

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR LEE COUNTY, FLORIDA

CATLIN DENTAL, P.A.,
Plaintiff,

vs.

CASE NUMBER:

THE CINCINNATI INDEMNITY
COMPANY,
Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, CATLIN DENTAL, P.A., by and through its undersigned attorneys,
and sues the Defendant, THE CINCINNATI INDEMNITY COMPANY, and alleges as follows:

PARTIES, JURISDICTION & VENUE

1. This is an action for damages that exceed \$30,000.00, exclusive of interest, attorney's fees and costs.
2. This is an action for declaratory relief pursuant to §86.011, Fla. Stat., for the purposes of determining an actual controversy between Plaintiff and Defendant with respect to the Plaintiff's claim for insurance coverage from Defendant and Defendant's failure to cover said claim.
3. On or about March 23, 2020, Defendant, THE CINCINNATI INDEMNITY COMPANY, is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of Ohio and duly authorized and licensed to write and issue insurance policies in the State of Florida, with agents located in Lee County, Florida.
4. Plaintiff's business is duly organized and incorporated in the State of Florida licensed to do business as a general dentistry practice.

5. Venue is proper in Lee County, Florida because the contract, which forms the subject matter of this lawsuit, was executed in Lee County, Florida.
6. Prior to bringing this Complaint, Plaintiff has performed and/or otherwise satisfied all those matters and things required of them to prosecute this action, including the satisfaction of all “conditions precedent” thereto, or, alternatively, has been excused from performative of the same by Defendant’s acts, representations or conduct.

GENERAL ALLEGATIONS

7. At all times material hereto, in consideration of a premium paid by the Insured, there was in full force and effect a certain business insurance policy No CAP 507 69 15 (the “Policy”), which was issued by the Insurance Company. A copy of the policy is in possession of both Plaintiff and Defendant but is too large to attach to the Complaint. The Policy will be produced pursuant to orders issued by the Court.
8. Accordingly, under the terms of the Policy, the Insurance Company agreed to provide insurance coverage to the Insured’s property against certain losses. The damaged property is located at 4447 Camino Real Way, Fort Myers, FL 33966.
9. On March 11, 2020 World Health Organization Director General Tedros Adhanom Ghebreyesus , declared the COVID-19 outbreak a worldwide pandemic: “WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction. We have therefore made the assessment that COVID-19 can be characterized as a pandemic.”¹

¹ See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19-11-march-2020>

10. On March 16, 2020, the Centers for Disease Control and Prevention, and members of the national Coronavirus Task Force issued to the American public guidance, styled as “30 Days to Slow the Spread” for stopping the spread of COVID-19. This guidance advised individuals to adopt far-reaching social distancing measures, such as working from home, avoiding shopping trips and gatherings of more than 10 people, and staying away from bars, restaurants, and food courts.²
11. Following this advice for individuals to adopt far-reaching social distancing measures, many state government administrations across the nation recognized the need to take steps to protect the health and safety of their residents from the human to human and surface to human and surface to human spread of COVID-19. As a result, the State of Florida entered civil authority orders suspending or severely curtailing business operations of non-essential businesses that interact with the public and provide gathering places for the individuals.
12. The result of these far-reaching restrictions and prohibitions have been catastrophic to the Plaintiff which has been forced to close, furlough employees, and endure a sudden shutdown of cash flow that threatens its survival.
13. Plaintiff insured against such catastrophic events like the current unforeseen COVID-19 pandemic through its Policy. This Policy promises to indemnify the policyholder for actual business losses incurred when business operations are involuntarily suspended, interrupted, curtailed, when access to the premises is prohibited because of direct physical loss or damage to the property, or by a civil authority order that restricts or prohibits access to the property. This coverage is

² <https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20-coronavirus-guidance-8.5x11-315PM.pdf>

commonly known as “business interruption coverage” and is standard in most all-risk commercial property insurance policies.

14. Defendant has denied the obligation to pay for business income losses and other covered expenses incurred by Plaintiff for the physical loss and damage to the insured property from measures put in place by the civil authorities to stop the spread of COVID-19 among the population. This action seeks a declaratory judgment that affirms that the COVID-19 pandemic and the corresponding response by civil authorities to stop the spread of the outbreak triggers coverage, has caused physical property loss and damage to the insured property, provides coverage for future civil authority orders that result in future suspensions or curtailments of business operations, and finds that Defendant is liable for the losses suffered by Plaintiff.
15. In addition, this action brings a claim against Defendant for its breach of its contractual obligation under the Policy to indemnify Plaintiff for business losses and extra expenses, and related losses resulting from actions taken by civil authorities to stop the human and surface to human spread of the COVID-19 outbreak.

