

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

NASHVILLE UNDERGROUND, LLC)

)

)

Plaintiff,)

)

VS.)

**NO.
JURY DEMAND**

)

NATIONWIDE PROPERTY AND

CASUALTY INSURANCE COMPANY)

and its wholly owned subsidiary,

AMCO INSURANCE COMPANY,

Defendants.

COMPLAINT

COMES NOW the Plaintiff NASHVILLE UNDERGROUND, LLC (hereinafter sometimes referred to as “Nashville Underground”), by and through its attorney of record, and files a civil action against Defendant Nationwide Property and Casualty Insurance Company (hereinafter sometimes referred to as “Nationwide”) and its wholly owned subsidiary Defendant AMCO Insurance Company (hereinafter sometimes referred to as “AMCO”) and for cause, would aver as follows:

1. The Plaintiff's causes of action arise in tort under common law and the laws of the State of Tennessee for damages Plaintiff sustained as a result of Defendants' wrongful denial of Plaintiff's commercial insurance claim for losses and damages which were caused directly and/or indirectly by the recent pandemic.

PARTIES

2. Plaintiff Nashville Underground, LLC is a corporation formed under the laws of the State of Tennessee and operating under the laws of the State of Tennessee with a principle place of business located at 105 Broadway, Nashville, Tennessee, Davidson County. Plaintiff's primary business is as a live music venue, restaurant and bar.

3. The Defendant Nationwide Property and Casualty Insurance Company is a for-profit insurance company authorized to engage in, and does engage in, the sale and delivery of property insurance within the State of Tennessee, with its principle place of business located at One West Nationwide Blvd, Columbus Ohio 43215-2220. Defendant Nationwide may be served with service of process through the Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, TN 37243. At all times material hereto, Nationwide was the sole owner of its subsidiary Defendant AMCO.

4. The Defendant AMCO Insurance Company is a for-profit insurance company authorized to engage in, and does engage in, the sale and delivery of property insurance within the State of Tennessee, with its principle place of business located at 1100 Locust Street, Des Moines, Iowa 50391-1100. Defendant AMCO may be served with service of process through the Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, TN 37243. At all times material hereto, AMCO was a wholly owned subsidiary of Defendant Nationwide.

VENUE AND JURISDICTION

5. Venue is properly situated in Davidson County pursuant to Tenn. Code Ann. § 20-4-101.

6. Jurisdiction is proper in this court pursuant to Tenn. Code Ann. § 16-10-101.

FACTUAL ALLEGATIONS

7. Plaintiff's claim for insurance indemnification arises from direct physical loss to its property and business income loss on and after March 13, 2020.

8. Plaintiff Nashville Underground, LLC, which does business as Nashville Underground, is a nationally acclaimed seven-story restaurant, bar, nightclub and live music venue located directly on Broadway in downtown Nashville, which currently is one of the most popular entertainment districts in the United States. Nashville Underground is open seven (7) days a week with varying hours; opening as early as 9 a.m. and closing as late as 3 a.m.. Nashville Underground generates significant revenue from private events, live music performances, DJ events, including a wildly popular weekend nightclub, food sales and alcohol sales. Nashville Underground does not derive any revenue from drive-thru, curbside pickup or delivery service.

9. Plaintiff renewed its commercial insurance policy with Nationwide and/or AMCO on or about November 22, 2019 for coverage from date of purchase through November 22, 2020, Policy Number ACP CPAA 30-2-8529540 ("Policy"). Such Policy provided indemnification, *inter alia*, for property loss and business income loss. The relevant portions of the Policy are attached hereto as follows: Exhibit A- Declarations; Exhibit B- Building and Personal Property Coverage Form; Exhibit C- Business Income Coverage Form; Exhibit D- Causes of Loss – Special Form; Exhibit E- Food Contamination Endorsement.

10. At all times material hereto, Plaintiff faithfully paid all premiums and fees and the Policy was in full force and effect.

11. In or about February of 2020, the first case of COVID-19 which is caused by SARS-Coronavirus-2, commonly referred to as the Coronavirus, was reported in the United States.

12. On or about March 12, 2020, the Governor of Tennessee signed Executive Order No. 14 declaring a state of emergency in order to facilitate the response to the spread and the effects of Coronavirus.

13. On or about March 15, 2020, in response to the fear of the spread of the Coronavirus, the Nashville-Davidson County Board of Health issued a Declaration thereby directing the Chief Medical Director to order the closure of certain businesses, including, all restaurants and bars which sold more alcohol than food. Within this resolution, the Board of Health stated that the basis of its Declaration was, *inter alia*, to implement “basic precautions of infection control and prevention, including . . . practicing respiratory and hand hygiene” and that “COVID-19 is a communicable disease with significant morbidity and mortality, and presents a severe danger to the public health.”

