

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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CROWN TROPHY INC. and CROWN AWARDS INC.,

Index No.

**SUMMONS**

Plaintiff,

-against-

Plaintiffs designates  
Westchester County as the  
place of trial.

FEDERAL INSURANCE COMPANY,

Defendant.

Plaintiffs address:  
9 Skyline Drive  
Hawthorne, New York, 10532

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**TO THE ABOVE NAMED DEFENDANT:**

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiffs' attorneys an answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete, if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Venue is placed in Westchester County based upon Plaintiffs principal place of business.

Dated: September 1, 2020

ROSENBERG FELDMAN SMITH, LLP

By: \_\_\_\_\_

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TO: Federal Insurance Company

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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CROWN TROPHY INC. and CROWN AWARDS INC.,

Plaintiffs

-against-

Index No.  
COMPLAINT

FEDERAL INSURANCE COMPANY,

Defendant.

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Plaintiffs Crown Trophy Inc. and Crown Awards Inc. ("Plaintiffs") as and for their complaint against Defendant Federal Insurance Company, allege as follows:

**INTRODUCTION**

1. This action arises out of Defendant's failure to provide insurance coverage for business interruption losses and related expenses. The Coronavirus pandemic (COVID-19) has caused physical loss to Plaintiffs' property and has interrupted Plaintiffs' businesses. Plaintiff Crown Trophy Inc. and Crown Awards Inc. make trophies and plaques for consumers, municipalities and schools and operate out of three locations (i) its main office location at 9 Skyline Drive, Hawthorne, New York 10532 (the "Main Office"), (ii) a warehouse located at 14 Saw Mill River Road, Hawthorne, New York 10532 ("Warehouse") and (iii) a location at 11 Skyline Drive, Hawthorne, New York 10532 to assemble the trophy's and equipment (the "Equipment Location").

2. To protect their businesses and the income arising from these operations, Plaintiffs purchased a blanket all-risk property insurance policy with policy number 000035925402 (the "Policy") covering all three properties.

3. The Policy was issued by Defendant Federal Insurance Company ("Federal"). Upon information and belief, Federal is a member of the Chubb group of insurance companies.

Under the Policy, Chubb is responsible for receiving and managing claims and loss notices, responding to questions about insurance and coverage, among other things. After the outbreak of the pandemic, plaintiffs turned to Federal through Chubb. However, instead of honoring its promises, Federal flatly denied coverage, refused to make any payments to Plaintiffs.

4. The Policy is a bilateral contract: Plaintiffs agreed to pay premiums to Defendant, in exchange for Defendant's promises of coverage for certain losses. The Policy was to protect Plaintiffs' businesses in the event that they suddenly had to suspend operations for reasons outside their control, or in order to prevent further property damage from accidental physical loss or physical damage to the covered property. This type of coverage is often referred to as business interruption coverage.

5. The insurance coverage purchased by Plaintiffs from Defendant included property coverage, as set forth in the Customarq Series Customarq Classic Insurance Program for their Main Office, the Warehouse, and the Equipment Location.

6. The Policy also provides "Extra Expense" coverage, under which Defendant promised to pay expenses incurred to minimize the suspension of business continue operations, and to repair and replace property.

7. Plaintiffs duly complied with their obligations under the Policy, paid the requisite premiums and gave timely notice of their claims.

8. Defendants' coverage forms provide "Business Income" coverage, which promises to pay for actual loss due to the necessary suspension of operations.

9. Unlike some policies that provide Business Income (also referred to as "business interruption") coverage, Defendant's coverage forms do not include, and are not subject to, any exclusion for losses caused by viruses or communicable diseases.

10. Beginning in March 2020, Plaintiffs' operations have and continue to be suspended and threatened by the novel coronavirus, SARS-CoV-2, which causes the infectious disease

COVID-19. Plaintiffs were forced to suspend or reduce business at their covered premises due to COVID-19 in order to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

11. Aerosolized droplets exhaled by normal breathing can travel significant distances and stay suspended in air for hours until gravity ultimately forces them to the nearest surface. Studies suggest that the SARS-CoV-2 virus can remain contagious on some surfaces for up to six days. Alex W.H. Chin, et al., “*Stability of SARS-CoV-2 in different environmental conditions.*” The Lancet Microbe (April 2, 2020).

12. On March 16, 2020, New York City Mayor de Blasio issued Emergency Executive Order No. 100 in which he declared that “the virus physically is causing property loss and damage” (“March 16 Order”).

13. Upon information and belief, Defendant has, on a widespread and uniform basis, refused to pay its insureds under its Business Income, Extra Expenses, Extended Business Income, for losses suffered due to COVID-19, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations. In particular, the Federal Insurance Company has denied claims timely submitted by Plaintiffs under their policies.

#### THE PARTIES

14. Plaintiff Crown Trophy Inc. is a domestic corporation organized and existing under the laws of the State of New York with its principal place of business located at 9 Skyline Drive, Hawthorne, New York 10532.

15. Plaintiff Crown Awards Inc. is a domestic corporation organized and existing under the laws of the State of New York with its principal place of business located at 9 Skyline Drive, Hawthorne, New York 10532.

