

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DENTAL EXPERTS, LLC, THE DENTAL)
CLINIC, LLC, PREMIER DENTAL CLINIC,)
LLC, STUDIO DENTAL, LLC, BRADLEY)
DENTAL, LLC, DENTAL EXPERTS, PA,)
ELITE DENTAL, LLC, DENTAL DREAMS,)
LLC (PA), DENTAL DREAMS, PLLC (MI),)
DENTAL DREAMS, PLLC (D.C.), FAMILY)
DENTAL, LLC, DENTAL DREAMS, LLC)
(MD), DENTAL DREAMS OF EDMONSON,)
LLC, and DENTAL DREAMS, LLC (MA),)

Plaintiffs,)

vs.)

Case No. 20 C 5887

MASSACHUSETTS BAY INSURANCE)
COMPANY,)

Defendant.)

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

The plaintiffs in this case, all dental offices, operate dental practices in the District of Columbia, Illinois, Maryland, Massachusetts, Michigan, Pennsylvania, South Carolina, and Texas. The Court will refer to them collectively as Dental Experts. Dental Experts purchased a property and casualty insurance policy from the defendant, Massachusetts Bay Insurance Company (Massachusetts Bay); all of the plaintiffs' offices are specifically identified as insured locations under the policy. The insurance policy provided coverage between December 1, 2019 and December 1, 2020.

Beginning in March 2020, state and local authorities nationwide issued orders

limiting or suspending operations of non-essential businesses due to the coronavirus pandemic. Dental Experts complied with these orders and contends that it lost business income as a result of suspending its operations in seven states and the District of Columbia. It filed claims under its insurance policy with Massachusetts Bay to recover for those losses. After Massachusetts Bay denied the claims, Dental Experts filed this lawsuit seeking to recover amounts it contends are due under various provisions of the policy. Dental Experts also asserted a claim in which it alleged that Massachusetts Bay acted in bad faith.

In its complaint, Dental Experts alleges that Massachusetts Bay violated its obligations under a "disease contamination provision" of the policy; it asserts claims for breach of contract based on the insurer's denial of coverage under "business income" and "civil authority" provisions; and it contends that the insurer acted in bad faith when it denied or limited coverage based on these provisions of the policy. Massachusetts Bay has moved to dismiss the claims in counts 9 through 22 of the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). It argues that the policy does not cover the losses Dental Experts alleges under the business income and civil authority provisions.

Background

All of the plaintiffs in this lawsuit are dental offices affiliated with a single entity—Dental Experts. Dental Experts operates in several locations: the District of Columbia, Illinois, Maryland, Massachusetts, Michigan, Pennsylvania, South Carolina, and Texas. All of its offices are covered by Massachusetts Bay's insurance policy. As indicated, the policy covers the period from December 1, 2019 to December 1, 2020. Within that

period, the novel coronavirus began to spread worldwide.

In March 2020, state and local authorities nationwide entered orders suspending the operations of non-essential businesses as a response to the coronavirus global pandemic. See, e.g., Def.'s Ex. 4 (dkt. no. 14-4). Dental Experts contends that it suspended its operations to comply with these orders and consequently lost business income. It filed claims with Massachusetts Bay, seeking to recover amounts under three distinct provisions of the policy: (1) business income; (2) disease contamination; and (3) civil authority.

The business income provision under the insurance policy reads as follows:

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 premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. 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 100 feet of such premises.

Def.'s Ex. 1, Policy at 270 (dkt. no. 14-1). The civil authority provision reads as follows:

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Id. at 271. The disease contamination provision reads as follows:

We will pay the actual covered loss of "business income" or "extra expense" you sustain due to the necessary "suspension" or delay of your "operations" during the "period of Restoration". The "suspension" must be caused by a disease contamination event declared by the National Center for Disease Control, or the applicable city, county or state Department of Health.

Id. at 202.

Dental Experts contends that it is entitled to coverage under each of these provisions of the Massachusetts Bay policy. Regarding the disease contamination provision, Massachusetts Bay concluded that Dental Experts was entitled to coverage and paid it a total of \$25,000 for all of its offices' closures. But Dental Experts alleges that this payment was insufficient because it was based on Massachusetts Bay's assessment that the business income Dental Experts lost was a single "occurrence" of disease contamination, rather than multiple occurrences affecting several of Dental Experts' offices across seven states and the District of Columbia. Accordingly, Dental Experts contends that the policy entitles it to over \$500,000 in lost business income—\$25,000 per location—and that Massachusetts Bay acted in bad faith when paid a significantly lower amount than what it owed.

Dental Experts also says that Massachusetts Bay breached its obligations under the insurance contract when it denied claims under the business income and civil authority provisions. Massachusetts Bay contends that Dental Experts' losses are not covered by either of these provisions. It makes two key arguments. First, Massachusetts Bay contends that Dental Experts did not suffer direct physical loss within the meaning of the policy. Second, it argues that another provision of the policy—the "virus exclusion" bars Dental Experts' claims. The virus exclusion provision

reads as follows:

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.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

Policy at 298. Dental Experts contends that the virus exclusion in the insurance contract does not bar coverage under the business income and civil authority provisions.

Dental Experts filed this lawsuit against Massachusetts Bay in Illinois state court in August 2020. The insurer removed the case to this Court in October 2020 based on diversity of citizenship. In its complaint, Dental Experts asserts numerous claims based on the laws of the states in which it operates dental practices. Specifically, Dental Experts alleges that Massachusetts Bay breached its obligations under the disease contamination provision (counts 1-8), breached the insurance contract by denying coverage under the business income and civil authority provisions (counts 9-16), and acted in bad faith (counts 17-22). Massachusetts Bay has moved to dismiss Dental Experts' complaint with respect to the breach of contract (counts 9-16) and bad faith claims (counts 17-22) under Federal Rule of Civil Procedure 12(b)(6). The bad faith claims include allegations concerning the insurer's actions with respect to under the disease contamination, business income, and civil authority provisions.

Discussion

On a motion to dismiss for failure to state a claim, the Court takes the plaintiff's factual allegations as true, draws reasonable inferences in the plaintiff's favor, and

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