

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

**UNIVERSITY MANAGEMENT, INC.,
COLUMBUS DELI, INC., GRILL TUPELO,
LLC AND BBC, LLC**

PLAINTIFFS

VERSUS

CIVIL CAUSE NO.: 1:20CV138-SA-RP

**STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY**

DEFENDANT

**PLAINTIFFS' MEMORANDUM BRIEF IN SUPPORT OF RESPONSE
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs University Management, Inc., Columbus Deli, Inc., Grill Tupelo, LLC and BBC, LLC (collectively referred to as "UMI" or "Plaintiffs") submit their *Memorandum Brief in Support of Response to Defendant's Motion for Summary Judgment*:

I. INTRODUCTION

Construing the BI Extension Endorsement most strongly against State Auto and most favorably for UMI, coverage is invoked for Plaintiffs' claim, thereby entitling Plaintiffs to a judgment as a matter of law and a denial of Defendant's *Motion for Summary Judgment*. Plaintiffs filed this lawsuit alleging coverage for their losses under several provisions of the applicable policy. However, the application of only the BI Extension Endorsement is needed for denial of Defendant's motion. Plaintiffs do not waive any provisions of the policy but will only address the BI Extension Endorsement in their response as it is dispositive of whether Defendant is entitled to summary judgment, and whether Plaintiffs are entitled to summary judgment.

As also stated in Plaintiffs' *Response*, Plaintiffs incorporate herein by reference all positions, arguments, citations, exhibits, etc. contained within *Plaintiffs' Motion for Summary Judgment* and *Plaintiffs' Memorandum Brief in Support of Motion for Summary Judgment*.

Unless noted otherwise, exhibits referenced herein are attached as exhibits to *Plaintiffs' Motion for Summary Judgment*.

Defendant's reading of the BI Extension Endorsement is a strained reading as it interjects interpretations and definitions not contained within the Endorsement. The Endorsement, by its wording, provides coverage for Plaintiffs' claim under the known facts here. Alternatively, the Endorsement is ambiguous, as it could be interpreted in multiple ways, and at least one of those ways invokes coverage.

II. LEGAL ARGUMENT

A. The Alleged Exposure of Restaurants to COVID-19 Resulted in City and State Officials Suspending Operations, Causing Financial Loss to Plaintiffs.

For easy reference and understanding, the Endorsement is stated again.

Additional Coverages **f. Business Income** and **g. Extra Expense** is amended to include coverage for the following Causes of Loss:

1. The suspension of your "operations" at the described premises due to the order of a civil authority; or adverse communications or media reports, resulting from the actual or alleged:
 - a. Food or drink poisoning of a guest at the described premises; or
 - b. Exposure of the described premises to a contagious or infectious disease.
2. The "period of restoration" for this cause of Loss shall not exceed 30 consecutive calendar days from the date of the suspension of your "operations".

BI Extension Endorsement, Exhibit A to Plaintiffs' Motion.

One reading of the Endorsement is that coverage is afforded for losses related to "[t]he suspension of your 'operations' at the described premises due to the order of a civil authority ... resulting from the actual or alleged ... [e]xposure of the described premises to a contagious or

infectious disease.”

The parties do not dispute that “described premises” is referencing Plaintiffs’ premises which are identified in the declaration pages of the policy. However, Defendant contends that the alleged conditions necessitating a suspension of operations must be “within” and “emanating” from the described premises. Neither of those words are contained within the Endorsement and are an attempt by State Auto to redefine and improperly limit the breath of it. In fact, the Endorsement broadly states that the suspension must be “at the described premises” and there must be an actual or alleged “exposure” of the premises to contagious or infectious disease. It is undisputed that Plaintiffs were required to stop in-restaurant dining and other services in each of the restaurant locations listed in the declarations. State Auto’s attempt to limit reports of contamination to those “within” or “emanating” from plaintiffs’ business locations is unsupported by the policy or law.

Next, State Auto argues that phrases such as “due to” and “resulting from” requires a causal connection between the alleged exposure to COVID-19 and the civil authority suspending operations. Again, State Auto is attempting to read more into the Endorsement in an effort to limit coverage that is simply not there. The words “due to” connect the suspension of operations to the order of civil authority. It is uncontroverted that the mandates from several governing bodies required that Plaintiffs suspend services it offered. UMI stopped offering in-restaurant dining and other services because orders of civil authority required it.