THE GLOBAL COVID-19 PANDEMIC

16. Viruses of the family Coronaviridae, such as Middle East Respiratory syndrome (MERS) coronavirus (MERS-CoV) and severe acute respiratory syndrome (SARS) coronavirus SARS-CoV) have been responsible for the loss of human life since at least 2002 and were identified in several animal hosts.³

³ See <https://www.cdc.gov/coronavirus/2019-ncov/downloads/genomic-characterization-of-2019-nCoV-Lancet-1-29-2020.pdf> (There are four genera of CoVs: (I) a-coronavirus (alphaCoV), (II) β-coronavirus

17. The clinical features of COVID-19 vary from asymptomatic forms to fatal conditions of severe respiratory failure that required ventilation and support in an intensive care unit (ICU). Pneumonia has been the most frequent severe manifestation of COVID-19, with symptoms of fever, cough, dyspnea, and bilateral infiltrates on chest imaging.⁴ There are no specific treatments recommended for COVID-19, and no vaccine is currently available; so, understanding the complexities of COVID-19 is ongoing.⁵
18. It has now been discovered by scientists that COVID-19 has several modes of transmission. Pursuant to a “Situation Report” released by the WHO, the virus can be transmitted through symptomatic transmission, pre-symptomatic transmission, or asymptomatic transmission.⁶ Symptomatic transmission refers to transmission by an individual who is experiencing symptoms associated with the virus who then transfers COVID-19 to another individual. Data from published studies provide evidence that COVID-19 is primarily transmitted from symptomatic people to others who are in close contact through respiratory

(betaCoV) probably present in bats and rodents, while (III) δ -coronavirus (deltaCoV), and (IV) γ -coronavirus (gammaCoV) probably represent avian species)

⁴ See <https://www.mdpi.com/1660-4601/17/8/2690> (Asymptomatic infections have also been described, but their frequency is unknown...Other, less common symptoms have included headaches, sore throat, and rhinorrhea. Along with respiratory symptoms, gastrointestinal symptoms (e.g., nausea and diarrhea) have also been reported, and in some patients they may be the presenting complaint.)

⁵ See <https://www.mdpi.com/1660-4601/17/8/2690> (Asymptomatic infections have also been described, but their frequency is unknown...Other, less common symptoms have included headaches, sore throat, and rhinorrhea. Along with respiratory symptoms, gastrointestinal symptoms (e.g., nausea and diarrhea) have also been reported, and in some patients they may be the presenting complaint.)

⁶ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvsn=5ae25bc7_2

droplets by direct contact with infected persons, or by contact with contaminated objects and surfaces.⁷

19. The incubation period for COVID-19, which is the time between exposure to the virus (becoming infected) and symptom onset, averages 5-6 days, however, it can be up to 14 days.⁸ During this period, also known as the “pre-symptomatic” period. Some infected persons can be contagious. For that reason, transmission from a pre-symptomatic case can occur before symptom onset. Presymptomatic transmission still requires the virus to be spread through infectious droplets or touching contaminated surfaces.⁹
20. An individual who does not develop symptoms, an asymptomatic case of COVID-19, can still transmit the virus to another.¹⁰
21. Not only is COVID-19 transmitted via human-to-human, but the WHO and scientific studies have confirmed that the virus can live on contaminated objects or surfaces. According to a study by scientists documented in *The New England*

⁷ See https://www.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (Data from clinical and virologic studies that have collected repeated biological samples from confirmed patients provide evidence that shedding of the COVID-19 virus is highest in upper respiratory tract (nose and throat) early in the course of the disease. That is, within the first 3 days from onset of symptoms. Preliminary data suggests that people may be more contagious around the time of symptom onset as compared to later on in the disease.)

⁸ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2

⁹ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (In a small number of case reports and studies, presymptomatic transmission has been documented through contact tracing efforts and enhanced investigation of clusters of confirmed cases. This is supported by data suggesting that some people can test positive for COVID-19 from 1-3 days before they develop symptoms. Thus, it is possible that people infected with COVID-19 could transmit the virus before significant symptoms develop.)

