

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

ROBINSON BROG LEINWAND GREENE
GENOVESE & GLUCK P.C.,

Plaintiff,

- against -

TRANSPORTATION INSURANCE COMPANY,
member of CNA INSURANCE GROUP,

Defendant.

Index No.:

SUMMONS

DATE FILED:

Plaintiff designates New York County
as the place of trial.

The basis of venue is Plaintiff's
principal place of business.

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within thirty (30) days 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 complaint.

Dated: New York, New York
February 22, 2022

ROBINSON BROG LEINWAND GREENE
GENOVESE & GLUCK, P.C.

By: S/Michael A. Eisenberg
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SUPREME COURT OF STATE OF NEW YORK
COUNTY OF NEW YORK

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ROBINSON BROG LEINWAND GREENE	:	Index No.
GENOVESE & GLUCK P.C.,	:	
	:	
Plaintiff,	:	
	:	COMPLAINT
- against -	:	
	:	
TRANSPORTATION INSURANCE COMPANY,	:	
member of CNA INSURANCE GROUP,	:	
	:	
Defendant.	:	
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Plaintiff Robinson Brog Leinwand Greene Genovese & Gluck P.C., (“Plaintiff” or “Insured”) as and for its Complaint against Defendant Transportation Insurance Company (“TIC”), alleges as follows:

1. Plaintiff is a professional corporation with its principal place of business in New York, New York. Plaintiff is a law firm whose only office location is maintained at 875 Third Avenue, 9th Floor, New York, New York.
2. TIC is corporation with its principal place of business in Chicago, Illinois, and is registered with the New York State Department of Financial Services.
3. TIC is one of the member companies of the CNA Group of Insurance Companies (“CNA”).
4. CNA, through its subsidiaries and member companies, writes various forms of property and casualty insurance, including, but not limited to, New York based entities.
5. CNA issued a liability insurance policy to Plaintiff bearing policy number 6011271266 (the “Policy”).

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6. The Policy was renewed by Plaintiff for the period February 23, 2020 through February 23, 2021. A true and correct copy of the Policy is attached hereto and incorporated herein as Exhibit A.

7. The Policy declaration identifies Plaintiff as the Insured, with an address at 875 3rd Avenue, 9th Floor, New York, New York, 10022 (the “Premises”).

8. The Policy contains property coverage for business personal property with a limit of \$1,230,354.

9. The Policy defines “Covered Property” as including but not limited to, “the buildings and structures at the premises, permanently installed machinery and equipment, specified personal property and specified business property.

10. Section A of the Businessowners Special Property Coverage Form provides that “We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from a Covered Cause of Loss.”

11. The Policy contains Business Income and Extra Expense (“BIEE”) coverage for the amount of actual loss sustained during a 12-month period.

12. The BIEE endorsement defines Business Income in pertinent part as “(1) Net Income (Net Profit or Loss before Income taxes) that would have been earned or incurred...and (2) Continuing normal operating expenses incurred, including payroll...”

13. The BIEE endorsement further provides that “We will pay for the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’ The ‘suspension’ must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.”

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14. The Policy’s BIEE coverage is supplemented and extended by a Civil Authority endorsement which provides coverage for “the actual loss of Business Income you sustain and reasonable and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises.”

15. Virus and/or pandemic exclusions are regularly contained in commercial policies.

16. The Policy does not contain an endorsement excluding coverage for loss caused by viruses or pandemics, despite the existence of a widely employed Insurance Services Office (“ISO”) form virus exclusion drafted in 2006.

17. The Policy became effective February 23, 2020, months after TIC had knowledge that the novel coronavirus, the causative agent for the disease known as COVID-19, could cause direct physical loss of or damage to property, and had caused such damage resulting in the widespread shuttering of businesses in China, Italy, and other countries.

18. As of July 16, 2020, in the United States alone more than 3.5 million people had been infected by the virus, and more than 135,000 had died.

19. As of July 16, 2020, in New York State alone more than 400,000 people had been infected by the virus, and more than 32,000 had died.

20. In a “Situation Report” released by the World Health Organization (“WHO”), it was reported that the virus can be transmitted through symptomatic transmission, pre-symptomatic transmission, or asymptomatic transmission.¹

21. Data from published studies provide evidence that COVID-19 is primarily transmitted from symptomatic people to others who are in close contact through respiratory

¹ See <https://rb.gy/jvz148>

droplets, by direct contact with infected persons, or by contact with contaminated objects and surfaces.²

22. The WHO has confirmed that the virus can live on contaminated objects or surfaces. According to a study documented in the The New England Journal of Medicine, COVID-19 was detectable in aerosols for up to three hours, up to four hours on metals, up to 24 hours on cardboard, and up to three days on plastic and stainless steel.³

23. The Premises contain all of these materials.

24. The virus was present in the building, and on property in the Premises in the building.

25. Several of Plaintiff's employees contracted the virus.

26. The presence of the virus at the Premises constitutes a direct physical loss or damage.

27. Plaintiff's property at the Premises damaged by the virus include permanently installed machinery and equipment, personal property and business property.

