

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP,

Index No.

COMPLAINT

Plaintiff,

-against-

VALLEY FORGE INSURANCE COMPANY and
CNA FINANCIAL CORPORATION,

Defendants.
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Plaintiff, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP, appearing *pro se*, as and for its complaint against defendants, Valley Forge Insurance Company and CNA Financial Corporation, alleges the following:

NATURE OF ACTION

1. This is an action for declaratory judgment resulting from defendant Valley Forge’s bad faith denial of Abrams, Fensterman’s claim for business interruption insurance coverage pursuant to the terms of a policy issued by defendant for losses sustained as a result of the COVID-19 virus.

2. After nearly two months of review, including numerous conference calls and requesting the production of significant amounts of data showing the actual financial losses suffered by plaintiff, defendant Valley Forge denied Abrams, Fensterman’s claim in a letter dated May 27, 2020. That denial was in bad faith and contrary to the language of the governing policy.

3. Abrams, Fensterman is therefore entitled to a judgment declaring that defendant is entitled to provide coverage for business interruption losses suffered by plaintiff as a result of COVID-19.

PARTIES AND VENUE

4. Abrams, Fensterman is a limited liability partnership organized under the laws of the State of New York that maintains an office at One MetroTech, 17th Floor, Brooklyn, New York.

5. Defendant Valley Forge is upon information and belief a foreign corporation that is authorized to issue insurance policies in the State of New York.

6. Upon information and belief, CNA Financial Corporation is the parent holding company of Valley Forge.

7. Venue is proper in this County pursuant to NY CPLR 503, as this is the County where plaintiff resides and the County where a substantial part of events giving rise to the claim occurred.

FACTUAL BACKGROUND

Valley Forge Agrees to Insure Abrams, Fensterman

8. Abrams, Fensterman is a full-service commercial law firm that employs approximately 220 attorneys and non-attorney support staff at four office locations throughout New York maintained in Brooklyn, Long Island, White Plains, and Rochester.

9. In 2018, Abrams, Fensterman joined the New York Law Journal's rankings of the 100 largest law firms in New York State.

10. Abrams, Fensterman's practice groups include commercial litigation, insurance defense, matrimonial, and healthcare collections.

11. In or about January 28, 2020, Abrams, Fensterman entered into a contract of insurance with defendant Valley Forge designated policy number B602468963 for the period January 28, 2020, to January 28, 2021, pursuant to which Valley Forge agreed to pay for "direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resolving from a Covered Cause of Loss" (the "Policy").

12. "Covered Property" is defined to include the four physical locations where Abrams, Fensterman maintains offices, and "Covered Causes of Loss" is defined as "risks of direct physical loss" (emphasis omitted).

13. The Policy also provides civil authority coverage, which applies to actual loss of business income sustained and reasonable and necessary extra expenses incurred as a result of any action by a civil authority prohibiting access to any of the Abrams, Fensterman offices.

14. Unlike many business interruption coverages, the Abrams, Fensterman Policy does not include an exclusion for viruses or pandemics.

15. Abrams, Fensterman paid in full all premiums required by the Policy, and the Policy has remained in effect since its issuance.

The COVID-19 Outbreak

16. In March 2020, New York State, like many other states, began to experience the dramatic effects of the COVID-19 pandemic. Through May, New

York State experiences 198,255 confirmed cases of COVID-19 infection, including over 16,000 confirmed deaths and another 5,000 probable deaths.

17. Indeed, four separate Abrams, Fensterman employees tested positive for COVID-19. These employees worked at three of the four offices covered by the Policy.

18. It is well documented that COVID-19 physically infects and remains on surfaces of objects for up to twenty-eight days, as evidenced by the unprecedented decision by Governor Cuomo to stop all subway service – which prides itself on operating 24 hours a day, seven days a week – for five hours each day to physically scrub and disinfect each subway car.

19. As a result, Abrams, Fensterman closed all of its offices to have them disinfected with the product Bio Protect, which is designed to protect against germs, bacteria, and viruses for 90 days.

20. On March 22, 2020, Governor Cuomo issued an Executive Order closing all non-essential businesses, including Abrams, Fensterman's four covered office locations, and closing the New York State Court System to all non-essential matters. This Executive Order barred all of Abrams, Fensterman's employees from physically accessing their offices.

21. As a result of these closures, Abrams, Fensterman lost substantial revenue due to its staff member's inability to access its offices and equipment, loss of efficiencies, and loss of productivity.

Abrams, Fensterman Submits a Claim to Valley Forge

22. On April 1, 2020, Abrams, Fensterman submitted a claim for coverage under the Policy to Valley Forge.

23. For nearly two months, Valley Forge claimed to investigate the financial damages of the claim, including by requesting Abrams, Fensterman to provide voluminous documents demonstrating its losses and multiple conference calls to discuss the materials and basis of the claim.

24. Finally, by letter dated May 27, Valley Forge denied Abrams, Fensterman's claim, claiming that the Policy "does not respond to provide coverage for the claim presented."

**AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)**

25. Abrams, Fensterman repeats and realleges each of the foregoing allegations as if fully set forth hereat.

26. An actual, justiciable controversy exists between Abrams, Fensterman and Valley Forge concerning the terms of the Policy and the parties' respective rights, duties, responsibilities, and obligations requiring Court intervention.

27. In contravention of the plain terms of the Policy, Valley Forge has refused to provide any coverage to Abrams, Fensterman as a result of losses sustained as a result of the COVID-19 pandemic.

WHEREFORE, Abrams, Fensterman is entitled to a judgment declaring that the confirmed presence of the COVID-19 virus in three of its offices constitutes physical damage and that Governor Cuomo's Executive Order closing all non-

essential businesses, including the Abrams, Fensterman offices, constitutes an act of a civil authority prohibiting access to the covered premises, directing Valley Forge to reimburse Abrams, Fensterman for all losses incurred as a result (up to the Policy limits), and awarding such other and further relief as the Court deems just, proper, and equitable.

Dated: May 28, 2020

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP

By:  _____

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