

IN THE CIRCUIT COURT OF
THE SIXTH JUDICIAL
CIRCUIT IN AND FOR
PINELLAS COUNTY,
FLORIDA

CASE NO.:

CLASS REPRESENTATION

ANDREW J. HOLLOMAN, DDS &
ASSOCIATES, P.L., individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

BANKERS INSURANCE GROUP,
INC., a Florida profit corporation, and
FIRST COMMUNITY INSURANCE
COMPANY, a Florida profit
corporation,

Defendants.

CLASS ACTION COMPLAINT

Plaintiff Andrew J. Holloman, DDS & Associates, P.L., individually and on behalf of all others similarly situated, asserts this class action complaint against Defendant Bankers Insurance Group, Inc. and First Community Insurance Company (collectively “BIG”) and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action on behalf of itself and all other persons or entities that are citizens of Florida and that are insured under a “BUSINESSOWNERS POLICY” (or a policy offering similar coverages by a different name) issued by BIG or one of BIG’s affiliates that provides “Business Income” and/or “Extra Expense” coverage (the “Policies”).

2. The Policies insure against the loss of business income due to the necessary suspension of operations caused by direct physical loss or damage to property.

3. Plaintiff and Class Members have uniformly had to suspend or significantly reduce their operations due to the global pandemic caused by the severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”) and the resulting coronavirus disease (“COVID-19”).

4. SARS-CoV-2 is a highly transmissible virus that is spread by respiratory droplets and close contact with an infected person. The virus also spreads through contact with contaminated surfaces and aerosolized particles.

5. The resulting disease, COVID-19, caused by SARS-CoV-2 can cause severe symptoms that can lead to hospitalization and death.

6. The presence of SARS-CoV-2 on, at, or around property owned or leased by Plaintiff and Class Members and insured by BIG has resulted in “physical loss or damage” (as that term is used in the Policies).

7. Plaintiff and Class Members have sustained an actual loss of business income due to the suspension and/or reduction in operations caused by the direct physical loss or damage associated with SARS-CoV-2.

8. Consistent with health concerns posed by the risk of or actual contamination of business property, including medical and dental offices, the Governor of the State of Florida declared a Public Health Emergency and issued a series of Executive Orders that limited the operations of most businesses and prohibited the provision of any medically unnecessary, non-urgent, or non-emergency procedure or surgery for a period of time.

9. Despite the direct physical loss of covered property associated with SARS-CoV-2, which caused closures, suspensions, and interruptions of business and a loss of business income, BIG has uniformly denied coverage under the Business Income and Extra Expense provisions of the Policies.

PARTIES, JURISDICTION, AND VENUE

10. Plaintiff Andrew J. Holloman, DDS & Associates, P.L. is a dental practice with its principal place of business at 2127 NE Coachman Road in Clearwater, Pinellas County, Florida.

11. Defendant Bankers Insurance Group, Inc. is a Florida corporation with its principal place of business at 11101 Roosevelt Blvd. N., St. Petersburg, Florida 33716.

12. Defendant First Community Insurance Company is a Florida corporation with its principal place of business at 11101 Roosevelt Blvd. N., St. Petersburg, Florida 33716.

13. Defendants Bankers Insurance Group, Inc. and First Community Insurance Company are affiliated entities.

14. This case arises under Florida law, and all members of the “Class” or “Class Members” that Plaintiff seeks to represent are individuals and businesses who are citizens of Florida.

15. The value of Plaintiff’s claims and the putative class claims in the aggregate exceed \$15,000.00 exclusive of all costs and attorney's fees.

16. The Court has personal jurisdiction over Defendants because they are headquartered in Florida and market, issue, and sell insurance throughout the State of Florida, are registered to do business, including insurance business, in Florida, and are engaged in substantial, continuous, systematic, and non-isolated insurance business activity within the State of Florida, including Pinellas County, Florida.

17. Venue is proper in this Court because the individual causes of action accrued here.

COMMON FACTUAL ALLEGATIONS

A. Relevant Policy Provisions

18. Plaintiff and the Class Members are policyholders of insurance policies issued by BIG that insure against the loss of business income. The Policies contain the following, or similar, language:

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, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from any Covered Cause of Loss.

