

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.**

I-O-T-L, INC.,  
a Florida Profit Corporation

Plaintiff,

STARR SURPLUS LINES INSURANCE COMPANY,  
a Texas Profit Corporation

Defendant.

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**COMPLAINT**

Plaintiff, **I-O-T-L, INC.**, files this action against Defendant, **STARR SURPLUS LINES INSURANCE COMPANY**, and in support states the following:

**INTRODUCTION**

1. Plaintiff, I-O-T-L, INC., is the owner and operator of Inn on the Lakes Sebring and Chicanes Restaurant and Bar, a hotel and fine dining restaurant located at 3101 Golfview Road in Sebring, Florida (the “Business”).

2. To protect the Business and the income from operation of the Business, Plaintiff purchased a property insurance policy with policy number SLSTPTY11154419 (the “Policy”).

3. The Policy was issued by STARR SURPLUS LINES INSURANCE COMPANY (“Starr”). Under the Policy, Starr is responsible for receiving and managing claims and loss notices, responding to questions about insurance and coverage, among other things.

4. The Policy is a bilateral contract: Plaintiff agreed to pay monthly premiums to Defendant, in exchange for Defendant’s promises of coverage for certain losses.

5. Among other types of coverage, the Policy protects Plaintiff against a loss of

business income due to a suspension of the Business' operations. This type of coverage is often referred to as business interruption coverage.

6. The Policy also provides "Extra Expense" coverage, under which the Defendant promised to pay expenses incurred to minimize the suspension of business. Additionally, the Policy provides "Civil Authority" coverage, under which the Defendant promised to pay for loss of business income caused by the action of a civil authority prohibiting access to the Business.

7. Plaintiff duly complied with its obligations under the Policy and paid the requisite premiums.

8. Beginning in March 2020, Plaintiff was forced to suspend business operations at the Business as a result of the novel coronavirus pandemic and COVID-19. Related actions of civil authorities also prohibited access to and occupancy of the Business. This suspension has caused Plaintiff to suffer significant losses and incur significant expenses.

9. Under the Policy, the Defendant promised to cover these losses and expenses, and is obligated to pay for them. In blatant breach of its contractual obligations to Plaintiff, Defendant has failed to pay for these losses and expenses.

#### **THE PARTIES**

10. Plaintiff I-O-T-L, INC. is a Florida Profit Corporation organized to do business and doing business at 3101 Golfview Road, Sebring, Florida 33870.

11. Defendant **STARR SURPLUS LINES INSURANCE COMPANY** is a Texas corporation with its principal place of business in the state of Texas.

12. At all times material, Defendant engaged in substantial and not isolated activity on a continuous and systematic basis in the state of Florida, namely by issuing and selling insurance policies in Florida and by contracting to insure property located in Florida.

13. Under applicable law, service of process on the Defendant, STARR may be

effectuated by serving its Registered Agent, the Chief Financial Officer of the State of Florida, located at 200 East Gaines Street, Tallahassee Florida 32399.

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between the Plaintiff and the Defendant and the amount in controversy exceeds \$75,000 exclusive of interest and costs. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claims occurred within the Southern District of Florida, a substantial part of property that is subject of the action is situated in this District, and Defendant, STARR has an office or has agents or conducts business within the Southern District of Florida.

16. This Court has personal jurisdiction over the Defendant pursuant to Fla. Stat. § 48.193(1)(a) because Plaintiff's claims arise out of, among other things, the Defendant conducting, engaging in, and/or carrying on business in Florida; Defendant STARR's maintenance of an office in Florida; Defendant breaching a contract in this state by failing to perform acts required by contract to be performed in this state; and Defendant contracting to insure property in Florida, including but not limited to the premises insured under the Policy. Defendant also purposefully availed itself of the opportunity of conducting activities in the state of Florida by marketing its insurance policies and services within the state, and intentionally developing relationships with brokers, agents, and customers within the state to insure property within the state, all of which resulted in the policy at issue in this action.

