

**UNITED STATES DISTRICT COURT FOR
EASTERN DISTRICT OF PENNSYLVANIA**

ZLOCK, P.C.

Plaintiff,

vs.

CONTINENTAL CASUALTY COMPANY

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Zlock, P.C. brings this Complaint, alleging against Defendant, Continental Casualty Company as follows:

I. NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiff's contract of insurance with the Defendant.

2. In light of the Coronavirus global pandemic and state and local orders requiring all non-life-sustaining businesses in the Commonwealth to cease operations and close all physical locations, Plaintiff shut its doors on Friday, March 13, 2020, at the close of business.

3. Plaintiff's insurance policy provides coverage for all non-excluded business losses, including Business Income that would have otherwise been earned, and thus provides coverage here.

4. As a result, Plaintiff is entitled to declaratory relief that it is covered for all business losses that have been incurred in an amount estimated to be greater than \$150,000.00.

II. JURISDICTION

5. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and the Defendant.

Plaintiff is a professional corporation with one member who is a resident of the Commonwealth of Pennsylvania. Further, Plaintiff has suffered business losses in an amount greater than \$150,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value those business losses. *Id.* at § 1332(a).

6. The Court has personal jurisdiction over Defendant because at all relevant times it has engaged in substantial business activities in the Commonwealth of Pennsylvania. At all relevant times Defendant transacted, solicited, and conducted business in Pennsylvania through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Pennsylvania.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because a substantial portion of the wrongful acts upon which this lawsuit is based occurred in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Defendant is a corporation that has substantial, systematic, and continuous contacts in the Commonwealth of Pennsylvania, and as a result it is subject to personal jurisdiction in this District.

8. The acts and/or omissions complained of took place, in whole or in part, within the venue of this Court.

III. PARTIES

9. At all relevant times, Plaintiff is a professional corporation authorized to do business and doing business in the Commonwealth of Pennsylvania, County of Bucks. Zlock, P.C., is and has been the owner, operator, manager, and/or controls the law firm with a primary location at 777 Township Line Road, Yardley, PA 19067 and a second location at 123 North Broad Street, FL 1, Doylestown, Pennsylvania 18901.

10. At all relevant times, Continental Casualty Company is a corporation doing business in the County of Delaware, Commonwealth of Pennsylvania, subscribing to Policy Number B 6021403688 issued to the Plaintiff¹ for the period of February 01, 2020 to February 01, 2021. See Policy Declaration page, attached hereto as Exhibit 1. Defendant is transacting the business of insurance in the Commonwealth of Pennsylvania and within the County of Delaware and the basis of this suit arises out of such conduct.

IV. **FACTUAL BACKGROUND**

A. **Insurance Coverage**

11. On or about February 1, 2020, Defendant entered into a contract of insurance with the Plaintiff, whereby Plaintiff agreed to make payments to Defendant in exchange for Defendant's promise to indemnify the Plaintiff for losses including, but not limited to, business income losses at its primary location in Bucks County at 777 Township Line Road in Yardley, Pennsylvania 19067 and an additional location at 123 North Broad Street, Floor 1 in Doylestown, Pennsylvania 18901.

12. Zlock, P.C. is a law firm which is owned, leased by, managed, and/or controlled by the Plaintiff. See <https://www.bucksdivorcelawyers.com/> (last visited May 29, 2020). The law firm focuses its practice representing clients in family law and divorce matters such as alimony, child custody, child support and other divorce and family law matters.

13. Plaintiff is covered under a policy issued by the Defendant with policy number believed to be B 6021403688 (hereinafter "Policy").

¹ The Policy was originally issued to Zlock and Coverdale P.C. but has been amended to reflect the firm's name change to Zlock P.C.

14. The Policy is currently in full effect, providing, among other things property, business personal property, business income and extra expense, contamination coverage, and additional coverages between the period of February 01, 2020 to February 01, 2021.

15. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority.

16. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the law firm is specifically prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of the law firm. This additional coverage is identified as coverage under "Civil Authority."

17. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means physical loss or physical damage unless the loss is specifically excluded or limited in the Policy.

18. Based on information and belief, the Defendant has accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown.

19. The Policy does not specifically exclude virus coverage, and in fact includes a specific endorsement for coverage in the event of a virus, which states "We will pay for loss or damage by "fungus, wet rot, dry rot, and microbes," though that provision is silent as it relates to viruses.

