

**NITE, NITE LLC D/B/A CITY BAR
AND CENTRAL TACO**

SUIT NUMBER: DIV:

VERSUS

19TH JUDICIAL DISTRICT COURT

**CERTAIN UNDERWRITERS AT
LLOYD'S LONDON, INDIAN HARBOR
INSURANCE COMPANY, ET AL**

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PETITION FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel comes the plaintiff, NITE, NITE LLC D/B/A CITY BAR AND CENTRAL TACO, a Louisiana Limited Liability Company, with its principal place of business in Baton Rouge, Louisiana that respectfully represents:

1.

The defendant, CERTAIN UNDERWRITERS AT LLOYD'S LONDON is a foreign insurance company authorized to do and doing business in the state of Louisiana, which may be served through its agent for service of process at Dinker, Biddle & Reath LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036 through the Louisiana Long Arm Statute.

2.

The defendant, INDIAN HARBOR INSURANCE COMPANY is a foreign insurance company authorized to do and doing business in the state of Louisiana, which may be served through its agent for service of process at the Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, Louisiana 70809.

3.

The defendant, HDI GLOBAL SPECIALTY SE is a foreign insurance company authorized to do and doing business in the state of Louisiana, which may be served through its agent for service of process at the Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, Louisiana 70809.

4.

This is a lawsuit for declaratory judgment filed pursuant to La. C.C.P. article 1871-1883. The Plaintiff made a claim for the loss of business income which it sustained as a result of a "shutdown order" issued by the Governor of the State of Louisiana on March 17, 2020. See Exhibit 1 attached.

5.

As described in more detail hereafter, the Plaintiff made a claim for loss of business income due to its compliance with the Louisiana order. See Exhibit 2 attached. The Defendants, CERTAIN UNDERWRITERS AT LLOYD'S LONDON, INDIAN HARBOR INSURANCE COMPANY, and HDI GLOBAL SPECIALTY SE, have denied the Plaintiff's claim. See Exhibit 3.

**THE PREVALENCE OF THE COVID-19 VIRUS IN LOUISIANA AND THE
RESPONSE OF THE LOUISIANA CIVIL AUTHORITY**

6.

In March, 2020, the Governor of Louisiana, recognizing the widespread prevalence of the COVID-19 virus in the State of Louisiana, and the dangerous and deadly nature of that virus, declared a state of emergency.

7.

Because of the widespread, dangerous and deadly nature of the virus, the Governor issued the shutdown (aka the stay-at-home) order on March 17, 2020. See Exhibit 1 attached.

THE INSURANCE POLICY

8.

The relevant part of the policy that is at issue in this declaratory judgment action is attached hereto as Exhibit 4.

9.

The policy provides coverage for loss of business income arising from an interruption of the Plaintiff's business caused by an order from a civil authority (a government official). The precise language is as follows:

... We will pay for the actual "loss of business income" you sustain caused by action of civil authority that prohibits access to the described premises (the insured's premises)...

10.

The damage to someone else's property – that causes action by the civil authority – must be property located within one mile of the insured's premises, and the action of the civil authority must be taken in response to a dangerous physical condition.

11.

At the time Plaintiff submitted a claim to the Defendant, the Defendant was well aware the shutdown order (Exhibit 1) had been entered because of the widespread nature of COVID-19, an airborne virus, throughout the State of Louisiana.

12.

In summary, at the time the Plaintiff made its claim, the Defendant was well aware that:

- Plaintiff had insurance for loss of “business income”;
- There is insurance for loss of “business income” if that loss results from the action of a “civil authority” (a government agency);
- The action of the civil authority need not be based upon damage to the insured’s property, but may be based upon damage to other property within one mile of the insured’s premises;
- There was evidence of such property damage, as the presence of the virus in the air and on surfaces may constitute property damage; and
- There was evidence of a widespread presence of the virus throughout the State of Louisiana and in Baton Rouge, Louisiana, and there was evidence that the presence of the virus constituted a dangerous physical condition.

13.

With full knowledge of the policy provisions summarized above, the Defendant denied the Plaintiff’s claim.

DECLARATORY JUDGMENT – THE ISSUES

14.

La. C.C.P. arts. 1871-1883 provides that the Court may enter declaratory judgment declaring the rights of the parties herein.

15.

The Plaintiff respectfully submits to the Court that there are several issues raised by the Plaintiff’s claim, and the insurance company’s denial of that claim, that are appropriate for a declaratory judgment at this time. Those issues are as follows:

- Whether the presence of the virus constitutes damage to property or to applicable legal authorities; and
- Whether there is coverage under the terms of the policy issued by Defendants because of the widespread presence of the virus throughout the State of Louisiana and throughout Baton Rouge and East Baton Rouge Parish, Louisiana.

16.

The Plaintiff further submits to the Court that the facts and the case law will support a finding in favor of the Plaintiff on each of the above issues. Thus, the Court should render

declaratory judgment that the Plaintiff has coverage for the Plaintiff's losses of business income under the terms of the Plaintiff's policy.


DAMAGES

17.

Should the Court render declaratory judgment on the coverage issue, in favor of the Plaintiff, the Plaintiff does not seek the Court's determination or an award of damages at this time.

WHEREFORE, in consideration of the foregoing, the Plaintiff requests that the Court grant declaratory judgment in favor of the Plaintiff and order that the Plaintiff has insurance coverage, to be provided by the Defendants, Certain Underwriters at Lloyd's, London, Indian Harbor Insurance Company, and HDI Global Specialty SE for the Plaintiff's loss of business income arising from the action of a civil authority, the Governor of Louisiana. The Plaintiff further requests all other proper and appropriate relief.

RESPECTFULLY SUBMITTED:

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Baton Rouge, LA 70809

HDI GLOBAL SPECIALTY SE

Through its agent for process:
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