

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS SOUTH FLORIDA ENT ASSOCIATES, INC. DEFENDANTS HARTFORD FIRE INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Hartford, Connecticut (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Frank A. Florio, Esq. fflorio@kttlaw.com

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) Tracy A. Jurgus, Esq. BUTLER WEIHMULLER KATZ CRAIG LLP

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION 28 USC 1332 LENGTH OF TRIAL via 4 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$750,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE September 3, 2020 SIGNATURE OF ATTORNEY OF RECORD [Signature]

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

SOUTH FLORIDA ENT ASSOCIATES, INC.,)	
)	
)	
Plaintiff,)	FEDERAL COURT CASE NO.:
)	STATE CASE NO.:
)	20-015532-CA-01
)	
v.)	
)	
HARTFORD FIRE INSURANCE COMPANY)	
)	
Defendant.)	

**DEFENDANT HARTFORD FIRE INSURANCE COMPANY’S
NOTICE OF REMOVAL**

Defendant HARTFORD FIRE INSURANCE COMPANY (“Hartford Fire”), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, hereby file this statement on the grounds for removing this cause of action to the United States District Court for the Southern District of Florida, Miami Division together with a copy of all process, pleadings and orders served upon Hartford Fire in the state court case. In support of removal, Hartford Fire states the following:¹

1. On July 22, 2020, Plaintiff South Florida ENT Associates, Inc. (“South Florida ENT”) sued Hartford Fire for breach of contract arising out of the policy of insurance between

¹ Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Hartford Fire’s rights to assert any defense, including, but not limited to those defenses available under Rule 12 of the Federal Rules of Civil Procedure or otherwise.

Hartford Fire and Plaintiff (“Policy”). Plaintiff’s lawsuit arises out of Hartford Fire’s denial of Plaintiff’s claims for coverage for loss of business income and extra expense arising from “the existence of the national COVID-19 emergency, and orders to close medical and surgical facilities to elective, non-urgent and non-emergency care, in South Florida and throughout the state and country....” Compl. ¶ 47.

2. The lawsuit is pending in the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida under Case No. 20-015532-CA-01 (“State Action”).

3. On August 5, 2020, Hartford Fire was served with a Summons and copy of the Complaint in connection with the State Action.

4. Hartford Fire timely files this Notice of Removal within 30 days of service in accordance with 8 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), requiring a copy of all process, pleadings, and orders served upon Defendant to be included with a notice of removal, the Complaint and Summons are attached as **Exhibit “A”**. No other documents have been served on Hartford Fire.

6. Venue is proper in this Division in accordance with 28 U.S.C. § 28 U.S.C. §§ 121(1) and 1441(a).

7. This case is properly removable to federal court because it involves a controversy between citizens of different states and an amount in controversy that exceeds \$75,000, exclusive of interest and costs. *See* U.S.C. §§ 1332, 1441, and 1446.

8. Plaintiff, South Florida ENT, is a Florida corporation.² Compl. ¶ 2. Plaintiff is a citizen of Florida for diversity purposes. *See* 28 U.S.C. § 1332(c).

² *See also* Florida Department of State, SOUTH FLORIDA ENT ASSOCIATES, INC., SEARCH BY ENTITY NAME, available at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (last visited August 31, 2020).

9. Hartford Fire is incorporated in Connecticut with a principal place of business is in Connecticut.³ As such, Hartford Fire is a citizen of Connecticut, not Florida, for diversity purposes. *See* 28 U.S.C. § 1332(c).

10. The parties are therefore diverse.

11. The Complaint alleges that Plaintiff is seeking “in excess of Seven Hundred Fifty Thousand Dollars (\$750,000).” Compl. ¶ 1.

12. Plaintiff is seeking compensatory damages for breach of contract, costs, and attorneys’ fees pursuant to Fla. Stat. § 627.428. Compl. “Prayer for Relief”.

13. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as a district or division embracing the place where the state action is pending. The time within which Defendants are required to file this Notice of Removal in order to remove this cause to the Court has not yet expired.

14. Attached as **Exhibit “B”** is a copy of the Certification of Notice of Removal, which will be filed by Defendant in the pending State Action.

15. Attached as **Exhibit “C”** is a copy of the Notice of Removal to Opposing Counsel, which will be filed by Hartford Fire in the pending State Action.