### **FACTUAL BACKGROUND**

#### **The Policy**

17. In March 2019, Plaintiff obtained the Policy issued by Defendant, STARR. The Policy has a policy period of March 22, 2019 to March 21, 2020 (which policy was renewed under policy number SLSTPTY11282120 for the period of March 22, 2020 to March 21, 2021). A true and correct copy of the Policy is attached hereto as *Exhibit A*.

18. The insured property under the Policy is 3101 Golfview Road, in Sebring, Florida, the location of Inn on the Lakes Sebring.

19. The Policy is an all-risk insurance policy. In an all-risk insurance policy, all risks of loss are covered unless they are specifically excluded.

20. Consistent with the all-risk nature of the Policy, Defendants specifically agreed to pay for all losses caused by “Covered Causes of Loss,” defined as “direct physical loss unless the loss is excluded or limited in this policy.”

21. One type of coverage provided by the Policy is for loss of business income, often called business interruption insurance. This coverage is specifically provided for in a section of the Policy titled “Business Income (and Extra Expense) Coverage Form.”

22. Pursuant to this Form, Defendant, STARR promised to pay for “Loss of Business Income” caused by a Covered Cause of Loss. Specifically, Defendant, STARR promised to pay for the loss of Business Income sustained due to the necessary “suspension” of the insured’s “operations” during the “period of restoration.”

23. In addition to promising to pay for loss of Business Income, under the Policy, Defendant also promised to pay for certain necessary “Extra Expense[s].” Extra Expenses mean expenses that the policyholder incurs to, for example, minimize the suspension of business.

24. The Policy also provides “Civil Authority” coverage. Under this type of coverage, Defendant promised to pay for the loss of Business Income and Extra Expense that the Plaintiff sustained as a result of “action of civil authority that prohibits access to the described premises [Inn

on the Lakes Sebring].”

25. This Civil Authority provision is an independent basis for business interruption coverage. That is, it can be triggered even when the standard business interruption coverage is not.

26. Parts of the Policy, including the “Business Income (and Extra Expense) Coverage Form,” are standardized forms drafted by the Insurance Services Office (ISO). The ISO is a company that drafts standard policy language for use in insurance contracts.

27. In 2006, the ISO drafted a new endorsement, CP 01 40 07 06, acknowledging that claims for business interruption losses would be filed under existing policy language for losses resulting from the presence of disease-causing agents. Endorsement CP 01 40 07 06, which other insurers have since incorporated in policies, provides that the insurer “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.” Significantly, Defendant, STARR chose to not include this endorsement in Plaintiff’s Policy.

28. Plaintiff’s Policy does not contain any exclusion which would apply to allow the Defendant to deny coverage for losses caused by COVID-19 and related actions of civil authorities taken in response to COVID-19.

29. Accordingly, because the Policy is an all-risk policy and does not specifically exclude the losses that Plaintiff has suffered, those losses are covered.

**Plaintiff’s covered losses**

30. The presence of COVID-19 and the public health emergency it has created have prompted actions by civil authorities throughout the United States (“Civil Authority Actions”), including but not limited to civil authorities with jurisdiction over Inn on the Lakes Sebring: the City of Sebring, Highlands County, and the state of Florida. These Civil Authority Actions have restricted and prohibited access to the insured property.

31. On March 30, 2020, the Governor of Florida signed Executive Order 20-89, ordering Highland County, among other counties, “to restrict public access” to non-essential businesses.

32. In Florida, violations of an executive order issued by the Governor pursuant to the State Emergency Management Act are second-degree misdemeanors punishable by imprisonment.

33. The presence of COVID-19 caused direct physical loss of and/or damage to the covered premises under the Policy by, among other things, damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be physically uninhabitable by customers, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

34. The Civil Authority Actions prohibiting public access to the covered premises and the surrounding area were issued in response to dangerous physical conditions and caused a suspension of business operations on the covered premises.

35. As a result of the presence of COVID-19, Inn on the Lakes Sebring has suffered a suspension of business operations, sustained losses of business income, and incurred extra expenses.

36. As a result of the Civil Authority Actions, Inn on the Lakes Sebring has suffered a suspension of business operations, sustained losses of business income, and incurred extra expenses.

37. These losses and expenses have continued through the date of filing of this action.

38. These losses and expenses are not excluded from coverage under the Policy. And because the Policy is an all-risk policy, and Plaintiff has complied with its contractual obligations, Plaintiff is entitled to payment for these losses and expenses.