16. Defendant Federal Insurance Company is a corporation formed under the laws of the

State of Indiana with its principal place of business in the State of Indiana. Defendant Federal is the issuer of the Policy.

### **JURISDICTION AND VENUE**

17. This Court has jurisdiction under CPLR 302(a)(1) as the Defendants contracted in New York to provide insurance coverage to Plaintiffs. The amount in controversy exceeds \$500,000 exclusive of interest and costs.

18. Venue is proper in this County as Plaintiffs' principal places of business are located within Westchester County, New York.

### **FACTUAL BACKGROUND**

#### **The Policy**

19. In return for the payment of premiums, Defendants issued the Policy No. 3592-54-02 FPO to Plaintiffs on January 9, 2020 and is, an all-risk property insurance policy issued by Defendant Federal, including a Building and Personal Property Coverage Form and Business Income (and Extra Expense) Coverage Form. The Policy has a policy period effective December 31, 2019 through December 31, 2020.

20. The insured property under the Policy is 9 Skyline Drive, Hawthorne, New York 10532, 14 Saw Mill River Road, Hawthorne, New York 10532, and 11 Skyline Drive, Hawthorne, New York 10532.

21. Sometimes property insurance is sold on a specific peril basis, where coverage is limited to risks of loss that are specifically listed. However, the Policy sold by Defendant to Plaintiffs is an "all-risk" property damage policy, where all risks of loss are covered unless they are specifically excluded.

22. Plaintiffs are the Named Insured under the Policy, which remains in force.

23. Defendant is the effective and liable insurer of the Policy.

24. Under the heading “Covered Causes of Loss,” Defendant specifically agreed to pay for all direct loss unless the “loss” is excluded or “limited” in the policy.

25. Defendant did not exclude or limit coverage for losses from viruses in Plaintiffs’ Policy. The Policy also did not exclude pandemic coverage, communicable disease coverage or anything similar. Because Federal’s Policy is an “all-risks” policy that expressly insures all risks not expressly excluded, it insures losses caused by or resulting from viruses, communicable diseases, and pandemics. Simply put, because these perils are not excluded, they expressly are insured “covered perils.”

26. Losses due to COVID-19 are a Covered Cause of Loss under Defendant’s Policy with the Building and Personal Property Coverage Form and Business Income (And Extras Expense) Coverage Form.

27. Pursuant to this Form, Defendant promised to pay for “Loss of Business Income” caused by a Covered Cause of Loss. Specifically, Defendants promised to pay for the loss of Business Income sustained due to the necessary “suspension” of the insured’s “operations” during the “period of restoration” caused by direct “loss” to property at the covered premises. The Federal Policy insures not only against physical loss or damage to covered property, but also for resulting economic and financial losses.

28. “Loss” is defined to mean accidental physical loss or accidental physical damage.

29. “Suspension” is defined to mean the slowdown or cessation of business activities and that part or all of the covered premises is rendered untenable.

30. “Period of restoration” is defined to mean the period of time that begins at the time of direct loss.

31. “Business income” is defined to mean net income (net profit or loss before income taxes) that would have been earned or incurred and continuing normal operating expenses, including

payroll. Federal's Policy's Business Income with Extra Expense coverage is designed, understood, stated and intended to insure Plaintiffs, for economic losses, including losses from "the actual impairment" of their business "operations" suffered as a result of "direct physical loss or damage" to covered property.

32. The presence of virus or disease can constitute physical loss of or damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called "virus" exclusions to be placed in some policies, but not others, the insurance industry drafting arm – Insurance Services Office, Inc. or "ISO"- circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the costs of replacement of property (for example, the milk) cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

41. The ISO also created a new "amendatory endorsement" to exclude loss due to a virus or bacteria from coverage afforded by certain insurance policies. The ISO amendatory endorsement states that there is "no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease" (the "Virus Exclusion").

42. Some insurers added the Virus Exclusion to their policies that provide Business Income (also referred to as "business interruption") coverage. Defendant's Policy does not include, and is not subject to, any exclusion for losses by viruses or communicable diseases.

43. In the Building and Personal Property Coverage Form and Business Income (And Extra Expense) Coverage Form, Defendant also agreed to pay necessary Extra Expense that its insureds sustain during the “period of restoration” that the insureds would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

48. Losses caused by COVID-19 triggered the business Income, Extra Expense, and Extended Business Income provisions of Defendants’ Policy.

**COVID-19 and the Covered Cause of Loss**

49. Coronavirus is a highly contagious virus that has rapidly spread and continues to spread across the United States. It is a physical substance, human pathogen and can be present outside the human body in viral fluid particles. According to the CDC, everyone is at risk of getting COVID-19.

50. Well before Federal sold its policies to Plaintiffs, it knew of the possibility of a pandemic and the potential losses that could be associated with a pandemic. In fact, they long have known that if there were a pandemic, it could be obligated to pay substantial amounts under its policies. For years, including for the fiscal year ended December 31, 2019, Chubb stated as follows in its Form 10-K filed with the United States Securities and Exchange Commission:

We have substantial exposure to losses resulting from . . .  
catastrophic events, **including pandemics.**

(emphasis added). Chubb further routinely stated in this annual filing that “catastrophes” “including a global or other wide-impact pandemic” may result in “substantial” losses. Thus, Chubb and Federal knew that the policies they were selling, including the ones sold to Plaintiffs, would cover losses associated with pandemics.

