

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

ERIC R. SHANTZER, DDS d/b/a
RICHBORO DENTAL EXCELLENCE,

Plaintiff,

v.

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA, THE
TRAVELERS INDEMNITY COMPANY,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Eric R. Shantzer, DDS, d/b/a Richboro Dental Excellence (“Plaintiff”) brings this Complaint against Defendant, Travelers Casualty Insurance Company of America and/or The Travelers Indemnity Company (“Defendant” or “Travelers”) and alleges as follows:

NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiff’s contract of insurance with Defendant.
2. In light of the Coronavirus global pandemic and state and local orders mandating that all non-essential in-store businesses must shut down, and the suffering of physical harm and impact and damages, within Plaintiff’s business premises and/or within the immediate area surrounding and outside its business premises, Plaintiff shut the doors of his business to customers on March 16, 2020. Plaintiff’s normal office hours were usually Monday from 9:00 a.m. to 8:00 p.m.; Tuesday from 9:00 a.m. to 6:00 p.m.; Wednesday from 7:00 a.m. to noon; and Thursday from 7:00 a.m. to noon or 1:00 depending upon demand.
3. Plaintiff’s insurance policy provides coverage for all non-excluded business losses and thus provides coverage here.

4. As a result, Plaintiff is entitled to declaratory relief that its business is covered for all business losses that have been suffered and sustained, which losses are in an amount greater than \$150,000.00.

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 Defendant. Plaintiff is a dental office in Pennsylvania and a citizen of Pennsylvania. Defendant is a New York corporation with its principal place of business in New York. 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 of those business losses. *Id.* § 1332(a).

6. The Court has personal jurisdiction over Defendant because at all relevant times they have 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 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.

PARTIES

9. At all relevant times, Plaintiff was authorized to do business and was doing business in the Commonwealth of Pennsylvania, County of Bucks. Plaintiff operates, manages and owns a dental office at two locations. These locations include 130 Almshouse Road, Suite 406, Richboro, Pennsylvania 18954 and 804 2nd Street Pike, Unit D, Southampton, Pennsylvania 18966 (“Insured Properties”). Plaintiff is a citizen of Pennsylvania.

10. At all relevant times, Defendant Travelers Casualty Insurance Company of America/The Travelers Indemnity Company is a corporation doing business in the Commonwealth of Pennsylvania. Defendant issued an insurance policy with Policy Number 680-7263M141-19-42 to Plaintiff for the period October 7, 2019 to October 7, 2020. *See* Policy Declaration, attached hereto as Exhibit 1. Defendant transacts business of insurance in the Commonwealth of Pennsylvania and within the County of Bucks, and the basis of this suit arises out of such conduct. Defendant is headquartered in New York at 485 Lexington Avenue, New York, New York 10017.

FACTUAL BACKGROUND

I. Insurance Coverage

11. Defendant entered into a contract of insurance with Plaintiff, whereby Plaintiff agreed to make payments to Defendant in exchange for Defendant’s promise to indemnify Plaintiff for losses including, but not limited to, business income losses at Plaintiff’s Insured Properties.

12. The Insured Properties are covered under a policy issued by Defendant. *See* Ex. 1 (hereinafter “Policy”).

13. The Policy provides, among other things property, business personal property, business income and extra expense, contamination coverage, and additional coverages.

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

15. Under the Policy, business interruption insurance coverage is extended to apply to, *inter alia*, the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred.

16. 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.

17. Based on information and belief, 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 from a virus pandemic. Plaintiff contacted its insurance agent about making a claim under the policy and was told that Defendant would reject the claim.

II. The Coronavirus Pandemic

18. The scientific community, and those personally affected by the virus, recognize COVID-19 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 offices and retail store constituting the Insured Property.

19. 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 April 9, 2020).

20. 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.

21. 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.

22. 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.

III. Civil Authority

23. 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.

24. 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* Exhibit 3; <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order> (last visited April 7, 2019).

25. 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 4. 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 5.

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