

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

KRISTEN JOHNER,
individually and on behalf
of all others similarly situated;

Plaintiff,

v.

Case No. 20-1715

**GENERALI U.S. BRANCH;
CUSTOMIZED SERVICES
ADMINISTRATORS, INC. D/B/A
CSA TRAVEL PROTECTION &
INSURANCE SERVICES D/B/A
GENERALI GLOBAL ASSISTANCE
AND INSURANCE SERVICES;**

Defendants.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Kristen Johner (“Plaintiff” or “Johner”), individually and on behalf of all others similarly situated, by and through the undersigned counsel, and brings this putative class action against Defendants Generali U.S. Branch and Customized Services Administrators, Inc. D/B/A Generali Global Assistance & Insurance Services, D/B/A CSA Travel Protection and Insurance Services (collectively “Defendants” or “Generali”). In support thereof, Plaintiff makes the following allegations based upon information and belief, except as to the allegations specifically pertaining to her, which are based on personal knowledge.

INTRODUCTION

This is a class action lawsuit on behalf of all holders of Defendants’ travel insurance policy (the “Policy,” or “Policies”) who have submitted claims for losses (“Claims”) related to trip

cancellation, interruption, or delay in the year 2020 which were subsequently denied by Defendants.

1. Defendants have caused substantial harm to Plaintiff and the proposed class by wrongfully denying valid Claims submitted for losses covered under the Policy (attached hereto as **Exhibit A**).

PARTIES

2. Plaintiff Kristen Johner is an individual and citizen of the United States residing in the City of St. Louis in St. Louis County, Missouri.
3. Defendant Generali U.S. Branch (Defendant “Generali U.S.”) is a Maryland corporation with its principal place of business located in New York, New York.¹
4. Defendant Customized Services Administrators, Inc. D/B/A CSA Travel Protection and Insurance Services D/B/A Generali Global Assistance & Insurance Services² (Defendant “CSA”) is a California corporation with its principal place of business located in San Diego, California.
5. Together, Defendants Generali U.S. and CSA may hereinafter be referred to and/or treated collectively as “Generali” (or “Defendants”), except where either is addressed distinctly.
6. Both Defendants Generali U.S. and CSA maintain the same registered agent in Missouri, CSC-Lawyers Incorporating Service Company, who can be served at 221 East Bolivar Street, Jefferson City, Missouri, 65101.

¹ Generali Group is licensed to do business in all 50 states as well as in the District of Columbia.

² CSA Travel Protection and Insurance Services is alternatively/previously known as Generali Global Assistance & Insurance Services in five (5) states: Arkansas, Hawaii, Indiana, Maine, and Utah.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at least one member of the Class is a citizen of a different state than Defendant; there are more than 100 members of the Class; and upon information and belief the aggregate amount in controversy exceeds \$5,000,000.00 exclusive of interest and costs.
8. This Court has personal jurisdiction over Defendants because at all relevant times they have purposefully availed themselves of the benefits and protections of Missouri by continuously and systematically conducting business so substantial as to render it essentially at home in Missouri.
9. Pursuant to 28 U.S.C. § 1391, venue is proper because a substantial part of the events or omissions giving rise to the claims alleged herein occurred or originated in this District.

FACTUAL BACKGROUND

Plaintiff Plans Her Honeymoon Trip

10. On February 15, 2020, Plaintiff reserved travel accommodations for her honeymoon, which included a fourteen (14) night stay at a vacation rental house in the Manuel Antonio community of the harbor town Quepos in the Puntarenas province of Costa Rica. The honeymoon trip was scheduled for approximately seven (7) months later; specifically, for September 8, 2020 – September 22, 2020.
11. Plaintiff paid, via VRBO.com, an upfront fee of \$1,335.88 to the rental house owner to secure the reservation on February 15, 2020. Concurrent with and in addition to this expense, also through VRBO.com, Plaintiff applied for and obtained, for an additional one-time premium payment of \$152.44, Defendants' Policy. *See Exhibit B*, the VRBO Receipt.

12. Plaintiff received from Defendants, via email, a PDF copy of the Policy in a Confirmation Letter (attached hereto as **Exhibit C**). The Policy Confirmation Letter included a Schedule of Benefits;³ and, most importantly, it stated a maximum insurance coverage limit of \$2,478.75 provided under the Policy for “Trip Cancellation.” *See* Exhibit C.

The Novel Coronavirus and COVID-19 Disease

13. Infection with the new coronavirus (severe acute respiratory syndrome coronavirus 2, or SARS-CoV-2) causes coronavirus disease 2019 (COVID-19).⁴

14. The first COVID-19 death in the U.S. occurred on February 29, 2020, more than two weeks after Plaintiff had already booked her September honeymoon trip and paid the above-detailed reservation fee of \$1,335.88.

