

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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HARRY E. BASSETT III EXECUTOR FOR
ESTATE OF JOSEPHINE ALONGE,

Index No.

Plaintiff,

VERIFIED COMPLAINT

-against-

WESCO INSURANCE COMPANY,

Defendant.

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The Plaintiff HARRY E. BASSETT III EXECUTOR FOR ESTATE OF JOSEPHINE ALONGE
(hereinafter "BASSETT" or "Plaintiff"), by its attorneys The Law Office of Mitchell J. Winn, PLLC as
and for its Verified Complaint to obtain a judgment against Defendant WESCO INSURANCE
COMPANY (hereinafter "WESCO" or "Defendant"), respectfully alleges, upon information and belief,
as follows:

THE PARTIES

1. At all times hereinafter mentioned, Plaintiff BASSETT was and is a natural person, residing at 235 E Chester St, Valley Stream, State of New York.
2. At all times hereinafter mentioned, BASSETT was the Executor of the Estate of the deceased JOSEPHINE ALONGE.
3. At all times hereinafter mentioned, the ESTATE OF JOSEPHINE ALONGE was the owner of the premises located at or about 7601-7603 Fifth Avenue, Kings County, City of New York, State of New York (hereinafter the "subject premises").
4. At all times hereinafter mentioned, BASSETT did operate the subject premises by renting out units thereat to various tenants.
5. At all times hereinafter mentioned, BASSETT was the owner(s) of, and/or did have an insurable interest in, the subject premises and the personal property located thereat.
6. Upon information and belief, at all times hereinafter mentioned, Defendant WESCO was and is an insurance company duly authorized and existing under the laws of State of Delaware.

7. Upon information and belief, at all times hereinafter mentioned, WESCO was and is an insurance carrier duly licensed and/or authorized to issue property insurance policies within the State of New York.

8. On or about January 24, 2020, WESCO did issue to Plaintiff, for good and valuable consideration, its policy of Commercial insurance, number WPP1808815 01 (hereinafter the “policy”), effective from February 28, 2020 to and including February 28, 2021, insuring, *inter alia*, the subject premises, the property of Plaintiff located at or about the subject premises, and Plaintiff’s business income derived from the premises.

9. The policy did insure the subject premises, property and business income of Plaintiff against all risk of loss resulting from, *e.g.* action of civil authority and its effects.

FACTUAL BACKGROUND

10. COVID-19 is an infectious disease caused by a recently discovered novel coronavirus, formally known as SARS-CoV-2. The first instances of the disease spreading to humans were diagnosed in China in or around December 2019, and the first reported case in the United States was in January 2020.

11. The impact of the virus and the resulting pandemic on life and property has been staggering. Though testing has been severely limited, as of the filing date of this Complaint, more than 2,000,000 Americans have had confirmed cases of COVID-19, and more than 120,000 have died from it.

12. The virus is easily transmitted from person to person and from surface to person. According to the World Health Organization (the “WHO”), the virus can spread from person to person through small droplets from the nose or mouth that are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch the virus by touching these objects or surfaces, then touching their eyes, noses, or mouths. People can also catch the virus if they breathe in droplets from a person infected with the virus who coughs or exhales droplets.¹

¹ *Q&A on Coronaviruses (COVID-19)*, World Health Organization (April 17, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>

13. Infected individuals can be completely asymptomatic—and thus unaware that they may be spreading the virus through the mere touching of objects and surfaces. Indeed, studies have estimated that more than 40% of infected individuals may never develop any symptoms.² But even individuals who appear healthy and present no identifiable symptoms of the disease might still spread the virus by breathing, speaking, or touching objects and surfaces.

14. According to a report in *The New York Times*, “[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough.”³ And one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles an hour.⁴

15. Although these droplets are smaller than mold, rust, or paint chips, they are physical objects that travel and attach to other surfaces and cause harm.

16. Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials.⁵ The virus can survive and remain virulent on stainless steel and plastic for 3 to 6 days, on glass and plastic for 3 to 6 days, on glass and banknotes for 3 days, and on wood and cloth for 24 hours.⁶ Testing of similar viruses suggests that SARS-CoV-2 can survive on ceramics, silicon, and paper for at least 5 days. And the Centers for Disease Control (the “CDC”) confirmed that the virus was identified on surfaces of the *Diamond Princess* cruise ship a full 17 days after the cabins were vacated.⁷

² Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected* (May 27, 2020, 12:43 PM), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>

³ See Yuliya Pashina-Kottas, et al., This 3-D Simulation Shows Why Social Distancing Is So Important, *The New York Times* (April 21, 2020), available at <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html>

⁴ Sarah Gibbens, “See how a sneeze can launch germs much farther than 6 feet,” *National Geographic* (April 17, 2020), available at www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/

⁵ National Institutes of Health “Study suggests new coronavirus may remain on surfaces for days” <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>

⁶ Letter from Neeltje van Doremalen et al. to N. Eng. Journal of Med. (April 16, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973>.

⁷ *Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February–March 2020*, Centers for Disease Control and Prevention (March 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

17. Without a vaccine to protect against COVID-19, effective control of the pandemic relies on measures designed to reduce human-to-human and surface-to-human exposure. The CDC have stated that the virus can spread when people are within 6 feet of each other or when a person comes in contact with a surface or object that has the virus on it.
18. The nature of the virus has caused authorities to issue stay-in-place orders to protect persons and property. Indeed, authorities in each of the Teams' respective states have issued such orders, many of which observe the virus's threat to property.⁸
19. On March 18, 2020, the Governor Andrew Cuomo issued New York Executive Order No. 202.6, whereby the State of New York, which provided, *inter alia*, as follows: "Whereas, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue; . . . Each employer shall reduce the in-person workforce at any work locations by 50% no later than March 20 at 8 p.m."
20. On March 19, 2020, the Governor Andrew Cuomo issued New York Executive Order No. 202.7, whereby the State of New York, which provided, *inter alia*, that "Each employer shall reduce the in-person workforce at any work locations by 75% no later than March 21 at 8 p.m."
21. On March 20, 2020, the Governor Andrew Cuomo issued New York Executive Order No. 202.8, whereby the State of New York, which provided, *inter alia*, that "Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m."
22. By reason of the aforesaid Executive Orders, Plaintiff, along with all "non-essential" New York State businesses was compelled to reduce, and then cease, all in person business operations.

⁸ City of New Orleans, *Mayoral Proclamation to Promulgate Emergency Orders During the State of Emergency Due to COVID-19 2* (2020), <http://nola.gov/mayor/executive-orders/emergency-declarations/03162020-mayoral-proclamation-to-promulgate-emergency-orders-during-the-state-of-emergency-due-to-col>; City of N.Y., *Emergency Executive Order No. 103* (2020), <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf>; State of Colo., *Executive Order D 2020 032* (2020), <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20032%20Extending%20D%202020%20003.pdf>; Broward Cty. Adm'r, *Emergency Order 20-03* (2020), <https://www.broward.org/CoronaVirus/Documents/BC-EmergencyOrder20-03.pdf>; Pinellas Cty Adm'r (2020), <http://www.pinellascounty.org/emergency/PDF/covid19/res20-20.pdf>.

