

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

MICHAEL J. REDENBURG, ESQ. PC,

Plaintiff,

v.

MIDVALE INDEMNITY COMPANY,

Defendant,

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF**

Index No.:

Plaintiff MICHAEL J. REDENBURG, ESQ. P.C. (“Plaintiff”), by his attorneys, Michael J. Redenburg, Esq. P.C., alleging relief against Defendant MIDVALE INDEMNITY COMPANY (“Defendant” or “MIDVALE”)

NATURE OF THE ACTION

1. This is an action seeking declaratory relief arising from Plaintiff’s contract of insurance with Defendant.
2. In light of the global coronavirus 2019 (“COVID-19”) pandemic and state and local government orders (“Civil Authority Orders”) mandating that all non-essential in-store and/or in-office businesses must shut down nationwide, Plaintiff’s business has suffered significant business loss. Because of the shutdown, Plaintiff is unable to meet clients in his Lower-Manhattan office, which is where Plaintiff traditionally met his clients, as his law firm’s practice is established on face-to-face personal interactions.
3. Plaintiff’s insurance policy provides coverage for all non-excluded business losses, and thus provides coverage here.

4. As a result, Plaintiff is entitled to declaratory relief that his business is covered for all business losses that have been incurred, and that will be incurred until the pandemic is over.

JURISDICTION AND VENUE

5. This action for a declaratory judgment is within this Court's general original jurisdiction and not within the jurisdiction of any court of limited jurisdiction of this state.
6. This Court has personal jurisdiction over the Defendant because the Defendant has transacted, solicited and conducted business in New York through its employees, agents, affiliates and/or sales representatives and has derived substantial revenue from such business in New York. Defendant is licensed to do business in New York State and has purposefully availed itself of personal jurisdiction in New York because it contracted to provide insurance to Plaintiff in New York which is the subject of this case.
7. Venue is proper in New York County pursuant to CPLR §503 because Plaintiff's office is located in this county; Plaintiff is a New York County Domestic Professional Corporation and because a substantial part of the events or omissions giving rise to this claim occurred in New York County.

PARTIES

8. At all relevant times, Plaintiff has been authorized and licensed to do business in the State of New York. Plaintiff owns, operates, manages and controls his law firm which is located at 32 Broadway, Suite 811, New York, NY 10004.
9. Defendant MIDVALE, an insurance carrier, has a home office located at 6000 American Parkway, Madison, WI 53783.

- 10. At all relevant times, Defendant issued an insurance policy to Plaintiff MICHAEL J. REDENBURG, ESQ. P.C. (Policy Number: BPP1009534) that included coverage for business interruption losses, incurred by Plaintiff from April 07, 2020 through April 7, 2021 (**Ex. 1**) and which had also been in effect the year prior. *See also Ex. 2, Original Policy Packet.*
- 11. The policy, currently in full effect, includes coverage for, among other things, business personal property, business income and extended business income.
- 12. Plaintiff submitted a claim and was told to expect a call from Defendant’s Third Party Administrator, Gallagher Bassett. Gallagher Bassett’s representative, Louie McKnight, advised Plaintiff, “You’ll be gettin’ [sic] your denial letter.”

FACTUAL BACKGROUND

I. Insurance Coverage

- 13. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority and for business loss for property damage.
- 14. The terms of the Policy explicitly provide the insured with insurance coverage for actual loss of business income sustained, along with any actual, necessary and reasonable extra expenses incurred, when access to the Insured’s property is specifically prohibited by Civil Authority Orders. This additional coverage is identified as coverage under “Civil Authority.”
- 15. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy provides coverage for all covered losses, including but not limited to direct physical

loss and/or direct physical damage, unless a loss is specifically excluded or limited in the Policy.

16. As drafter of the Policy of insurance, if MIDVALE had wished to exclude from coverage as “physical loss or damage” loss of use of property that has not been physically altered, it could have used explicit language stating such a definition of “physical loss of damage.”

It did not do so.

17. Plaintiff’s Policy of insurance does not contain an Exclusion for “pandemic(s)” and the Policy’s “Civil Authority” coverage, covering “the loss of Business Income and necessary Extra Expenses sustained by Plaintiff ‘caused by action of civil authority that prohibits access’ to Plaintiff’s insured premises” affords Plaintiff coverage; (Policy pg. 7 of 49). Civil authority is triggered when “non- excluded cause results in ‘damage to property other than property’ at the Plaintiff’s premises, and is intended to cover losses resulting from governmental actions ‘taken in response to dangerous physical conditions.’” (Policy pg. 8 of 49)

18. The Policy also provides coverage for damages resulting from business interruption when there is property damage.

19. Plaintiff has suffered a direct physical loss of, and damage to, his property because he has been unable to use his property for its intended purpose.