15. On March 11, 2020, COVID-19 was declared a global pandemic by the World Health Organization, which expressed deep concern that the “uncontained global spread of the virus” was alarmingly severe.⁵

16. On March 16, 2020, Costa Rica’s President Carlos Alvarado declared a State of Emergency due to coronavirus and announced the closure of its borders to all foreigners and non-residents, effective March 18, 2020.⁶ The ban was, at the time, set to last until April 12. Because Plaintiff’s trip was not until September, she did not cancel it.

³ Including Plaintiff’s Policy Number, 20046W1738; Product Code, G-250HA; and other details and services. *See* Exhibit C.

⁴ Mayo Clinic Staff, *Coronavirus Disease 2019 (COVID-19)*, MAYOCLINIC.ORG, <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963>.

⁵ Jackie Salo, *World Health Organization Declares Coronavirus a Pandemic*, NEW YORK POST (Mar. 11, 2020, 12:49 PM), <https://nypost.com/2020/03/11/world-health-organization-declares-coronavirus-a-pandemic/>.

⁶ Alejandro Zuniga, *Costa Rica Declares State of Emergency Due to Coronavirus; Will Close Borders to Foreigners and Non-Residents*, THE TICO TIMES (Mar. 16, 2020), <https://ticotimes.net/2020/03/16/costa-rica-declares-state-of-emergency-due-to-coronavirus-will-close-borders-to-foreigners-and-non-residents>.

17. On March 18, 2020, the day Costa Rica closed its borders, the country's first COVID-19 death occurred.⁷
18. On March 25, the Costa Rican Tourism Institute general manager Alberto Lopez stated: "The economic impact has no comparison, nor any previous reference. We will have a season of zero visitation and zero economic income, which we hope will, in the best of cases, last at least three months."
19. On May 30, 2020, Costa Rica extended the border closures through June 30, 2020.⁸
20. On June 26, 2020; however, Costa Rica announced that the country's borders would only reopen to tourists from Europe and Canada on August 1, 2020.⁹
21. Finally, on July 20, 2020, an update from Costa Rica's National Emergency Commission restated that the country's borders remained closed to tourists.¹⁰ (It was not until August 19, 2020, that the Costa Rican Tourism Board announced plans to reopen the country's borders to U.S. tourists beginning in September of 2020; however, even so, only residents of the following six (6) states would be allowed entry: New York, New Jersey, New Hampshire, Vermont, Maine and Connecticut.)¹¹

⁷ Karla Baquero, Coronavirus Covid-19 Costa Rica: 116.363 Casos Confirmados al 7 de Noviembre, LAREPUBLICA.NET (Mar. 6, 2020, 2:48 PM), <https://www.larepublica.net/noticia/ya-estan-confirmado-el-primer-caso-de-coronavirus-en-costa-rica>.

⁸ Garda World News Alerts, *Costa Rica: Authorities Extend Border Closures Through June 30/Update 6*, GARDA.COM (May 30, 2020, 11:04 PM), <https://www.garda.com/crisis24/news-alerts/347016/costa-rica-authorities-extend-border-closures-through-june-30-update-6>.

⁹ Garda World News Alerts, *Costa Rica: Borders to Reopen to Tourists on August 1*, GARDA.COM (Jun. 27, 2020, 4:36 AM), <https://www.garda.com/crisis24/news-alerts/354691/costa-rica-borders-to-reopen-to-tourists-on-august-1-update-8> (stating that the country's borders would only reopen on August 1 to tourists from certain destinations).

¹⁰ Garda World News Alerts, *Costa Rica: Authorities Update COVID-19 Restrictions July 20-31/Update 10*, GARDA.COM (Jul. 22, 2020, 12:18 AM), <https://www.garda.com/crisis24/news-alerts/361971/costa-rica-authorities-update-covid-19-restrictions-july-20-31-update-10> (stating also that "airports [were] due to resume operations in August" but offering no further details.)

¹¹ Alejandro Zuniga, *Requirements for U.S. Tourists to Enter Costa Rica (and Some Thoughts)*, THE TICO TIMES (Aug. 19, 2020), <https://ticotimes.net/2020/08/19/requirements-for-u-s-tourists-to-enter-costa-rica-and-some-thoughts>.