WHEREFORE, Defendant, HARTFORD FIRE INSURANCE COMPANY, respectfully requests that this Honorable Court exercise jurisdiction over this matter.

Dated: September 3, 2020.

Respectfully submitted,

/s/ Tracy A. Jurgus

Tracy A. Jurgus, Esq.

Florida Bar No.: 483737

BUTLER WEIHMULLER KATZ CRAIG LLP

³ *See* <https://www.thehartford.com/legal-notice> (last visited August 31, 2020).

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

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Counsel for the Plaintiff

by ECF and e-Service on September 3, 2020.

/s/ Tracy A. Jurgus

Tracy A. Jurgus

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.

SOUTH FLORIDA ENT ASSOCIATES, INC.,
a Florida corporation,

Plaintiff,

v.

HARTFORD FIRE INSURANCE COMPANY,
a Connecticut corporation,

Defendant.

COMPLEX BUSINESS LITIGATION DIVISION

COMPLAINT

Plaintiff South Florida ENT Associates, Inc. (“SFENTA”) sues Defendant Hartford Fire Insurance Company (“Hartford”) and states:

JURISDICTION, PARTIES AND VENUE

1. This is a civil action for breach of an insurance contract, costs, and attorneys’ fees in excess of Seven Hundred Fifty Thousand Dollars (\$750,000.00).

2. Plaintiff SFENTA, formerly known as South Florida ENT Associates, P.A., is a Florida corporation and a medical group consisting of 54 board certified ear, nose and throat physicians in South Florida, that conducts elective ENT procedures in its medical offices in Miami-Dade, Broward and Palm Beach Counties. SFENTA is owned by its parent company ENT MSO, LLC, a Delaware limited liability company. On February 25, 2019, SFENTA changed from a Florida professional association to a Florida corporation.

3. Defendant is a Connecticut corporation authorized to conduct business in Florida.

4. Venue lies in Miami-Dade County, Florida pursuant to Fla. Stat. § 47.051 because Hartford has agents in Miami-Dade County, where the cause of action accrued, where the

insurance contract was issued, and where the named insured is located. *See also* Fla. Stat. § 47.011; Fla. Stat. § 47.041.

5. This Court has personal jurisdiction over Defendant pursuant to Fla. Stat. § 48.193(1)(a) because Plaintiff's claim arises out of Defendant conducting, engaging in and carrying on business in Florida; Defendant breaching an insurance contract in Florida by failing to perform contractual obligations that the contract requires to be performed in Florida; and Defendant contracting to insure Plaintiff's insureds' premises and other properties, which are located in Florida. Furthermore, the Plaintiff is a Florida company with offices in South Florida.

6. All conditions precedent to this action have occurred, have been performed or have been waived.

FACTS

A. Background

7. People and businesses buy insurance to protect against financial disaster.

8. People and businesses know that they are at their most vulnerable and desperate in the wake of disasters like the current pandemic. Insurance companies know it too.

9. As commercial contracts, the insurance contract contains mutual obligations.

10. The insurance company, including Defendant herein, promises that it will provide money when most needed after a covered loss in the event of a disaster.

11. The insurance company, including Defendant herein, promises, warrants and sells "peace of mind" that in the event of a catastrophe or disaster, such as a pandemic, the policy holder will be fully and promptly indemnified.

12. For years and even decades, the vast majority of people and businesses that carry business interruption insurance have faithfully paid their premiums and have never made a claim.

Now that there is a catastrophic business interruption caused by a national healthcare disaster stemming from the COVID-19 pandemic and subsequent government-ordered business shutdowns, their claims are denied. Like Plaintiff, many people and businesses are relying on their business interruption insurance to cover what it is supposed to cover – loss of income and ongoing expenses – to get through this crisis and rebuild their businesses.

13. Plaintiff, like any business, is in commerce: it hires employees, contracts with suppliers and sells to customers. The business counts on current income and future income from operations to remain operational, and insurance coverage when operations are interrupted and suspended due to disasters.

14. Policyholders are dependent on performance by the insurance company when they are most vulnerable. Dependence here arises from the policyholders' financial desperation combined with a state of mind focused on managing the fallout from the disaster.

