

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL DIVISION**

YELLOW STRAWBERRY CCCR, INC.

Plaintiff,

vs.

CASE NO: _____

CONTINENTAL CASUALTY COMPANY

Defendant,

_____ /

COMPLAINT

COMES NOW, the Plaintiff, YELLOW STRAWBERRY CCCR, INC. (“Yellow Strawberry”), brings this action against Defendant, CONTINENTAL CASUALTY COMPANY (“Continental”), and in support thereof alleges the following:

GENERAL ALLEGATIONS

1. This is an action for a declaratory judgment pursuant to Chapter 86, Florida Statutes, to determine rights under a contract of insurance. This action also brings claims for Breach of Contract and Bad Faith claims adjusting. The breach of contract seeks damages in excess of Thirty Thousand Dollars (\$30,000.00), exclusive of interest, costs, and attorney’s fees and, therefore, falls within the jurisdictional limits of this Court.

2. Defendant was and is a corporation authorized to do business in Broward County, maintains agents in Broward County, and regularly sells insurance policies to businesses in Broward County. Defendant, its affiliates, and/or its subsidiaries that issued the policy of insurance have substantial identities of interest.

3. At all times material hereto, Plaintiff was and is a Florida corporation providing hair salon services in Lakewood Ranch, Manatee County, Florida and employs between 20 to 25 employees, six days a week.

4. As of June 2020, Manatee County, Florida is a hot spot for coronavirus cases.

5. On or about September 1, 2019, CONTINENTAL issued and delivered a commercial property insurance policy, protecting Plaintiff from all risks unless specifically excluded with effective dates from 09/01/2019 through 09/01/2020. Loss of business income and operating expenses are specifically covered under the policy by civil authority coverage. A true and correct copy of the policy of insurance is attached hereto as Exhibit "A".

6. 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.

7. On March 16, 2020, President Donald J. Trump, 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. On March 29, 2020, the President extended such guidance to be in effect until April 30, 2020.

8. To implement the advice that individuals adopt far-reaching social distancing measures, many governmental entities entered civil authority orders suspending or severely curtailing business operations of non-essential businesses that interact with the public and provide gathering places for individuals.

9. On March 30, 2020, Governor DeSantis issued an Executive Order confirming the efforts of Miami-Dade County, Broward County, Palm Beach County and Monroe County to restrict public access to businesses and facilities deemed non-essential.

10. On April 1, 2020, Governor DeSantis issued a state-wide “stay at home” order for the entire state of Florida in response to the COVID-19 pandemic. The “stay at home” order limited the movements and personal interaction of all persons in Florida outside of their home to only those necessary to obtain or provide essential services or conduct essential activities for an additional 30 days. This suspension of business by civil authority had a devastating effect on Plaintiff’s business.

11. The result of these far-reaching restrictions and prohibitions has been catastrophic for most non-essential businesses who have been forced to close, furlough employees, and endure a sudden shutdown of cash flow, threatening their very survival.

12. Plaintiff insured against such catastrophic events like the effects of the current unforeseen COVID-19 pandemic through the “all-risk” commercial property insurance policy at issue in this matter. The Policy is an “all-risk” policy, insofar as it provides that covered causes of loss under the policy means direct physical loss or direct physical damage unless the loss is specifically excluded or limited in the Policy.

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

14. Specifically, Plaintiff's Business Income and Extra Expense Endorsement to the Businessowners Special Property Coverage Form provides as follows:

1. Business Income

a. Business Income means:

(1) Net Income (Net Profit or Loss before Income taxes) that would have been earned or incurred, including:

(a) "Rental Value"; and

(b) "Maintenance Fees," if you are a condominium association; and

(2) Continuing normal operating expenses incurred, including payroll, subject to 90 day limitation if indicated on the Declaration page.

b. 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. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 1,000 feet of the site at which the described premises are located.

2. Extra Expense

a. Extra Expense means reasonable and necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss of or damage to property caused by or resulting from a Covered Cause of Loss.

b. We will pay Extra Expense (other than the expense to repair or replace property) to:

(1) Avoid or minimize the "suspension" of business and to continue "operations" at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement premises or temporary locations; or

(2) Minimize the "suspension" of business if you cannot continue "operations."

c. We will also pay Extra Expense (including Expediting Expenses) to repair or replace the property, but only to the extent it reduces the amount of loss that otherwise would have been payable under Paragraph 1. Business Income above.

3. Extended Business Income

If the necessary "suspension" of your "operations" produces a Business Income loss payable under Paragraph 1. Business Income above, we will also pay for the actual loss of Business Income you sustain during the period that:

- a. Begins on the date property is actually repaired, rebuilt or replaced and "operations are resumed; and
- b. Ends on the earlier of:
 - (1) The date you could restore your "operations" with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage occurred; or
 - (2) Sixty consecutive days after the date determined in paragraph a. above.

