

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

THE KIRKLAND GROUP, INC.
Plaintiff,

v.

Case No. 3:20-cv-496-DPJ-FKB

**SENTINEL INSURANCE GROUP LTD.,
D/B/A THE HARTFORD**
Defendants

_____ /

ORIGINAL COMPLAINT

Plaintiff THE KIRKLAND GROUP, INC., files this Original Complaint against SENTINEL INSURANCE GROUP LTD. d/b/a THE HARTFORD ("Defendant") over their refusal to provide insurance coverage for an insurable event pursuant and allege as follows:

INTRODUCTION

1. Plaintiff is a Mississippi corporation with its principal place of business at 404 Orchard Park, Ridgeland, Mississippi 39157.
2. Founded in 1997 and headquartered in Ridgeland, Mississippi, The Kirkland Group, Inc. is an educational consulting firm comprised of highly qualified instructional coaches who are experts in building teacher capacity and improving student performance. As a leading service provider for K-12 College and Career Readiness (CCR), The Kirkland Group is dedicated to advancing academic performance for at-risk and struggling students and supporting teachers and administrators through services like data coaching, teacher coaching, professional development, and audit preparation. A proven agent of change in the public school sector, The Kirkland Group is bridging the gap between teaching and learning in school districts throughout the United States.

3. Plaintiff has been forced, by recent orders issued by the State of Mississippi, including Executive Order 1460 enacted March 19, 2020, to close school districts and provide instruction with essential staff due to the COVID-19 global pandemic. Educational consulting was not deemed to be an emergency public service thus is not considered an essential business in Executive Order 1463 enacted March 24, 2020.

4. To protect Kirkland's business from situations like these, which threaten its livelihood based on factors wholly outside of its control, Plaintiff obtained business interruption insurance from Defendant.

5. The policy pays for loss of business income, stating inter alia: "Civil Authority. We will pay for the actual loss of "Business Income" you sustain is caused by action of civil authority that prohibits access to the "premises" due to direct result of a covered cause to property in the immediate area of your "scheduled premises". The closure of business in Mississippi under civil authority prohibited access to the business premises and caused substantial loss of business income for Plaintiff.

6. In breach of its insurance obligations that it voluntarily undertook in exchange for Plaintiff's premium payments, Defendant has denied Plaintiff's claims arising from the State ordered interruption of the businesses.

7. On March 19, 2020, during the term of the policies issued by Defendant to Plaintiff, Mississippi Governor Tate Reeves issued an order closing public schools in an effort to address the ongoing COVID-19 pandemic. A few days later, on March 24, 2020, Governor Reeves ordered all "non-essential businesses" to close. The particulars of these orders left educational consultants with the ability to provide emergency work but not routine work. The March 19 and March 24 orders are hereinafter collectively referred to as the "Closure Orders."

8. The closure orders named only staff and educators as essential so long as they were doing essential work or the minimal work required to provide in person or online educations support to students.

9. Additionally, the Center for Disease Control and Prevention (“CDC”) has made the Recommendation that schools, working together with local health departments, have an important role in slowing the spread of diseases and protecting vulnerable students and staff, to help ensure students have safe and healthy learning environments. Guidance for schools is organized into three categories based on the level of community transmission: 1) when there is no community transmission (preparedness phase), 2) when there is minimal to moderate community transmission, and 3) when there is substantial community transmission.¹ Guidance is also provided for when a confirmed case has entered a school, regardless of the level of community transmission.

10. The more people a student or staff member interacts with, and the longer that interaction, the higher the risk of COVID-19 spread. The risk of COVID-19 spread increases in school settings as follows:

- **Lowest Risk:** Students and teachers engage in virtual-only classes, activities, and events.
- **More Risk:** Small, in-person classes, activities, and events. Groups of students stay together and with the same teacher throughout/across school days and groups do not mix. Students remain at least 6 feet apart and do not share objects (e.g., hybrid virtual and in-person class structures, or staggered/rotated scheduling to accommodate smaller class sizes).
- **Highest Risk:** Full sized, in-person classes, activities, and events. Students are not spaced apart, share classroom materials or supplies, and mix between classes and activities.²

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>

² <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>

COVID-19 is mostly spread by respiratory droplets released when people talk, cough, or sneeze. It is thought that the virus may spread to hands from a contaminated surface and then to the nose or mouth, causing infection.

