

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Investigroup, LLC, Plaintiff, vs. Hartford Underwriters Insurance Company, The Hartford Financial Services Group, Inc. d/b/a The Hartford, and Sentinel Insurance Company Limited, Defendants.	Civil Action No. _____ COMPLAINT
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Plaintiff Investigroup, LLC, (“Plaintiff” or “Investigroup”), by way of Complaint against Defendants Hartford Underwriters Insurance Company, The Hartford Financial Services Group, Inc., d/b/a The Hartford, and Sentinel Insurance Company Limited (collectively, “Defendants” or “The Hartford”), allege as follows:

INTRODUCTION/BACKGROUND

1. On March 11, 2020 World Health Organization Director General Tedros Adhanom Ghebreyesus declared the COVID-19 outbreak a worldwide pandemic: “WHO has been assessing this Outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction. We have therefore made the assessment that COVID-19 can be characterized as a pandemic.”¹

¹ See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-COVID-19-11-march-2020>

2. On March 16, 2020, the Centers for Disease Control and Prevention, and members of the National Coronavirus Task Force issued to the American public guidance, styled as “30 Days to Slow the Spread” for stopping the spread of COVID-19. This guidance advised individuals to adopt far-reaching social distancing measures, such as working from home, avoiding shopping trips and gatherings of more than 10 people, and staying away from bars, restaurants, and food courts.²

3. Following this advice for individuals to adopt far-reaching social distancing measures, many state government administrations across the nation recognized the need to take steps to protect the health and safety of their residents from the human to human and surface to human spread of COVID-19. As a result, many governmental entities entered civil authority orders suspending or severely curtailing business operations of non-essential businesses that interact with the public and provide gathering places for the individuals. Currently, almost all states within the United States have issued some sort of “stay-at-home” order and ordered private non-essential business operations to close.

4. The result of these far-reaching restrictions and prohibitions has been catastrophic for most non-essential businesses, especially retail establishments, and other small, medium, and large businesses who have been forced to close, furlough employees, and endure a sudden shutdown of cash flow that threatens their survival.

5. Most businesses insure against such catastrophic events like the current unforeseen COVID-19 pandemic through all-risk commercial property insurance policies. 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

² See https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

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

6. Defendants who have issued commercial property insurance policies with business interruption coverage, are 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.

7. This action brings a claim against Defendants for their breach of their contractual obligation under their respective commercial property insurance policy to indemnify Plaintiff for business losses and extra expenses, and related losses resulting from actions taken by civil authorities to stop the human to human and surface to human spread of the COVID-19 outbreak.

THE PARTIES

8. Plaintiff Investigroup LLC (“Plaintiff” or “Investigroup”) is a limited liability company which provides accounting and auditing services. Plaintiff is a citizen of New Jersey, whose principal place of business is 1416b Morris Ave, #206, Union, New Jersey.

9. Defendant The Hartford is a collection of property and casualty insurance companies doing business under the name The Hartford. This Defendant is a citizen of Connecticut being organized under the laws of the State of Connecticut and with its headquarters and principal place of business at One Hartford Plaza, Hartford, Connecticut 06155. On information and belief, the other Hartford companies and Sentinel Insurance Company, Limited, are subsidiaries of The Hartford Financial Services Group, Inc

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) in that the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are citizens of different states: Plaintiff and the members of its LLC are citizens of New Jersey and Defendants are citizens of Connecticut.

11. This Court has personal jurisdiction over Defendants, as Defendants are registered to conduct business in this Commonwealth, regularly conduct business in New Jersey, and have sufficient contacts in New Jersey. Defendants intentionally avail themselves of this jurisdiction by conducting operations here and promoting, selling, and marketing Defendants' policies of insurance to resident New Jersey consumers and entities.

12. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events, acts, and omissions giving rise to Plaintiff's claims occurred in this District and because Plaintiff's insured property that is the subject of the action is situated in this District. Moreover, Defendants do business in this District and thus reside in this District, in accordance with 28 U.S.C. § 1391(c).

FACTUAL ALLEGATIONS

A. The Hartford Policy

1. In return for the payment of a premium, The Hartford issued Policy No. 13 SBA TQ2917 to Plaintiff (hereinafter, the "Policy"). The Policy is attached hereto as Exhibit A.