However, this extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of loss in the area where the described premises are located.

15. Further, Plaintiff's Civil Authority Endorsement to the Business Income And Extra Expense Coverage Form and Businessowners Special Property Coverage Form provides as follows:

Civil Authority

1. When the Declarations show that you have coverage for Business Income and Extra Expense, you may extend that insurance to apply to the actual loss of Business Income you sustain and reasonable and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises. The civil authority action must be due to direct physical loss of or damage to property at locations, other than described premises, caused by or resulting from a Covered Cause of Loss.
2. The coverage for Business Income will begin 24 hours after the time of that action and will apply for a period of four consecutive weeks after coverage begins.
3. The coverage for Extra Expense will begin immediately after the time of that action and will end when your Business Income coverages ends for this Coverage Extension.

16. On or about March 31, 2020, Plaintiff notified CONTINENTAL of the loss, provided all details surrounding the loss, and permitted CONTINENTAL with the opportunity

to investigate and adjust the loss. Plaintiff further requested that CONTINENTAL pay all benefits owed under the policy for the COVID-19 suspension of business by civil authority.

17. On May 6, 2020, CONTINENTAL denied Plaintiff's claim and refused to pay benefits under the policy of insurance. A true and correct copy of the claim denial letter is attached as Exhibit "B".

18. In response, Plaintiff filed and served a Civil Remedy Notice of Insurer Violations (hereafter "CRN") as required by Florida Law. A true and correct copy of the CRN is attached as Exhibit "C."

19. On July 7, 2020, CONTINENTAL responded to the CRN. CONTINENTAL failed to cure its bad faith. A true and correct copy of CONTINENTAL's response to the CRN is attached as Exhibit "D."

20. CONTINENTAL 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.

21. The policy provisions cited by CONTINENTAL in its letter denying coverage do not support its position that there is no coverage under the policy for a complete physical loss of the property due to, inter alia, COVID-19 and related governmental orders.

22. Further, in addition to Governor DeSanctis' Executive Orders requiring non-essential businesses to close, Broward County and the City of Key West have issued orders that support affording business interruption coverage for losses sustained as a result of COVID-19 closures because the "virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time." See Broward County Administrator's Emergency

Order 20-01 attached as Exhibit “E” and City Of Key West State Of Local Emergency Directive 2020-03 attached as Exhibit “F”.

23. A growing number of states have also introduced legislation which seeks to require coverage for business interruption losses due to COVID-19 – despite policy provisions requiring there to first be some physical damage and containing a “Virus” exclusion.

24. Accordingly, 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 CONTINENTAL is liable for the losses suffered by Plaintiff.

25. This action also brings a claim against CONTINENTAL for breach of its contractual obligation under the instant commercial property insurance policy to indemnify Plaintiff for business losses, extra business expenses, and other related losses resulting from actions taken by civil authorities to stop the human to human and surface to human spread of the COVID-19 outbreak.

26. In addition, this action brings a claim against CONTINENTAL for bad faith claims adjusting when it owed a duty to Plaintiff to attempt in good faith to settle the business income claim and further owed to Plaintiff a duty to refrain from engaging in unfair claim settlement practices.

27. As a result of CONTINENTAL’s actions, Plaintiff has sustained losses in excess of \$30,000 and is continuing to accrue losses.

28. All conditions precedent to this action have been performed, have been waived, or are excused.

29. Due to the failure of CONTINENTAL to pay the benefits under the policy, Plaintiff has been required to retain the undersigned law firm to act on their behalf in this suit and CONTINENTAL is required to pay Plaintiff's reasonable attorney's fees and costs.

COUNT I
DECLARATORY JUDGMENT

30. Plaintiff realleges and incorporates paragraphs 1 through 28 above as though fully set forth herein.

31. This Count is an action for declaratory judgment filed pursuant to Chapter 86 of the Florida Statutes.

32. Plaintiff has incurred actual loss of business income due to the suspension of its business operations.

33. Plaintiff is incurring loss in the form of lost business income due to the suspension of activities as well as extra expenses, which are costs incurred to minimize the business loss to Plaintiff.

34. Plaintiff is presently in genuine doubt and uncertain as to its rights, status, and privileges, under the policy of insurance issued by CONTINENTAL, and specifically, its rights, status, and privileges and CONTINENTAL's obligations to provide coverage for the losses stemming from the civil authority suspensions as detailed herein for the losses of income, business interruption, extra expense, civil authority, all risk coverage, and other coverage extensions under the policy of insurance.