14. On or about March 17, 2020, the Chief Medical Director issued an order closing all establishments that sold more alcohol than food. Upon information and belief, restaurant and bars were closed, in part, because the Board of Health and the Chief Medical Director were attempting to limit the spread of the Coronavirus through contamination of food, the conveyances of food, contamination of employees and the contamination of the interior, structure, furnishings, fixtures and equipment of the restaurants and bars.

15. Nashville Underground is in the category of business closed by the Chief’s Medical Director’s Order and, thus, Nashville Underground was forced to fully shutter its

business, thereby losing all of its business income.

16. On or about March 22, 2020, the Tennessee Governor Bill Lee issued Executive Order No. 17, which effectively closed all restaurants and bars, with the exception of restaurants which served menu items through drive-thru, curbside pickup and/or delivery. Nashville Underground's business model does not include providing menu items through drive-thru, curbside pickup and/or delivery services.

17. The aforementioned Executive Order additionally admonished the public to limit the spread of the Coronavirus by "practicing good personal hygiene, including washing hands, especially after touching any frequently used item or surface, avoiding touching the face, and disinfecting frequently used items and surfaces as much as possible."

18. On or before the closure of Plaintiff's business, upon information or belief, one or more employees believed they were in contact with an individual infected with the coronavirus or had been in contact with an individual infected with the coronavirus.

19. The subject Policy is an all-risk policy as such provides that the Policy covers causes of loss unless the loss is specifically excluded or limited under the terms of the Policy.

20. The aforementioned physical damage to Plaintiff's property and the business income loss and other related losses and damages are Covered Losses under the Policy.

21. On March 16, 2020, Plaintiff gave proper notice of the losses and damages by promptly notifying Defendants pursuant to the Policy (Claim No. 334749-GK).

22. On or about March 23, 2020, contrary to the terms and conditions of the policy, Plaintiff's claim was denied as Defendant Nationwide erroneously asserted that any loss resulting from a virus was excluded, as well as losses related to a closure by civil authority were

excluded. This denial was conveyed verbally over the phone and via a denial letter.

23. On March 26, 2020, Plaintiff resubmitted its claim for additional consideration. On or about April 1, 2020, the claim was again erroneously denied contrary to the terms and conditions of the Policy via phone conversation and letter sent via electronic mail.

24. In denying the claim, the adjuster for Nationwide advised that in making the determination of whether the losses were covered he only reviewed the Tennessee Governor's Executive Order (no number was specified), the Nashville Mayor's Executive Order (no number was specified) and guidelines from the Center of Disease Control ("CDC") regarding food contamination (no section or page number was specified). The adjuster acknowledged that the CDC recommended when you purchase food via delivery, you should slide the contents onto a plate and throw away the bag and other conveyances in which the food was delivered.

25. Within the written denial Defendants asserted that there is no direct physical loss or damage to the covered property. Such a position ignores the scientific evidence that the Coronavirus can remain on surfaces and objects for several days, is highly contagious and that medical experts highly recommend routine cleaning and sanitizing of all surfaces.

26. The Defendants further asserted that because no evidence or report of food contamination was provided, coverage was being denied. Defendants assertion is either not in good faith or is a misunderstanding of the terms of the Policy as the Policy covers "suspicion" of contamination of food by employees with a communicable disease, which is part of the reason restaurants and bars were closed by governmental authorities.

27. Defendants additionally relied on an exclusion in the Policy for losses caused by viruses or bacteria. However, the Policy specifically states that such exclusion does not apply to

losses related to food contamination.

28. Upon information and belief, Defendants are intentionally refusing to follow the plain language of the policy and provide Plaintiff's claim fair consideration as they fear, given the persuasive and global effects of the Coronavirus, if Defendants were to pay Plaintiff's claim, Defendants will be exposed to a significant financial loss.

29. Plaintiff would aver that it is entitled to the monetary limits under the Policy or some portion thereof as Plaintiff has suffered losses and damages as a result of one or more Covered Causes of Loss as defined under the Policy and/or one or more Covered Causes of Loss which are not specifically excluded or limited under the Policy.

30. Plaintiff has suffered additional losses and damages given Defendants' failure to properly investigate Plaintiff's claim and timely pay the claim under the terms of the Policy.

COUNT I: DECLARATORY JUDGMENT

31. The Plaintiff adopts and incorporates the previous paragraphs as if set forth fully herein.

32. Plaintiff seeks a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101 et seq. as an actual controversy has arisen between the parties given Defendants' refusal to pay any amounts pursuant to the terms and conditions of the Policy.

33. The Policy is a contract of insurance between the parties pursuant to Tenn. Code Ann. § 57-6-102(b). The Plaintiff petitions the Court to determine its rights and remedies under the Policy.

