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Cook County, IL

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DOROTHY BROWN
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COOK COUNTY, IL
2020CH05129

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

STONE PARK ENTERTAINMENT, INC.,)	9897985
an Illinois corporation,)	
)	
Plaintiff,)	Case No. <u>2020CH05129</u>
)	
v.)	Calendar:
)	
LEXINGTON INSURANCE CO.,)	JURY DEMANDED
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

NOW COMES the Plaintiff, STONE PARK ENTERTAINMENT, INC. ("SPE"), by and through its attorneys, PEDERSEN & HOUP, P.C., and for its Complaint for Declaratory Judgment and Other Relief against Defendant LEXINGTON INSURANCE CO. ("Lexington"), allege as follows:

NATURE OF THE ACTION

1. This action seeks a declaration of coverage under SPE's casualty insurance policy, issued by Lexington. SPE operates a nightclub in Stone Park, Illinois. Lexington insured SPE against business interruptions caused by "direct physical loss or damage by any of the perils covered herein during the term of this policy to Real and/or Personal Property as covered herein."

2. On March 16, 2020, SPE suspended its business operations because the rapid spread of the COVID-19 virus and its presence among the general population presented an unreasonable risk of harm to SPE's employees and patrons. As a result of COVID-19's physical presence, SPE lost the use of the insured real and personal property.

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3. SPE submitted its business interruption claim to Lexington on March 16, 2020. On April 3, 2020, Lexington denied coverage. SPE brings this timely action seeking a declaration of coverage under the policy and damages resulting from Lexington's wrongful denial of coverage, in amounts to be proven at trial.

THE PARTIES

4. SPE is a corporation organized under the laws of the State of Illinois and having its principal place of business in Stone Park, Cook County, Illinois. SPE operates a nightclub.

5. Lexington is an affiliate of American International Group ("AIG") with its principal place of business in Boston, Massachusetts.

THE POLICY

6. Lexington Policy No. 060437902 (the "Policy") took effect on September 1, 2019. (Ex. A). Section 7(A) of the Policy's Manuscript All Risk Form states that the Policy covers the "interest of the Insured in all Real and/or Personal Property" identified on the Location Schedule to the Policy. SPE is the Insured under the Policy. The Location Schedule includes SPE's facility at 4003 Lake Street in Stone Park, Illinois.

7. Section 7(B) of the Policy's Manuscript All Risk Form states as follows:

Business Interruption means loss resulting from necessary interruption of business conducted by the Insured and caused by direct physical loss or damage by any of the perils covered herein during the term of this policy to Real and/or Personal Property as covered herein.

If such loss occurs during the term of this policy, it shall be adjusted on the basis of the actual loss sustained by the Insured, during the period of restoration, consisting of the net profit (or loss) which is thereby prevented from being earned and of all charges and expenses, but only to the extent that they must necessarily continue during the interruption of business, and only to the extent to which they would have been incurred had no loss occurred.

8. Section 9 of the Policy’s Manuscript All Risk Form, entitled “Perils Insured Against” states, in pertinent part, that the Policy “insures against all risks of direct physical loss of or damage to property described herein ... except as hereinafter excluded.”

THE COVID-19 PANDEMIC

9. On December 31, 2019, the People’s Republic of China reported a cluster of cases of pneumonia in people associated with the Huanan Seafood Wholesale Market in Wuhan, Hubei Province. On January 7, 2020, Chinese health authorities confirmed that this cluster was associated with a novel coronavirus, SARS-CoV-2. The illness caused by the novel coronavirus was originally called 2019-nCoV. This name was eventually shortened to COVID-19, for **CO**rona **VI**rus **D**isease **2019**. Chinese authorities reported the first death from COVID-19 on January 11, 2020.

10. Although Chinese authorities originally reported that COVID-19 was associated with exposure to the seafood market in Wuhan, epidemiologic data soon confirmed that COVID-19 was being transmitted from person to person.

11. A disease’s level of contagiousness in a population is known as its R0 (pronounced “R-naught”). R0 refers to the average number of people that one sick person goes on to infect in a group that has no immunity. An R0 value of one (1) means the average person who gets that disease will transmit it to one other person; in that case, the disease is spreading at a stable rate. An R0 of more than 1 means the disease spreads exponentially.

12. A disease’s R0 varies between populations as different societies take different measures to restrict transmission, develop immunities and so forth. To end the transmission of a novel disease, a population must reduce the disease’s R0 to a number less than one.

13. Based upon transmission rates during the initial, uncontrolled days of the Wuhan outbreak, *i.e.*, before Chinese authorities imposed social controls designed to restrict COVID-19's spread, COVID-19's R0 may be as high as 5.7 if left unchecked. By comparison, the coronavirus that caused the 2003 SARS epidemic had a R0 of between 2 and 4.

14. On January 20, 2020, there were only 239 confirmed cases of COVID-19 in the world. Of these, 235 were in China.

15. On January 21, 2020, Washington State health authorities confirmed the first case of COVID-19 infection in the United States. The second confirmed case came the next day, in Chicago, Cook County, Illinois.