39. Accordingly, Plaintiff provided notice of its losses and expenses to Defendant,

STARR consistent with the terms and procedures of the Policy.

40. Contrary to the plain language of the Policy, and to Defendant, STARR's corresponding promises and contractual obligations, Defendant, STARR has refused to pay for Plaintiff's losses and expenses.

**COUNT I: DECLARATORY JUDGMENT**

41. Plaintiff re-adopts and re-alleges paragraphs 1 through 40 above.

42. Under 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

43. Plaintiff's Policy is an insurance contract under which the Defendant, STARR was paid premiums in exchange for promises to pay Plaintiff's losses for claims covered by the Policy.

44. In the Policy, Defendant, STARR promised to pay for losses of business income sustained as a result of perils not excluded under the Policy. Specifically, Defendant, STARR promised to pay for losses of business income sustained as a result of a suspension of business operations.

45. COVID-19 caused direct physical loss of and damage to the Inn on the Lakes Sebring, resulting in suspensions of business operations at these premises. These suspensions have caused Plaintiff to suffer losses of business income.

46. These suspensions and losses triggered business income coverage under the Policy.

47. Plaintiff has complied with all applicable provisions of their respective policies, including payment of premiums.

48. Defendant, STARR without justification, disputes that the Policy provides coverage for these losses.

49. Plaintiff seeks a Declaratory Judgment that its Policy provide coverage for its losses of business income.

50. An actual case or controversy exists regarding Plaintiff's rights and the Defendant, STARR's obligations to reimburse Plaintiff for the full amount of these losses. Accordingly, the Declaratory Judgment sought is justiciable.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment declaring that the Policy provide coverage for its losses of business income.

### **COUNT II: BREACH OF CONTRACT**

51. Plaintiff re-adopts and re-alleges paragraphs 1 through 40 above.

52. Plaintiff's Policy is an insurance contract under which Defendant, STARR was paid premiums in exchange for promises to pay losses for claims covered by the Policy.

53. In the Policy, the Defendant, STARR promised to pay for losses of business income incurred as a result of perils not excluded under the Policy. Specifically, the Defendant, STARR promised to pay for losses of business income sustained as a result of a suspension of business operations.

54. COVID-19 caused direct physical loss of and damage to the Inn on the Lakes Sebring, resulting in suspensions of business operations at these premises. These suspensions have caused the Plaintiff to suffer losses of business income.

55. These suspensions and losses triggered business income coverage under the Policy.

56. Plaintiff has complied with all applicable provisions of their respective policies, including payment of premiums.

57. Defendant, STARR without justification, has refused performance under the Policy by denying coverage for these losses and expenses. Accordingly, Defendant, STARR is in breach of the Policy.

58. As a result of Defendant, STARR's breaches of the Policy and other Class members' policies, Plaintiff has suffered actual and substantial damages for which the Defendant is

liable.

WHEREFORE, Plaintiff seeks compensatory damages resulting from Defendant, STARR's breach of the Policy and seek all other relief deemed appropriate by this Court, including attorneys' fees and costs.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant, STARR as follows:

- A. Entering a declaratory judgment on Count I, in favor of Plaintiff as follows:
  - i. Business Income, Civil Authority and Extra Expense losses and expenses incurred and sustained as a result of COVID-19 and related civil authority actions are insured and covered losses and expenses under Plaintiff's Policy; and
  - ii. Defendant, STARR is obligated to pay for the full amount of the Business Income, Civil Authority and Extra Expense losses and expenses sustained and incurred, and to be sustained and incurred, as a result of COVID-19 and related civil authority actions are insured and covered losses and expenses under the Policy;
- B. Entering judgment on Count II in favor of Plaintiff and awarding damages for breach of contract in an amount to be determined at trial;
- C. An order requiring Defendant, STARR to pay both pre- and post-judgment interest on any amounts awarded;
- D. An award of costs and attorneys' fees; and
- E. Such other or further relief as may be appropriate.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of June, 2020.

***HARTLEY LAW OFFICES, PLC***

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