

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

KITON CORPORATION,

Plaintiff,

-against-

CHUBB LTD. and PACIFIC INDEMNITY COMPANY,

Defendants.

Index No.: ____/2020

Date Filed: _____

SUMMONS

Venue is based on the
Plaintiff's residency:

4 East 54th Street
New York, NY 10022

TO THE ABOVE NAME DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your answer, or if the Verified Complaint is not served with this Summons, to serve a Notice of Appearance on Plaintiff's attorneys within twenty (20) days after 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); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: New York, New York
June 30, 2020

ADAM LEITMAN BAILEY, P.C.
Attorneys for Plaintiff

By: /s/ Massimo D'Angelo
Massimo F. D'Angelo, Esq.
One Battery Park Plaza, 18th Floor
New York, New York 10004
(212) 825-0365

DEFENDANTS' ADDRESSES:

CHUBB LTD.
202B Hall's Mill Road
Whitehouse Station, New Jersey 08889

PACIFIC INDEMNITY COMPANY
202B Hall's Mill Road
Whitehouse Station, New Jersey 08889

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Summons

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SUPREME COURT OF THE STATE OF NEW YORK
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KITON CORPORATION,

Plaintiff,

-against-

CHUBB LTD. and PACIFIC INDEMNITY COMPANY,

Defendants.

Index No.: ____/2020

VERIFIED COMPLAINT

Plaintiff, KITON CORPORATION (“Kiton” or “Plaintiff”), by its attorneys, Adam Leitman Bailey, P.C., as and for its Complaint for a Declaratory Judgment against Defendants, CHUBB LTD. (“Chubb”) and PACIFIC INDEMNITY COMPANY (“Pacific”) (“Chubb” and “Pacific” shall be collectively referred to hereinafter as the “Defendants”), respectfully avers:

THE PARTIES

1. Kiton is a domestic corporation with a principal office located at 4 East 54th Street, New York, New York 10022.
2. Upon information and belief, Chubb is a Swiss corporation that conducts business throughout the world and, substantially, in New York State.
3. Upon information and belief, Chubb is the parent company of various subsidiaries that specialize in the issuing of, *inter alia*, property insurance.
4. Upon information and belief, Pacific is a Wisconsin corporation that conducts business throughout the United States and, substantially, in New York State.
5. Upon information and belief, Pacific is a subsidiary of Chubb and is duly qualified and licensed to issue insurance in the state of New York.

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Verified Complaint

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6. Upon information and belief, Defendants are authorized to do business, and have done business, in the State of New York.

7. Upon information and belief, Defendants have transacted business in the State of New York.

PRELIMINARY STATEMENT

8. This action seeks a declaratory judgment declaring that Defendants must provide insurance coverage, pursuant to the explicit provisions of Plaintiff's insurance policy – policy number 3603-49-33-DTO (the "Policy") – for the business losses and damages sustained by Plaintiff that began on or about March 20, 2020 (the "Loss), as a result of the COVID-19 pandemic.

9. Due to governmental orders that were issued in each state in which Plaintiff operates its business: 1. California; 2. Texas; 3. Nevada; 4. Florida; and 5. New York, Plaintiff's business, which was deemed "non-essential," were mandated by civil authority to close¹ each of its locations from which Plaintiff operates successful, high quality clothing boutiques (the "Boutiques").

10. In addition, the microbial matter propagated from the COVID-19 pandemic, an extremely pernicious disease, attached to the surfaces within the Boutiques, thereby causing direct physical loss and/or damage to the subject properties.

11. Specifically, the Loss, which occurred as a result of the COVID-19 pandemic's sweeping destruction of the retail shopping industry, caused damage to the Covered Premises operations, resulting in substantial losses to Plaintiff's business income.

¹ The parties' insurance policy provides insurance coverage for the following nine (9) locations: (i) 4 East 54th Street, New York, NY 10022; (ii) 15 West 53rd Street, New York, NY 10019; (iii) 2060 Northern Blvd., Manhasset, NY 11030; (iv) 3131 Las Vegas Blvd. S., Las Vegas, NV 89109; (v) 9700 Collins Ave., Bal Harbour, FL 33154; (vi) 701 S. Miami Ave., Miami FL, 33154; (vii) 340 Royal Poinciana Way, Palm Beach, FL 33480; (viii) 207 Grant Ave., San Francisco, CA 94108; (ix) 4444 Westheimer Rd., A165, Houston, TX 77027.