2. The Covered Property and Scheduled Premises under the Policy includes 1282 Liberty Ave, Hillside NJ 07205.

3. The Hartford Policy is currently in full effect, providing property, business personal property, business income and extra expense, extended business income, virus, and civil authority coverage for a policy period of March 30, 2019 to March 30, 2020 and March

30, 2020 to March 30, 2021.

4. Plaintiff has performed all of its obligations under the Policy, including the payment of the premium.

5. Most property policies sold in the United States, including the Policy sold by The Hartford, is an all-risk property damage policy. This type of policy covers all risks of loss except for risks that are expressly and specifically excluded.

6. Pursuant to the “Special Property Coverage Form,” Form SS 00 07 07 05 the Hartford Policy covers “direct physical loss of or direct physical damage to Covered Property. . . caused by or resulting from a Covered Cause of Loss.” “Covered Cause of Loss” means “risks of direct physical loss unless the loss is Excluded ...or Limited...”

7. The Policy contains the Business Income, and Extra Expense endorsements, the Virus Endorsement (Form SS 40 93), and the Civil Authority endorsement. Coverage extensions provided within these endorsements include payment for lost business income, normal operating expenses incurred (including payroll expenses), extended business income during a period of restoration, and extra expenses for expenses that would not have been incurred but for the loss or damage.

8. The Policy’s Business Income and Civil Authority endorsements contain no exclusion for losses caused by governmental orders issued in order to prevent exposure to a virus, and no other exclusion in the Policy apply to this coverage.

9. Moreover, the Policy expressly provides “Fungus, Bacteria or Virus coverage” in the amount of \$50,000 per location.

10. Despite this express coverage language, Defendants have denied coverage in willful disregard of their obligations under its Policy as well as under New Jersey law.

B. The Covered Cause of Loss

11. Efforts to prevent exposure to COVID-19 have caused civil authorities throughout the country to issue orders requiring the suspension of non-essential businesses and preventing citizens from leaving home for non-essential purposes (the “Closure Orders”).

12. Plaintiff’s business is not considered “essential,” and has therefore been subject to a variety of Closure Orders by state and local authorities, preventing Plaintiff from operating its business, limiting its operations, and/or from use of the covered premises for its intended purpose.

13. These Closure Orders include, but are not limited to, New Jersey Governor Phil Murphy’s Executive Order Number 107 dated March 21, 2020 requiring all non-essential businesses in the State to cease operations and close all physical locations.³ The Supreme Court of our sister state of Pennsylvania recently clarified that a similar order to that of New Jersey entered by the Pennsylvania Governor has resulted in the temporary loss of use of non-essential business premises effected by the order, and that the order was issued to protect the lives and health of millions of Pennsylvania citizens. *See Friends of DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100 at *17 (Pa. Apr. 13, 2020).

14. There was no presence of the COVID-19 virus at Plaintiff’s Covered Property. Rather, Plaintiff experienced a “Covered Cause of Loss” by virtue of the Closure Order which denied use of the Covered Property by causing a necessary suspension of operations during a period of restoration. The presence or absence of the COVID-19 virus would have no effect upon the closure or the loss of business inasmuch as the stay at home orders apply to all non-essential businesses regardless of their exposure to the virus. The Closure Orders operate as a

³ See also <https://www.nj.gov/governor/news/news/562020/20200320j.shtml>.

blockade that prevents employees and patrons from entering the businesses for their intended purpose.

15. This Covered Cause of Loss triggered coverage pursuant to the coverage extensions of the Policy's Business Income endorsements.

16. The Policy's Business Income coverage extension provides coverage "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 or direct physical damage to property. . . caused by or resulting from a Covered Cause of Loss." This coverage extends to 12 consecutive months for actual sustained loss. The Extended Business Income coverage extension further provides for payment of the actual loss of Business Income the insured incurs during the period that begins on the date that "property is actually repaired, rebuilt or replaced and 'operations' are resumed," and ends on the earlier of the date that either the insured could restore "operations" with reasonable speed, or 60 days. The Extra Expense coverage extension covers reasonable and necessary extra expenses incurred by the insured during the "period of restoration," that the insured would not have incurred if there had been no direct physical loss or direct physical damage to property.

17. Consistent with the provisions of the Policy's Civil Authority endorsement, the "Covered Cause of Loss" also caused a direct physical loss or damage to property other than at Plaintiff's Scheduled Premises, triggering coverage under the Policy's Civil Authority coverage extension. The coverage extension provides payment for actual loss of Business Income and necessary Extra Expense incurred during the "civil authority period of restoration."

