

**UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF NEW YORK**

JAMES SERVEDIO,

Plaintiff,

vs.

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA, THE TRAVELERS
INDEMNITY COMPANY,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, James Servedio (“Plaintiff” or “Servedio”) brings this Complaint, alleging relief against Defendant, Travelers Casualty Insurance Company of America and/or The Travelers Indemnity Company (“Defendant” or “Travelers”) and avers as follows:

I. NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiff’s contract of insurance with the Defendant, Travelers.

2. In light of the Coronavirus global pandemic and state and local orders mandating that all non-essential in store businesses must shut down on March 20, 2020, Plaintiff’s live event sound and stage business has suffered business loss. Because of the shutdown, Plaintiff was unable to operate his business.

3. Plaintiff’s insurance policy provided coverage for all non-excluded business losses, and thus provide coverage here.

4. As a result, Plaintiff is entitled to declaratory relief that its business is covered for all business losses that have been incurred in an amount greater than \$80,000.

II. JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and Defendant. Further, Plaintiff has suffered business losses in an amount greater than \$80,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of those business losses. *Id.* at § 1332(a).

6. This Court has personal jurisdiction over Defendant, Travelers. At all relevant times Defendant has engaged in substantial business activities in the State of New York. At all relevant times Defendant transacted, solicited, and conducted business in New York through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in New York. Defendant purposefully availed itself of personal jurisdiction in New York because it contracted to provide insurance to Plaintiff in New York which is the subject of this case.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) because Defendant are corporations that have substantial, systematic, and continuous contacts in New York and within the Southern District of New York.

III. PARTIES

8. At all relevant times, Plaintiff, Servedio is authorized to do business the State of New York. Plaintiff's business is located at 133 Bryant Road, Norwich, NY 13185 ("Insured Property"). Servedio was issued a policy by Travelers to cover business interruption loss from September 7, 2019 until September 7, 2020. The policy number is 680-6H145157-19-42. ("the Policy"). The Policy was intended to cover losses to business interruption. *See* Declaration attached hereto as Exhibit 1.

9. Defendant Travelers' principal place of business is in Connecticut. It is located at

1 Tower Square Hartford Connecticut 06183. It is a citizen of Connecticut. Defendant provided the Policy to Plaintiff.

10. The Policy is currently in full affect in providing, among other things, personal property, business income and extra expense, contamination coverage and additional coverage.

11. Plaintiff, Servedio informally submitted a claim to/c Travelers. Defendant advised Plaintiff a submission would be futile. Defendant contends, *inter alia*, that Plaintiff did not suffer physical damage to its property directly and stating other reasons why Plaintiff purportedly is not entitled to coverage for the losses and damages claimed.

IV. FACTUAL BACKGROUND

A. Insurance Coverage

12. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority and for business loss for property damage.

13. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Insured Property is specifically prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff's Insured Property. This additional coverage is identified as coverage under "Civil Authority."

14. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means coverage for all covered losses, including but not limited to direct physical loss or direct physical damage, unless the loss is specifically excluded or limited in the Policy.

15. The Policy also covers for damages resulting from business interruption when there is property damage.

16. Based on information and belief, the Defendant has accepted the policy premiums

with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown and property damage. The Virus Exclusion was not properly disclosed and does not apply to the pandemic.

B. The Coronavirus Pandemic

17. The scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation.

18. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited April 9, 2020).

19. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.

20. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

21. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

C. Civil Authority

22. On March 7, 2020 Governor Cuomo declared a State of disaster Emergency for the entire state of New York as a result of COVID-19.

23. On March 12, 2020, Governor Cuomo set restrictions on large gatherings.

24. On March 20, 2020, the State of New York issued a stay at home order that all non-

essential workers must stay at home as a result of COVID-19. This Order has been extended to at least May 15,2020.

25. On April 17, 2020, the State of New York ordered all individuals over the age of two to wear face covering when in a public place.

26. Plaintiff's live event sound and stage business is unable to operate due to the stay-at-home orders for public safety issued by the Governor of New York and the State of New York generally.

27. Further, on April 10, 2020 President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff.

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. ***Business interruption insurance***, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. *But if I had it I'd expect to be paid*. You have people. I speak mostly to the restaurateurs, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when

they finally need it, the insurance company says ‘we’re not going to give it.’ We can’t let that happen.

https://youtu.be/_cMeG5C9TjU (last visited on April 17, 2020) (emphasis added).

28. The President is articulating a few core points:
 - a. Business interruption is a common type of insurance.
 - b. Businesses pay in premiums for this coverage and should reasonably expect they’ll receive the benefit of the coverage.
 - c. This pandemic should be covered unless there is a specific exclusion for pandemics.
 - d. If insurers deny coverage, they would be acting in bad faith.

29. These Orders and proclamations, as they relate to the closure of all “non-life-sustaining businesses,” evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiff’s, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated.

D. Impact on Plaintiff

30. As a result of the Orders referenced herein, Plaintiff shut its doors to his business.

31. Plaintiff’s business loss occurred when the State of New York declared a State of Emergency on March 7, 2020. It suffered further when the State of New York required all non-essential businesses to shut down on March 20, 2020.

32. Prior to March 7, 2020, Plaintiff was operating at full capacity. Plaintiff’s business does not operate in a closed environment. There is an ever-present risk that the Insured Property serviced by Plaintiff is contaminated and would continue to be contaminated.

33. Businesses like the Plaintiff’s are susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Insured Property and

remain viable for far longer as compared to a facility with open-air ventilation.

34. Plaintiff's business is also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa.

35. The virus is physically impacting Plaintiff. Any effort by Defendant to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger the Plaintiff and the public.

36. A declaratory judgment determining that the coverage provided under the Policy exists and is necessary so as to prevent the Plaintiff from being left without vital coverage acquired to ensure the survival of his business due to the shutdown caused by the civil authorities' response. As a result of these Orders, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

CAUSE OF ACTION
DECLARATORY RELIEF

37. Plaintiff re-alleges and incorporate by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

38. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

39. An actual controversy has arisen between Plaintiff and Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiff contends and, on information and belief, the Defendant disputes and denies that:

- a. The Orders constitute a prohibition of access to Plaintiff's Insured Property;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;

- c. The Policy's Exclusion of Loss Due to Virus or Bacteria does not apply to the business losses incurred by Plaintiff here.
- d. The Orders trigger coverage;
- e. The Policy provides coverage to Plaintiff for any current and future civil authority closures of business in New York due to physical loss\or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters;
- f. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Insured Property; and
- g. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

40. Plaintiff seeks a Declaratory Judgement to determine whether the Orders constitute a prohibition of access to Plaintiff's Insured Property as Civil Authority as defined in the Policy.

41. Plaintiff further seeks a Declaratory Judgement to affirm that the Order triggers coverage.

42. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff for any current and future Civil Authority closures of businesses in the State of New York due to physical loss or damage from the Coronavirus and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the Insured Property.

V. **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff herein prays as follows:

- 1) For a declaration that the Orders constitute a prohibition of access to Plaintiff's Insured Property.
- 2) For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- 3) For a declaration that the Orders trigger coverage under the Policy.

4) For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of businesses in New York due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.

5) For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Insured Property or the immediate area of the Plaintiff's Insured Property.

6) For such other relief as the Court may deem proper.

TRIAL BY JURY IS DEMANDED

Dated: May 19, 2020

Respectfully submitted,

/s/ Michael Weinkowitz

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