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12. Notably, on or about March 12, 2020, the World Health Organization (the “WHO”), in a statement issued by Dr. Hans Henri P. Kluge (“Dr. Kluge”), the WHO Regional Director for Europe, officially declared the COVID-19 outbreak to be a pandemic.²

13. Dr. Kluge’s statement noted, *inter alia*, the following:

More and more countries are now experiencing clusters of cases or community transmission. We expect that in the days and weeks ahead, the number of cases and the number of deaths will continue to rise rapidly, and we must escalate our response in such a way as to take pre-emptive action wherever possible. Such actions may help to delay the pandemic, giving health-care systems time to prepare and assimilate the impact.³

14. Thereafter, on or about March 16, 2020, the Centers for Disease Control and Prevention (the “CDC”), along with members of the national Coronavirus Task Force, issued “the President’s Coronavirus Guidelines for America” (the “CDC Guidelines”), advising individuals across the United States to avoid, *inter alia*, social gatherings in groups of more than ten (10), travel, and, most notably, shopping trips.⁴

15. In following the CDC Guidelines, many state governments across the United States began to implement restrictions to combat the spread of this extremely virulent and novel life-threatening disease.

16. As such, many state government administrations implemented civil authorities, executive orders, and/or emergency measures, shutting down non-essential businesses, specifically those in the retail shopping industry, of which naturally require public interaction and gatherings to conduct their operations.

² <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>.

³ <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>.

⁴ https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

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17. In fact, almost all of the states throughout the country have implemented “stay-at-home” orders, which require such non-essential retail businesses to close their doors and cease operation.

18. Moreover, every single state in the nation declared a “state of emergency,” the first time that has ever happened in the history of the United States.

19. Consequently, these government actions and/or decrees, which are unprecedented and sweeping in both degree and scope, have crippled businesses, especially those within the retail shopping industry where operation depends on public access and travel for shopping purposes.

20. In order to protect their interests in the event that such a devastating and unforeseen event may occur, it is precisely for this very reason that many retail businesses procure insurance that covers damages for loss of business income.

21. Such policies include coverage provisions whereby the insurance company agrees, and promises, to indemnify the insured business for their actual business losses that were incurred at the time of the loss in which the business was, *inter alia*, forced to involuntarily suspend its operations, within the full limits of the insured’s policy.

22. Such coverage provisions, which are commonly included in most all-risk commercial property insurance policies, include indemnification for events that prohibit access to the insured’s business due to restrictions put in place by a civil authority and/or government order.

23. Further, the business loss coverage under Plaintiff’s Policy is similarly triggered where Plaintiff suffers business loss due to a direct physical loss to any of the properties covered under the Policy.

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Verified Complaint

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24. Kiton is one of those businesses that procured insurance including such loss of business income coverage as a means to protect it in this type of event.

25. Here, Kiton entered into an agreement with Defendants whereby Defendants promised to indemnify it in the event that Kiton suffered a loss that forced it to incur substantial actual business losses.

26. The Policy explicitly provides that Defendants will extend coverage for business losses sustained by Kiton due to the closure of its Boutiques for business due to civil authority and/or where such Boutiques sustain a direct physical loss.

27. Kiton has provided Defendants notice of the claim for the Loss and has demanded coverage under the Policy issued by Defendants.

28. In fact, New York law is crystal clear in that coverage shall be provided to cover an insured during the relevant period of restoration of damaged property. *Roundabout Theatre Co., Inc. v. Continental Cas. Co.*, 302 A.D.2d 1 [1st Dep't 2002].

29. Clearly, the COVID-19 contagion sticks to surfaces within properties that then require constant cleaning and/or de-sanitization, rendering the property damaged.

30. Since the property needs to be remediated, the microbes, virus and/or bacteria resulting from COVID-19 plainly constitutes a direct physical loss to property, thereby triggering coverage.

