

2020-003187-3

NO. _____

M DISTILLERY, INC.,
Plaintiff,

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IN THE COUNTY COURT AT LAW

v.

NO. _____

PHILADELPHIA CONSOLIDATED
HOLDING CORPORATION DBA
PHILADELPHIA INSURANCE
COMPANY,

Defendant.

TARRANT COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, M Distillery, Inc., Plaintiff in the above-styled cause, and files this its Original Petition against Defendant Philadelphia Consolidated Holding Corporation dba Philadelphia Insurance Company ("Philadelphia"), and would respectfully show the Court as follows:

DISCOVERY LEVEL

1. Pursuant to Texas Rule of Civil Procedure 190.1, Plaintiff affirmatively pleads that discovery in this case is intended to be conducted under Level II as set forth in Texas Rule of Civil Procedure 190.3.

PARTIES

2. Plaintiff is M Distillery, Inc. Plaintiff is a Texas corporation with its principal office in Tarrant County, Texas.

3. Defendant Philadelphia, is a Pennsylvania corporation doing business in the State of Texas and a member of Tokio Marine Management, Inc.

4. Defendant Philadelphia is in the business of providing insurance in the State of Texas. The insurance business conducted by Philadelphia includes, but is not limited to, the formation and issuance of contracts of insurance with Plaintiff, accepting applications for insurance, receipt of premiums, commissions and fees, as well as the delivery of contracts of insurance to residents of this state or person authorized to do business in this state, including Plaintiff.

5. Defendant Philadelphia may be served with process by serving the registered agent of Tokio Marine Management, Inc. at **CT Corporation System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136. Service is requested at this time.**

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter because the amount in controversy is within the jurisdictional limits of this Court. Venue is appropriate in Tarrant County, Texas, because all or a substantial part of the events or omissions giving rise to the claim occurred in Tarrant County and Plaintiff's principal place of business is located in Tarrant County.

BACKGROUND FACTS

7. Plaintiff is the owner of an Insurance Policy (hereinafter referred to as "the Policy") which covers Plaintiff's business and property located at 2616 Weisenberger Street, Fort Worth, Texas 76107. Defendant sold the policy to Plaintiff

8. During the terms of said Policy, Plaintiff has sustained and will sustain covered losses during the Covid-19 outbreak and subsequent Tarrant County and City of Fort Worth Orders. Plaintiff reported said losses to Philadelphia pursuant to the terms of the Policy. Plaintiff requested that Philadelphia covered the cost for business interruption to the Property pursuant to the terms of the Policy. Philadelphia assigned Corey Moore, a property claims

examiner, to investigate the loss related to Plaintiff's business interruption claim. The claim has been wrongfully denied. To date, Philadelphia has mishandled Plaintiff's claim and caused and will continue to cause Plaintiff further and additional damages. Defendant has made material misrepresentations about Policy provisions, coverage and the law in Texas applying thereto. To date, Philadelphia continues to den the payment for Plaintiff's loss of business.

CAUSES OF ACTION

A. BREACH OF CONTRACT

9. Plaintiff incorporates the preceding paragraphs and allegations herein. Philadelphia and its agents' conduct constitutes a breach of the insurance contract between it and Plaintiff. Defendants failure and/or refusal, as described above, to pay Plaintiff adequate compensation as its obligated to do under the terms of the Policy in question, and under the laws of the State of Texas, constitutes a breach of the insurance contract with Plaintiff.

10. Further, Defendant failed to perform is contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Philadelphia wrongfully denied coverage. All conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiff. Defendant's conduct constitutes a breach of insurance contract between Plaintiff and Defendant.

NONCOMPLIANCE WITH TEXAS INSURANCE CODE

11. Texas law is clear that insurance companies and anyone engaged in the business of insurance by investigating and adjusting a claim must conduct a reasonable, full and fair claim investigation. Defendant violated Chapter 541 of the Texas Insurance Code, by the following acts or omissions:

- i. Making an untrue statement of material fact;

- ii. Making a misleading statement; and
- iii. Failing to disclose material facts.