See Ex. A, Holloman Policy.¹

19. In addition to the Business Income coverage, the Policies cover “Extra Expense:”

We will pay necessary Extra Expense you incur during the “period of restoration” that would not have incurred if there had been no direct physical loss 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 1000 feet of the site at which the described premises are located.

Id.

¹ Plaintiff’s policy also includes a “Business Income and Extra Expense Changes” endorsement, which limits the coverage to the amount shown in the policy Declarations.

20. The Policies define “Covered Causes of Loss” as “RISKS OF DIRECT PHYSICAL LOSS unless the loss is: a. Excluded in Section B., Exclusions; or b. Limited in Paragraph A.4., Limitations.”

21. In other words, the Policies purport to cover all risks of direct physical loss except for those expressly excluded.

22. “RISKS OF DIRECT PHYSICAL LOSS” is not defined in the Policies.

23. In the BIG “Businessowners Liability Coverage Form,” the definition of “property damage” includes “Loss of use of tangible property that is not physically injured.”

24. The Policies do not expressly exclude loss or damage resulting from a virus.

25. The insurance industry has long recognized that viruses constitute a risk of physical loss or damage. Accordingly, many carriers include a “virus exclusion” in their property damage policies.

26. In 2006, the Insurance Services Office (“ISO”), which provides policy writing services to insurers, announced the submission of an exclusion of loss “due to disease-causing agents such as viruses and bacteria” to state insurance regulatory bodies.

27. The ISO exclusion language was intended to “state[] that there is no coverage for loss or damage caused by or resulting from any virus, bacterium or

other microorganism that induces or is capable of inducing physical distress, illness or disease.”

28. The actual exclusionary language stated, “We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.”

29. This exclusion drafted by ISO shows that many policies that purport to cover all risks of direct physical loss or damage likely do not exclude loss or damage caused by a virus; thus, to exclude such loss or damage, a policy needs an express exclusion.

30. Neither this exclusionary language nor any similar language applicable to viruses is in the Policies of the Plaintiff or the Class Members.

B. COVID-19 Pandemic

31. SARS-CoV-2 is virus that causes the disease COVID-19.

32. As of the filing of this Complaint, there have been over 1.43 million confirmed cases of COVID-19 in the United States since approximately mid-January 2020, and there have been over 4.37 million confirmed cases of COVID-19 worldwide since December 2019. Those numbers continue to grow.

33. Because of the high number of cases and the threat posed by COVID-19, the World Health Organization (“WHO”) declared a global health emergency on January 30, 2020.

34. On March 9, 2020, Florida Governor DeSantis declared a State of Emergency for Florida

35. On March 13, 2020, President Trump declared a national emergency.

36. According to the Centers for Disease Control (CDC), COVID-19 is transmitted by close contact with a person who has COVID-19, by respiratory droplets from coughing, sneezing, talking, or breathing or through touching a surface or object that has the virus on it. The virus becomes present on surfaces or objects by the release of respiratory droplets or aerosolized particles from infected humans.

37. Research indicates that COVID-19 can be spread through aerosolized particles that can travel much farther than larger droplets from coughing, sneezing, or talking.

38. Researchers have also found that the SARS-CoV-2 virus can remain viable and infectious in aerosols for hours and on surfaces up to days, depending on the surface.

39. These methods of transmission mean that a person can become infected by being exposed to air containing droplets or aerosols or by touching a contaminated surface. Thus, infected air or surfaces pose a significant risk to the safety of any exposed person.

40. Research also indicates that COVID-19 can be spread by pre-symptomatic and asymptomatic people. In other words, people with COVID-19 may

be not be exhibiting symptoms and may not know that they have COVID-19, yet they can still transmit the virus to other people who can then become ill.

41. COVID-19 can lead to serious illness, which can require hospitalization, and death.

42. As of the date of filing, Florida has over 42,000 cases of COVID-19 and over 1,800 resulting deaths.

43. There have been over 85,000 deaths in the United States and over 298,000 deaths worldwide due to COVID-19.

C. Claims by Plaintiff and Class Members and BIG's Denial of Coverage

44. Because of the spread of COVID-19 and the related health risks, Plaintiff and Class Members closed, suspended, or substantially reduced their operations.