31. Despite this, at all relevant times, Defendants have refused, and continue to refuse, to provide Plaintiff with coverage for the damages and monumental losses that it sustained and incurred due to the Loss under the Policy.

32. Kiton has complied with all relevant provisions of the Policy, and has paid all premiums owed under the Policy to Defendants.

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33. Kiton thus brings this lawsuit in order to, among other things, obtain a declaration that Defendants must provide coverage for the damages caused to Kiton as a result of the Loss.

FACTUAL AND PROCEDURAL POSTURE

a. The Insurance Policy

34. Defendant issued the Policy – a commercial general liability insurance policy – effective for the policy period from December 31, 2019 to December 31, 2020 (the “Policy Period”) covering the Covered Premises.

35. The Policy provides “Blanket Limits” for the “Premises Coverage.”

36. Specifically, the Policy provides “Limits of Insurance” of \$7,100,000 for coverage under “Business Income with Extra Expense” on all of the Covered Premises in the Policy that are identified as having a “Blanket 2” Limit of Insurance.

37. As such, the following properties of the Covered Premises have this Blanket 2 Limit of Insurance under the Policy (the “Blanket 2 Properties”): (i) 4 East 54th Street, New York, NY 10022; (ii) 2060 Northern Blvd., Manhasset, NY 11030; (iii) 3131 Las Vegas Blvd. S., Las Vegas, NV 89109; (iv) 9700 Collins Ave., Bal Harbour, FL 33154; (v) 701 S. Miami Ave., Miami FL, 33154; (vi) 340 Royal Poinciana Way, Palm Beach, FL 33480; and (vii) 207 Grant Ave., San Francisco, CA 94108; (viii) 4444 Westheimer Rd., A165, Houston, TX 77027.

38. Therefore, the Blanket 2 Properties are entitled to, *inter alia*, business coverage claims that are capped at \$7,100,000.

39. Under the Policy, Defendants agreed to provide certain business interruption/property damage claim coverage for the Blanket 2 Properties.

40. Specifically, the Business Income With Extra Expense Coverage Form, Form 80-02-1004, states, as follows:

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We will pay for the actual: business income loss you incur due to the actual impairment of your operations;...and extra expense you incur due to the actual or potential impairment of your operations, during the period of restoration, not to exceed the applicable Limit Of Insurance for Business Income shown under Any Other Location in the Declarations...This actual or potential impairment of operations must be caused by or result from direct physical loss or damage by a covered peril to property at unspecified premises.

(Emphasis supplied).

41. In this same form, the Policy provides following Additional Coverages under the heading of "Civil Authority:"

We will pay for the actual: business income loss; or extra expense, you incur due to the actual impairment of your operations, directly caused by the prohibition of access to: your premises; or a dependent business premises, by a civil authority. This prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such dependent business premises by a covered peril, provided such property is within: one mile; or the applicable miles shown in the Declarations, from such premises or dependent business premises, whichever is greater. The most we will pay for Civil Authority is the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.

(Emphasis supplied).

42. Furthermore, the Policy defines "Business Income," as follows:

Net profit or loss, including rental income from tenants and net sales value of production, that would have been earned or incurred before income taxes:...your continuing normal:...operating;...and payroll, expenses;...charges you incur which are the legal obligation of your tenant which would otherwise be your obligations; and...the cost you are required to pay to rent temporary premises when that portion of the premises shown in the Declarations occupied by you is untenable, not to exceed the fair rental value of such untenable portion of the building you occupy Business income does not mean bank interest or investment income.

43. The Policy also defines "Extra Expense" as the following:

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Necessary expenses you incur:...in an attempt to continue operations, over and above the expenses you would have normally incurred; and...to repair or replace any property, or to research or restore the lost information on damaged valuable papers, records and media, if such action will reduce any loss we would pay under this insurance...

44. Critically, with respect to policy loss payment limitations under the Business Income With Extra Expense Coverage Form, the Policy does not include any specific limitation for damages or exclusions related to viruses or bacteria.