PROMPT PAYMENT OF CLAIMS

12. Defendant's conduct constitutes and will continue to constitute multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by TEX. INS. CODE §542.060.

13. Defendant failed to timely pay Plaintiff's claim, and for all the covered losses due to its wrongful denial of the policy benefits. TEX. INS. CODE §542.057.

14. Defendant failed to meet its obligations under the Texas Insurance Code regarding payment of claims without delay due to its wrongful denial. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX INS. CODE §542.058.

BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

15. Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insureds pursuant to insurance contracts. From and after the time Plaintiff's loss was presented to Philadelphia, its liability to pay the full claim in accordance with the terms of the Policy was reasonably clear. Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing.

16. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of damages sustained by Plaintiff.

B. FRAUDULENT INDUCEMENT

17. Plaintiff incorporates the preceding paragraphs and allegations herein. In March, 2019, Plaintiff's President had the foresight to inquire about business interruption insurance prior to the annual renewal of Plaintiff's insurance policy with Defendant. Plaintiff's agent at the time, Kyle C. Rheiner, an employee of Defendant, stated as follows:

"Business Interruption – Yes. On your policy – Probably your most important coverage. I'd like to firm up the number though – See attached and this is a way to guesstimate the amount needed. PHLY insurance throws in an automatic \$300,000.00, so we'll want to revise. See Exhibit "A". attached hereto an incorporated by reference herein (emphasis supplied).

18. Plaintiff would show that Plaintiff detrimentally relied upon Defendant's statements and was fraudulently induced to renew the subject policy following a very specific and pointed inquiry regarding business interruption insurance Defendant now denies is covered under said Policy. Defendant's misrepresentations were material, made with knowledge of their falsity or asserted without knowledge of their truth and made with the intention that Plaintiff act on or renew said policy. Plaintiff relied on said misrepresentations which caused Plaintiff's damages.

19. Defendant has taken the position that Plaintiff did not suffer a "direct physical loss," even though such term is not defined in the Policy itself, is vague, ambiguous and any question or disagreement about an undefined term should be interpreted in favor of the policy holder as a matter of public policy. Defendant ignores its own agent's statements in inducing coverage specifically concerning coverage of business interruption insurance.

20. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of damages sustained by Plaintiff.

PUNITIVE DAMAGES

21. As a consequence of Defendant's foregoing clear and convincing fraudulent acts and the willful and malicious nature of the wrongs committed against Plaintiff, Plaintiff is entitled to punitive damage. Plaintiff is entitled to exemplary damages under Texas law in excess of the minimum jurisdictional limits of this court.

ATTORNEY FEES

22. Defendant's wrongful acts and omissions have caused Plaintiff to file suit. Plaintiff is entitled to recover reasonable attorney fees under Texas Civil Practice & Remedies Code chapter 38 because this is a suit for breach of a written contract.

JURY DEMAND

23. Plaintiff demands a trial by jury on all issues.

CONDITIONS PRECEDENT

24. All conditions precedent to Plaintiff's right to recovery in this matter have been performed or have occurred.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff M Distillery, Inc., prays that:

1. Defendant be cited to appear and answer herein;
2. Plaintiff be granted judgment for actual damages due and owing;
3. Plaintiff be granted reasonable attorneys fees in an amount as proved at trial;
4. Plaintiff be granted punitive damages in the maximum amount authorized by law;
5. Plaintiff be granted pre-judgment interest at the highest appropriate legal rate under Texas law, until the date of judgment;
6. Plaintiff be awarded post-judgment interest on such claims, at the highest appropriate legal rate under Texas law from the date of judgment until the date

such judgment is paid;

7. Plaintiff be awarded costs of suit;
8. Plaintiff be granted such other and further relief as it may be shown to be justly entitled.

M DISTILLERY, INC.

By: /s/ P. Markus Kypreos

P. Markus Kypreos

President

State Bar No. 24043769

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ATTORNEY FOR PLAINTIFF
M DISTILLERY, INC.