Plaintiff is Finally Forced to Cancel Her Honeymoon Trip

22. The following day, on July 21, 2020, Plaintiff messaged the vacation rental house owner to confirm that Plaintiff would have to cancel her honeymoon trip to Costa Rica. Plaintiff asked the house owner's advice as to whether Plaintiff needed to cancel via VRBO.com. The house owner suggested that, because Plaintiff had purchased the Policy via VRBO.com when Plaintiff booked the accommodations, Plaintiff should cancel via VRBO.com so that she could submit a proper claim with Defendants to recover, under the Policy, the \$1,335.88 that she had expended on the trip by that point. *See Exhibit D*, VRBO Cancellation.
23. Plaintiff's Trip was cancelled due to a quarantine, within the meaning of the Policy and everyday use of the word, and also as a result of the COVID-19 natural disaster making Plaintiff's accommodations inaccessible. As a result, Plaintiff incurred losses in the form of forfeited, prepaid, non-refundable, non-refunded, unused payments.
24. In accordance with Defendants' Policy, Plaintiff submitted a Claim for her losses as covered under the Policy. Plaintiff received a letter from Defendants via email on July 30, eight (8) days after her trip cancellation, denying her Claim in full. *See Exhibit E*, Claim Denial.
25. The Claim Denial stated that Plaintiff's losses were not covered under the Policy because they were "not due to an event that is covered by the plan [Plaintiff] purchased" and that, among other things, "the Coronavirus outbreak is considered a foreseeable event under any plans purchased on or after January 29, 2020." *Id.*
26. Finally, the Claim Denial stated:

We understand any frustration you may be experiencing as the COVID-19 crisis has created unprecedented circumstances for travelers and the travel industry. **Due to these difficult circumstances, we would like to offer you some compensation in the form of a travel insurance policy voucher.** The policy voucher is for the full amount of your travel insurance premium and can be applied to a future trip. **We hope that you are able to travel again when it is safe to do so** and that this voucher provides you with the means to travel insured.

Id.

Defendants are Liable to Plaintiff for Breach of Contract

27. Travel insurance is intended to provide travelers reimbursement in case of pecuniary or other losses related to travel. Travel insurance covers travel costs if you need to cancel your trip, emergency medical expenses and evacuation, lost baggage, and travel delay expenses.¹²
28. Defendants are, and were at all times relevant herein, bound by a contractual duty—under their Policy—to pay benefits “...for the forfeited, prepaid, non-refundable, non-refunded and unused published Payments...”¹³ (hereinafter also referred to as “Trip Cancellation Costs”) paid by a Policy holder for their trip if they are prevented from taking their trip due to an “unforeseeable Covered Event”¹⁴ that occurs before departure and while Policy coverage is in effect.
29. Plaintiff brings this action on behalf of herself and all other similarly situated individuals nationwide. Plaintiff seeks compensatory damages, injunctive relief, and a declaratory judgment that Defendants breached their contractual duties to all Plaintiffs.

CLASS ALLEGATIONS

30. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and/or 23(c)(4), Plaintiff brings this action on behalf of himself and all others similarly situated, and seeks to represent the following:

Nationwide Class

All persons who purchased or obtained a travel protection Policy from Defendants, and whose claims for reimbursement for Trip Cancellation Costs thereunder were denied after their trips were cancelled due to the COVID-19 pandemic or any events related to or resulting from the pandemic (the “Class”).

¹² Tysdal, D., 2018. *The Ultimate Travel Insurance Cheat Sheet*. [ebook] Hingham, Massachusetts: Travel Insurance Review Inc., p.1. Available at: <<https://www.travelinsurancereview.net/wp-content/uploads/2018/04/Travel-Insurance-Cheat-Sheet-2018.pdf>> [Accessed 4 November 2020].

¹³ Exhibit A, the Policy, p. 16.

¹⁴ Exhibit A, Policy pp. 16-18, “Covered Events.”

31. Plaintiff also seeks to represent the following subclass, pursuant to Federal Rule of Civil Procedure 23(c)(5):

Missouri Class

All persons in Missouri who purchased or obtained a travel protection Policy from Defendants, and whose claims for reimbursement for Trip Cancellation Costs thereunder were denied after their trips were cancelled due to the COVID-19 pandemic or any events related to or resulting from the pandemic (the “Class”).

32. Excluded from the class(es) are Defendants, any entities in which Defendants have a controlling interest, any of the officers, directors, or employees of the Defendants, the legal representatives, heirs, successors, and assigns of the Defendants, anyone employed with Plaintiff’s counsels’ firms, any Judge to whom this case is assigned, and his or her immediate family.

33. **Numerosity.** The Class is so numerous that joinder of all members is impracticable. Due to the nature of the insurance involved, the members of the Class are geographically dispersed throughout the United States. While the exact number of Class members is information not readily available at this time, as only Generali possesses the data to determine a numerical figure to indicate the Policies sold throughout the US that have resulted in myriad claims Generali has received from consumers who would qualify as Class Members for purposes of this action, Plaintiff has reasonable belief that there are thousands of potential members in the Class. Generali states on its website that it has a presence in 50 countries in the world and earned a total premium income in excess of € 69.7 billion (approximately \$80 billion) in 2019, serving 61 million customers worldwide.¹⁵

34. **Typicality.** Plaintiffs’ claims are typical of the claims of the other members of the Class she seeks to represent because Plaintiff and all Class members purchased identical coverage from

¹⁵ <https://www.general.com>

Generali containing identical language regarding Trip Cancellation and Covered Events, and all Class members have been improperly denied coverage.