45. Notably, Defendants failed to include explicit language in the Policy that set forth to exclude loss payment limitations for damages resulting from a “virus or bacteria,” as the loss payment limitation section under the Business Income With Extra Expense Coverage Form, Form 80-02-1004, fails to include any reference to “virus or bacteria” whatsoever.

46. In fact, the Building and Personal Property Form, Form 80-02-1000 – which is not applicable to claims arising solely under Blanket 2 coverage – includes an additional exclusion for “Pollutants” only.

47. However, such reference under this section does not provide an explicit exclusion to coverage, under the Policy, for damage resulting from the microbial matter stemming from the Covid-19 pandemic.

b. The Loss and Defendants’ Denial of Kiton’s Claim

48. As noted above, on or about March 12, 2020, the WHO declared the COVID-19 outbreak to be a pandemic.⁵

49. In order to combat the potentially life-threatening and irreversible effects of this pandemic, Governor Cuomo has issued a string of Executive Orders⁶ that have effectively

⁵ <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>.

⁶ <https://www.governor.ny.gov/keywords/executive-order>.

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shuttered schools, courts, and nearly all businesses, with only a select few “essential” businesses being permitted to remain open, such as grocery stores and pharmacies.

50. Where, as here, Kiton’s stores were not deemed an “essential” business by the New York State Department of Financial services and other regulatory agencies, including the Department of Homeland Security, Plaintiff was forced to close its Boutiques in New York indefinitely until Governor Cuomo’s Executive Orders are lifted and the viral matter is eradicated from the underlying premises.

51. Similarly, Kiton’s Boutiques in the other states in which it operates were likewise deemed “non-essential,” and forced to shut down.

52. As New York was the epicenter of the Pandemic, as of the date of the filing of this Complaint, roughly 403,619 New Yorkers have tested positive for COVID-19 and 31,945 New Yorkers have tragically lost their lives to this unprecedented and terrible disease.⁷

53. Domestically, the number of COVID-19 infections and deaths are far greater, with approximately 2.46 million Americans having tested positive and 128,000 having lost their lives to the deadly contagion as of the date of filing of this complaint.

54. As a result of the foregoing, this contagion has exacted extreme financial hardship and difficulty not only to New York City, but also to Kiton’s Boutiques in other states, which have been forced to shut down, as the formerly thriving New York City retail industry has essentially come to a screeching halt.

55. Because of these government-mandated closures, as well as the corresponding bans against “non-essential” travel and public gatherings, Kiton has suffered substantial damages and loss of business income at all of its Boutiques across the country.

⁷ <https://news.google.com/covid19/map?hl=en-US&gl=US&ceid=US%3Aen&mid=%2Fm%2F059rby.655598/1>

56. Moreover, the direct physical loss caused by COVID-19's bacteria and microbial matter which sticks to the high-touch surfaces in Kiton's Boutiques, triggers Kiton's business loss coverage under its policies of insurance.

57. As a result of Kiton's losses, in or around the early part of May 2020, Kiton tendered to Defendants a notice of claim, duly apprising Defendants of its calculable losses and placing Defendants on notice of its request for business interruption/property damage coverage under the Policy.

58. Despite this, by way of letter dated June 19, 2020 (the "Denial Letter"), Defendants improperly denied Kiton's coverage claims as related to all nine (9) properties throughout the United States.

59. Here, Defendants wrongfully denied Kiton's claims for coverage under the Policy.

60. Particularly, Kiton's Policy does not have explicit exclusions for the events that caused the Loss.

61. Additionally, the Loss, which fully restricted public access to the Covered Premises in accordance with Governor Cuomo's Executive Orders, qualifies for coverage under the Policy's Additional Coverage provisions related to "Civil Authority."

62. Furthermore, New York law calls for the Courts to strictly construe language in an insurance policy against the insurance company and in favor of the insured.

63. Moreover, even assuming that Plaintiff's business interruption losses are not triggered by governmental orders, such losses are triggered by a direct physical loss to Kiton's underlying covered properties.

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64. Therefore, because Defendant failed to include explicit exclusions to coverage for “virus or bacteria” under the Policy, Defendant wrongfully denied Kiton’s claim for coverage.