18. None of the Policy's exclusions apply to Plaintiff's claims for coverage.

CLAIMS FOR RELIEF

COUNT I

BREACH OF CONTRACT
BUSINESS INCOME COVERAGE

19. Plaintiff realleges the above paragraphs as if fully set forth herein.
20. Plaintiff's Policy is a contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.
21. In the Business Income and Extra Expense endorsement, The Hartford provided Business Income, Extended Business Income, and Extra Expense coverage extensions.
22. The Hartford agreed to pay for Plaintiff's actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration."
23. A "partial slowdown or complete cessation" of business activities at the Scheduled Premises is a "suspension" under the Policy, for which The Hartford agreed to pay for loss of Business Income during the "period of restoration," as well as continuing normal operating expenses incurred, including payroll expenses.
24. "Business Income" means net income (or loss) before tax that Plaintiff would have earned "if no physical loss or damage had occurred."
25. The Extended Business Income coverage extension provides for payment of the actual loss of Business Income the insured incurs during the period that begins on the date that "property is actually repaired. . . and 'operations' are resumed," and ends on the earlier of the date that either the insured could restore "operations" with reasonable speed, or 60 days.
26. The Extra Expense coverage extension provides for payment of reasonable and necessary Extra Expense an insured incurs during the "period of restoration" that the insured would not have incurred if there had been no direct physical loss or direct physical damage to

property at the Scheduled Premises.

27. The Closure Orders caused direct physical loss and damage to Plaintiff's Scheduled Premises, requiring suspension of operations at the Scheduled Premises. Losses caused by the Closure Orders thus triggered the Business Income provision of Plaintiff's Policy.

28. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by The Hartford, or The Hartford is estopped from asserting them, and yet The Hartford has abrogated its insurance coverage obligations.

29. By denying coverage for any Business Income losses incurred by Plaintiff, The Hartford has breached its coverage obligations under the Policy.

30. As a result of The Hartford's breaches of the Policy, Plaintiff has sustained substantial damages for which The Hartford is liable, in an amount to be established at trial.

COUNT II

BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE

31. Plaintiff realleges the above paragraphs as if fully set forth herein.

32. Plaintiff's Policy is contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

33. In the Business Income for Civil Authority Actions endorsement, Defendants agreed to pay for its insureds' actual loss of Business Income and Extra Expense incurred due to the necessary suspension of its operations during the "period of restoration."

34. The Closure Orders caused direct physical loss and damage to property other than Plaintiff's Scheduled Premises, resulting in a prohibition of access to the Scheduled Premises. Losses caused by the Closure Orders thus triggered the Business Income for Civil Authority Actions provision of Plaintiff's Policy.

35. Plaintiff has complied with all applicable provisions of its Policy and/or those provisions have been waived by the Defendants, or the Defendants are estopped from asserting them, and yet the Defendants have abrogated their insurance coverage obligations.

36. By denying coverage for any Civil Authority losses incurred by Plaintiff, Defendants have breached their coverage obligations under the Policy.

37. As a result of Defendants' breaches of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

COUNT III

BAD FAITH

38. The foregoing paragraphs are incorporated at length as if set forth fully herein.

39. Defendants have no actual basis for declining complete coverage of the Plaintiff's claim for damages.

40. The refusal of Defendants to compensate Plaintiff for losses sustained and its practices in the handling of the claim constitute bad faith towards the insured.

41. Defendants have declined coverage in an intentional, willful and wanton disregard of the terms of the Policy.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants in an amount in excess of \$50,000.00, attorney's fees, pre- and post-judgment interest, delay damages, punitive damages, treble damages, cost of suit, and such other legal and equitable relief as this court deems just and proper.

PRAYER FOR RELIEF

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

- a. Entering judgment in favor of Plaintiff and awarding damages for breach of contract in an amount to be determined at trial;
- b. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- c. Ordering Defendants to pay attorneys' fees, reasonable expenses and costs of suit; and
- d. Ordering such other and further relief as may be just and proper.

**SHERMAN, SILVERSTEIN, KOHL,
ROSE & PODOLSKY, P.A.**

By: *s/Alan C. Milstein*
Alan C. Milstein
308 Harper Drive, Suite 200
Moorestown, NJ 08057
Telephone: 856-662-0700
E-Mail:
amilstein@shermansilverstein.com
Attorneys for Plaintiff

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