pay for the reasonable and necessary extra expenses incurred by SPOTTSWOOD to resume and continue its business activities that otherwise would be necessarily suspended.

c. "Civil or Military Authority" under which ZURICH promised to pay for the loss sustained by SPOTTSWOOD resulting from the necessary suspension its business activities caused by order of civil or military authority that prohibits access to its location.

11. The Civil Authority provision is an independent basis for Time Element coverage that can be triggered even when the standard Time Element coverage is not.

12. Beginning in early March 2020, the presence of COVID-19 created a public health emergency that prompted actions by the civil authorities with jurisdiction over SPOTTSWOOD and its properties (i.e., The State of Florida, Monroe County and various counties across the State of Florida) that were insured under ZURICH'S All-Risk Policy.

13. On March 20, 2020, Monroe County issued Executive Order 20-02 which expressly closed the county to all tourists and leisure visitors and prohibited all lodging establishments from accepting reservations. Pursuant to this order, all hotels, short term vacation rentals, marinas and time shares were to cease renting to tourist effective immediately.

14. On March 26, 2020, Broward County issued Emergency Order 20-03, “Directing Shelter-in-Place: Safer at Home Policy.” Among other things, this Order required the closure of all non-essential businesses, including restaurants and bars. Emergency Order 20-03 was expressly issued in response to the propensity of COVID-19 and its disease-causing agent to “physically caus[e] property damage.”

15. On March 30, 2020, the Governor of Florida signed Executive Order 20-91, ordering the closure of all non-essential businesses as part of the “Safer at Home” initiative to stop the spread of COVID-19.

16. These civil authority actions restricted and prohibited access to numerous SPOTTSWOOD properties – including its hotels, timeshares, marinas and commercial properties.

17. The Civil Authority Actions issued in response to the COVID-19 emergency prohibiting public access to the covered premises and the surrounding area were issued in response to dangerous physical conditions and caused a suspension of business operations on the covered premises.

18. The presence of COVID-19 caused direct physical loss of/or damage to the covered properties under the All-Risk Policy by, among other things, damaging the covered properties, denying access to the covered properties, preventing customers from physically occupying the covered properties, causing the covered properties to be physically uninhabitable by customers, causing the function of the covered properties to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the covered properties

19. As a result of the presence of COVID-19, SPOTTSWOOD has suffered a suspension of business operations, sustained losses of business income and incurred extra expenses.

20. These losses and expenses have continued through the date of filing of this action, are not excluded from coverage under the All-Risk Policy. Because the Policy is an all-risk policy and SPOTTSWOOD has complied with its contractual obligations, SPOTTSWOOD is entitled to payment for these losses and expenses.

21. On May 5, 2020, SPOTTSWOOD sent a Formal Notice of Claim to ZURICH describing the losses it incurred as a result of a direct physical loss.

22. ZURICH has denied SPOTTSWOOD'S claim contending that a direct physical loss has not occurred and that the claim is excluded under certain exclusions contained in the All-Risk Policy.

23. SPOTTSWOOD has performed all conditions precedent to this action or said conditions have been waived or excused.

24. SPOTTSWOOD has become obligated to retain counsel to represent it in this insurance dispute and ZURICH is required to pay SPOTTSWOOD reasonable attorney's fees pursuant to F.S. §627.428.

Count I – Declaratory Relief: Time Element Loss and Extra Expense Coverages

25. Plaintiff realleges and reaffirms paragraphs 1 through 8, 10a, 10b, and 12 through 24 of the common allegations of this complaint as if fully setout herein.

26. SPOTTSWOOD is uncertain as to its rights, status, and privileges, under the All-Risk Policy issued by ZURICH, and specifically ZURICH's obligations to provide coverage the All-Risk policy for Time Element Loss, Extra Expense, business interruption, contingent business interruption, ingress/egress, and all risk coverages for the losses incurred as a result of the COVID-19 pandemic.

27. SPOTTSWOOD has a bona fide, actual and present need for a declaration and construction of the ZURICH All-Risk Policy, its status, rights, and privileges, and ZURICH's obligation to provide coverage to SPOTTSWOOD under the All-Risk Policy, including its primary coverage and all coverage extensions.

WHEREFORE, SPOTTSWOOD requests that the Court declare and construe the All-Risk Policy and enter its declaratory judgment as follows:

a. Declare that the All-Risk Policy issued by ZURICH to SPOTTSWOOD provides coverage for the losses stemming from the COVID-19 Civil Authority suspension of business operations for business income, extra expense, and all other coverage extensions up to the limits of the policy (\$200,000,000);

b. Declare that the All-Risk Policy issued by ZURICH to SPOTTSWOOD provides coverage for the losses stemming from suspension of SPOTTSWOOD business activities due to a direct physical loss of/or damages to SPOTTSWOOD'S properties;

c. Grant further and supplementary relief based on the declaratory judgment and after adjudication of the rights of the parties, when necessary and proper, and, after notice to ZURICH, require ZURICH to show cause why further relief should not be granted forthwith;

d. Enter final declaratory judgment in SPOTTSWOOD's favor and against ZURICH for all declaratory and supplemental relief within the declaratory jurisdiction of this court, including taxing costs of suit, prejudgment interest, and a reasonable attorney's fee as part of that declaratory judgment.

Count II – Declaratory Relief: Civil and Military Authority Coverage

28. Plaintiff realleges and reaffirms paragraphs 1 through 7, 9, 10c, and 11 through 24 of the common allegations of this complaint as if fully setout herein.

29. Upon information and belief, properties neither owned by SPOTTSWOOD nor insured under the All-Risk Policy which are located within the City of Key West and in other areas of Monroe County were penetrated by the COVID-19 virus causing Monroe County to issue Executive Order 20-02, as a result of which SPOTTSWOOD was ordered to shut down its various commercial properties located in Monroe County, thus triggering coverage under the Civil and Military Authority provision of the All-Risk policy.

30. SPOTTSWOOD is uncertain as to its rights, status, and privileges, under the All-Risk Policy issued by ZURICH, and specifically ZURICH's obligations to provide coverage under the All Risk Policy for Civil and Military Authority, business interruption, contingent business interruption, ingress/egress, and all risk coverages for the losses stemming from the civil authority suspension as a result of the COVID-19 pandemic.

31. SPOTTSWOOD has a bona fide, actual and present need for a declaration and construction of the ZURICH All-Risk Policy, its status, rights, and privileges, and ZURICH's obligation to provide coverage to SPOTTSWOOD under the All-Risk Policy, including its primary coverage and all coverage extensions.

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b. Declare that the All-Risk Policy issued by ZURICH to SPOTTSWOOD provides coverage for the losses stemming from suspension of SPOTTSWOOD business activities due to a direct physical loss of/or damage to SPOTTSWOOD'S properties;

c. Grant further and supplementary relief based on the declaratory judgment and after adjudication of the rights of the parties, when necessary and proper, and, after notice to ZURICH, require ZURICH to show cause why further relief should not be granted forthwith;

d. Enter final declaratory judgment in SPOTTSWOOD's favor and against ZURICH for all declaratory and supplemental relief within the declaratory jurisdiction of this court, including taxing costs of suit, prejudgment interest, and a reasonable attorney's fee as part of that declaratory judgment.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

DATED this 8th day of July, 2020.

Respectfully submitted,

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