16. The World Health Organization ("WHO") declared the COVID-19 outbreak a Public Health Emergency of International Concern January 30, 2020. By January 31, 2020, there were 9,826 confirmed cases of COVID-19 spread across 22 countries.

17. According to a February 28, 2020, article published in the Journal of the American Medical Association, COVID-19's clinical presentation has involved fever in 83% to 98% of patients, dry cough in 76% to 82%, and fatigue in 11% to 44%. Other symptoms had been reported, such as headache, sore throat, abdominal pain, and diarrhea. COVID-19's dry cough could cause severe difficulty breathing. As of February 28th, approximately 25% of COVID-19 patients were suffering a severe course requiring intensive care; approximately 10% required mechanical ventilation.

18. For some, even mechanical ventilation is not enough. COVID-19's actual mortality rate is difficult to calculate for a variety of reasons. As of February 28, 2020, 3.4% of people with confirmed diagnoses of COVID-19 infection had died as a result.

19. As COVID-19 is a new disease, many aspects as to how it spreads are under investigation. It is known, however, that the disease is spread during close contact, often by small droplets produced during coughing, sneezing, or talking. The droplets are transmitted, and cause new infection, when inhaled by people in close contact, *i.e.*, within 3 to 6 feet.

20. Most of the relatively-heavy droplets, however, fall to the ground or surfaces, where they can still infect other people, particularly if those people touch contaminated surfaces and then their eyes, nose or mouth with unwashed hands.

21. On surfaces, the amount of active virus decreases over time until it can no longer cause infection. Experiments show, however, that the virus can survive on various surfaces for some time. For example, COVID-19 can survive on copper or cardboard for a few hours; on plastic or steel, it can survive for a few days.

22. As the people of the world took action to prevent COVID-19's spread, the estimate R_0 decreased. On February 28, 2020, the Journal of the American Medical Association published an article estimating COVID-19's R_0 at between 2 and 3. By comparison, the seasonal flu has an R_0 of approximately 1.3.

23. Despite the lower R_0 value, COVID-19 was spreading exponentially. By March 1, 2020, there were 87,026 confirmed cases of COVID-19 across sixty-three countries. Of these, 69 cases were in the United States. Also on March 1st, the United States reported its first confirmed death from COVID-19.

24. By March 11, 2020, the number of confirmed cases in the United States had grown by a factor of approximately 15 in ten days, to 1,025 total cases and 28 deaths. Worldwide, the number of cases passed 118,613, of whom 4,293 had died. That day, the WHO

declared that COVID-19 constituted a pandemic. The United States declared a national emergency on March 13, 2020.

25. By March 16, 2020, the United States had 3,774 total cases of COVID-19, resulting in 69 deaths. Worldwide, COVID-19 had struck 167,418 times, causing 6,514 deaths — a death rate of 3.8%. Cook County, Illinois, health officials reported 77 confirmed cases.

26. As predicted, the number of COVID-19 cases — and deaths — has continued to rise exponentially.

27. By April 1, 2020, the United States had 189,618 confirmed COVID-19 cases, with 4,079 deaths. Every State in the Union reported multiple confirmed cases of COVID-19. Total worldwide cases had reached 851,587, with 42,540 deaths. Cook County reported 5,152 cases and 95 deaths.

28. By April 15, 2020 — two weeks later — the United States had 609,516 confirmed COVID-19 cases, with 26,057 deaths. Total worldwide cases had reached 1,953,786, with 128,157 deaths. Cook County reported 17,306 cases and 630 deaths.

29. By July 23, 2020 — the date this Complaint was written — the United States had 3,987,584 confirmed cases of COVID-19; 143,224 Americans are confirmed dead. The worldwide total has passed 15.2 million cases, with over 600,000 dead. Cook County has confirmed 100,124 cases of COVID-19; 4,801 Cook County residents are dead.

30. As of this writing, COVID-19's death rate for confirmed cases in Cook County, Illinois is 4.7%. Worldwide, the death rate is 4.1%. COVID-19's R0 in Illinois remains between 0.84 and 1.32.

STONE PARK ENTERTAINMENT'S LOSSES

31. By March 16, 2020, the COVID-19 virus had caused a direct physical loss of Stone Park Entertainment's insured property, *i.e.*, its nightclub on Lake Street in Stone Park, Illinois.

32. The COVID-19 virus itself is a physical thing that causes physical harm to human tissue.

33. Persons infected by COVID-19 almost immediately contagious, but typically go four to five days, on average, without showing symptoms of illness.

34. Thus, assuming an R_0 of 5.7, one would estimate that, for every confirmed case of COVID-19 infection in a given population on a given day, there are between approximately 1,055 and 6,016 individuals (*i.e.*, 5.7 to the fourth or fifth power, respectively) in the same population that are infected and contagious, but not yet diagnosed.