15. When the insurance company fails to fulfill its obligations timely and completely, the policyholder suffers contractual damages and harm to the existence of its business.

16. In order to protect its business and its income from losses, Plaintiff obtained an insurance policy (the "Policy") from Hartford.

17. Plaintiff purchased this commercial property insurance policy, with policy number 36 UUN AA3936 DH, effective October 15, 2019. *See* Exhibit A. The Policy protects against, among other risks, business losses and extra expenses that result from an involuntary interruption of business operations.

18. The Policy period runs until October 15, 2020, and insures Plaintiff's commercial property, the medical offices where SFENTA physicians practice and the Plaintiff medical group

conducts its business operations. The Policy is in full effect as Plaintiff has faithfully paid the premiums due which Defendant accepted.

19. The Policy is a contract in which Plaintiff agreed to pay monthly premiums in exchange for Defendant's promises of coverage for business income losses, including coverage for losses due to the involuntary interruption and suspension of business operations.

20. Beginning in March 2020, Plaintiff was forced to suspend full business operations at the covered medical offices which were interrupted as a result of the national healthcare crisis and national emergency proclaimed to deal with the strain placed on the nation's healthcare system from the COVID-19 pandemic and resultant civil authority orders, which shut down medical offices in Florida and prohibited SFENTA physicians from seeing non-emergency patients in order to prevent SFENTA's patients from becoming endangered by contact with other people. This ongoing interruption and suspension have caused Plaintiff to suffer significant business income losses and to incur significant expenses.

21. Defendant is in breach by refusing coverage for the interruption and suspension of business that resulted from the national healthcare disaster and COVID-19 pandemic emergency. Defendant is obligated under the Policy to cover and pay these losses and expenses but has refused to do so.

B. Relevant Policy Provisions

22. The Policy is an all-risk commercial property insurance policy that provides coverage for physical loss of the insured property from all risks unless expressly excluded by language in the body of the Policy or through a separate exclusion endorsement. There is no exclusion in the Policy for business interruption caused by a natural disaster and that forces the declaration of a national emergency and the urgent lock down of non-essential businesses and

along with the at-home quarantine of the vast majority of the national population due to a global pandemic and due to the need to lessen the strain on the nation's healthcare system by restricting access to places where the population can be exposed to this physically dangerous condition.

23. The Policy defines Plaintiff's covered property as "Business Income" for which it will pay for the loss caused by or resulting from any "Covered Cause of Loss."

24. The Business Income coverage provides that Defendant will pay for the actual loss of business income Plaintiff sustains due to the necessary interruption and suspension of its business operations during a period of restoration which ends when business operations return to normal.

25. The Policy defines "Interruption" as "the slowdown or cessation of any part of your business activities."

26. The Policy defines business income as "Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss had occurred."

27. The Policy also provides for coverage for "Extended Business Income" where the necessary interruption and suspension of operations produces a business income loss up to the time normal business operations resume.

28. The Policy includes coverage for Extra Expense, providing that Defendant will pay the necessary expenses Plaintiff incurs that it would not have incurred if there had been no loss of the property.

29. The Policy includes coverage for actions of Civil Authority, providing Defendant will pay for the actual loss of Business Income and incurred Extra Expenses at the premises caused by the action of civil authority that prohibits access to the premises in response to dangerous physical conditions.

30. The Business Income and Extra Expense from Dependent Property coverage provides that Defendant will pay for the actual loss of business income Plaintiff sustains and the actual necessary and reasonable extra expense Plaintiff incurs due to the necessary interruption or suspension of operations during a dependent property period of restoration which ends when business operations return to normal.

31. The Policy defines “Dependent Property” as property at premises owned and operated by others that Plaintiff depends on to deliver materials or services to it or to others on Plaintiff’s account.

C. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy

32. On March 9, 2020 Governor Ron DeSantis issued Executive Order 20-52 concerning the public health emergency posed by the COVID-19 pandemic, citing his authority to declare a state of emergency under Article IV, Section (1)(a) of the Florida Constitution and Chapter 252, Florida Statutes, which is intended to provide emergency measures to protect residents from disasters that threaten life, health and safety and damage to property.

