

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Case No.:

INFINITY EXHIBITS, INC.,

Plaintiff,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON KNOWN AS SYNDICATE PEM
4000 AND HAMILTON DESIGNATED
ACTIVITY COMPANY,

Defendants.

DEFENDANTS' NOTICE OF REMOVAL

Defendants Certain Underwriters at Lloyd's, London Known as Syndicate PEM 4000 ("Underwriters") and Hamilton Designated Activity Company ("Hamilton"), hereby give notice of the removal of the above-captioned action from the Twelfth Judicial Circuit Court, In and For Sarasota County, to the United States District Court for the Middle District of Florida, pursuant to 28 U.S.C. §§ 1332 and 1441, *et. seq.* Defendants file this Notice without waiving any defenses that may exist in their favor in state or federal court. In support of this removal, Defendants allege as follows:

1. Plaintiff, Infinity Exhibits, Inc., commenced this action by filing a First Amended Complaint in the Twelfth Judicial Circuit, In and For Sarasota County, entitled *Infinity Exhibits v. Certain Underwriters at Lloyd's, London Known as Syndicate 4000 and Hamilton Designated Activity Company* (the "Complaint") bearing Case No. 2020 CA 002300 NC. (A copy of the First Amended Complaint, including Summons and associated exhibits, is attached hereto as Exhibit 1).

2. This Notice of Removal of the case to the United States District Court is timely filed, as it is filed no more than thirty (30) days after Defendants were served with the First Amended Complaint on July 2, 2020, in accordance with 28 U.S.C. §§ 1441 *et. seq.* and Federal Rule of Civil Procedure 6(a)(1)(c).

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is diversity jurisdiction because all parties are diverse and the amount in controversy exceeds \$75,000.

Complete Diversity Exists Between the Parties

4. Plaintiff, Infinity Exhibits, Inc., is a Florida corporation authorized to do business and doing business at 2226 8th Street, Sarasota, FL 34237. *See* Exhibit 1 at ¶ 12. Accordingly, Plaintiff is a citizen of Florida for purposes of diversity jurisdiction.

5. Defendant, Underwriters, for the 2019-2020 policy year, consists of a single syndicate, PEM 4000, which has a sole capital contributor, Ironshore CC (Three) Ltd, a company registered in England & Wales, with its principal place of business in London, England. Accordingly, Underwriters for the 2019-2020 policy year is a citizen of the United Kingdom for the purposes of diversity jurisdiction.

6. Defendant, Hamilton, who subscribed to 80% of the policy for the 2020-2021 policy year, is a company registered in England & Wales, with its principal place of business in London, England. Accordingly, Hamilton is a citizen of the United Kingdom for the purposes of diversity jurisdiction.

7. Therefore, there is complete diversity of citizenship between the Plaintiff and Defendants.

The Amount in Controversy Exceeds \$75,000

8. Plaintiff's First Amended Complaint alleges claims against Underwriters and Hamilton for declaratory judgment and alleged breach of contract seeking an order for Underwriters and Hamilton to pay for business interruption loss due to losses caused by the Coronavirus pandemic. *See* Exhibit 1 at ¶¶ 55-80.

9. Plaintiff's First Amended Complaint does not specify the amount of damages sought against Underwriters, but the 2019 policy issued by Underwriters has a business interruption limit of \$150,000. Thus, Plaintiff's claim against Underwriters exceeds the \$75,000 threshold for diversity jurisdiction.

10. Plaintiff's First Amended Complaint does not specify the amount of damages sought against Hamilton, but the 2020 policy provides \$100,000 in business interruption coverage and Hamilton subscribed to 80% of that policy. Thus, Plaintiff's claim against Hamilton exceeds the \$75,000 threshold for diversity jurisdiction.

11. This Court has original jurisdiction over this action, and this case may be properly removed to this Court pursuant to 28 U.S.C. § 1441(a), in that the captioned matter is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and all properly joined parties are citizens of different states. 28 U.S.C. § 1332(a).

Removal is Proper

12. This action is removable pursuant to 28 U.S.C. § 1441 because it originally could have been brought in this Court.

13. The only previous state court filings served on Underwriters and Hamilton are the First Amended Complaint, attached exhibits and summons, which, pursuant to 28 U.S.C. § 1446(a), are attached as Exhibit 1.

14. Pursuant to 28 U.S.C. § 1446(d), Defendant will provide notice to Plaintiff through delivery of a copy of this Notice and the state court Notice of Filing of Notice of Removal to Plaintiff's counsel of record, and will also provide notice to the Clerk of the Twelfth Judicial Circuit Court, In and For Sarasota County, through the filing of this Notice and the Notice of Filing of Notice of Removal into the record of the state court action. (The Notice of Filing of Notice of Removal is attached hereto as Exhibit 2).