51. Federal knew that it could be obligated to pay for massive losses in the event of a pandemic. Federal knew that it could use common and widely available exclusions to guard



against being obligated to pay for pandemic-associated losses. However, it decided not to do so here, selling Plaintiffs the all-risks Federal Policy and deliberately omitting from the policies any potentially applicable exclusion associated with a virus-related –pandemic.

52. Specifically, Defendant promised to pay for the actual loss of Business Income during the period that begins on the date that the insured property is repaired, and ends either 60 days thereafter or on the date when operations are restored to the level which would generate business income to normal levels, whichever is earlier.

53. Plaintiffs' Policy does not contain any exclusion which would apply to allow Defendant to deny coverage for losses caused by COVID-19.

54. Accordingly, because the Policy is an all-risk policy and does not specifically exclude the losses that Plaintiffs have suffered, those losses are covered.

**Plaintiff's covered losses**

55. As of July, 2020, according to the New York Department of Health, COVID-19 is present in all of New York's 62 counties, with Westchester County being one of the first hotspots and one of the most affected counties.

56. The presence of COVID-19 caused direct physical loss of and/or damage to the covered premises under the Policy by, among other things, damaging the property, denying access to the property, preventing customers and workers from physically occupying the property, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

57. As a result of the presence of COVID-19, Plaintiffs have suffered a suspension of business operations, sustained losses of business income, and incurred extra expenses.

58. These losses and expenses have continued through the date of filing of this action.

59. These losses and expenses are not excluded from coverage under the Policy. Since the Policy is an umbrella all-risk policy, and Plaintiffs have complied with its contractual obligations, Plaintiff is entitled to payment for these losses and expenses.

60. Accordingly, Plaintiffs provided notice of their losses and expenses to Defendants, consistent with the terms and procedures of the Policy.

61. Contrary to the plain language of the Policy, and to Defendant's corresponding promises and contractual obligations, Defendants have refused to pay for Plaintiffs' losses and expenses.

#### **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

62. Plaintiffs repeat and reallege paragraphs 1 through 61 above.

63. Plaintiffs' Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay losses for claims covered by the Policy.

64. In the Policy, Defendant promised to pay for losses of business income and Extra Expenses incurred as a result of perils not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income sustained as a result of a suspension of business operations during the Period of Restoration and for those expenses incurred in restoration.

65. Plaintiffs made a claim under the Policy, which claim was wrongly rejected by Defendant.

66. By rejecting Plaintiffs' claim, Defendant breached its obligations to Plaintiffs as required by the Policy.

67. Plaintiffs have fully performed their obligations under the Policy.

68. By virtue of the foregoing, Defendant has breached its obligations under the Policy to Plaintiffs and is liable for all damages under the Policy.

#### **SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT**

69. Plaintiffs repeat and reallege paragraphs 1 through 68 above.

70. This Court has jurisdiction to declare the rights and other legal relations of the parties in dispute.

71. Plaintiffs' Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiffs' losses for claims covered by the Policy.

72. In the Policy, Defendant promised to pay for losses of business income and extra expenses sustained as a result of perils not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income and extra expenses sustained as a result of a suspension of business operations during the Period of Restoration.

73. COVID-19 caused direct physical loss of and damage to Plaintiffs' insured premises, resulting in suspensions of business operations at these premises. These suspensions have caused Plaintiffs to suffer losses of business income and incur extra expenses.

74. These suspensions and losses triggered business income coverage under the Policy.

75. Plaintiffs have complied with all applicable provisions of their respective policies, including payment of premiums and providing timely notice of these claims.

76. Defendant, without justification, dispute that the Policy provides coverage for these losses.

77. Plaintiffs seeks a Declaratory Judgment that their Policy provides coverage for the losses of business income and extra expenses beyond those incurred or sustained to the date of this complaint.

78. An actual case or controversy exists regarding Plaintiffs' rights and Defendant's obligations to reimburse Plaintiffs for the full amount of these losses extending to those incurred after the commencement of this action. Accordingly, the Declaratory Judgment sought is

justiciable.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment in their favor and against Defendant, as follows:

- A. Granting judgment against Defendants on the First Cause of Action for Breach of Contract for their current damages in an amount to be determined at trial but in no event less than \$20,000,000;
- B. Entering declaratory judgments on the Second Cause of Action in favor of Plaintiffs declaring that Business Income and Extra Expense losses and expenses incurred and sustained as a result of COVID-19 subsequent to the date of this complaint are a continuing obligation of Defendant and are insured and covered losses and expenses under Plaintiffs' Policy;
- C. Granting Plaintiffs interest, costs and reasonable expenses including counsel fees; and
- D. Granting Plaintiffs such other and further relief as to the Court deems just and proper.

Dated: September 1, 2020

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By: 

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