65. Moreover, on or about July 9, 2020, Plaintiff filed complaints with each state insurance department in which Kiton operates its nine different Covered Premises.⁸

**AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Direct Physical Loss or Damage Coverage)**

66. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

67. Kiton is a named insured under the Policy.

68. Therefore, Defendants have an obligation to provide coverage to Kiton under the Policy because the COVID-19 pandemic caused direct physical loss and/or damage to the covered premises.

69. Since Kiton’s claims arise out of the Loss, and Kiton asserts claims for damages resulting for a direct physical loss or damage to Kiton’s underlying covered premises, the Policy requires Defendants to provide coverage and to indemnify Kiton for the losses it sustained, as a result of the Loss.

70. Thus, Defendants have a duty to cover Kiton for the Losses sustained, which are covered under the provisions of the Policy without exclusion.

71. By reason of the foregoing, an actual and justiciable controversy exists between Kiton and Defendants.

⁸ Plaintiff, on or about July 9, 2020, filed the following five (5) separate state insurance complaints: (i) Consumer Complaint Case: CSB-2020-01364230 filed with the New York Department of Financial Services; (ii) Complaint ID: 51180 filed with the Nevada Division of Insurance; (iii) Service Request Number 1-1011981829 filed with the Florida Department of Financial Services; (iv) Case Number 8264676 filed with the California Department of Insurance; and (v) Complaint 294587 filed with the Texas Department of Insurance.

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72. As a result of Defendants' breaches of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

**AS AND FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment – Business Income Coverage)**

73. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

74. Kiton is a named insured under the Policy.

75. Therefore, Defendants have an obligation to provide coverage to Kiton under the Policy due to the business losses sustained by Kiton due to the closure of its Boutiques.

76. Since Kiton's claims arise out of the Loss, and Kiton asserts claims for loss of business income, the Policy requires Defendants to provide coverage and to indemnify Kiton for the losses it sustained, as a result of the Loss.

77. Thus, Defendants have a duty to cover Kiton for the Losses sustained, which are covered under the provisions of the Policy.

78. By reason of the foregoing, an actual and justiciable controversy exists between Kiton and Defendants.

79. As a result of Defendants' breaches of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

**AS AND FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment – Civil Authority Coverage)**

80. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

81. Kiton is a named insured under the Policy.

82. Therefore, Defendants have an obligation to provide coverage to Kiton under the Policy because the Boutiques were closed pursuant to civil authority.

83. Since Kiton's claims arise out of the Loss, and Kiton asserts claims for a loss that arises from the imposition of civil authorities, the Policy requires Defendants to provide coverage and to indemnify Kiton for the losses it sustained, as a result of the Loss.

84. Thus, Defendants have a duty to cover Kiton for the Losses sustained, which are covered under the provisions of the Policy.

85. By reason of the foregoing, an actual and justiciable controversy exists between Kiton and Defendants.

86. As a result of Defendants' breaches of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

**AS AND FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment – Extra Expense Coverage)**

87. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

88. Kiton is a named insured under the Policy.

89. Therefore, Defendants have an obligation to provide coverage to Kiton under the Policy for explicitly covered extra expenses.

90. Since Kiton's claims arise out of the Loss, and Kiton asserts claims for a loss of extra expenses arising from the forced and involuntary closure of its businesses and operations, the Policy requires Defendants to provide coverage and to indemnify Kiton for the losses it sustained, as a result of the Loss.

91. Thus, Defendants have a duty to cover Kiton for the Losses sustained, which are covered under the provisions of the Policy.

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92. By reason of the foregoing, an actual and justiciable controversy exists between Kiton and Defendants.

93. As a result of Defendants' breaches of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

**AS AND FOR A FIFTH CAUSE OF ACTION
(Breach of Contract)**

94. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

95. Defendants breached the Policy with Kiton by:

- (i) failing to promptly and reasonably adjust the claim;
- (ii) failing to timely indemnify Kiton for the loss of business income that it incurred;
- (iii) failing to promptly adjust, and properly pay, the Policy limits to Kiton; and
- (iv) any other acts or omissions to be shown at trial on the merits.