33. On March 13, 2020, President Donald Trump declared a national state of emergency over the COVID-19 pandemic, effective March 1, 2020, wherein he directed that “hospitals and medical facilities throughout the country assess their preparedness posture and be prepared to surge capacity and capability.”

34. On March 17, 2020 Miami-Dade Mayor Carlos Giménez issued Emergency Order 3-20, declaring a county-wide state of emergency due to COVID-19, severely restricting or closing non-essential businesses in Miami-Dade County.

35. On March 19, 2020 Miami-Dade Mayor Carlos Giménez issued Emergency Order 7-20, extending the state of county-wide emergency, citing the need to “slow the spread” of COVID-19 and providing further detail on business limitations.

36. On March 20, 2020 Governor DeSantis issued Executive Order 20-72, relating to the COVID-19 pandemic, prohibiting all elective, non-urgent or non-emergency medical and surgical procedures in Florida in order to conserve essential resources such as personal protective equipment for use by hospital workers and first responders.

37. Then, on March 30, 2020 Governor DeSantis issued Executive Order 20-89, explicitly limiting access to businesses in South Florida:

I hereby order Miami-Dade County, Broward County, Palm Beach County and Monroe County to restrict public access to businesses and facilities deemed non-essential pursuant to the guidelines established by Miami-Dade County pursuant to its March 19, 2020 Emergency Order 07-20, and as modified by subsequent amendments and orders prior to the date of this order.

38. In all, from March through June 2020, Governor DeSantis entered dozens of additional Executive Orders interrupting or curtailing business operations in Florida.¹

39. As a result of the benefits realized from prior restrictions, on April 29, 2020, Governor DeSantis entered Executive Order 20-112, as part of the “Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery”, lifting the total restriction on all elective, non-urgent and non-emergency medical and surgical procedures effective May 4, 2020, however due to the effects of the COVID-19 pandemic, Plaintiff’s business operations remain interrupted and suspended.

40. And, just shortly after attempts were made to reopen under Phase 1 of the Step-by-Step Plan for Florida’s Recovery, on July 6, 2020, in the face of increasing cases of COVID-

¹ <https://www.flgov.com/2020-executive-orders/>

19 in Miami-Dade County, Mayor Carlos Giménez announced he would be issuing a new emergency order (Amendment No. 2 to Emergency Order 26-20), stating:

I am continuing to roll back business openings as we continue to see a spike in the percent of positive COVID-19 tests and an uptick in hospitalizations.

I am signing an emergency order that will close restaurants (except for takeout and delivery services), along with ballrooms, banquet facilities, party venues, gyms and fitness centers, and short-term rentals. These closings, among others that will be included in the order, will be effective Wednesday, July 8, 2020. We want to ensure that our hospitals continue to have the staffing necessary to save lives.

41. Other similar state and local civil authority orders have been issued that close or restrict access to all non-essential business operations or prohibit public access to the property of non-essential businesses where the individuals gather in close proximity to each other, in order to protect the public from the dangerous condition of contracting the respiratory illness named COVID-19.

42. The civil authority orders expressly state that the closing of non-essential businesses, reductions in permitted operating hours, and social distancing restrictions placed on the public are necessary emergency measures to protect the health and safety of all residents in Florida due to the spread of COVID-19 through human-to-human and surface-to-human contact with the coronavirus.

43. The COVID-19 pandemic is a “natural disaster.” Like other specific disasters, such as hurricanes or earthquakes, it involves substantial damage to property, hardship, suffering, and loss of life.

44. At least one State Supreme Court has already recognized, in *Friends of DeVito v. Wolf*, that the damage caused by the COVID-19 pandemic is indistinguishable from those caused by earthquakes, fires and the other casualty events:

We agree with Respondents that the COVID-19 pandemic qualifies as a “natural disaster” under the Emergency Code...

2020 Pa. LEXIS 1987, at *31 (Pa. April 13, 2020).

45. Losses from disasters are what property-based insurance coverage has always been intended to cover.

46. The nature of Plaintiff’s business is performing elective medical and surgical ENT procedures in an outpatient setting where SFENTA physicians and other personnel work very closely and in fact invasively with patients. The intended purpose of SFENTA’s facilities is to provide a safe environment for patient medical and surgical care.