35. On March 16, 2020, therefore, there were likely between 81,000 and 463,202 infected and contagious, but undiagnosed, COVID-19 carriers in Cook County, Illinois.

36. Again, these numbers were expanding exponentially. Left unchecked and based on information available at the time, COVID-19 could be expected to infect the entire population of Cook County — 5.15 million people — in just a few weeks, resulting in an estimated quarter of million deaths.

37. If it did nothing, therefore, SPE itself could expect 4.7% of its employees and patrons — to die from COVID-19 over the next two months.

38. No door or lock could prevent the entry of COVID-19 onto the insured premises. In fact, there was a statistically significant possibility that one or more infected persons had

already entered SPE's facility, possibly leaving behind virus that would remain infectious for days.

39. In short, SPE's continued use of the insured property would have presented an unreasonable risk of harm and/or death to SPE's employees and patrons. SPE had, therefore, lost the physical use of its property as a direct result of the COVID-19 virus.

40. SPE's business was necessarily interrupted by the direct physical loss of its property's use. SPE, once a thriving business, earned no revenue during the applicable coverage period. Its obligations to its landlord and lenders, however, continued to accrue.

COUNT I

DECLARATORY JUDGMENT

41. Plaintiff incorporates by reference, as if restated fully herein, the allegations of fact set forth in paragraphs 1-40, above.

42. On March 16, 2020, SPE submitted a claim for coverage under the business interruption provisions of the Policy.

43. On April 3, 2020, Lexington denied coverage for SPE's loss.

44. The Policy is a contract for insurance under which SPE paid premiums to Lexington in exchange for its promise to pay SPE's losses covered by the Policy.

45. SPE's business interruption losses are covered by the Policy.

46. SPE has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage.

47. Lexington has arbitrarily and without justification refused to reimburse SPE for its losses incurred in connection with the necessary interruption in business caused by the COVID-19 pandemic and SPE's corresponding loss of the use of its insured property.

48. SPE is a properly interested party entitled to invoke this Court's power and authority pursuant to Section 2-701 of the Code of Civil Procedure, 735 ILCS § 5/2-701, to grant the declaratory relief requested herein.

49. A dispute and actual controversy exists between the parties concerning the scope of the Policy's coverage.

50. A judicial determination of that scope is therefore necessary and appropriate pursuant to Section 2-701.

WHEREFORE, Plaintiff Stone Park Entertainment respectfully request that this Court enter an Order finding and declaring that:

A. The losses arising from the necessary interruption of SPE's business caused by the COVID-19 pandemic is an insured loss under the Policy; and

B. Lexington has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for SPE's losses by denying coverage without conducting a claim investigation as required under Illinois law; and

C. Lexington is obligated to pay SPE for the full amount of the aforementioned losses, in an amount to be determined at trial and subject to such Policy limits as may apply.

COUNT II

BREACH OF CONTRACT

51. Plaintiff incorporates by reference, as if restated fully herein, the allegations of fact set forth in paragraphs 1-50, above.

52. The Policy is a contract for insurance under which SPE paid premiums to Lexington in exchange for its promise to pay SPE's losses covered by the Policy.

53. SPE has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage.

54. By denying coverage for the losses arising from the necessary interruption of SPE's business caused by the COVID-19 pandemic, Lexington has breached its coverage obligations under the Policy.

55. As a result of Lexington's breach of the Policy, SPE has sustained substantial damages for which Lexington is liable, in an amount to be proven at trial.

WHEREFORE, Plaintiff Stone Park Entertainment respectfully request that this Court enter an Order against Lexington and in favor of SPE awarding SPE its damages cause by Lexington's breach of the Policy, in an amount to be proven at trial, together with pre- and post-judgment interest thereon.

COUNT III

BAD FAITH DENIAL OF COVERAGE IN VIOLATION OF 215 ILCS 5/155

56. Plaintiff incorporates by reference, as if restated fully herein, the allegations of fact set forth in paragraphs 1-55, above.

57. Under Illinois law, Lexington was required to conduct a "reasonable investigation based on all available information" before it could deny coverage. 215 ILCS 5/154.6

58. Lexington did not conduct such an investigation.

59. Lexington's denial of coverage was vexatious and unreasonable.

60. Lexington's denial of coverage constitutes "improper claims practices" under Illinois law.

WHEREFORE, Plaintiff Stone Park Entertainment respectfully request that this Court enter an Order against Lexington and in favor of SPE:

A. Awarding SPE the statutory penalty set forth in 215 ILCS 5/155, in an amount to be determined in accordance with the statute;

B. Awarding SPE its attorneys' fees and costs incurred in the prosecution of this coverage action against Lexington, in an amount to be proven at or after trial, pursuant to 215 ILCS 5/155.

Dated: July 27, 2020

Respectfully Submitted,

STONE PARK ENTERTAINMENT, INC.

By: /s/ Stanley C. Sneeringer
One of its attorneys

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