

RETURN DATE: AUGUST 23, 2022	:	SUPERIOR COURT
	:	
THERAPLANT, LLC	:	JUDICIAL DISTRICT OF
	:	
	:	WATERBURY
V.	:	
	:	
NATIONAL FIRE & MARINE	:	
INSURANCE COMPANY	:	AUGUST 1, 2022

COMPLAINT

The Parties

1. The Plaintiff Theraplant, LLC (“Theraplant”) is a Connecticut limited liability company operating a business at 856 Echo Lake Road, Watertown, Connecticut 06795 (“Covered Property”).

2. Theraplant grows, cultivates, processes, sells, and distributes cannabis products at the Covered Property.

3. Theraplant’s operations at the Covered Property are regulated, authorized, and licensed by the State of Connecticut.

4. The Defendant National Fire & Marine Insurance Company is a Nebraska insurance company with its principal place of business located at 1314 Douglas Street, Suite 1400, Omaha, Nebraska 68102 (“National Indemnity”). National Indemnity is licensed by the State of Connecticut Insurance Department to write certain insurance policies, including a Commercial Lines Policy with commercial property coverage issued to Theraplant.

The Policy

5. National Indemnity issued to Theraplant a Commercial Lines Policy which included Commercial Property Coverage, Policy No. 12PRM025511-04, with effective dates of February 11, 2019 to February 11, 2020 (the “Policy”).

6. At all times material hereto, all premiums due under the Policy were paid and the Policy was in full force and effect.

7. The Policy provides, *inter alia*, coverage for direct physical loss of or damage to the Covered Property and loss of Business Income due to the necessary suspension of operations during a period of restoration.

Covered Losses

8. Under the Policy, National Indemnity is obligated to pay for business interruption (“Business Income”) losses sustained by Theraplant due to the necessary suspension of operations caused by direct physical loss of or physical damage to the Covered Property as a result of a covered cause of loss.

9. Fire is a covered cause of loss under the Policy.

10. “Business Income” means net income (net profit or loss before income taxes) that would have been earned, continuing normal operating expenses, and payroll.

11. “Suspension” means the slowdown or cessation of business activities. “Operations” means business activities occurring at the Covered Property. The “period of restoration” means the period of time that begins 72 hours after the time of direct physical loss or damage and ends on the earlier of: (a) the date the property should be repaired, rebuilt or replaced

with reasonable speed and similar quality; or (b) the date when business is resumed at a new permanent location.

12. In each period of 30 consecutive days after the period of restoration commences, the Policy provides coverage for loss of Business Income up to the Limit of Insurance multiplied by the Monthly Limit of Indemnity fraction.

The Fire and Suspension of Operations

13. On February 8, 2020, a lamp installed in a lighting fixture located in Flowering Room 2 exploded, failed, and disintegrated and caused a fire at the Covered Property.

14. Flowering Room 2 is part of the Covered Property.

15. The fire caused damage to Covered Property within Flowering Room 2 including, without limitation, grow lamps, horticultural tables, irrigation and fertilizing equipment, and ventilation equipment. Soot from the fire covered every surface in the room. Operations in Flowering Room 2 were required to be suspended until affected Covered Property was repaired or replaced, and the room was deep cleaned to the level required to satisfy strict requirements for producing goods for human consumption.

16. The fire is a covered loss under the Policy and National Indemnity accepted coverage for and paid for certain physical losses and damage to the Covered Property caused by the fire that occurred on February 8, 2020.

17. As a result of the fire, Theraplant was unable to use Flowering Room 2 for its normal business operations for seventy-one (71) days from February 8, 2020 through and including April 18, 2020.

18. Theraplant suffered a loss of income, profits, and business as a result of the fire and the inability to use Flowering Room 2 for its business operations, which constitutes a loss of Business Income under the Policy.

Claim and Denial

19. Theraplant submitted timely notice of the February 8, 2020 fire and resulting property damage and business income loss to National Indemnity.