35. Plaintiff has a bona fide, actual, present, and practical need for the declaration and construction of the policy of insurance, its status, rights, and privileges, and

CONTINENTAL's obligation to provide coverage to Plaintiff under the policy of insurance, including its primary coverage and all coverage extensions, including the applicable coverage triggers under the policy.

36. A bona fide, actual, and present dispute exists as to Plaintiff's rights and CONTINENTAL's obligations under the policy of insurance.

37. Plaintiff seeks a declaratory judgment that the standard "all-risk" commercial property insurance policy provides coverage for business income losses and extra expenses suffered by Plaintiff as a result of civil authority order.

38. Plaintiff also seeks a declaratory judgment that the forced closures of its premises due to orders from state or local civil authorities is a prohibition of access to its premises and covered as defined in the insurance policy.

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

WHEREFORE, Plaintiff requests that the Court declares and construes the policy of insurance and enter its declaratory judgment as follows:

- a. declare that the civil authority action was due to direct physical loss of or damage to property at locations, other than described premises;
- b. declare that the civil authority orders constitute a prohibition of access to Plaintiff's Insured Property and that the prohibition of access by the civil authority orders is specifically prohibited access as defined in the Policy;
- c. declare that the civil authority orders trigger coverage under the Policy;

d. declare that the policy issued by CONTINENTAL to Plaintiff provides coverage for the losses stemming from civil authority suspension of business operations for business income, extra expense, and all other coverage extensions up to the limits of the policy;

e. enter final declaratory judgment in Plaintiff's favor and against CONTINENTAL for all declaratory and supplemental relief within the declaratory jurisdiction of this court, including taxing costs of suit, prejudgment interest, and a reasonable attorney's fee as part of that declaratory judgment as well as other relief as the Court may deem just and proper.

COUNT II
BREACH OF CONTRACT

40. Plaintiff realleges and incorporates paragraphs 1 through 28 above as though fully set forth herein.

41. Plaintiff has a standard "all-risk" commercial property insurance policy issued by the CONTINENTAL.

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

43. Plaintiff's insurance policy provides coverage for losses to business income and for "extra expenses." The policy provides that CONTINENTAL will pay for the actual loss of business income due to the "necessary 'suspension' of your 'operations' during the 'period of restoration.'"

44. The policy also provides that CONTINENTAL will pay for any necessary expenses that Plaintiff incurs that they would not have incurred had there been no physical loss of their property.

45. Plaintiff's standard all-risk commercial property insurance policy further provides coverage for suspension of business operations due to closures caused by the action of civil authorities that prohibits access to the described premises.

46. As stated above, Plaintiff was forced to close its premises to the public and cease or substantially reduce operations because of the measures put in place by civil authorities to stop the spread of COVID-19 through human-to-human and surface-to-human transmission.

47. CONTINENTAL refused performance under the insurance policy. Specifically, CONTINENTAL denied or refused to provide coverage for business income losses or extra expenses incurred due to the measures put in place by civil authorities.

48. As a result of CONTINENTAL's repudiation or breach of the insurance policies, Plaintiff has suffered actual and substantial damages for which CONTINENTAL is liable, in an amount to be determined at trial.

49. Plaintiff has incurred attorney's fees and costs as result of having to bring this suit.

WHEREFORE, Plaintiff seeks compensatory damages resulting from CONTINENTAL's repudiation or breach of contract and further seek all relief deemed appropriate by this Court, including attorney's fees and costs.

COUNT III
VIOLATION OF SECTION 624.155, FLORIDA STATUTES

50. Plaintiff realleges and incorporates paragraphs 1 through 28 above as though fully set forth herein.

51. This claim will ripen upon the determination by the Court that Plaintiff is entitled to business income benefits under the standard "all-risk" commercial property insurance policy.

52. Pursuant to Fla. Stat. Sec. 624.155, Plaintiff has a statutory cause of action for bad faith due to the CONTINENTAL's general business practice of willful, wanton, immoral, unlawful, malicious and/or deceptive claims handling practices (misconduct collectively referred to as "Bad Faith").

53. Plaintiff timely reported the claim to CONTINENTAL and otherwise complied with all obligations under the contract.

54. On or about May 13, 2020, Plaintiff filed a Civil Remedy Notice of Insurer Violations with the Florida Department of Insurance and served a copy of the CRN upon CONTINENTAL.

55. As a result of civil authority ordinances that prohibited access to the insured property, CONTINENTAL owed a duty to Plaintiff to attempt in good faith to settle the business income claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for Plaintiff's interests.