¹⁰ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2

Journal of Medicine, COVID-19 was detectable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard, and up to two to three days on plastic and stainless steel.¹¹ All of these materials are used in the preparation and service of food by restaurants. The results of the study suggest that individuals could get COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic.

22. Without a vaccine to protect against COVID-19, effective control of the outbreak relies on measures designed to reduce human to human and surface to human exposure. Recent information on the CDC's website provides that COVID-19 spreads when people are within six feet of each other or when a person comes in contact with a surface or object that has the virus on it.¹² Various other sources state that close contact with a person with the virus or surfaces where the virus is found can transmit the virus.¹³
23. Plaintiff has suffered a direct physical loss of and damage to its property because it has been unable to use their property for its intended purpose and/or has been extremely limited in its use.

¹¹ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>; See <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (In the context of COVID-19, airborne transmission may be possible in specific circumstances and settings in which procedures or support treatments that generate aerosols are performed; i.e., endotracheal intubation, bronchoscopy, open suctioning, administration of nebulized treatment, manual ventilation before intubation, turning the patient to the prone position, disconnecting the patient from the ventilator, non-invasive positive-pressure ventilation, tracheostomy, and cardiopulmonary resuscitation.)

¹² See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-spreads.html>

¹³ See *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, Vol. 104, Kemp., G., et al., *Journal of Hospital Infection*, No. 3, March 2020, pages 246-251 (remains infectious from 2 hours to 28 days depending on conditions); see all <https://www.ucsf.edu/news/2020/02/41667/how-new-coronavirus-spreads-and-progresses-and-why-one-test-may-not-be-enough> (doorknobs and table tops can contain the virus); <https://www.nytimes.com/2020/03/02/health/coronavirus-how-it-spreads.html> (virus can remain on metal, glass and plastic for several days).

COUNT I
BREACH OF CONTRACT

24. The Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.
25. On or prior to March 23, 2020, Plaintiff procured and paid premiums to Defendant for a commercial package insurance bearing policy number CAP 507 69 15, a copy which is attached hereto as Exhibit A.
10. The policy at issue contains a provision for business interruption which reads as follows: “We will pay for the actual loss of “business income” you sustain due to the necessary suspension of your “operations” during the “period of restoration”. The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss...”
11. The policy at issue contains a provision for civil authority which reads as “When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply: (1) Access to the area immediately surrounding the damages property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damages property; and (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access

to the damage property. Civil Authority coverage for “business income” will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to 30 days after coverage begins. Civil Authority coverage for necessary “extra expense” will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end: (1) 30 days after the time of that action; or (2) When your Civil Authority coverage for “business income” ends; whichever is later.

12. On or about March 2020, novel COVID-19 was identified as a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms of cough, fever, and shortness of breath.
13. On or about March 1, 2020, Governor Ron DeSantis issued Executive Order number 20-51 directing the Florida Department of Health to issue a Public Health Emergency.
14. On or about March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of the COVID-19 pandemic.
15. On or about March 9, 2020, Governor Ron DeSantis issued Executive Order 20-51 declaring a state of emergency for the entire State of Florida as a result of the COVID-19 pandemic.
16. On or about March 18, 2020, President Donald J. Trump and the Centers for Medicare and Medicaid Services recommended providers limit all “non-essential” medical and surgical procedures, including dental procedures.

17. On or about March 11, 2020, COVID-19 was identified as a pandemic that plagued the world. This pandemic was airborne pathogen that was inherently dangerous and a novel plague.
18. Plaintiff's dental office was damaged since airborne particles existed in the air and the risk of the COVID-19 pandemic outweighed continued operations. Plaintiff incurred costs of decontaminating his business office and office closure. This physical damage resulted in loss of income to the business.
19. On or about March, 2020, Plaintiff incurred a severe business disruption due to damage caused by the spread of the COVID-19 pandemic.
20. On or about March, 2020, the Governor of the State of Florida issued an Executive Order limiting dental offices to emergency procedures only. See attached Exhibit B.
21. Defendant owes and is obligated to compensate Plaintiff pursuant to policy ACP 30-1-8931337.
22. On or about March, 2020, Plaintiff contacted Defendant to submit a claim for losses. His claim was denied. See attached Exhibit C.
23. Plaintiff has retained undersigned counsel to prosecute his claims and owes customary fees and costs. Plaintiff seeks all reasonable attorney's fees and costs against Defendant pursuant to Florida Statute 627.428.
24. Plaintiff reserves his ability to file for supplemental relief pursuant to policy ACP 30-1-8931337.