**AS AND FOR A FIRST CAUSE OF ACTION
FOR BREACH OF CONTRACT**

23. Plaintiff does repeat and reallege each and every allegation set forth in paragraphs "1" through "22," inclusive, as if each were again set forth herein in its respective entirety.
24. On or about March 18, 2020, said policy was in full force and effect.
25. The policy contains a Business Income (And Extra Expense) Coverage Form, form CP00301012, which at paragraph A (5) thereof, "Additional Coverages", and at paragraph "(a)" thereof, provides as follows: "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 that area but are not more than one mile from the damaged property; 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."
26. The policy also provides at Section B, "Exclusions" of the "Causes of Loss - Special Form", , at page 1 of form CP 10300917, that causes of loss listed therein are excluded from coverage under the policy "regardless of any other cause or event that contributes concurrently or in any sequence to the loss" (hereinafter "anti-concurrent causation clause").
27. The policy also contains an Endorsement, form CP01780808, entitled "NEW YORK - EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA", (hereinafter "Virus Endorsement") which provides, *inter alia*, that losses caused by virus are excluded from coverage. However, while the Virus Endorsement states that it is "not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or

action of civil authority", it does not state that it negates or excludes coverage under the additional coverage for action of civil authority, nor does it contain an anti-concurrent causation clause.

28. The action of civil authority in this matter was caused by a Covered Cause of Loss, since Virus is not excluded from coverage under the Exclusions clause of said policy, and since the Virus Endorsement by its terms does not apply when other causes of loss are applicable, *to wit*, action of civil authority.

Accordingly, since the loss in this case was not caused by virus *per se*, but by the aforesaid action of the civil authority of State of New York, Plaintiff's loss of business income is covered under the policy.

29. By reason of the aforesaid Executive Orders, the Plaintiff did sustain loss of business income and extra expenses derived from the subject premises due to a peril covered under the policy, action of civil authority.

30. By reason of the aforesaid, and as otherwise provided in the policy and at law, Plaintiff did sustain loss of business income and extra expenses derived from the subject premises due to a peril covered under the policy.

31. Plaintiff has made due demand upon WESCO for the payment of said loss or damages.

32. WESCO has refused, and continues to refuse, to make payment for said loss or damages.

33. By reason of said failure and/or refusal, WESCO has breached its aforesaid policy and contract of insurance with Plaintiff.

34. By reason of said breach of contract, Plaintiff have been damaged in the sum of the amount of its loss of business income, in a sum thought to exceed FORTY-SEVEN THOUSAND SIX HUNDRED SEVENTY-SEVEN DOLLARS and TEN CENTS (\$47,677.10), plus extra expense in an amount yet to be determined, plus interest thereon from the (18th) day of March, 2020.

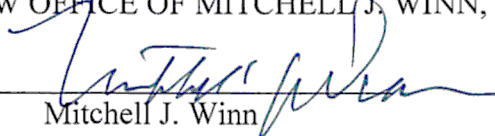
35. **WHEREFORE, Plaintiff BASSETT demands Judgment against Defendant WESCO in the sum of at least FORTY-SEVEN THOUSAND SIX HUNDRED SEVENTY-SEVEN DOLLARS and TEN CENTS (\$47,677.10), plus extra expense in an amount yet to be determined, on the First Cause of Action set forth herein, all plus interest, attorney fees, costs, and such other, different and**

further relief as may be deemed by the Honorable Court to be just, proper and equitable.

Dated: July 12, 2020
Garden City, New York

Yours, etc.,

LAW OFFICE OF MITCHELL J. WINN, PLLC

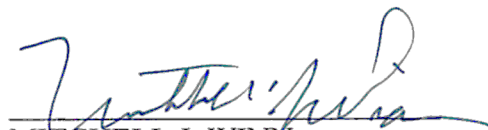
By: 
Mitchell J. Winn

Attorneys for Plaintiff HARRY E. BASSETT III EXECUTOR FOR
ESTATE OF JOSEPHINE ALONGE

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Garden City, New York 11530
(516) 385-6300

VERIFICATION

MITCHELL J. WINN, an attorney duly admitted to practice before the Courts of the State of New York, hereby states and affirms, under the penalties of perjury and pursuant to CPLR 2106, that the foregoing COMPLAINT is true to the best of my knowledge, information and belief, and that the reason that this Verification is made by me is that I do not maintain an office in the County where Plaintiff maintains its principal place of business.


MITCHELL J. WINN

Dated: July 12, 2020
Garden City, New York