

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAUBR RESTAURANT CORP. d/b/a BRUNO'S  
RESTAURANTE ITALIANO,

Plaintiff,

## COMPLAINT

- against -

Index No. /2020

NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendant.

The plaintiff BR Restaurant Corp. d/b/a Bruno's Restaurante Italiano, by its attorneys  
Cole Hansen Chester LLP, complaining of the defendant respectfully alleges:

*The Parties*

1. The plaintiff *BR Restaurant Corp. d/b/a Bruno's Restaurante Italiano* (hereinafter "Bruno's Restaurante") is a restaurant business located at 158-22A Crossbay Boulevard, Howard Beach, New York.

2. The defendant *Nationwide Mutual Insurance Company* (hereinafter "Nationwide") is a foreign corporation organized and existing under the laws of State of Ohio and duly authorized to do insurance business and doing business in the State of New York, County of Nassau.

3. Plaintiff Bruno's Restaurante has a business interruption insurance policy with defendant Nationwide wherein defendant has refused plaintiff's claim for coverage as further detailed below.

*Statement of Claim in Brief*

4. Whereas rule of law mandates material ambiguity in an insurance policy held against the insurer, whereas strong equities favor the insured in present extraordinary circumstances: defendant insurer must make good business interruption coverage reasonably promised to the insured per the strict interpretation of the terms of the insurance contract.

5. The business interruption insurance policy with the insured in this case has been ambiguously if not intentionally written in deceptive manner – formatted as to make coverage appear broader than the insurer is willing to provide. In fitting consequence, the deceptive formatting created an ambiguity in interpreting the coverage at issue. This ambiguity must be held against the insurer as a matter of law.

6. The insurance policy as strictly written promises omnibus business interruption insurance coverage except for express conditional limitation on coverage viz. *exclusions* represented as being contained in designated sections only. The insurer then placed an omnibus exclusion, the exclusion at issue, concerning virus infection, in an undesignated other section. One not reasonably likely to be found by the insured and contrary to the promise made in the earlier conditional limitation provision.

7. An insurance company with years of experience, batteries of lawyers, knew or reasonably should have known, formatting the policy in this way is likely to mislead the insured on coverage. Hoisted on its own petard in doing so, the insurer created ambiguity to be construed against it per the material facts of the claim detailed below.

8. The plaintiff insured, Bruno's Restaurante, Howard Beach Queens, paid \$40,000 per year in premiums to defendant Nationwide for three years – for coverage reasonably expected and never received.

*Material Facts of the Claim*

9. The subject Nationwide business interruption insurance policy was renewed in 2019 by the insured Bruno's Restaurante as part of an insurance package with a premium of \$40,000 per year.

10. The business interruption insurance coverage promised is for *direct physical loss or damage to covered property* from a *covered cause of loss*.

11. In this case, the insurer denies coverage by letter to the insured dated April 2, 2020 stating “coronavirus and government action” not a covered loss. More specifically, the insurer stated that pursuant to the terms of the policy *there has been no physical loss or damage*

to the described premises arising from a covered cause of loss. See defendant insurer's denial letter annexed hereto as **Exhibit A**.

12. The *described premises* under the policy is Bruno's Restaurante located at 158-22A Crossbay Boulevard, Howard Beach New York.

13. The insured's claim for coverage of *physical loss* to the described premises arises from prohibition of on-premise use of the restaurant per the civil authority viz. the New York Governor's emergency order prohibiting on-premise operation or use of the restaurant.

14. Insurance policy *Section 5j* under the heading *Civil Authority* expressly promises to pay for *physical loss or damage* to the described premises caused by civil authority which prohibits access to the premises arising *from any covered cause of loss*.

15. Introductory paragraph A(3) of the policy defining *covered cause of loss* states cause of loss is covered unless *excluded* or *limited* in the following designated provisions of the policy: *Section B*; as limited in *Section A4*; as limited or excluded in *Section E*; *Section F*.

16. Nevertheless, at pages 5 and 6 of the insurer's denial letter (Exhibit A) there is quoted *Section K* of the policy entitled *Amendments to Property Coverage*. Billeted at item 8 of *Section K* is a provision peremptorily stating *virus* as an omnibus exclusion to coverage. Item 8 of *Section K* is thus deceptively written as an omnibus exclusion to coverage inconsistent and

contrary to the prior conditional limitation limiting all exclusions to business loss coverage to expressly designated sections other than Section K.

17. The conditional limitation on all policy coverage exclusions limited to designated sections is irreconcilable with the outlier omnibus policy exclusion relied upon by the insurer in denying coverage. It is ambiguity in coverage created by the contradiction of material terms in the insurance policy.

18. Ambiguity favors the insured at law.

19. As a matter of law, the defendant insurer is therefore in breach of contract denying the claim of the plaintiff insured for business interruption loss.

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

20. The plaintiff repeats and re-alleges paragraphs 1 through paragraph 19 as if fully set forth herein.

21. That by reason of the defendant's breach of the promise of business interruption insurance, the plaintiff has been damaged in the amount of \$360,000 (Three Hundred Sixty Thousand Dollars) or such other or greater amount as may be proven at a trial of this action.

**WHEREFORE**, the plaintiff insured demands judgment as follows:

1. On the First Cause of Action against the defendant insurer for breach of contract damages in the amount of \$360,000 (Three Hundred Sixty Thousand Dollars) or such other or greater amount as may be proven at a trial of this action.
2. Judgment interest and costs.
3. Such other and further relief as may be just and proper.

Dated: New York, New York  
May 25, 2020

Yours, etc..



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