WHEREFORE, Defendants, Underwriters and Hamilton, pray that this matter be removed from the Twelfth Judicial Circuit Court, In and For Sarasota County to the United States District Court for the Middle District of Florida, pursuant to 28 U.S.C. §§ 1332 & 1441, *et. seq.*, for further proceedings and disposition.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed this 14th day of July, 2020, using the Court's CM/ECF filing system and served via email to: **Joshua I. Gornitsky, Esq.**, Searles, Sheppard & Gornitsky, PLLC, *Attorneys for the Plaintiff*, 110 E. Broward Blvd., Suite 1570, Fort Lauderdale, Florida 33301, josh@ssg.law, sean@ssg.law, jean@ssg.law.

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**IN THE CIRCUIT COURT, TWELFTH JUDICIAL CIRCUIT,
IN AND FOR SARASOTA COUNTY, FLORIDA**

**INFINITY EXHIBITS, INC.,
Plaintiff,**

CASE NO.: _____

vs.

**CERTAIN UNDERWRITERS AT
LLOYD’S LONDON KNOWN AS
SYNDICATE PEM 4000; and HAMILTON
INSURANCE DESIGNATED ACTIVITY
COMPANY,**

Defendants.

_____ /

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff, INFINITY EXHIBITS, INC., brings this action against CERTAIN UNDERWRITERS AT LLOYD’S LONDON KNOWN AS SYNDICATE PEM 4000, and HAMILTON INSURANCE DESIGNATED ACTIVITY COMPANY (“UNDERWRITERS”) for a declaratory judgment of rights and obligations under contracts of insurance and over UNDERWRITERS’ anticipated breach of insurance policies from the denial of business interruption and extra expense coverage, and additional coverages, for Plaintiff who has suffered enormous business income losses and related covered expenses resulting from civil authority orders putting in place measures to stop the spread of the COVID-19 pandemic, and states:

I. INTRODUCTION

1. On March 11, 2020, the WHO declared that the COVID-19 outbreak qualified as a worldwide pandemic.

2. A few days later, the Centers for Disease Control and Prevention issued public guidance in an attempt to slow the spread of COVID-19.

3. This guidance advised that individuals adopt social distancing measures, such as

working from home, avoiding shopping trips and gatherings of more than 10 people.

4. In order to enforce the guidelines, state governments 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.

5. The results of these restrictions and prohibitions has been catastrophic for most non-essential businesses, especially those that cater to large events, who have been forced to close, furlough employees, and endure a sudden shutdown of cash flow that threatens their very survival.

6. Most businesses, like the Plaintiff herein, protect themselves from events like the current pandemic through all-risk commercial property insurance policies.

7. These policies promise 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.

8. This coverage is commonly known as “business interruption coverage” and is standard in most all-risk commercial property insurance policies.

9. The UNDERWRITERS, and most insurance companies who have issued all-risk commercial property insurance policies with business interruption coverage, are putting off coverage decisions via Reservation of Rights letters or outright denying the obligation to pay for business income losses and other covered expenses incurred by policyholders 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.

10. 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 the UNDERWRITERS are liable for the losses suffered by the Plaintiff.

11. In addition, this action brings a claim against the UNDERWRITERS for their anticipatory breach of their contractual obligation under the Plaintiff's all-risk commercial property insurance policy to indemnify Plaintiff for business losses and extra expenses, and other related losses resulting from actions taken by civil authorities to stop the spread of the COVID-19 virus.

II. PARTIES

12. Plaintiff, INFINITY EXHIBITS, INC., is a Florida corporation authorized to do business and doing business at 2226 8th Street, Sarasota, Florida, 34237.

13. Plaintiff has provided notice to the UNDERWRITERS of its business income and other expense losses pursuant to the Policy.

14. On or about April 4, 2019, the UNDERWRITERS issued all-risk commercial property insurance policy no. 994OR100192 to INFINITY EXHIBITS INC, attached hereto as **Exhibit A**.

15. On or about April 4, 2020, the UNDERWRITERS renewed the policy and issued all-risk commercial property insurance policy no. 994OR100642 to INFINITY EXHIBITS INC, attached hereto as **Exhibit B**.

16. Defendant UNDERWRITERS AT LLOYD'S LONDON is composed of syndicates of individual underwriters that share respective and several liability under an insurance policy.

17. Normally, several syndicates jointly underwrite a given policy.

18. Upon information and belief, the liabilities in Plaintiff's 2019-2020 policy is shared

by only one syndicate, identified via the pseudonym of PEM 4000.

19. Upon information and belief, the liabilities in Plaintiff's 2020-2021 policy are shared by PEM 4000 (20%) and HAMILTON INSURANCE DESIGNATED ACTIVITY COMPANY (80%).