State Auto contends that there is no proof of *allegations* that UMI’s premises had been infected with the coronavirus. This argument ignores the reality of the COVID-19 pandemic as it existed in March and April 2020. As UMI explained in its Memorandum Brief, practically every news outlet in the world was reporting the aggressive spread of the coronavirus to all

places, especially places where people gathered in numbers, such as restaurants.

State Auto contends that “[i]t is truly undisputed here that the government orders had nothing to do with conditions -- actual or alleged -- at Plaintiffs’ restaurants.” In fact, the various orders of mayors, other government officials and the governor of Mississippi were in response to the alleged contamination of coronavirus at restaurants in Mississippi, including those operated by Plaintiffs. Regarding alleged contamination in his restaurants, UMI’s CFO Robert Fort specifically referenced the government mandates: “Other than the governor’s orders and, you know, the government of Mississippi and other locations and their preparation of their orders. I’m sure they were aware of COVID.” *Exhibit I to Plaintiffs’ Motion*, p. 77.

Governor Reeves’ executive orders clearly stated that the closure orders were being instituted due to alleged exposure to COVID-19. “The worldwide outbreak of COVID-19 and the effects of its extreme risk of person to person transmission throughout the United States and Mississippi significantly impact the life and health of our people” and “the risk of spread of COVID-19 within Mississippi constitutes a public emergency that may result in substantial injury or harm to life, health and property within Mississippi” *Exhibit G to Plaintiffs’ Motion*. Governor Reeves specifically addressed restaurants and bars as locations where COVID-19 was likely to be present with the threat of further spread. He stated: “On March 20, 2020, the Mississippi State Department of Health issued a COVID-19 update recommending that all restaurants and bars suspend dine-in service *in order to help slow the spread of COVID-19 ...* .” The exposure of restaurants in Mississippi, including restaurants operated by UMI, is what prompted Governor Reeves and other elected officials to issue the many closure orders.

**B. The Semicolon after “Authority” in the Endorsement
Subjects it to Multiple Interpretations.**

One reasonable interpretation of the Endorsement is to read everything before the

semicolon as an independent clause that stands by itself. Rules of punctuation state that a semicolon is used to separate related but independent clauses. *grammar.yourdictionary.com/punctuation* (“a semicolon can join related independent clauses that are of equal importance”).

With that rule in mind, one way to read the Endorsement is that coverage is provided for “[t]he suspension of your ‘operations’ at the described premises due to the order of a civil authority.”

Clearly, the orders of the mayor and the governor constitute orders of civil authority. And there is no doubt that UMI had to stop offering dine-in, carryout and bar services at its restaurants. There was a suspension of operations as “the business need not be completely shut down to trigger the [endorsement] provision.” *Terry Blacks Barbeque, LLC v. State Automobile Mut. Ins. Co.*, 2021 WL 972878 (decided January 21, 2021).

Ambiguity in the Endorsement favors UMI. “An ambiguity in an insurance policy exists when the policy can be interpreted to have two or more reasonable meanings.” *J & W Foods Corp. v. State Farm Mut. Auto. Ins. Co.*, 723 So. 2d 550, 552 (Miss. 1998). “When the language of a policy is subject to more than one reasonable interpretation, [the Mississippi Supreme Court] will apply a construction permitting recovery.” *Id.* Where ambiguity does exist, “it is a well-known cannon of contract construction that ambiguities in a contract are to be construed against the party who drafted the contract.” *Mississippi Transp. Comm’n v. Ronald Adams Contractor, Inc.*, 753 So. 2d 1077, 1088 (Miss. 2000); *Farmland Mut. Ins. Co. v. Scruggs*, 886 So. 2d 714, 717 (Miss. 2004)(“It is also bedrock law that ambiguous terms in an insurance contract are to be construed most strongly against the preparer, the insurance company.”); *Caldwell v. Hartford Accident & Indem. Co.*, 160 So. 2d 209, 212-13 (Miss. 1964)(“The rule that the insurance policy

prepared by the insurer must be construed more strongly against the insurance company, and that any fair doubt should be resolved in favor of the insured, is so well-settled in the law of insurance that we hesitate to cite any cases.”).

III. CONCLUSION

For the reasons stated herein and in *Plaintiffs’ Motion for Summary Judgment* and *Memorandum Brief, Defendant’s Motion for Summary Judgment* should be denied.

This the 1st day of July, 2021.

**UNIVERSITY MANAGEMENT, INC.,
COLUMBUS DELI, INC., GRILL
TUPELO, LLC AND BBC, LLC**

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system which then served a copy to Counsel for all parties via ECF.

This the 1st day of July, 2021.

/s/ J. Douglas Ford