11. Therefore, due to the orders of the Mississippi Governor and the COVID virus crisis, an independent educational consultant, like the Kirkland group, is effectively shut down during the duration of the crisis. The Plaintiff has been forced to halt ordinary operations, resulting in substantial lost revenues.

12. Defendant has been paid premiums and is contractually obligated to cover losses related to this work shut down.

13. But despite Defendant's promise in its policies to cover the Plaintiff's business interruption losses when the government forces them to close, Defendant have issued a denial to Plaintiff for any losses related to the Closure Orders without first conducting any meaningful coverage investigation, claiming: "From a Civil Authority cause of loss perspective, there must be direct physical damage from a covered proper cause of loss that eliminates access to your property."

14. Express language in the insurance contract provides:

We will pay for loss or damage by "fungi", wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:

(1) Direct physical loss or direct physical damage to Covered Property caused by "fungi", wet rot, dry rot, bacteria or virus, including the cost of removal of the "fungi", wet rot, dry rot, bacteria or virus".

15. However, the presence of a substance like COVID-19 does in fact legally result in property damage due to viral contamination. Defendant based denial of the Plaintiff's claim on the allegation that the closure orders were to prevent the risk of the spread of COVID-19. This logic

is fatally flawed because the risk of the spread of infection cannot exist without first having the presence of viral contamination. Mississippi executive order No. 1460 pursuant to the Constitution of Mississippi and Miss. Code Ann. §33-15-11(b)(17), issued a proclamation declaring that a State of Emergency exists in Mississippi as a result of the outbreak of COVID-19.

16. If Defendant had wanted to exclude pandemic-related losses under the Plaintiff's policies it easily could have attempted to do so on the front-end with an express exclusion. Instead, Defendant waited until after it collected Plaintiff's premiums, and after a pandemic and the resulting Closure Orders caused catastrophic business losses to Plaintiff, to try to limit its exposure on the backend through its erroneous assertion that the presence of the coronavirus is not "physical loss" and therefore is not a covered cause of loss under its policies.

17. The fact that the insurance industry has created specific exclusions for pandemic related losses under similar commercial property policies undermines Defendant's assertion that the presence of a virus, like the coronavirus, does not cause "physical loss or damage" to property. Indeed, if a virus could never result in a "physical loss" to property, there would be no need for such an exclusion.

18. As a result of Defendant's wrongful denial of coverage, Plaintiff files this action for a declaratory judgment establishing that it is entitled to receive the benefit of the insurance coverage they purchased, for indemnification of the business losses they have sustained, for breach of contract, and for bad faith claims handling.

19. All insurance policies are contracts which include an implied duty of "good faith and fair dealing" that extends to the duty of an insurance company to properly investigate a claim. Policyholders have the right to request and receive from the insurance company any adjuster reports, engineer reports, contractor reports, statements or documents which are not legally

privileged documents that the insurance company prepared, had prepared, or used during its adjustment of the policyholder's claim.

PARTIES

21. Plaintiff is a Mississippi professional corporation, operating in Mississippi and licensed in Mississippi, with its principal place of business in Ridgeland, Mississippi. Plaintiff has a Commercial Insurance Policy from Defendant, Policy No. 43-SBA-BG4913, which covered losses for business interruption, business expenses and physical loss of use of premises at Plaintiff's business address.

22. Defendant, Sentinel Insurance Company, Ltd "dba" The Hartford holds an insurance license in Mississippi to transact and enter into insurance contracts with Mississippi residents. The license number is 0000034. Service of process can be served on Defendant's registered agent CT Corporation System of Mississippi located at 645 Lakeland East Drive Suite 101, Flowood, Mississippi 39232. Defendant's principal place of business is One Hartford Plaza, Hartford, Connecticut, 06155.