45. Due to COVID-19's highly transmissible nature and its transmission by pre-symptomatic and asymptomatic people, Plaintiff and Class Members likely had, and, but for closing or suspending their operations, certainly would have had, employees or customers who were infected with COVID-19 at their premises.

46. Because COVID-19 can be transmitted through respiratory droplets, close contact, contaminated surfaces, and, likely, aerosolized particles, the physical surfaces and air within Plaintiff and Class Members' insured property likely became contaminated, and, but for closing or suspending their operations, certainly would

have become contaminated, with SARS-CoV-2—making the insured property unsafe for occupancy or use by employees or members of the public.

47. As a result, Plaintiff and Class Members lost the ability to use their insured property because of the physical presence of SARS-CoV-2 and the health risks that its presence poses to anyone at or around the premises.

48. The health risks were even more pronounced in March and April 2020 because of a lack of information about the rate of infection and proper treatment methods, an insufficient supply of tests, and a potential for hospitals and other health care facilities to be overwhelmed by COVID-19 patients.

49. While the insured property could be disinfected, the CDC-recommended disinfection process suggests closing off infected areas and waiting twenty-four hours before the cleaning the area.

50. When a portion of an insured property is infected, Plaintiff or Class Members would either have to close that portion of the premises for twenty-four hours or not follow the best practices recommended by the CDC.

51. Thus, all property contaminated by SARS-CoV-2 requires some type of interruption to the business of the insured.

52. While Plaintiff and Class Members could potentially disinfect their premises, disinfection does not prevent re-contamination by a person with COVID-19.

53. Following their shutdowns or reduced operations, Plaintiff and some Class Members submitted claims to BIG for the physical loss, including the loss of use, of their property and the resulting loss of business income.

54. BIG denied Plaintiff's claim and, upon information and belief, has denied or will deny the claims of all Class Members.

55. BIG has uniformly taken the improper position that the "Business Income" and/or "Extra Expense" coverages in the Policies do not cover the losses of its insureds arising from the interruption of operations caused by the direct physical loss of insured property associated with SARS-CoV-2.

56. This decision to deny coverage conflicts with the all-risks nature of the Policies, the absence of any "virus exclusion" in the Policies, and BIG's acceptance of premiums from Plaintiff and Class Members.

57. Plaintiffs and Class Members have suffered significant, and in some instances complete, losses of revenue over a period of time.

58. In addition, before resuming operations at, in almost all instances, reduced capacity due to continued interruptions associated with SARS-CoV-2, Plaintiff and Class Members have incurred and will likely continue to incur significant expenses to make their property safe for use in order to restore and continue operations.

59. Just as BIG has rejected Plaintiff and Class Members' claims for loss of business income due to the physical loss, including the loss of use, of their insured property, BIG has also denied all claims for "extra expenses" incurred to avoid or minimize the suspension of operations.

60. BIG stated in its denial letter to Plaintiff that "the cause of the Business Income Loss did not result from direct physical loss or damage to your Building or your Business Personal Property." Plaintiff disputes this statement and asserts that it has, in fact, suffered a loss of business income caused by direct physical loss or damage to covered property.

61. BIG also quoted an exclusion for loss or damage caused directly or indirectly by "The Enforcement of any ordinance or law: (1) Regulating the construction, use or repair of any property; or (2) Requiring the tearing down of any property, including the cost of removing its debris."

62. Finally, BIG quoted an exclusion for "any other consequential loss."

63. None of these exclusions apply to Plaintiff or Class Members' claims.

64. The presence of SARS-CoV-2 caused a direct physical loss or damage to the insured property and resulted in a loss of use and a suspension or interruption of operations that led to a loss of business income.

65. No relevant government authority has enacted an ordinance or law that regulates the construction, use, or repair of any physical property that caused the infection of Plaintiff and Class Members' insured premises.