56. CONTINENTAL further owed to Plaintiff a duty to refrain from engaging in unfair claim settlement practices.

57. CONTINENTAL breached its duties to Plaintiff in violation of section 624.155, by, including and not limited to:

- a. Failing to attempt, in good faith, to settle Plaintiff's business income claim when, under all of the circumstances, it could have and should have done so, had it acted fairly and honestly and with due regard for Plaintiff's interests, who was an insured, in violation of section 624.155(1)(b)(1), Florida Statutes;
- b. Placing its own financial interests before that of Plaintiff;

c. Engaging in unfair claims settlement practices in violation of section 626.9541(1)(i)(3) a, c, d, f, and g, Florida Statutes. Specifically, CONTINENTAL violated Florida Statutes by:

- i. Failing to adopt and implement standards for the proper investigation of claims, including coverage;
- ii. Failing to acknowledge and act promptly upon communications with respect to Plaintiff's business income claim;
- iii. Denying Plaintiff's business income claim without conducting a reasonable investigation based on the available information;
- iv. Failing to provide a reasonable written explanation of the basis in the insurance policy, in relation to the facts or applicable law, for its lack of a reasonable settlement offer; and
- v. Failing to promptly notify Plaintiff of any additional information necessary for the processing of the business income claim, including what information CONTINENTAL's employees required to properly assess and determine whether Plaintiff was afforded coverage pursuant to CONTINENTAL's policies and procedures.

58. The acts complained of herein constituted CONTINENTAL's general business practices in that they (a) were expressions of, and in compliance with, standard company practices and procedures, (b) are said by CONTINENTAL to be in conformity with what it contends are standard and good faith claims practices, and consequently or incidentally, (c) occur with such frequency as to indicate general business practices.

59. As a direct and proximate result of CONTINENTAL's actions and/ or inactions as set forth above, Plaintiff has been damaged.

60. CONTINENTAL failed to cure its bad faith.

61. CONTINENTAL's violation of section 624.155 has caused damages to Plaintiff including, but not limited to, interest on unpaid benefits, pre-judgment interest accrued since the date of CONTINENTAL's violation; attorney's fees incurred by Plaintiff and pre-judgment interest thereon; costs incurred in the prosecution of Plaintiff's claim, including expert witness fees, and pre-judgment interest thereon; costs incurred in the prosecution of Plaintiff's claim for the violation of section 624.155, and pre-judgment interest thereon.

62. As a further direct and proximate result of CONTINENTAL's failure to act in good faith and statutory violations alleged above, Plaintiff had to retain the services of the undersigned attorney.

63. By operation of law, including section 627.428, Florida Statutes, CONTINENTAL will be obligated to pay those fees upon the successful conclusion of Plaintiff's claim.

64. All conditions precedent to Plaintiff's rights to bring this action have occurred or have been satisfied.

WHEREFORE, the Plaintiff, YELLOW STRAWBERRY CCDD, INC., demands judgment for damages against the Defendant, CONTINENTAL CASUALTY COMPANY, for the total damages suffered, pre- and post-judgment interest, attorney's fees pursuant to sections 624.155 and 627.428, costs, and any other relief this Court deems just and proper.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court:

1. Enter a declaratory judgment on Count I of the Complaint in favor of Plaintiff and against CONTINENTAL, declaring as follows:

- a. declare that contamination from COVID-19 constitutes a direct physical loss or damage to property;
- b. declare that the civil authority action was due to direct physical loss of or damage to property at locations, other than described premises;
- c. declare that the civil authority orders constitute a prohibition of access to Plaintiff's Insured Property and that the prohibition of access by the civil authority orders is specifically prohibited access as defined in the Policy;
- d. declare that the civil authority orders trigger coverage under the Policy;
- e. declare that the policy issued by CONTINENTAL to Plaintiff provides coverage for the losses stemming from civil authority suspension of business operations for business income, extra expense, and all other coverage extensions up to the limits of the policy;
- f. enter final declaratory judgment in Plaintiff's favor and against CONTINENTAL for all declaratory and supplemental relief within the declaratory jurisdiction of this court, including taxing costs of suit, prejudgment interest, and a reasonable attorney's fee as part of that declaratory judgment as well as other relief as the Court may deem just and proper.

2. Enter a judgment on Count II of the Complaint in favor of Plaintiff and against CONTINENTAL and award damages for breach of contract in an amount to be proven at trial as well as attorney's fees and costs;

3. Enter a judgment on Count III of the Complaint in favor of Plaintiff and against CONTINENTAL for the total damages suffered, pre- and post-judgment interest, attorney's fees pursuant to sections 624.155 and 627.428;
4. Award to Plaintiff and against CONTINENTAL prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by CONTINENTAL's wrongful refusal to pay Plaintiff for the full amount in costs incurred stemming from the COVID-19 civil authority suspension of business operations.
5. Award Plaintiff any further and additional relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues triable as of right.

Respectfully submitted this 27th day of July, 2020

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