35. **Adequacy.** Plaintiff has retained counsel experienced in complex class action and insurance litigation. Plaintiff has no interests which are adverse to or in conflict with other members of the Class. Plaintiff will fully and adequately protect the interests of all members of the Class.
36. **Commonality.** The questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, namely: whether the events caused by the emergence of the COVID-19 pandemic constitute Covered Events under the Policy; whether the effects of any stay-at-home directives, “stop the spread” initiatives, or any other national health or safety warnings issued as a result of the COVID-19 pandemic that precluded Class Members from embarking upon or completing trips for which they purchased Policy coverage, trigger Covered Events under the Policy’s terms; and whether the Policy requires Generali to reimburse Policy holders for expenses incurred as a result of trip cancellation due to events caused by the COVID-19 pandemic national disaster.
37. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action, on the other hand, would achieve substantial economies of time, effort, and expense, and would assure uniformity of decision with respect to persons similarly situated without sacrificing procedural fairness or bringing about other undesirable results.

38. The interest of the members of the Class in individually controlling the prosecution of separate actions is theoretical rather than practical. The Class is cohesive, and prosecution of the action through representatives would be unobjectionable. The damages suffered by the Class are uniform and generally formulaic, and the expense and burden of individual litigation could preclude them from fair redressal of the wrongs done to them. Plaintiff anticipates no difficulty in the management of this action as a class action.

COUNT I: BREACH OF CONTRACT

(On Behalf of the Nationwide Class or, alternatively, the Missouri Class)

39. The preceding paragraphs are incorporated by reference as if fully alleged herein.
40. Plaintiff and the class purchased insurance from Defendant and were thereupon issued the Policy.
41. The Policy is a valid and enforceable contract between Generali and all policyholders, including Plaintiff and class members.
42. Plaintiff and the class members substantially performed their obligations under the terms of the Policy and Class Policies.
43. Plaintiff and the class members suffered losses from events that should be reimbursed as results of Covered Events under the Policy.
44. Defendants have failed to compensated Plaintiff and class members for their respective losses as required by the Policy.
45. As a direct and proximate result of Defendant's breaches, Plaintiff and the class have sustained damages that are continuing in nature in an amount to be determined at trial.

COUNT II: DECLARATORY AND INJUNCTIVE RELIEF

(On Behalf of the Nationwide Class or, alternatively, the Missouri Class)

46. The preceding paragraphs are incorporated by reference as if fully alleged herein.
47. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Policy.
48. Plaintiff contends that Generali has breached the Policy by failing to timely pay Class Members for their respective losses for covered damages.
49. Plaintiff, therefore, seeks a declaration of the parties' respective rights and duties under the Policy and requests the Court to declare Generali's conduct unlawful and in material breach of the Policy so as to avoid future controversies that would allow for continual injustices such as the one at issue here, where huge insurance companies take advantage of masses of consumers.
50. Pursuant to a declaration of the parties' respective rights and duties under the Policy and Class Policies, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy; and (2) ordering Defendant to comply with the terms of the Policy, including payment of all amounts due to each respective class member under the stated Policy coverages that were extended to them upon purchase.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- (a) That the Court enter an order certifying the class, appointing Plaintiff as a representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the class;

- (b) For a judgment against Defendant for the causes of action alleged against it;
- (c) For compensatory damages in an amount to be proven at trial;
- (d) For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy and Class Policies;
- (e) For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Policies;
- (f) For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (g) For Plaintiff's attorneys' fees;
- (h) For Plaintiff's costs incurred; and
- (i) For such other relief in law or equity as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

December 3, 2020

Respectfully submitted,

THE POTTS LAW FIRM, LLP

/s/ Derek H. Potts

Derek H. Potts

MO Bar No. #44882

POTTS LAW FIRM, LLP

1901 West 47th Place, Ste. 210

Westwood, Kansas 66205

Tel: (816) 931-2230

Fax: (816) 931-7030

Email: dpotts@potts-law.com

/s/ Dylan H. Potts

Dylan H. Potts

GILL RAGON OWEN, P.A.

425 W. Capitol Avenue, Suite 3800

Little Rock, Arkansas 72201

Tel: (501) 376-3800

Fax: (501) 372-3359

potts@gill-law.com

To be admitted pro hac vice

ATTORNEYS FOR PLAINTIFFS