JURISDICTION & VENUE

23. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

24. This Court has personal jurisdiction over Defendant pursuant to the Mississippi "long arm statute," § 13-3-57, because Defendant have submitted to jurisdiction in this state by: (a) transacting business in Mississippi; (b) contracting to insure a person, property or risk located within Mississippi at the time of contracting; and (c) making a contract substantially connected with Mississippi. In addition, Defendant exercise substantial, systematic and continuous contacts

with Mississippi by doing business in Mississippi, serving insureds in Mississippi, and seeking additional business in Mississippi.

25. This Court has jurisdiction to grant declaratory relief under 28 U.S.C. § 2201 because an actual controversy exists between the parties as to their respective rights and obligations under the Policy with respect to the loss of business arising from the civil authority event detailed below.

26. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omission giving rise to Plaintiff's claims occurred within the Southern District of Mississippi.

FACTUAL ALLEGATIONS

27. In exchange for substantial premiums, Defendant sold commercial property insurance policies promising to indemnify the Plaintiff for losses resulting from occurrences, including the necessary suspension of business operations at any insured location caused by a government order, during the relevant time period (each a "Policy" and collectively, the "Policies").

28. The Policy is an "all risk" policy that provides broad coverage for losses caused by any cause unless expressly excluded and does not exclude losses from viruses or pandemics.

29. In addition to property damage losses, Defendant also agreed to "pay for the actual loss of Business Income" sustained by Plaintiff due to the necessary suspension of Plaintiff's operations during the period of business interruption caused by "by direct physical loss of or damage to covered property" at the insured's premises.

30. The Defendant's Policies also include "Civil Authority" coverage, pursuant to which Defendant promised to pay for the loss of income and necessary expenses sustained by Plaintiff.

31. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus—otherwise known as COVID-19—constituted a global pandemic.

32. In response to the pandemic, and the spread of the coronavirus in Mississippi, Governor Reeves issued Executive Order 1460 on March 19, 2020 requiring that all public schools close.

33. The continuous presence of the coronavirus on or around Plaintiff's premises have rendered the premises unsafe and unfit for its intended use and therefore caused physical property damage or loss under the Policies. Executive Order 1463 was issued in direct response to these dangerous physical conditions, and prohibited the public from accessing Plaintiff's business, thereby causing the necessary suspension of its operations and triggering the Civil Authority coverage under the Policies. Executive Order 1463 specifically states, "the Mississippi Department of Public Health recommends Mississippi residents avoid group dining in public settings, such as in bars and restaurants, which usually involves prolonged close social contact contrary to recommended practice for social distancing," and that "frequently used surfaces in public settings, including bars and restaurants, if not cleaned and disinfected frequently and properly, also pose a risk of exposure."

35. Governor Reeves's March 24, 2020 Closure Order (Executive Order 1463) closing all "non-essential" businesses in Mississippi, including all public schools, restaurants and movie theaters, likewise was made in direct response to the continued and increasing presence of the coronavirus on property or around Plaintiff's premises.

36. The closure orders prohibited the public from accessing Plaintiff's business, thereby causing the necessary suspension of its operations and triggering the Civil Authority coverage under the policy.

37. As a result of the Closure Orders, the Plaintiff have each suffered substantial losses. The covered losses incurred by Plaintiff and owed under the Policies is increasing every day. Plaintiff has lost substantial revenue.

38. Following the Closure Order, the Plaintiff submitted a claim to Defendant requesting coverage for its business interruption losses promised under the Policies. Defendant has denied Plaintiff's claims without conducting a proper investigation.

COUNT I: DECLARATORY JUDGMENT

39. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1 - 38 above, as though fully pleaded herein.

40. The Policy that is the subject of this suit is an insurance contract under which Defendant was paid premiums in exchange for its promise to pay Plaintiff' losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to close its businesses.

41. Plaintiff has complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies.

42. Defendant has arbitrarily and without justification refused to reimburse Plaintiff for any losses incurred by Plaintiff in connection with the covered business losses related to the Closure Orders and the necessary interruption of its businesses stemming from the COVID-19 pandemic.