28. The presence of the virus at the Premises rendered the Premises unusable by physical forces.

29. Plaintiff suffered direct physical loss or damage to its property caused by the presence of the virus at the Premises.

30. Plaintiff's business is not a closed environment, and because staff, clients, delivery personnel, and others. constantly cycle in and out of the office, there is an ever-present

² *Id.*

³ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>; see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>.

risk that the office is contaminated and/or would be become and would continue to be contaminated.

31. The virus physically impacted Plaintiff, preventing its employees and members from being able to hold meetings and conferences, meet with and sign up new clients, initiate new lawsuits on behalf of current and potential clients, adequately or thoroughly prepare witnesses, move cases forward, adequately take depositions, as taking depositions by video-conferencing is not as effective as in-person depositions, collect fees from clients for work performed or that need to be performed, and other limitations in the practice of law. The foregoing limitations on practice resulted in fewer attorney billable hours, and thus, less revenue.

32. Accordingly, the virus caused the suspension of Plaintiff's operations at the Premises.

33. In response to the virus, former Governor Cuomo issued a series of Executive Orders prohibiting the operations of on-site personnel due to Covid-19.

34. Order No. 202.8, issued March 20, 2020, provides in pertinent part that, "[e]ach employer shall reduce the in-person workforce at any work locations by 100% . . . Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law."

35. Order No. 202.8 constitutes an order of a civil authority prohibiting access to the Premises based on a covered cause of loss.

36. Plaintiff was unable to access the Premises due to Order No. 202.8.

37. Plaintiff paid and TIC accepted all premium payments required under the Policy.

38. On or about April 13, 2020, pursuant to the terms and conditions of the Policy, Plaintiff submitted a claim under the Policy for direct physical loss at the Premises, business

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income interruption coverage, and loss due to the order of a civil authority, all covered causes of loss under the Policy.

39. By letter dated May 12, 2020, TIC denied coverage under the policy, asserting that the presence of the virus does not constitute a direct physical loss or damage.

40. Because the virus is a covered cause of loss and no Policy exclusion applies, TIC has breached its obligations under the Policy and declaratory relief is required to compel TIC to provide the coverage for which it contracted and accepted payments from Plaintiff.

FIRST CAUSE OF ACTION
Breach of Contract

41. Plaintiff realleges and incorporates by reference the above paragraphs as if fully set forth herein.

42. The Policy is a valid and enforceable contract between Plaintiff and TIC.

43. Plaintiff has paid its premiums and fulfilled all of its obligations under the Policy.

44. TIC has breached the Policy by, among other things, denying coverage for covered causes of loss, including but not limited to physical damage at the Premises and the suspension of Plaintiff's operations at the Premises due to the virus and orders of a civil authority.

45. No exclusion in the Policy bars coverage for Plaintiff's claims.

46. Plaintiff has been damaged in an amount to be proven at trial, including but not limited to pre and post-judgment interest, costs, expenses and fees.

SECOND CAUSE OF ACTION
Declaratory Judgment

47. Plaintiff realleges and incorporates by reference the above paragraphs as if fully set forth herein.

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48. An actual controversy has arisen between Plaintiff and TCI as to a covered cause of loss pursuant to the Policy and TCI's obligations thereunder.

49. The controversy includes but is not limited to whether the presence of the virus constitutes a physical loss or damage, whether Plaintiff's operations were suspended due to the virus, and whether orders of the New York State and/or local government restricting access to the Premises mandates coverage under the civil authority endorsement.

50. Plaintiff therefore seeks a declaration from the Court i) that the Policy covers Plaintiff's claim, and ii) that no Policy exclusion applies to bar or limit coverage to Plaintiff's claim.

WHEREFORE, Plaintiff respectfully demands a judgment against Defendants as follows:

- a. a monetary judgment in an amount to be determined at trial, together with pre-judgment and post-judgment interest, costs, expenses and fees; and
- b. a declaration i) that the Policy covers Plaintiff's claim, and ii) that no Policy exclusion applies to bar or limit coverage to Plaintiff's claim; and
- c. such other and further relief as this Court deems just, proper and equitable.

Dated: New York, New York
February 22, 2022

ROBINSON BROG LEINWAND
GREENE GENOVESE & GLUCK P.C.

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