96. Plaintiff's Policy is a contract, which is to be construed against Defendants per New York law, under which Defendants were paid premiums in exchange for Defendants' promise to pay Plaintiff for its losses for claims covered by the Policy.

97. Per the Policy, Defendants agreed to pay for Kiton's actual loss of Business Income sustained due to the necessary suspension of its operations during the period of restoration.

98. Defendants further agreed to pay for Kiton's actual loss of Business Income sustained due to the necessary suspension of Kiton's operations during the period of restoration caused by direct physical loss or damage.

99. A partial slowdown or complete cessation of business activities at the Boutiques is a suspension under the Policy, for which Defendants agreed to pay for loss of Business Income during the period of restoration that occurs after the date of direct physical loss or damage.

100. The Closure Order caused direct physical loss and damage to Plaintiff's Boutiques, which are covered properties under the Policy, requiring suspension of operations at the Boutiques.

101. Losses caused by the civil authority orders thus triggered the Business Income provision of Plaintiff's Policy.

102. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendants, and/or Defendants are estopped from asserting them.

103. As such, Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

104. By denying coverage for any Business Income losses incurred by Plaintiff as a result of the civil authority orders mandating closures, along with the orders intended to mitigate the COVID-19 pandemic, Defendants breached their coverage obligations under the Policy.

105. As a result of Defendants' breaches of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

**AS AND FOR A SIXTH CAUSE OF ACTION
(Specific Performance)**

106. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

107. Defendants entered into the Policy with Kiton wherein they clearly and expressly agreed to provide insurance coverage for loss of business income that Kiton incurs with respect to the Covered Premises as a result of specific covered events, including the Loss at issue here.

108. Under the Policy, Defendants are required to reimburse Kiton for its loss of business income, plus extra expenses within the full parameters of the Policy limits.

109. Defendants entered into the Policy in exchange for Kiton's payment of substantial premiums, which served as consideration for the agreed upon coverage.

110. Kiton, in turn, paid to Defendants such substantial premiums.

111. Because of Defendants refusal to provide Kiton with coverage of the Loss, Kiton has suffered severe damage to its Covered Premises as a proximate and direct result of the Loss and has consequently lost substantial business income.

112. Kiton performed its end of the bargain and is accordingly now entitled to specific performance of the Policy, compelling Defendants to extend appropriate coverage thereunder.

113. The Court should therefore compel Defendants to specifically perform pursuant to the Policy agreement, and in so doing, provide coverage to Plaintiff, to the fullest extent allowable under the policy, in order to reimburse Kiton for all of its business losses stemming from the COVID-19 pandemic.

**AS AND FOR A SEVENTH CAUSE OF ACTION
(Unjust Enrichment)**

114. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

115. Despite accepting and retaining substantial premium payments from Kiton, Defendants have withheld the insurance proceeds owed to Kiton for the Loss.

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116. Defendants have therefore been unjustly enriched at Kiton's expense, to Kiton's great prejudice.

**AS AND FOR AN EIGHTH CAUSE OF ACTION
(Anticipatory Repudiation)**

117. Kiton repeats, reiterates, and re-alleges each of the foregoing allegations with the same force and effect as if fully set forth at length herein.

118. Plaintiff's Policy is a contract under which Defendants were paid premiums in exchange for Defendants' promise to pay Plaintiff's losses for claims covered by the Policy.

119. Defendants agreed to pay for Plaintiff's actual loss of Business Income sustained due to the necessary suspension of its operations during any period of restoration.

120. More generally, Defendants further agreed to pay for Plaintiff's actual loss of Business Income sustained due to the necessary suspension of Plaintiff's operations during any period of restoration caused by direct physical loss or damage and/or civil authority.

121. Partial slowdown or complete cessation of business activities at the Boutiques, which are covered properties under the Policy at issue, is a "suspension" under the Policy, for which Defendants agreed to pay for loss of Business Income during any "period of restoration."

122. Business Income under the policy means the Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, as well as continuing normal operating expenses incurred, including payroll.

123. The governmental orders mandating closure of the Boutiques and/or the COVID-19, which caused direct physical loss and damage, required suspension of operations at the Boutiques.