66. Furthermore, the Executive Orders entered by Florida's Governor were not the cause of the physical loss or damage or the suspension of business operations. The presence of SARS-CoV-2 is the precipitating cause. The fact that Executive Orders were issued after SARS-CoV-2 infiltrated the State of Florida does not negate the coverage that was triggered by the presence of SARS-CoV-2 and the associated physical loss.

67. Finally, the Plaintiff and Class Members' losses are not consequential. Rather, they are claiming loss of business income as it is described in the policy.

D. Class Representation Allegations

68. Plaintiff seeks to certify a class action under Fla. R. Civ. P. 1.220(a) and (b)(3) defined as follows:

All persons or businesses in the State of Florida who or which are citizens of Florida and insured under an insurance policy issued by First Community Insurance Company, Bankers Insurance Group, Inc. or any of their corporate affiliates that provides Business Income and/or Extra Expense coverage and who or which (1) has experienced a loss of business income related to a closure, suspension, or interruption of business operations in connection with SARS-CoV-2 or (2) has incurred or will incur expenses to avoid or minimize the suspension of business operations associated with SARS-CoV-2.

69. Numerosity: The Class is composed of hundreds, if not thousands, of businesses in Florida, the joinder of which in one action is impractical. While the exact number and identity of Class Members are not presently known, they can be identified through the review of records in BIG's possession, custody, and control.

70. Commonality: The answers to common questions of fact and law will determine BIG's liability to all Class Members. Common questions to the Proposed Class include:

- a. Whether the Class Members have an insurance policy issued by BIG that covers losses to business income or expenses associated with avoiding or minimizing the suspension or business operations;
- b. Whether the Class Members have an insurance policy issued by BIG that has an express virus exclusion;
- c. Whether the likely presence of SARS-COV-2 at or around the Class Members' insured property constitutes "direct physical loss or damage" as that phrase is used in the Policies;
- d. Whether any exclusions in the Policies, including the "Ordinance or Law" exclusion or an exclusion for "other consequential loss" apply; and
- e. Whether the Class Members are entitled to recover "business income" or "extra expense" losses under their BIG Policies.

71. Typicality: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff has a policy that insures against losses to business income and extra expenses caused as a result of direct physical loss or damage. Plaintiff's policy does not have an express virus exclusion. Plaintiff submitted a claim to BIG that was denied.

72. Adequate Representation: Plaintiff will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff has retained counsel and law firms that are experienced in the prosecution of complex class actions.

73. Predominance and Superiority: The class action in this instance is appropriate for certification because common questions of law and fact predominate over questions affecting individual members. In particular, the common issues of liability can be resolved on a class-wide basis. BIG's insurance policy language in its endorsements and exclusions is typically uniform among its insureds. As a result, coverage—and thus liability—can be determined on a class-wide basis by interpreting the policy language. While individual class members will have different damages, BIG, as an insurance company, is already equipped to handle a claims process. An insurance company, by its nature, operates a business that receives, evaluates, and pays out claims made by its insureds. Thus, the Court will not have to devote significant resources to calculating individual class members' damages.

Further, the class action is superior to individual claims because of the sheer number of potential claims. Businesses throughout Florida have insurance policies that insure against losses to business income. Many have already filed suit disputing coverage denials. As a result, the Florida court system will already see a significant number of cases filed against a number of different insurance companies. The class action will allow the court system to reduce the potentially thousands of individual cases to a much smaller number. In particular, this class action will limit the hundreds, if not thousands, of individual cases that could be filed against BIG. It will also eliminate the potential for inconsistent adjudications.

CAUSES OF ACTION AND CLAIMS FOR RELIEF

COUNT ONE (Breach of Contract)

74. Plaintiff, individually and on behalf of all other similarly situated, incorporate by reference paragraphs 1–73 and all exhibits attached to this Complaint.

75. Plaintiff and the Class Members each had a contract with BIG under which BIG agreed to provide insurance to Plaintiff and the Class members in exchange for their payment of a premium.

76. The insurance contract is reflected in the Policies that BIG issued to Plaintiff and the Class Members.

77. BIG states in the Policies:

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, including personal property in the open (or in a vehicle) within 100 feet, caused by or resulting from any Covered Cause of Loss.