20. On March 3, 2020, National Indemnity acknowledged Theraplant's notice of loss and the February 8, 2020 fire.

21. National Indemnity acknowledged Theraplant's claim for damage to Theraplant's Building and Business Personal Property. National Indemnity also acknowledged that Theraplant would have a claim for Business Income loss associated with the fire. Nonetheless, National Indemnity stated that "some of the claimed damages may not be within the coverage afforded by the Policy."

22. National Indemnity requested that Theraplant provide National Indemnity with certain information and documentation regarding Theraplant's Business Income claim.

23. Theraplant provided the requested information and documentation to National Indemnity.

24. On July 15, 2022, National Indemnity issued a letter to Theraplant in which it denied coverage for the Business Income loss.

COUNT ONE—Declaratory Judgment

1.-24. Paragraphs 1 through 24 of this Complaint are incorporated by reference and realigned as paragraphs 1 through 24 of Count One if fully alleged herein.

25. The Declaratory Judgment Act, Connecticut General Statutes § 52-59, allows this Court to declare the rights and other legal relations of the parties to this dispute.

26. An actual controversy has arisen and now exists between Theraplant and National Indemnity concerning the respective rights and duties of the parties under the Policy. Theraplant requested coverage for Business Income losses caused by the fire that occurred at the Covered Property on February 8, 2020. National Indemnity has denied coverage for Theraplant's Business Income loss.

27. Theraplant therefore seeks a declaration of the parties' respective rights and duties under the Policy and requests the Court declare that Theraplant has suffered Business Income losses caused by the fire that occurred at the Covered Property on February 8, 2020 that are within the Business Income coverage afforded by the Policy.

COUNT TWO – Breach of Contract

1.-24. Paragraphs 1 through 24 of this Complaint are incorporated by reference and realleged as paragraphs 1 through 24 of Count Two as if fully alleged herein.

25. Theraplant purchased a Commercial Lines Policy from National Indemnity, under which National Indemnity agreed to pay for Business Income losses sustained by Theraplant due to the necessary suspension of operations caused by direct physical loss of or physical damage to the Covered Property as a result of a covered cause of loss.

26. The Policy is a valid and enforceable contract between the National Indemnity and Theraplant.

27. Theraplant performed its obligations under the terms of the Policy including giving National Indemnity timely notice of Theraplant's claim. Alternatively, National

Indemnity has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

28. Theraplant has sustained a loss of income, profits and business which qualify as a covered loss under the Business Income coverage in the Policy arising from the suspension of Theraplant's operations due to the February 8, 2020 fire.

29. National Indemnity has denied and not paid Theraplant's claim for Business Income losses related to the suspension of Theraplant's operations due to the February 8, 2020 fire, in breach of the Policy.

30. As a direct and proximate result of National Indemnity's breach, Theraplant has sustained damages in an amount to be determined at trial.

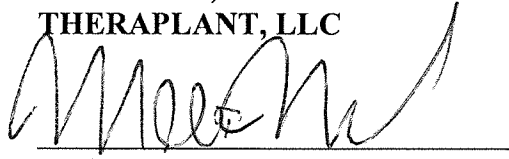
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests relief and judgment against Defendant as follows:

- a. For a judgment against Defendant for the causes of action alleged against it;
- b. For compensatory damages in an amount to be proven at trial;
- c. For a declaration that Theraplant has suffered Business Income losses caused by the fire that occurred at the Covered Property on February 8, 2020 that are within the Business Income coverage afforded by the Policy;
- d. For pre-judgment and post-judgment interest at the maximum rate permitted by law; and
- e. For such other relief in law or equity as the Court deems just and proper.

**PLAINTIFF,
THERAPLANT, LLC**

By

A handwritten signature in black ink, appearing to read 'McCormack', written over a horizontal line.

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Its Attorneys

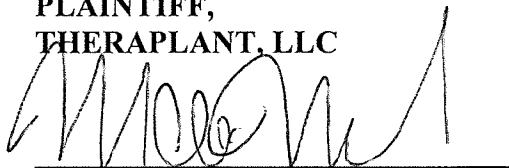
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STATEMENT OF AMOUNT IN DEMAND

The amount in demand is in excess of \$15,000.00, exclusive of interest and costs in addition to the demand for non-monetary relief.

**PLAINTIFF,
THERAPLANT, LLC**

By



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