

SPECTOR GADON ROSEN VINCI P.C.
By: Daniel Dugan (ID 37906)
Neal R. Troum (ID 94572)
1635 Market Street, 7th Floor
Philadelphia, PA 19103
(215) 241-8800, (215) 241-8844 (fax)
ddugan@sgrvlaw.com, ntroum@sgrvlaw.com

Attorneys for Plaintiff, Spector
Gadon Rosen Vinci P.C.

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A. SILIGRINI

Spector Gadon Rosen Vinci P.C.
1635 Market Street, 7th Floor
Philadelphia, PA 19103

Plaintiff,

v.

Valley Forge Insurance Company
151 N. Franklin
Chicago, IL 60606

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

MAY TERM, 2020
No. _____

COMMERCE PROGRAM

Notice to Defend

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

**Philadelphia Bar Association
Lawyer Referral and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197**

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al

partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

**Asociacion De Licenciados De Filadelfia
Servicio De Referencia E
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One Reading Center
Filadelfia, Pennsylvania 19107
(215) 238-6333
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operating expenses that SGRV has incurred from the suspension of the operations at its Philadelphia offices due to the pandemic.

5. Although SGRV has complied with all provisions of the subject insurance policy, and although application of the standard rules of insurance contract interpretation makes clear that coverage exists for SGRV under the instant circumstances, Valley Forge refuses to reimburse SGRV under this insurance, in breach thereof.

6. SGRV brings claims for breach of contract and declaratory judgment to obtain the coverage under this insurance that Valley Forge is contractually obligated to provide.

Jurisdiction and Venue

7. Jurisdiction exists pursuant to 42 Pa.C.S.A. § 931. Jurisdiction for the declaratory judgment sought exists pursuant to 42 Pa.C.S.A. § 7532.

8. Venue is proper in this Court pursuant to Pennsylvania Rule of Civil Procedure 1006, as this county is where Plaintiff's claims arose and/or where a transaction or occurrence took place out of which Plaintiff's claims arose and/or where the insured property is located.

Parties

9. SGRV is a Pennsylvania professional corporation with its principal place of business in Philadelphia, Pennsylvania.

10. Valley Forge is a Pennsylvania business corporation with its principal place of business in Illinois.

Background

11. Valley Forge issued to SGRV a "Business Property" policy of insurance ("the Policy"), policy no. 6050523008, with a policy period of October 20, 2019 to October 20, 2020. (A copy of the Policy is attached hereto as Exhibit 1.)

12. The "Business Income" insuring agreement in the Policy provides that:

[t]he Insurer will pay for the actual loss of business income the Named Insured sustains during the period of restoration due to the necessary suspension or delay of operations caused by direct physical loss of or damage to property at a location directly caused by a covered peril.

13. Thus, the prerequisite to coverage under the insuring agreement for “Business Income” is that the suspension of the insured’s operations have been caused by “direct physical loss of or damage to property” at the insured premises (*i.e.*, SGRV’s office).

14. The “Civil Authority” insuring agreement in the Policy provides that:

the Insurer will pay . . . for . . . [t]he actual loss of business income the Named Insured sustains during the period of restoration due to the necessary suspension or delay of operations . . . caused by action of civil authority that prohibits access to the location Such action must result from a civil authority's response to direct physical loss of or damage to property located away from a location That lost or damaged property must be within five miles of that location . . . which sustains a business income . . . loss The loss or damage must be directly caused by a covered peril.

15. Thus, the prerequisites to coverage under the insuring agreement for “Civil Authority” is that (i) operations were suspended because of the “action of civil authority that prohibits access to the location,” (ii) the civil authority’s denial of access constituted a “response to direct physical loss of or damage to property located away from” the insured premises (but within five miles of the insured premises), and (iii) the damage to the property was directly caused by a covered peril.

16. “Location” is defined as “each of the locations specified in the Business Property Schedule of Locations” The Business Property Schedule of Locations, in turn, lists all of SGRV’s offices, including its primary office in Philadelphia, Pennsylvania and its office in St. Petersburg, Florida.

17. “Covered Peril” is defined as “a fortuitous cause or event, not otherwise excluded, which occurs during this policy period.” The coronavirus and Covid-19 pandemic fall within this definition.

18. The policy provides coverage for any loss of “business income,” and the policy defines that term to include not only “losses” (*i.e.*, lost income) but also “continuing operating expenses.”

19. In March 2020, a government stay-at-home directive caused SGRV to suspend operations at its offices in Philadelphia as of March 17, 2020.