B. The Coronavirus Pandemic

20. The scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the restaurant.

21. The virus that causes COVID-19 remains stable and transmittable 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. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited May 29, 2020).

22. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.

23. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

24. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

C. Civil Authority

25. On March 6, 2020, Pennsylvania Governor Tom Wolf issued a Proclamation of Disaster Emergency, the first formal recognition of an emergency situation in the Commonwealth as a result of COVID-19. See Exhibit 2.

26. On March 19, 2020 Governor Wolf issued an Order requiring all non-life-sustaining businesses in Commonwealth to cease operations and close all physical locations. Businesses that were permitted to remain open were required to follow “social

distancing practices and other mitigation measures defined by the Centers for Disease Control.”

See <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order> (last visited May 29, 2020). All law firms, deemed non-life-sustaining businesses, including the Plaintiff’s, were required to close. *See* <https://www.law.com/thelegalintelligencer/2020/03/19/new-state-order-means-all-law-firm-offices-must-close/> (last visited May 29, 2020).

27. On March 23, 2020, Governor Wolf issued a Stay-at-Home Order for residents of Philadelphia, Allegheny, Bucks, Chester, Delaware, Monroe, and Montgomery Counties. *See* Exhibit 3. On that same date, the Pennsylvania Department of Health issued a similar Order, noting that “operation of non-life-sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID–19.” *See* Exhibit 4.

28. On April 1, 2020, Governor Wolf extended the March 23, 2020 Stay at Home Order to the entire Commonwealth of Pennsylvania. *See* Exhibit 5.

29. On April 10, 2020, the Bucks County Department of Consumer Protection issued a press release warning that any businesses that operate in violation of Governor Tom Wolf’s aforementioned directives will face enforcement actions in the form of penalties including, but not limited to “forfeiture of the ability of the business to receive disaster relief, termination of state loans or grant funding, suspension or revocation of licensure, or prosecution resulting fines and/or jail time.” <http://www.buckscounty.org/news/2020News/2020/04/10/consumer-protection-shutdown-of-non-essential-businesses-will-be-enforced> (last visited May 29, 2020).

30. On April 20, 2020, Governor Tom Wolf extended the March 23, 2020 Stay at Home Order to May 8, 2020 for the entire Commonwealth of Pennsylvania. *See* Exhibit 6.

31. The Pennsylvania Supreme Court recently clarified the Governor's Orders and supported Plaintiff's position that physical loss and damage exists resulting in coverage here. *See Friends of DeVito, et. al v. Wolf*, No. 68 MM 2020 (Pa. April 13, 2020).

32. Further, on April 10, 2020 President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff:

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. ***Business interruption insurance***, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. ***But if I had it I'd expect to be paid.*** You have people. ***I speak mostly to the restaurateurs***, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot of money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

https://youtu.be/_cMeG5C9TjU (last visited on May 29, 2020) (emphasis added).

33. The President is articulating a few core points:

- a. Business interruption is a common type of insurance, especially for restaurants.
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
- c. This pandemic should be covered unless there is a specific exclusion for pandemics.
- d. If insurers deny coverage, they would be acting in bad faith.

34. On April 28, 2020, Governor Wolf has amended the "Legal Services" category of *Industry Operation Guidance*, continuing the Commonwealth's directive that law offices may not continue physical operations except in certain limited and specific instances enumerated. *See* <https://www.scribd.com/document/452553026/UPDATED-11-45am-April-28-2020-Industry-Operation-Guidance> (last visited May 29, 2020).

35. These Orders and proclamations, as they relate to the closure of all “non-life-sustaining businesses,” evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiff's, as the requisite contact and interaction causes a heightened risk of the property suffering loss and damage and becoming contaminated or further contaminated.

D. Impact on Zlock, P.C.

36. As a result of the Orders referenced herein, Plaintiff shut its office doors on March 13, 2020 and continues to be shutdown.

37. Plaintiff's business is not a closed environment, and because people – staff, clients, delivery personnel, and others – constantly cycle in and out of the office, there is an ever-present risk that the office is contaminated and/or would be become and would continue to be contaminated.