124. Such losses caused by the civil authority orders mandating closures thus triggered the Business Income provision of Plaintiff's Policy.

[655598/1]

Verified Complaint

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This is a copy of a pleading filed electronically pursuant to New York State court rules (22 NYCRR §202.5-b(d)(3)(i)) which, at the time of its printout from the court system's electronic website, had not yet been reviewed and approved by the County Clerk. Because court rules (22 NYCRR §202.5[d]) authorize the County Clerk to reject filings for various reasons, readers should be aware that documents bearing this legend may not have been accepted for filing by the County Clerk.

125. Notwithstanding the foregoing, the notice on Chubb's website states that Chubb will pay business interruption claims only if the subject property is physically altered.

126. As a result, Chubb has anticipatorily breached the Policy of Plaintiff who has suffered physical loss or damage to its property because the use of that property has been substantially impaired and, thus, would be entitled to coverage under the Policy, as well as under applicable law, but for Chubb's anticipatory breach of contract.

127. Plaintiff has complied with all applicable provisions of its Policy and/or those provisions have been waived by Chubb and/or Chubb is estopped from asserting them, and yet Chubb has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

128. As a result of Defendants' breaches of the Policy, Plaintiff has sustained substantial damages for which Defendants are thus liable, in an amount to be established at trial.

WHEREFORE, Plaintiff demands judgment as follows:

- (i) **On the First Cause of Action**, declaring that Defendants have a duty to extend full insurance coverage to Kiton for its claim of the Loss under the Policy and to indemnify Kiton for such losses;
- (ii) **On the Second Cause of Action**, declaring that Defendants have a duty to extend full insurance coverage to Kiton for its claim of the Loss under the Policy and to indemnify Kiton for such losses;
- (iii) **On the Third Cause of Action**, declaring that Defendants have a duty to extend full insurance coverage to Kiton for its claim of the Loss under the Policy and to indemnify Kiton for such losses;
- (iv) **On the Fourth Cause of Action**, awarding Kiton compensatory damages, together with incidental and consequential damages in an amount to be determined at the time of trial, but which, in no event, are less than the full limits of the Policy, plus interest, together with fees and costs;
- (v) **On the Fifth Cause of Action**, awarding Kiton compensatory damages, together with incidental and consequential damages in an amount to be determined at the time of

trial, but which, in no event, are less than the full limits of the Policy, plus interest, together with fees and costs; and

- (vi) **On the Sixth Cause of Action**, an Order granting Kiton specific performance of the Policy, and compelling Defendants to extend coverage thereunder, to the full limits of the Policy;
- (vii) **On the Seventh Cause of Action**, awarding Kiton compensatory damages, together with incidental and consequential damages in an amount to be determined at the time of trial, but which, in no event, are less than the full limits of the Policy, plus interest, together with fees and costs;
- (viii) **On the Eighth Cause of Action**, awarding Kiton compensatory damages, together with incidental and consequential damages in an amount to be determined at the time of trial, but which, in no event, are less than the full limits of the Policy, plus interest, together with fees and costs; and
- (ix) Together with such other and further relief as to the Court seems just and proper.

Dated: New York, New York
June 30, 2020

ADAM LEITMAN BAILEY, P.C.
Attorneys for Plaintiff

By: /s/ Massimo D'Angelo
Massimo F. D'Angelo, Esq.
One Battery Park Plaza, 18th Floor
New York, New York 10004
(212) 825-0365

VERIFICATION

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

ANGELO MACRI, being duly sworn, deposes and says: that he is the Chief Operating Officer of the Plaintiff named in the foregoing Verified Complaint; that he has read the foregoing Verified Complaint; that he knows the contents thereof; and that, to his knowledge, the Verified Complaint is true, except as to matters stated therein to be alleged upon information and belief, and, as to those matters, he believes them to be true.

Notarized online using audio-video communication

Angelo Macri

ANGELO MACRI

Sworn to before me this
30th day of June, 2020

In the State of Florida, in the County of Brevard

Terri Ronlev

Terri Ronlev

NOTARY PUBLIC