47. As a direct result of the existence of the national COVID-19 emergency, and orders to close medical and surgical facilities to elective, non-urgent and non-emergency care, in South Florida and throughout the state and country, Plaintiff’s medical and surgical facilities became unsafe for the public to use. Thus, Plaintiff lost the physical use of the insured medical and surgical facilities, suffering a significant physical loss of its business income and incurred extra expenses. The loss continues.

48. Further, the civil authority actions restricting the patients from accessing Plaintiff’s premises and the area surrounding it resulted from unsafe and dangerous physical conditions present at SFENTA’s medical and surgical facilities and caused an interruption and suspension of Plaintiff’s full business operations and loss of business income.

49. There are over 58,000 reported cases of people testing positive for the coronavirus that have been reported in Miami-Dade County, more than 22,000 in Broward County, more than 26,000 in Palm Beach County and more than 244,00 across all of Florida. This shows that the population is vulnerable to contracting COVID-19 throughout South Florida, and that dangerous conditions permeate all property, including the areas surrounding Plaintiffs’ premises.

50. Specifically, the civil authority orders have denied access to the premises, prevented physicians, staff and patients from physically occupying the premises, caused the premises to be physically uninhabitable by SFENTA physicians, staff and patients, caused the intended purpose and function of SFENTA's medical and surgical facilities to be nearly eliminated or destroyed, and caused the interruption and suspension of the majority of business operations, including elective ENT procedures which form the bulk of SFENTA's business operations.

D. Plaintiff Has Suffered and Continues to Suffer a Loss Under the Policy, But Was Denied Coverage

51. The business income losses Plaintiff has and continues to suffer, and the extra expenses Plaintiff has incurred are covered under the Policy, yet on June 15, 2020 Defendant denied coverage despite Plaintiff's timely notice of its claim.

52. Due to the proclaimed national disaster, state and local state of emergency declarations, and related civil authority orders intended to keep the public safe, Plaintiff has suffered business income losses from the reduction, interruption and suspension of business operations, and has incurred extra expenses.

53. These losses and expenses have continued through the date of filing of this action as SFENTA's medical and surgical operations remain severely interrupted, suspended, slowed down or ceased, in whole or in part.

54. Plaintiff's lost business income and extra expenses due to a national disaster are covered under the Policy, are not limited and have not been excluded from coverage. Plaintiff is entitled to be indemnified by Defendant for its business income losses and expenses incurred.

55. Thus, Defendant is in breach of the Policy for denying coverage.

COUNT I

BREACH OF CONTRACT

56. Plaintiff incorporates by reference paragraphs 1 – 55 as though fully set forth herein.

57. Plaintiff has a commercial property insurance policy issued by Defendant.

58. Plaintiff has performed all its obligations as specified by the Policy including the payment of all premiums due.

59. Plaintiff's Policy provides coverage for business income loss, extended business income loss, and extra expense for unexpected and unexcluded covered causes of loss.

60. As stated above, Plaintiff had to involuntarily close its business operations and insured premises to its patients and severely interrupt, suspend, slow down or cease its business operations, in whole or in part, due to the national healthcare disaster and COVID-19 emergency and resulting measures put in place by civil authority orders and thus has incurred substantial business income losses and extra expenses.

61. Defendant denied and refused to provide coverage for Plaintiff's business income losses and extra expenses.

62. As a result of the Defendant's breach of the Policy, Plaintiff has suffered actual damages.

WHEREFORE, Plaintiff seeks compensatory damages resulting from Defendant's breach of contract, an appraisal to determine the amount of Plaintiff's damages, and further seeks all relief deemed appropriate by this Court, including attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

- (1) Awarding Plaintiff compensatory damages from the Defendant's breach of the insurance contract in an amount to be determined at trial or appraisal ordered by this Court, together with appropriate prejudgment interest at the maximum rate allowable by law;
- (2) Awarding Plaintiff costs and disbursements and reasonable allowances for the fees of Plaintiff's experts, and reimbursement of expenses;
- (3) Awarding Plaintiff attorneys' fees pursuant to Fla. Stat. § 627.428; and
- (4) Awarding such other and further relief the Court deems just, proper, and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff requests a jury trial for any and all Counts for which a trial by jury is permitted by law.

Respectfully submitted July 22, 2020.

/s/ Harley S. Tropin

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