20. Each syndicate is organized under the laws of the United Kingdom and is located in and has its principal place of business in England.

21. This Court has jurisdiction over the Defendants pursuant to Pursuant to *Florida Statutes* § 48.193(1)(a)(4) in that they contracted to insure a person, property or risk located in the State of Florida at the time of the contracting.

III. FACTUAL ALLEGATIONS

22. COVID 19 is a type of coronavirus that causes respiratory disease in humans.

23. On March 11, 2020, the WHO declared that the COVID-19 outbreak qualified as a worldwide pandemic.

24. A few days later, the Centers for Disease Control and Prevention issued public guidance in an attempt to slow the spread of COVID-19.

25. This guidance advised that individuals adopt social distancing measures, such as working from home, avoiding shopping trips and gatherings of more than 10 people.

26. In order to enforce the guidelines, state governments 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.

27. The results of these restrictions and prohibitions has been catastrophic for most non-essential businesses, especially those that cater to large events, who have been forced to close, furlough employees, and endure a sudden shutdown of cash flow that threatens their very survival.

28. UNDERWRITERS insurance policy issued to the Plaintiff is an "all risk"

commercial property policy which covers loss or damage to the covered premises resulting from all risks other than expressly excluded.

29. The UNDERWRITERS use standard, uniform insurance policies issued by the Insurance Services Office (ISO), an insurance advisory organization that provides statistical and actuarial information to businesses and provides ISO commercial property forms for commercial property insurance policies.

30. These commercial property forms include a standard policy form titled “Business Income (and Extra Expense) Coverage Form.”

31. This form is identified by the ISO under common form numbers “CP 0010” and “CP 00 30.”

32. Under the “Coverage- Business Income” provision of the CP 00 30 insurance policy at issue in this case, business income is defined as :

(1) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and (2) continuing normal operating expenses incurred, including payroll.

33. The standard provision further states that the UNDERWRITERS will:

[P]ay 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.

34. The provision for “Additional Coverages- Civil Authority” provides that the UNDERWRITERS will:

[P]ay for the actual loss of Business Income you sustain, and necessary Extra Expense caused by the action of civil authority that prohibits access to the described premises.

35. Plaintiff has suffered a direct physical loss of and damage to their property due to the suspension of their operations from the COVID-19 pandemic and the civil authorities’

measures to stop the spread of the virus.

36. On April 4, 2019, the UNDERWRITERS issued a standard ISO all-risk commercial property insurance policy to the Plaintiff under which the Plaintiff agreed to make premium payments in exchange for the UNDERWRITERS promise to indemnify the Plaintiff for losses including but not limited to business income losses at the insured property.

37. The insured property is defined in the policy as 2226 8th Street, Sarasota, Florida, 33247.

38. The policy is an all-risk common policy that provided coverage for physical loss and physical damage unless expressly excluded.

39. The First Policy provided coverage from April 4, 2019 to April 4, 2020.

40. The Second Policy provided coverage From April 4, 2020 to April 4, 2021.

41. At all times material, each policy was in full effect during its stated coverage period as Plaintiff has faithfully paid the premiums due.

42. The UNDERWRITERS accepted those premium payments.

43. Plaintiff paid the policy premiums to the UNDERWRITERS specifically to provide coverages for coverage of lost business income and extra expenses in the event of an involuntary business interruption.

44. On April 1, 2020, Governor Ron DeSantis issued an Executive Order which ordered all non-essential businesses to close.

45. Other similar orders have been issued that close or restrict all non-essential business operations or prohibit public access to the property of non-essential businesses.

46. The civil authority orders expressly state that the closing of non-essential businesses are a necessary measure to protect the health and safety of all residents by stopping the spread of the virus.

47. As a direct result of the government orders and the COVID-19 pandemic, Plaintiff has been forced to close its premises, suspend business operations, and furlough employees.

48. Plaintiff has faithfully paid its premiums and the UNDERWRITERS have accepted payment and as such are obligated to honor their contractual duty to provide coverage for the business losses and extra expenses suffered.

49. Upon information and belief, the UNDERWRITERS have received and taken the policy premiums but have no intention of providing any coverage under the policies due to any business income losses or expenses incurred by policyholders related to the COVID-19 pandemic.

50. Plaintiff began to lose business income as a result of cancelled trade shows starting March 2, 2020.

51. Plaintiff filed a claim with the Underwriters on March 18, 2020.

52. Plaintiff fully and timely complied with the UNDERWRITERS' request for information.

53. On April 10, 2020, the UNDERWRITERS sent Plaintiff a Reservation of Rights letter, attached hereto as **Exhibit C** and incorporated by reference herein.

