



April 13, 2020

KEDZIE BOULEVARD CAFE INC DBA
SCOFFLAW
3201 W ARMITAGE AVE
CHICAGO IL 60647

Claim Number: P4066664
Insured: KEDZIE BOULEVARD CAFE INC DBA SCOFFLAW
Claimant Name: KEDZIE BOULEVARD CAFE INC DBA SCOFFLAW
Date of Loss: 03/15/2020
Type of Loss: OTHER
Location of Loss: 3201 W ARMITAGE AVE, CHICAGO, IL 60647
Policy Number: ROP 451854

Society would like you to know that we appreciate and value you as a customer. We regret to inform you, however, that Society will have to deny your claim because there is no insurance coverage for this claim under the Society Policy for the reasons discussed below.

I. THE CLAIM

We summarize the facts based upon Society's investigation to-date as well as the materials we have received. If you have any additional materials or information that you believe is relevant to this claim or that you would like us to consider, please send it for our review.

Within the past few days, local, state and federal governments have requested businesses to shut down to the general public in order to reduce the spread of COVID-19.

II. REASONS FOR DISCLAIMER OF COVERAGE

We have investigated your claim, and after careful review of the claim and the Society Policy we have concluded that there is no coverage for your claim.

A. Not a Covered Cause of Loss

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The Businessowners Special Property Coverage Form of the Society Policy insures a direct physical loss or damage to Covered Property at the premises caused by or resulting from a Covered Cause of Loss within the policy period.

Relevant Policy Language, Form TBP2 (05-15)

A. Coverage

3. Covered Causes of Loss

Direct Physical Loss unless the loss is excluded or limited under this coverage form.

A Covered Cause of Loss is a direct physical loss not otherwise excluded or limited by the policy. A slowdown in business due to the public's fear of the coronavirus or a suspension of business because a governmental authority (i.e. the governor or the mayor) has ordered or recommended all or certain types of businesses to close is not a direct physical loss. In addition, the actual or alleged presence of the coronavirus is not a Covered Cause of Loss.

B. No Coverage Under Additional Coverage, A.5(k) Civil Authority

The Society Businessowners Special Property Coverage Form includes Civil Authority additional coverage (Section A. 5(k)), which insures only for actual loss of Business Income and Extra Expense caused by an action of civil authority that prohibits access to the described premises when "a Covered Cause of Loss causes damage to property other than property at the described premises."

Relevant Policy Language, Form TBP2 (05-15)

A. Coverage

5. Additional Coverages

g. Business Income

1. Business Income

(c) Business Income means the:

- (i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damages had occurred, but not including any Net Income that would likely have been earned as a result of an increased in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and**

- (ii) Continuing necessary operating expenses incurred.**

h. Extra Expense

(2) Extra Expense means expense incurred:

- (a) To avoid or minimize the suspension of business and to continue "operations":**

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- (i) At the described premises; or
- (ii) At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations.
- (b) To minimize the suspension of business if you cannot continue “operations”
- (c) To:
 - (i) Repair or replace any property; or
 - (ii) Research, replace or restore the lost information on damages “valuable papers and records”
- (3) With respect to the coverage provided in this Additional Coverage, suspension means:
 - (a) The partial slowdown or complete cessation of your business activities; or
 - (b) That a part or all of the described premises is rendered untenable if coverage for Business Income applies

k. Civil Authority (7)

When a **Covered Cause of Loss** causes damage to property other than property at the described premises, we will pay for the actual loss of **Business Income** you sustain and necessary **Extra Expense** caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within the area; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property

Civil authority coverage for Business Income will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will apply for a **period of up to four consecutive weeks** from the date on which such coverage begins.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. **The Civil Authority Additional Coverage is not subject to the Limits of Insurance.**

The Civil Authority additional coverage requires that a Covered Cause of Loss cause damage to property other than the property at the described premises, and that access to the area immediately surrounding the damaged property is prohibited by a civil authority. There is no coverage here because, as detailed above, Coronavirus is not a Covered Cause of Loss, and because a civil authority

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has not prohibited access to your business because of a Covered Cause of Loss that caused damage to a premises other than the described premises.

C. No Coverage Under Additional Coverage, A.5(m) Contamination

Society Businessowners Special Property Coverage Form also includes additional coverage for Contamination (Section A. 5 (m)).

Relevant Policy Language, Form TBP2 (05-15)

A. Coverage

5. Additional Coverages

m. Contamination (8)

If your "operations" are suspended due to "contamination":

- (1) We will pay for your costs to clean and sanitize your premises, machinery and equipment, and expenses you incur to withdraw or recall products or merchandise from the market. We will not pay for the cost or value of the product.

The most we will pay for any loss or damage under this Additional coverage arising out of the sum of all such expenses occurring during each separate policy period is **\$5,000**; and

- (2) We will also pay for the actual loss of **Business Income** and **Extra Expense** you sustain caused by:

- (a) "Contamination" that results in an action by a public health or other **governmental authority that prohibits access to the described premises** or production of your product.