43. An actual case or controversy exists regarding Plaintiff' rights and Defendant's obligations under the Policies to reimburse Plaintiff for the full amount of losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of its businesses stemming from the COVID-19 pandemic.

44. Pursuant to 28 U.S.C. § 2201, Plaintiff seek a declaratory judgment from this Court declaring the following: (a) Plaintiff' losses incurred in connection with the Closure Orders and the and the necessary interruption of its businesses stemming from the COVID-19 pandemic are insured losses under the Policies; (b) Defendant has waived any right it may have had to assert

defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing blanket coverage denials without conducting a claim investigation as required under Mississippi law; and (c) Defendant is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders during the four-week indemnity period and the necessary interruption of its businesses stemming from the COVID-19 pandemic.

COUNT II: BREACH OF CONTRACT

45. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1 – 44 above, as though fully pleaded herein.

46. The Policy that is the subject of this suit is an insurance contract under which Defendant was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to close its businesses.

47. Plaintiff have complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies, and yet Defendant has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

48. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Defendant has breached its coverage obligations under the Policies.

49. As a result of Defendant's breaches of the Policies, Plaintiff have sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

COUNT III: STATUTORY PENALTY FOR BAD FAITH DENIAL OF INSURANCE UNDER MISS. CODE ANN. § 11-1-65

50. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in

paragraphs 1 - 49 above, as though fully pleaded herein.

51. Upon receipt of the Closure Order Claims, Defendant immediately denied the claims without conducting any investigation, let alone a “reasonable investigation based on all available information” as required under Mississippi law.

52. Defendant' denials were vexatious and unreasonable.

53. Defendant' denials constitute “improper claims practices” under Mississippi law—namely Defendant Insurance’s (1) refusals to pay Plaintiff's claims without conducting reasonable investigations based on all available information and (2) failure to provide reasonable and accurate explanations of the bases in its denials. See Insured’s Bill of Rights-Mississippi Department of Insurance.

54. Therefore, Plaintiff requests that, in addition to entering a judgment in favor of Plaintiff and against Defendant for the amount owed under the Policies at the time of judgment, the Court enter a judgment in favor of Plaintiff and against Defendant for punitive damages.

55. Plaintiff further requests that the Court enter a judgment in favor of Plaintiff and against Defendant in an amount equal to the attorney fees and costs incurred by Plaintiff for the prosecution of this coverage action against Defendant, which amount will be proved at or after trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully pray that the Court:

1. Enter a declaratory judgment on Count I of the Complaint in favor of Plaintiff and against Defendant, declaring as follows:

(a) Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under

the Policies;

(b) Defendant has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing blanket coverage denials without conducting a claim investigation as required under Mississippi law; and

(c) Defendant is obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders during the shelter in place period and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

2. Enter a judgment in favor of Plaintiff and against Defendant and award damages for breach of contract in an amount to be proven at trial;

3. Enter a judgment on the Complaint in favor of Plaintiff and against Defendant for punitive damages consistent with Mississippi statutory limits imposed on punitive damages based on the net worth of the defendant. Miss. Code Ann. §11-1-65 (1972, as amended). Under this statute, the maximum punitive damage award for the largest defendants (i.e. those with a net worth of One Billion Dollars) is Twenty Million Dollars while the punitive damages cap for the smallest defendants (those with a net worth of Fifty Million Dollars or less) is two percent of the defendant's net worth;

4. Enter a judgment in favor of Plaintiff and against Defendant in an amount equal to all attorney fees and related costs incurred for the prosecution of this coverage action against Defendant, which is an amount to be established at the conclusion of this action;

5. Award to Plaintiff and against Defendant prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by Defendant wrongful refusal to pay Plaintiff for the full amount in costs incurred in connection with Closure Order Claims.

6. Award Plaintiff such other, further, and additional relief as this Court deems just and appropriate.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable.

Dated this 3rd day of August 2020.

Respectfully submitted,

By: /s/ Tina M. Bullock
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