54. A declaratory judgment determining that the business income loss and extra expense coverage provided in common all-risk commercial property insurance policies applies to the suspension, curtailment, and interruption of business operations resulting from measures put into place by civil authorities is necessary to prevent the Plaintiff from being denied critical coverage for which it has already paid.

IV. CLAIMS

COUNT I- DECLARATORY JUDGMENT

55. Plaintiff incorporates by reference paragraphs 1-54 as though fully set forth herein.

56. An actual and bona-fide controversy exists between the Plaintiff and the

UNDERWRITERS as to the rights and obligations under the policy coverage for business income loss in that:

- a. Plaintiff was forced to close its premises or substantially reduce its business due to the measures put in place by civil authorities to stop the spread of COVID 19;
- b. Plaintiff contends that these measures trigger coverage under the standard all-risk commercial property insurance policy because the policy does not include an exclusion for a viral pandemic;
- c. Plaintiff further contends that the orders from civil authorities to close its premises triggers the “additional coverage” from that same form; and
- d. Upon information and belief, the UNDERWRITERS deny and dispute that the standard business income loss and extra expense coverage policy provides coverage in this instance.

57. Plaintiff seeks a Declaratory Judgment that the standard all-risk commercial property insurance policy provides coverage for business income losses and extra expenses because the policy does not contain an exclusion for a viral pandemic.

58. Plaintiff also seeks a Declaratory Judgment that the forced closures of their premises due to orders from state or local civil authorities is a prohibition of access to their premises and covered as defined in the insurance policies.

59. This is an action for declaratory relief pursuant to Chapter 86, *Florida Statutes*.

60. By virtue of the facts alleged herein, there exists an urgent and practical need for the Court to declare the rights of the parties in respect to whether the Defendant is obligated to provide coverage for Plaintiff’s business income losses under the Policies.

61. Plaintiff is in doubt regarding their rights and seeks declaratory relief from this

Court regarding this aspect of the instant Complaint.

62. Plaintiff contends that the Defendants are obligated to provide coverage for Plaintiff's business losses pursuant to the Policies.

63. The Plaintiff has suffered damages for which Plaintiffs seek judgment as against the Defendant.

64. With regard to this cause of action, Plaintiff avers that there is a bona fide, actual, present need for the declaration sought.

65. The declaration sought by Plaintiff deals with a present controversy as to an ascertainable set of facts.

66. The Plaintiff's rights and privileges are dependent upon the law applicable to the facts of this case.

67. The Plaintiff and the Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of this Complaint.

68. The antagonistic and adverse interests are all interested parties are before this Court.

69. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy between the parties to this action.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment declaring that the standard all-risk commercial property insurance policy provides coverage for business income losses and extra expense losses incurred due to the measures taken by civil authorities to prevent the spread of COVID-19.

COUNT II- BREACH OF CONTRACT

70. Plaintiff incorporates by reference paragraphs 1-54 as though fully set forth herein.

71. Plaintiff has a standard all-risk commercial property insurance policy issued by the UNDERWRITERS.

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

73. Plaintiff's insurance policy contains standard forms that provide coverage for losses to business income and for "extra expenses."

74. The policy provide that the UNDERWRITERS will pay for the actual loss of business income due to the "suspension" of "operations."

75. The policy also provide that the UNDERWRITERS will pay for any necessary expenses that Plaintiff incurs that they would not have incurred had there been no physical loss of their property.

76. 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.

77. As stated above, Plaintiff was forced to close its premises to the public, cancel appearances, and cease or substantially reduce their operations due to the measures put in place by civil authorities to stop the spread of COVID-19.

78. Upon information and belief, the UNDERWRITERS intend to refuse performance under the insurance policy.

79. Specifically, the UNDERWRITERS intend to deny or refuse to provide coverage for business income losses or extra expenses incurred due to the measures put in place by civil authorities to stop the spread of COVID-19.

80. As a result of the UNDERWRITERS' repudiation or anticipatory breach of the insurance policies, Plaintiff has suffered actual damages.

WHEREFORE, Plaintiff seeks compensatory damages resulting from the UNDERWRITERS repudiation or anticipatory breach of contract and further seeks all relief deemed appropriate by this Court, including attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

- 1) Issuing a Declaratory Judgment declaring the Parties' rights and obligations under the insurance policies;
- 2) Awarding Plaintiff compensatory damages from the UNDERWRITERS' anticipatory breach of the insurance policies in an amount to be determined at trial, together with appropriate prejudgment interest at the maximum rate allowable by law;
- 3) Awarding Plaintiff costs and disbursements and reasonable allowances for the fees of Plaintiff's counsel and experts, and reimbursement of expenses; and
- 4) Awarding such other and further relief the Court deems just, proper, and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff requests a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated this 2nd day of July, 2020.

/s/ Joshua I. Gornitsky _____
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