* * *

- (c) Publicity resulting from the discovery or suspicion of contamination.

Coverage for the actual loss of Business Income under this section will begin immediately upon the suspension of your business operations and will continue for a **period not to exceed a total of three consecutive weeks** after coverage begins.

[...] The definitions of Business Income and Extra Expense, contained in the Business Income and Extra Expense Additional Coverages section shall also apply to the additional coverages under this section.

- (4) Additional Definitions:

- (a) "Contamination" means a defect, deficiency, inadequacy or dangerous conditions in your products, merchandise, or premises.

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- (d) “Publicity” means a publication or broadcast by the media, **of the discovery or suspicion of “contamination” at a described premise.**

The Contamination Coverage provides that Society will pay for costs to clean and sanitize the premises, up to \$5,000, if the insured's operations are suspended due to “contamination.” Contamination is defined as “a defect, deficiency, inadequacy or dangerous conditions in your products, merchandise, or premises.” Coverage is provided for loss of business income for a period of up to three consecutive weeks after the suspension of the insured's business operations. The Contamination coverage also covers an actual loss of Business Income and Extra Expense only if caused by (1) “‘Contamination’ that results in an action by a public health or other governmental authority that prohibits access to the described premises;” or (2) “Publicity resulting from the discovery or suspicion of contamination.” “Publicity” is defined as “a publication or broadcast by the media, of the discovery or suspicion of ‘contamination’ at a described premises.

There is no coverage under Section A.5(m) because no government authority has prohibited access to the described premises because of “contamination,” as that term has been defined in the policy, and likewise there has been no publication or broadcast by the media of a “contamination” at the described premises. Your business operations have not been suspended, nor has access to your premises been prevented, by a public health authority or other governmental authority because of a “defect, deficiency, in adequacy or dangerous condition” in any of your products, merchandise or premises. In addition, there has been no publication or broadcast by the media of any such “defect, deficiency, in adequacy or dangerous condition” in any of your products, merchandise or premises.

D. No Coverage Under the Product Spoilage Endorsement (TBP12)

Product Spoilage is an additional coverage provided by endorsement TBP-12, which requires a specific and unique Spoilage Covered Cause of Loss and is subject to its scheduled limits and deductibles.

Relevant Policy Language, Form TBP12 (05-15)

I. Spoilage

A. Coverage

1. We will pay for your loss of "perishable stock" due to spoilage caused by a Spoilage Covered Cause of Loss, as provided by this endorsement.
2. Subject to all the provisions and conditions under the Businessowners Special Property Coverage Form, we will also pay for loss of Business Income or Extra Expense at the described premises resulting from loss of "perishable stock" due to spoilage caused by a Spoilage Covered Cause endorsement.

We cover only the location(s) and limits specified in the Declarations or that is indicated in the Schedule.

3. If a limit for Spoilage in Vehicles is shown in the Schedule, Spoilage coverage is extended to cover "perishable stock" in your vehicles which you own or operate and are equipped with refrigerating, cooling or humidity control apparatus.

B. Spoilage Covered Causes of Loss

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Subject to the exclusions described in Item **C.** of this section, Spoilage Covered Cause of Loss means the following:

1. Spoilage caused by or resulting from:

- a. Change in temperature or humidity resulting from mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment, only while such apparatus or equipment is at the described location; or
- b. Contamination by a refrigerant, only while the refrigerating apparatus or equipment is at the described location; or
- c. Power Outage, meaning change in temperature or humidity at the described location resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

2. Spoilage coverage applies to "perishable stock" at the described premises which is:

- a. Owned by you and used in your business; or
- b. Owned by others and in your care, custody or control except as otherwise provided in Loss Payment Property Loss Condition **E.5.d.(3)(b)**.

Spoilage Covered Cause of Loss is limited to a change in temperature or humidity due to a mechanical breakdown or failure of equipment, or contamination by a refrigerant or power outage. The spoliation coverage applies only to "perishable stock" at the described premises owned by you and used in your business or owned by others and in your care custody and control.

Your claim of alleged COVID-19 (Coronavirus) exposure or spoilage from the inability to use your perishable stock is not a result of change in temperature or humidity due to a mechanical breakdown or failure of equipment, or contamination by a refrigerant or power outage and therefore is not a Spoilage Covered Cause of Loss.

III. CONCLUSION

While Society values you as a customer and understands the difficulty of running a business in these challenging times, Society must deny your claim for the reasons discussed above. As mentioned, if you have any other information that you wish us to consider, please forward it to my attention.

Please be advised that by its acknowledgment and investigation of the reported loss Society is not waiving any other rights or defenses in connection with this matter. Society reserves the right to supplement and/or amend this letter in the future and to assert any additional defenses, whether specifically enumerated herein, that may be applicable now or in the future.

If you have any questions or concerns, please contact me.

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Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that, if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 122 S. Michigan Ave., 19th Floor, Chicago, Illinois 60603 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.