20. Direct physical loss arises when property is rendered unusable.

21. The COVID-19 pandemic causes property damage because of its propensity to attach to surfaces for long periods of time.

22. The Policy’s virus or bacteria exclusion does not apply to the closure of Plaintiff’s business as a result of an order issued by a Civil Authority due to the COVID-19 pandemic.

23. Nonetheless, Defendant has happily accepted policy premiums paid by Plaintiff with no intention of providing coverage for business income losses resulting from orders of a Civil Authority that the insured's business be shut down, or any related property damage.
24. The COVID-19 pandemic has caused Plaintiff property damage and physical loss. Moreover, the Civil Authority Orders have also caused Plaintiff to suffer compensable property damage and business losses.
25. Further, the Policy's Virus or Bacteria Exclusion clause does not apply to the COVID-19 pandemic because Plaintiff's losses were not caused by a 'virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. Rather, the efficient proximate cause of Plaintiff's losses, were precautionary measures taken by the State of New York to prevent the spread of COVID-19 in the future, not because coronavirus was found in or on Plaintiff's insured property.

II. The COVID-19 Pandemic

26. The reason that insureds, such as Plaintiff, pay for Business Interruption Insurance, is so that if, and when, there is a loss, they can count on their insurer to pay said claims.
27. The scientific community, and those personally affected by the pandemic, recognize COVID-19 as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the law office.
28. On information and belief, the COVID-19 pandemic remains stable and transmittable: in airborne aerosols for up to three (3) hours; on copper for up to four (4) hours; on cardboard for up to twenty-four (24) hours and on plastic and stainless steel for up to two (2) to three

(3) days. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited May 18, 2020).

29. The CDC has issued guidance recommending that gatherings of more than ten (10) people must not occur. People in congregate environments, which are places where people live, work, eat and sleep in close proximity, face increased danger of contracting COVID-19.

30. The global Coronavirus pandemic is exacerbated by the fact that the deadly COVID-19 physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

31. China, Italy, France and Spain have implemented procedures requiring the cleaning and disinfection of public areas prior to allowing them to re-open publicly due to COVID-19 contamination.

III. Civil Authority

A. New York

32. On March 7, 2020, New York Governor Andrew Cuomo declared a Disaster Emergency for the entire state of New York as a result of the COVID-19 pandemic.

33. On March 12, 2020, Governor Cuomo set restrictions on large gatherings.

34. On March 20, 2020, the State of New York issued a stay-at-home order that all non-essential workers must stay home as a result of the COVID-19 pandemic. To date, this order has been extended to at least May 28, 2020.

35. On April 17, 2020, the State of New York ordered all individuals over the age of two (2) to wear a face covering when in a public place.

36. Plaintiff's law firm was unable to have clients to his office as a direct consequence of the Civil Authority stay-at-home orders for public safety issued by the Governor of New York and the State of New York generally.

37. Accordingly, Plaintiff has submitted a claim to its insurance carrier, MIDVALE, related to such losses.

38. Further, On April 10, 2020, The President of the United States of America, Donald J. Trump, indicated his support of insurance coverage for business loss like that suffered by Plaintiff:

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. **Business Interruption Insurance**, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I did not always have it, sometimes I had it, sometimes, I had a lot of different companies. *But if I had it I'd expect to be paid.* You have people, I speak mostly to the restauranteurs, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, okay. And I do not see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I do not see it. I do not see it referenced. And they do not want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot of money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

<https://www.propertyinsurancecoveragelaw.com/2020/04/articles/commercial-insurance-claims/breaking-news-president-trump-demands-insurance->

[companies-to-pay-up-business-interruption-coverage/](#) (last visited on May 18, 2020) (emphasis added).

39. The President is articulating a few core points:

- a. Business interruption is a common type of insurance;
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage;
- c. The COVID-19 pandemic should be covered unless there is a specific exclusion for pandemics;
- d. If insurers deny business loss coverage due to the COVID-19 pandemic, they would be acting in bad faith.

