

FILED

IN THE DISTRICT COURT OF CHEROKEE COUNTY  
STATE OF OKLAHOMA

DEC 11 2020

LESA ROUSEY-DANIELS, Court Clerk  
CHEROKEE COUNTY

By \_\_\_\_\_ Deputy

CHEROKEE NATION; )  
CHEROKEE NATION BUSINESSES, LLC; )  
CHEROKEE NATION ENTERTAINMENT, LLC, )

Plaintiff, )

v. )

LEXINGTON INSURANCE COMPANY, et al., )

Defendants. )

Case No. CV-20-150

**THE NATION’S REPLY TO DEFENDANT  
ASPEN INSURANCE COMPANY AND ASPEN INSURANCE UK, LTD’S  
SUPPLEMENTAL OPPOSITION TO NATION’S MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON BUSINESS INTERRUPTION COVERAGE**

Cherokee Nation, Cherokee Nation Businesses, LLC, and Cherokee Nation Entertainment, LLC, (collectively referred to in the singular and as the “Nation”) submits its Reply to Defendant Aspen Insurance Company and Aspen Insurance UK, Ltd.’s (“Aspen”) Supplemental Opposition to Nation’s Motion for Partial Summary Judgment on Business Interruption Coverage. In support of this Reply, the Nation incorporates by reference each the arguments set forth in its Combined Reply to Defendant Insurers’ Opposition to Nation’s Motion for Partial Summary Judgment on Business Interruption Coverage and Objection to Various Supplemental Authorities Submitted by Defendant Insurers. In response to Aspen’s additional Statement of Additional Undisputed Material Facts No. 1, the Nation agrees that the TPIP Policy is the contract at issue before the Court, but the Nation reserves its fact-based defenses to the validity of the excess policy for a later date.<sup>1</sup>

Simply put, Aspen’s role as an excess carrier is not relevant to the Nation’s Motion. As

<sup>1</sup> The Nation’s Reply to Defendant Insurers’ Opposition to Plaintiff’s Motion for Partial Summary Judgment on Business Interruption Coverage at 2-4, fn. 3.

discussed in the Nation's Reply to Defendant Insurers' Opposition, the issue before the Court is the question of coverage, not damages.<sup>2</sup> Aspen presents the same arguments the Court previously rejected in its Motion to Dismiss.<sup>3</sup>

For those reasons, the Nation respectfully requests the Court find the TPIP Policy issued by Defendant Insurers requires the Nation be indemnified for fortuitous losses related to the COVID-19 Pandemic Disaster under its business interruption coverage.

Respectfully submitted,



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<sup>2</sup> "The Nation respectfully requests the Court find the TPIP Policy issued by Defendant Insurers requires the Nation be indemnified for fortuitous losses related to the COVID-19 Pandemic Disaster under its business interruption coverage." The Nation's First Motion for Partial Summary Judgment on Business Interruption Coverage at 19; The Nation's Reply to Defendant Insurers' Opposition to Plaintiff's Motion for Partial Summary Judgment on Business Interruption Coverage at 14-15; "An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages." 12 O.S. § 2056 (D).

<sup>3</sup> Compare Hallmark Specialty Insurance Company's, Aspen Specialty Insurance Company's, Aspen Insurance UK, LTD.'s Motion to Dismiss *with* Defendant Aspen Insurance Company and Aspen Insurance UK, LTD.'s Supplemental Opposition to Plaintiff's Motion for Partial Summary Judgment on Business Interruption Coverage. See also the Nation's Response to Hallmark Specialty Insurance Company's, Aspen Specialty Insurance Company's, Aspen Insurance UK, LTD.'s Motion to Dismiss at 10-12.

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**CERTIFICATE OF SERVICE**

This is to certify that on this 14 day of ~~November~~ <sup>December</sup> 2020, a true and correct copy of the foregoing instrument was served by electronic mail and/or U.S. Mail upon the following:

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