38. The virus is physically impacting Zlock P.C. As a result of the Orders, the law firm and its members are unable to meet and sign up new clients, cannot initiate new lawsuits on behalf of current and potential clients, cannot adequately or thoroughly prepare witnesses, cannot move cases forward, cannot take depositions, as taking depositions by video-conferencing is not practical in the firm's family law cases, cannot collect fees from clients for work performed or that need to be performed, and other limitations in the practice of law. Further, prior to the business interruption, Plaintiff charged clients a fee for initial consultation; now, it is offering free virtual consultations to clients and prospective clients. At a minimum, until Bucks county is no longer considered "red," the Plaintiff remains forcibly shut down.

39. Any effort by the Defendant to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger the Plaintiff and the public.

40. A declaratory judgment determining that the coverage provided under the Policy will prevent the Plaintiff from being left without vital coverage acquired to ensure the survival of the business due to the shutdown caused by the civil authorities' response is necessary. As a result of these Orders, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

**V. CAUSE OF ACTION
DECLARATORY RELIEF**

41. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

42. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not

further relief is or could be sought.” 28 U.S.C. § 2201(a); *see also Principal Life Ins. Co. v. Minder*, No. CIV A 08-5899, 2009 WL 1917096 (E.D. Pa. July 1, 2009); *Miller v. Liberty Mut. Grp.*, 97 F. Supp. 2d 672 (W.D. Pa. 2000).

43. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiff contends and, on information and belief, the Defendant disputes and denies that:

- a. The Orders constitute a prohibition of access to Plaintiff’s offices;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- c. The Orders trigger coverage;
- d. The Policy includes coverage for losses caused by the Orders;
- e. The Policy includes coverage for losses caused by the Coronavirus;
- f. The Policy provides coverage to Plaintiff for any current and future civil authority closures of law firms in Bucks County due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters;
- g. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff’s offices or immediate area around thereof; and
- h. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

44. Plaintiff seeks a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to Plaintiff’s offices as Civil Authority as defined in the Policy.

45. Plaintiff further seeks a Declaratory Judgment to affirm that the Order triggers coverage.

46. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff for any current and future Civil Authority closures of law offices in Bucks

County due to physical loss or damage from the Coronavirus and the policy provides business income coverage in the event that Civil Orders or the Coronavirus has caused a loss or damage at the Insured Property.

47. Plaintiff does not seek any determination of whether the Coronavirus is physically in or at the office, amount of damages, or any other remedy other than declaratory relief.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein prays as follows:

- 1) For a declaration that the Orders constitute a prohibition of access to Plaintiff's law offices.
- 2) For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- 3) For a declaration that the Orders trigger coverage under the Policy.
- 4) For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of law firms in Bucks County due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.
- 5) For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Insured Properties or the immediate area of the Plaintiff's Insured Properties.
- 6) For a declaration that the Policy provides coverage for loss caused by virus;
- 7) For such other relief as the Court may deem proper.

TRIAL BY JURY IS DEMANDED

Dated: June 1, 2020

Respectfully submitted,

/s/ Richard M. Golomb
Richard M. Golomb, Esq.
Kenneth J. Grunfeld, Esq.
GOLOMB & HONIK, P.C.

1835 Market Street, Suite 2900
Philadelphia, PA 19103
Telephone: (215) 985-9177
Facsimile: (215) 985-4169
rgolomb@golombhonik.com
kgrunfeld@golombhonik.com

Arnold Levin, Esq.
Frederick Longer, Esq.
Daniel Levin, Esq.
LEVIN SEDRAN & BERMAN, L.L.P.
510 Walnut Street, Suite 500
Philadelphia, PA 19106-3697
Telephone: (215) 592-1500
alevin@lfsblaw.com
flonger@lfsblaw.com
dlevin@lfsblaw.com

W. Daniel "Dee" Miles, III
Rachel N. Boyd
Paul W. Evans
**BEASLEY, ALLEN, CROW, METHVIN,
PORTIS & MILES, P.C.**
P.O. Box 4160
Montgomery, Alabama 36103
Tel: (334) 269-2343
Fax: (334) 954-7555
dee.miles@beasleyallen.com
rachel.boyd@beasleyallen.com
paul.evans@beasleyallen.com

Counsel for Plaintiff