78. The Policies additionally provide coverage for certain “Extra Expense” incurred by policyholders “that would not have been incurred if there had been no direct physical loss or damage to property.”

79. Plaintiff and the Class Members suffered damage and loss that resulted from a Covered Cause of Loss. In particular, Plaintiff and Class Members suffered covered losses associated with SARS-CoV-2, which posed a significant threat to their employees, customers, and anyone who might enter their property.

80. As a result of the risks posed by SARS-CoV-2 and the corresponding physical loss to their covered property, Plaintiffs and Class Members have been forced to close, suspend, or interrupt their operations.

81. Plaintiff and Class Members have sustained losses of business income due to the necessary closure, suspension, or interruption of their business operations.

82. Plaintiff and Class Members have incurred or will incur extra expenses in order to avoid or minimize the suspension of business associated with SARS-CoV-2.

83. Plaintiff and Class Members submitted claims to BIG for coverage under their Policies.

84. BIG, in violation of the Policies, denied the claims and refused to pay Plaintiff and Class Members for their covered losses.

85. BIG's failure to pay Plaintiff and Class Members' claims is a breach of their contract to provide insurance according to the terms of the Policies. Because the obligation to pay for claims made is vitally important and goes to the essence of an insurance contract, BIG's breach was material.

86. Plaintiff and the Class Members suffered damages in the form of the non-payment of claims by BIG.

COUNT TWO
(Declaratory Judgment)

87. Plaintiff, individually and on behalf of all other similarly situated, incorporate by reference paragraphs 1–73 in this Complaint and all exhibits attached to this Complaint.

88. Plaintiff and Class Members are parties, respectively, to insurance contracts with BIG. They therefore have an interest under their respective BIG Policies, and their legal rights are affected by the terms of the Policies.

89. Plaintiff and Class Members have a bona fide dispute with BIG regarding the interpretation of and the coverage provided by their Policies.

90. Plaintiff and Class Members contend that the presence of SARS-CoV-2 on their insured property is a Covered Cause of Loss that resulted in the direct physical loss of or damage to the property. As a result, Plaintiff and Class Members

contend that BIG is contractually required to pay for the actual loss of business income and extra expenses that they sustained because of SARS-CoV-2.

91. BIG, however, denies that Plaintiff and Class Members' business income losses are covered by the Policies and has denied their claims.

92. Pursuant to sections 86.011 and 86.021 of the Florida Statutes, this Court has the jurisdiction and power to “determine[] any question of construction or validity arising under such . . . contract.”

93. Plaintiff, for itself and on behalf of the Class, seeks a declaratory judgment from this Court that BIG is contractually required to pay for the loss of business income and extra expenses that Plaintiff and the Class Members sustained because of SARS-CoV-2.

94. The parties have a bona fide, actual, and present need for this declaration. Plaintiff and Class Members have sustained actual losses, and BIG has refused to pay for those losses under the Policies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself and all others similarly situated, pray for a judgment against Defendants as follows:

(1) Enter an Order certifying this action to proceed as a class action under Florida Rule of Civil Procedure 1.220(a) and (b)(3) and naming Plaintiff as representative for the Class and Plaintiff's counsel as counsel for the Class;

(2) Enter an award in favor of Plaintiff and the Class that includes compensatory damages and other damages as allowed by law;

(3) Declare the parties' rights and obligations pursuant to section 86.021, specifically that BIG is obligated to pay for the losses of business income and extra expenses sustained by Plaintiff and Class Members as a result of the risk of or actual presence of SARS-CoV-2 at their insured property;

(4) Declare that Defendants are financially responsible for notifying all Class Members of their right to have their claims paid;

(5) Enter an award of pre-judgment and post-judgment interest, as provided by law;

(6) Enter an award of attorneys' fees and costs pursuant to section 627.428, Florida Statutes, or as allowed by law; and

(7) Grant such other relief against Defendants as the Court may deem just and proper under the circumstances and applicable law.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the Defendants via service of process.

/s/ Brent R. Bigger

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