34. Plaintiff seeks a declaratory judgment that the damage to its property and the loss

of business income and other losses and damages from March 16, 2020 forward are covered losses under the Policy and accordingly Plaintiff is entitled to indemnification thereof.

35. Plaintiff further seeks a declaratory judgment that Plaintiff is entitled to payment of the monetary limits set forth in the Policy or some portion thereof.

36. Plaintiff further seek any additional rights or remedies available pursuant to Tenn. Code Ann. § 29-14-101 et seq..

COUNT II: BREACH OF CONTRACT

37. The Plaintiff adopts and incorporates the previous paragraphs as if set forth fully herein.

38. The Policy is a contract of insurance pursuant to Tenn. Code Ann. § 57-6-102(b) and Defendants have breached the language and duties formed under the Policy by denying coverage and failing and refusing to pay benefits due thereunder.

39. Defendants failed to properly and thoroughly investigate the Plaintiff's claim as required under the Policy and by state statute. *See* Tenn. Code Ann. § 56-8-101 et seq..

40. Defendants failed to exercise the skill, care and knowledge required of a licensed insurance carrier with respect to the investigation and handling of Plaintiff's claim.

41. Upon information and belief, Defendants intentional ignored the plain language of the Policy and Plaintiff's request for fair consider as Defendants feared if they paid Plaintiff's claim as the Policy requires, it would suffer a significant financial loss.

42. Defendants actions as set forth herein were in violation of their duty of good faith and fair dealing implied in the language of the Policy or as otherwise may be required under

applicable law.

43. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendants, the Plaintiff has suffered damages and losses and Plaintiff will continue to incur such losses and injuries and seeks all damages to which it is legally entitled.

COUNT III: UNFAIR CLAIMS PRACTICES

44. The Plaintiff adopts and incorporates the previous paragraphs as if set forth fully herein.

45. Defendant committed unfair claims practices in violation of Tenn. Code Ann. § 56-8-101 through 111.

46. The Defendants' acts and/or omissions regarding Plaintiff's claim were made negligently, recklessly, knowingly and/or willingly.

47. While the foregoing statutes do not provide a private cause of action, Defendants' response to Plaintiff's claim fell below the standard set forth in the aforementioned statute and is further breach of the contract between the parties and/or is the basis for a cause of action under Tennessee law for negligence, negligence *per se* and/or recklessness.

48. As a direct and proximate result of one or more of the aforementioned acts or omission of Defendants, the Plaintiff has suffered damages and losses and Plaintiff will continue to incur such losses and injuries and seeks all damages to which it is legally entitled.

COUNT IV: BAD FAITH DENIAL

49. The Plaintiff adopts and incorporates the previous paragraphs as if set forth fully

herein.

50. The Defendants have not filed for a declaratory action pursuant to Tenn. Code Ann. § 56-7-102(f).

51. If the evidence establishes that Defendants refused to pay for Plaintiff's loss within sixty (60) days of the demand and that Defendants' failure and refusal to pay was not in good faith, Plaintiff will be entitled to recover an amount equal to twenty-five percent (25%) of the liability of the loss pursuant to Tenn. Code Ann. § 56-7-105.

52. Defendants' denial has resulted in additional expense, loss and/or injury to Plaintiff, including attorney's fees and costs to file this action.

53. As a direct and proximate result of one or more of the aforementioned acts or omissions of Defendants, the Plaintiff has suffered damages and losses and Plaintiff will continue to incur such losses and injuries and seeks all damages to which it is legally entitled.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays that proper process issue and be served upon the Defendants, requiring them to answer the Complaint within the time prescribed by law and demands a jury of twelve (12) and a judgment against the Defendants including:

1. a declaration that Plaintiff's losses and damages are a Covered Loss under the Policy and Plaintiff is accordingly entitled to payment from Defendants and other findings necessary to make Plaintiff whole;

2. an award of an amount to be paid under the Policy to be determined by the Jury, but not to exceed five million dollars (\$5,000,000) or the monetary limits payable under the

Policy;

3. an award of special, consequential and incidental damages in an amount to be determined by the Jury, but not to exceed two hundred and fifty thousand dollars (\$250,000);

4. if applicable, an award in an amount equal to twenty-five percent (25%) of the liability of the loss pursuant to Tenn. Code Ann. § 56-7-105.

5. if applicable, an award of punitive damages in an amount to be determined by the Jury

6. an award of costs, pre and post judgment interest and attorney's fees in an amount to be proven at trial;

7. Any and all other general and equitable relief to which Plaintiff is entitled and which justice may require.

Respectfully submitted,

CLEMENTS LAW FIRM, PLLC

/s/ Kirk L. Clements

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