20. Coverage exists under the Policy under the insuring agreement for “Business Income” because SGRV suspended operations due to a direct physical loss of property. The word “loss,” as defined in the dictionary and as applicable here, means detriment or disadvantage. The words “loss . . . of” property, as used in the Policy, can thus only refer to a “loss of” use of the property. The pandemic has caused SGRV a loss of use of its property, which triggers coverage under the Policy.

21. In addition, coverage exists under the Policy under the “Business Income” insuring agreement because SGRV suspended its operations because of direct physical damage to property. The coronavirus lives on surfaces, including building surfaces, from which it can come into contact with (and harm and kill) people, and so the presence of the coronavirus virus on building surfaces thus constitutes damage to the building. As a result, coverage is triggered under the Policy for this reason as well.

22. Coverage also exists under the Policy’s “Civil Authority” insuring agreement, because (i) there was a “denial of access” to SGRV’s premises due to the government stay-at-home orders; (ii) the government acted as it did because the virus was on surfaces throughout these areas, necessarily including surfaces within five miles of SGRV’s offices; and (3) the damage to property was directly caused by a fortuitous event.

23. No exclusion eliminates coverage under the policy for SGRV’s “continuing operating expenses” incurred after the shutdown order and SGRV’s suspension of its operations in the Philadelphia office.

24. SGRV wrote to Valley Forge on April 14, 2020, making a claim for coverage under the Policy for its “continuing operating expenses,” which is an element of “Business Income” under the Policy.

25. Valley Forge assigned the claim to an adjuster who sent emails asking certain questions, all of which SGRV answered promptly on or before April 17, 2020.

26. Valley Forge’s adjuster responded to SGRV’s inquiry as to the status of its claim by confirming in an email of May 8, 2020 that Valley Forge intended to deny coverage.

27. By another email of same date the adjuster told SGRV he expected a formal response to the claim would issue in seven to ten days. Valley Forge has not responded to the claim since, and it has refused to provide coverage under the Policy or to pay SGRV the amounts to which it is entitled under the Policy, in breach thereof.

Count I – Breach of Contract

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

29. The Policy is a contract of insurance binding upon Valley Forge, as insurer, and SGRV, as insured.

30. SGRV has complied with all applicable provisions of the Policy and is entitled to coverage under the Policy.

31. Valley Forge has refused to reimburse SGRV for amounts owed under the Policy for its continuing operating expenses, in breach thereof.

32. None of the Policy’s exclusions applies to the continuing operating expenses SGRV has paid during the suspension of operations at its Philadelphia offices beginning March 17, 2020.

33. SGRV has been proximately damaged as a result in an amount in excess of \$50,000.

WHEREFORE, the court should (i) enter judgment in favor of SGRV and against Valley Forge for damages in excess of \$50,000 to cover its continuing operating costs incurred during the suspension of its operations at its Philadelphia offices, plus costs and attorney's fees, and (ii) award such other relief as it deems equitable and just.

Count II – Declaratory Judgment

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

35. SGRV seeks a declaration that Valley Forge is obligated under the terms of the Policy to provide coverage to SGRV under the Policy's "Business Income" and "Civil Authority" coverage parts due to the coronavirus and Covid-19 pandemic and SGRV's subsequent resulting closure, as set forth herein.

36. An actual controversy exists between the parties.

37. Litigation concerning a direct, substantial, and present interest is inevitable and imminent, as set forth herein.

38. SGRV has suffered and will continue to suffer harm if review of this matter is delayed.

39. The declaration sought will practically help to end the controversy between the parties.

40. SGRV is entitled to the declaration sought as a matter of law.

WHEREFORE, the Court should (i) declare that Valley Forge is obligated under the Policy to provide coverage to SGRV for its continuing operating expenses under the Policy's "Business Income" and "Civil Authority" coverage parts due to the coronavirus and Covid-19 pandemic and SGRV's subsequent resulting closure of its Philadelphia offices, and (ii) award such other relief as it deems equitable and just.

Respectfully submitted,

SPECTOR GADON ROSEN VINCI P.C.

/s/ Neal Troum

Daniel Dugan, Esquire

Neal R. Troum, Esquire

1635 Market Street, 7th Floor

Philadelphia, PA, 19103

Telephone 215.241.8888

Fax: 215.531.9120

ddugan@lawsgr.com

ntroum@lawsgr.com

May 27, 2020

Attorneys for Plaintiff,

Spector Gadon Rosen Vinci P.C.

Verification

I, Daniel Dugan, hereby certify that the allegations set forth in the foregoing complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: May 26, 2020

/s/ Daniel Dugan
Daniel Dugan