WHEREFORE, Plaintiff, MAURICIO MARTINEZ, DMD, PA d/b/a GULF COAST SMILES, requests the entry of a Final Judgement against Defendant, ALLIED INSURANCE COMPANY OF AMERICA, wherein the Plaintiff is awarded compensatory damages, its

attorneys' fees, costs, prejudgment interest, and all other relief that this Court deems just and appropriate.

COUNT II
DECLARATORY JUDGEMENT

25. The Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-7 above as if fully set forth herein.
26. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes, specifically §86.011, Florida Statutes.
27. There exists a *bona fide* actual, present and practical need for the declaration of those rights, coverages(s), and benefits available under the Policies of the Plaintiff. Declaratory relief in this instant is proper because the Plaintiff is in doubt about the existence of those rights, duties, coverages, and benefits under the policies, including, but not limited to, the relief, scope and amount of available coverage for these damages encompassing the breadth of the Plaintiff' s claim.
28. There exists a present ascertained set of facts, and/or present controversy concerning said facts, that requires this Court's declaration of the Parties' rights and obligations under the policies.
29. Both the Plaintiff and Defendant have actual adversarial interests in the claim, which are properly before this Court.
30. The Plaintiff seeks this Court's declaration that those damages at issue in the claim constitute a covered loss under the policies, and, further, that Defendant has erroneously refused to provide all or part of the police benefits that the Plaintiff is due.

31. The plaintiff seeks this Court's declaration of the damages sought by the Plaintiff that were reported in the claim and supplemented with significant damage documentation, and, in addition, a declaration of the amount of insurance benefits due from Defendant for the damages that are at issue in the claim.
32. The plaintiff seeks this Court's declaration that it has performed and/or otherwise satisfied all state conditions under the policies, or, alternatively, has been excused from performance of the same by virtue of the acts, representations, and/or conduct of the Defendant.
33. The Plaintiff requests that this Court retain jurisdiction for supplemental relief pursuant to Section 86.061, Florida Statutes. This supplemental relief should include, but not be limited to, claims for damages and/or bad faith as appropriate.
34. The Plaintiff has complied with all conditions precedent to the filing of this lawsuit, and notwithstanding the same, Defendant has denied the claims in question, and/or has reserves its rights to deny the claims in question. Alternatively, to the extent that the Plaintiff as failed to comply with any conditions precedent, the failure to comply with the same did not prejudice and/or is in an immaterial breach of the subject contracts of insurance as such claims were or would have been denied by Defendant. Alternatively, Defendant waived any such conditions and/or are estopped from asserting any defenses related to conditions precedent. More specifically, the Plaintiff has plainly given notice of all claims which are the subject of this lawsuit to Defendant and/or its designated agents.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter an Order declaring the Parties respective rights, obligations and responsibilities under the policies,

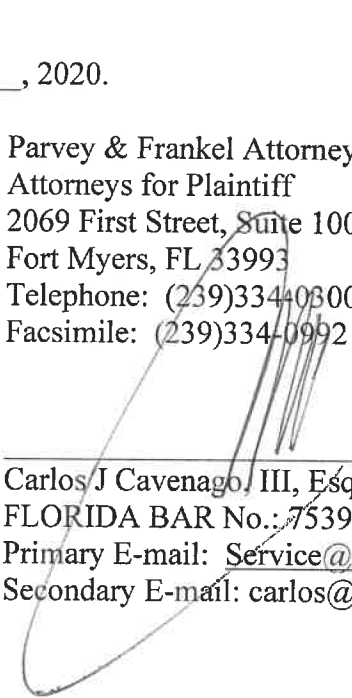
including, but not limited to, a declaration of the applicable and available coverage(s)/limits of insurance for those damages arising out of the claim, together with an award of prejudgment interest, costs, and attorney's fees, together with such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

The Plaintiff requests a jury trial on all issues so triable.

Dated this 14 day of July, 2020.

Parvey & Frankel Attorneys, P.A.
Attorneys for Plaintiff
2069 First Street, Suite 100
Fort Myers, FL 33993
Telephone: (239)334-0300
Facsimile: (239)334-0992

BY: 

Carlos J Cavenago, III, Esq.
FLORIDA BAR No.: 753955
Primary E-mail: Service@parveyfrankel.com
Secondary E-mail: carlos@parveyfrankel.com