40. The Civil Authority Orders and proclamations referenced herein, as they relate to the closure of all “non-life-sustaining businesses,” evidence an awareness on the part of both state and local governments that the COVID-19 pandemic causes damage to property. This is particularly true for businesses such as Plaintiff’s, where client interaction and personal contact results in a heightened risk of the property becoming contaminated.

IV. Impact on Plaintiff

41. As a result of the Civil Authority Orders referenced herein, Plaintiff’s business has been impacted in that clients have not been able to come to his office, which is where Plaintiff traditionally met his clients, as his law firm’s practice is established on face-to-face personal interactions.

42. Plaintiff’s business loss occurred when the New York Civil Authorities required all businesses to cease non-essential operations on March 20, 2020.

43. Furthermore, as courts closed, and new court filings were restricted to only emergency matters, Plaintiff had no way to file new civil actions in the State of New York until May 25, 2020.
44. Prior to March, 2020, Plaintiff was able to file new actions via the NYS/CEF Court filing system.
45. The COVID-19 pandemic is physically impacting public and private property, and physical spaces and cities around the world and the United States of America. Any effort by the Defendant, MIDVALE, to deny the reality that the pandemic causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders and the public.
46. A declaratory judgment determining that the insured Plaintiff is entitled to business loss coverage under the policy is necessary to prevent Plaintiff from being left without bargained-for insurance coverage required to ensure the survival of his law firm due to the Civil Authorities' response to the COVID-19 pandemic. As a result of these Civil Authority Orders, Plaintiff has incurred, among other things, a substantial loss of business income and additional expenses, which losses are covered under the terms of Defendant's insurance policies.

CAUSE OF ACTION
DECLARATORY RELIEF

47. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.
48. Pursuant to NY CPLR §3001, the Supreme Court may render a Declaratory Judgment having the effect of a final judgment as to the rights and other legal relations of the parties

to a justiciable controversy whether or not further relief is or could be claimed. If the Court declines to render such a judgment it shall state its grounds.

49. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties under the terms of the Policy in that Plaintiff contends, and upon information and belief, the Defendant disputes and denies that:

- a. The Civil Authorities' Orders constitute a prohibition of access to Plaintiff's Insured Property;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the policy;
- c. The Policy's Exclusion of Loss due to Virus or Bacteria does not apply to the business losses incurred by Plaintiff here that are proximately caused by the Civil Authority Orders issued in response to the COVID-19 pandemic;
- d. The Civil Authorities' Orders trigger coverage under the terms of the Policy;
- e. The Policy provides coverage to Plaintiff for any current and future civil authority closures of its business in New York due to physical loss and/or damage directly or indirectly from the COVID-19 pandemic under the Civil Authority coverage parameters; and
- f. The Policy provided business income coverage in the event that the COVID-19 pandemic directly or indirectly causes a loss or damage at the insured premises or immediate area of the Insured Property.

50. Resolution of the duties, responsibilities and obligations of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

51. Plaintiff seeks a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to Plaintiff's Insured Property as Civil Authority as defined in the Policy.

52. Plaintiff further seeks a Declaratory Judgment to affirm that the Civil Authority Order triggers coverage.
53. Plaintiff further seeks a Declaratory Judgment to affirm that Defendant's Policy provides coverage to Plaintiff for any current and future business personal property loss, loss of business income, and extended business income losses as a result of Civil Authority Orders affecting the operation of Plaintiff's law firm due to physical loss or damage caused by the COVID-19 pandemic.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. For a declaration that the Civil Authorities Orders constitute an insured impairment on the operation of Plaintiff's Insured business property;
- b. For a declaration that the Civil Authorities' Orders constitute the type of restriction on business operations that is defined in the Policy;
- c. For a declaration that the Civil Authorities' Orders trigger coverage under the Policy;
- d. For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued Civil Authority closure of its business due to physical loss or damage directly or indirectly from the COVID-19 pandemic under the Policy's Civil Authority coverage parameters;
- e. For a declaration that the Policy provides business income coverage in the event that the COVID-19 pandemic has directly or indirectly caused a loss or damage at the Plaintiff's Insured Property or the immediate area of the Plaintiff's insured property;
- f. Award Plaintiff his reasonable attorneys' fees and costs associated with this action;
- g. For such other and further relief as the Court may deem just and proper.

TRIAL BY JURY DEMANDED

Plaintiff hereby demands trial by jury.

Dated: May 25, 2020

New York, NY

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