

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

ISLAND GASTROENTEROLOGY CONSULTANTS PC
AND ISLAND ENDOSCOPY CENTER, LLC.,

Index No:
Filed:

Plaintiff(s),

Plaintiff designates SUFFOLK
County as the place of trial

-against-

The basis of venue is
PLACE OF BUSINESS

GENERAL CASUALTY COMPANY OF
WISCONSIN,

SUMMONS

Defendants.


Plaintiff
1175 Montauk Highway Ste 1
West Islip, New York 11795
County of Suffolk

To the above-named Defendant(s):

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 30 days after the service is complete 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: Woodbury, New York
March 8, 2021

BUTTAFUOCO & ASSOCIATES, PLLC

By: 
SHAWN M. ALFANO, ESQ.
Attorneys for Plaintiff
144 Woodbury Road
Woodbury, New York 11797
(516) 746-8100

Defendants' Addresses:

- 1. GENERAL CASUALTY COMPANY OF WISCONSIN
One General Drive
Sun Prairie, WI 53596

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
ISLAND GASTROENTEROLOGY CONSULTANTS PC AND
ISLAND ENDOSCOPY CENTER LLC

Plaintiffs,

vs.

Index #

GENERAL CASUALTY COMPANY OF
WISCONSIN,

Defendant,
-----X

Plaintiff Island Gastroenterology Consultants PC (“Island Gastroenterology”) and
Island Endoscopy Center LLC (“Island Endoscopy”) (collectively, “Plaintiffs”), Complaint,
alleging against Defendant General Casualty Company of Wisconsin (“Defendant” or “General
Casualty”) as follows:

I. NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiff’s contracts of insurance with the Defendant.
2. In light of the Coronavirus global pandemic and state and local directives, Plaintiffs shut their doors for patients on March 24 (Island Endoscopy) and March 25 (Island Gastroenterology), 2020, and had begun to limit the number of patients immediately prior to these dates.
3. Plaintiffs’ insurance policies provide coverage for all non-excluded business losses, and thus provides coverage here.

4. As a result, Plaintiffs are entitled to declaratory relief for all business losses that have been incurred in an amount greater \$150,000.00

II. JURISDICTION

5. This court has subject matter jurisdiction over this action pursuant to NY CPLR 3001. Further, Plaintiffs have suffered business losses in an amount greater than \$150,000.00

6. The court has personal jurisdiction over Defendant because at all relevant times it 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.

7. Venue is proper in this County pursuant to NY CPLR 503 (c) and (d) because both Plaintiff Corporation and the Plaintiff LLC principal offices are located in this county and are deemed residents of this county.

8. The acts and/or omissions complained of took place, in whole or in part, within the venue of this Court.

III. PARTIES

9. Plaintiff Island Gastroenterology Consultants PC (“Island Gastroenterology”) is a New York professional corporation with its principal place of business in Suffolk County, New York, authorized to do business and doing business in New York. Island Gastroenterology operates a healthcare office at 1111 Montauk Highway, Floor 3, West Islip, New York 11795.

10. Plaintiff Island Endoscopy Center LLC (“Island Endoscopy”) is a New York limited liability company with its principal place of business in Suffolk County, New York authorized to do business and doing business in New York. Each member of Island Endoscopy is a citizen and resident of New York. Island Endoscopy operates a healthcare office at 1175 Montauk Highway, Suite 1, West Islip, New York 11795

11. Defendant General Casualty Company of Wisconsin (“General Casualty”) is a Wisconsin corporation with its principal place in Sun Prairie, Wisconsin. At all relevant times General Casualty subscribed to Policy CFB1329178 issued to Plaintiff Island Gastroenterology for the period of September 1 2019 through September 1, 2020. *See* Policy Declaration page, attached hereto as Exhibit 1. At all relevant times, General Casualty subscribed to Policy CFB1329 issued to Plaintiff Island Endoscopy for the period of September 1, 2019 though September 1, 2020. *See* Policy Declaration page, attached hereto as Exhibit 1. Defendant is transacting in the business of insurance in the State of New York and the basis of this suit arises out of such conduct.

IV. FACTUAL BACKGROUND

A. INSURANCE COVERAGE

12. On or about September 1, 2019, Defendant entered into a contract of insurance with Plaintiff Island Gastroenterology, and a separate contract of insurance with Plaintiff Island Endoscopy. Each Plaintiff agreed to make payments to Defendant in exchange for Defendant’s promise to indemnify each Plaintiff for losses including, but not limited to, business income losses at each Plaintiff’s respective business locations in West Islip, New York (individually, an “Insured Property,” and collectively, the “Insured Properties”)

13. The Insured Properties consist of (i) a medical office (operated by Plaintiff Island Gastroenterology) for the evaluation and treatment of diseases of the digestive system, located at

1111 Montauk Highway, Floor 3, West Islip, New York 11795, and (ii) a license ambulatory surgery center (operated by Plaintiff Island Endoscopy) specializing in surgery and related procedures relation to the diagnosis, treatment, and prevention of diseases of the digestive system, located at 1175 Montauk Highway, Suite 1, West Islip, New York 11795.

14. Prior to March 24-25, 2020, Plaintiff Island Gastroenterology's office was open seven days a week, 9a.m. to 7 p.m., seeing an average of 500 patients per week. Plaintiff Island Endoscopy's facility was open seven days a week, 8 a.m. to 6 p.m., seeing an average of 200 patient procedures per week.

15. The Insured Properties is covered under policies issued by the Defendant with policy numbers believed to be CFB1329178 (for Island Gastroenterology) and CFB1329179 (for Island Endoscopy). Each policy appears to be materially identical, and thus are referred to hereafter as the "Policies".

16. The Policies are currently in full effect, providing, among other things property, business personal property, business income and extra expense, contamination coverage, and additional coverages between the period of September 1, 2019 through September 1, 2020.

17. Plaintiffs faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverage in the event of business interruption or closures by order of Civil Authority.

18. Under the Policies, 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 Properties 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 each Plaintiff's Insured Property. This additional coverage is identified as coverage under "Civil Authority."

19. Each Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means direct physical loss or direct physical damage unless the loss is specifically excluded or limited in each Policy.

20. An all-risk policy is one that projects against catastrophic events, such as the Coronavirus (also known as COVID-19, a pandemic currently, being experienced on a global scale, has resulted in the widespread, omnipresent and persistent presence of COVID-19 in and around each Plaintiff's Insured Property and adjacent properties.

21. Each Plaintiff's all-risk policy includes coverage for business interruption, which is standard in most all-risk commercial property insurance policies, along with coverage for extended expenses.

22. Each Plaintiff purchased the aforementioned respective Policy expecting to be insured against losses, including, but not limited to, business income losses each of their respective offices or facilities.

23. Each Plaintiff purchased, among other coverages, business interruption coverage for closure by Order of Civil Authority.

24. Based upon information and belief, the Policies provided by Defendant included language that is essentially standardized language adopted from and/or developed by the ISO ("Insurance Service Office"). The ISO, founded in 1971, provides a broad range of services to the property and casualty insurance industry. In addition to form policies, ISO collects and manages databases containing large amounts of statistical, actuarial, underwriting, and claims information, fraud-identification tools, and other technical services. ISO describes itself as follows: "ISO provides advisory services and information to many insurance companies...ISO develops and publishes policy language that many insurance companies use as the basis for their

products. “ISO General Questions, Verisk, <http://www.verisk.com/insurance/about/faq/>(last visited July 17, 2020).

25. The language in the Policies is language that is “adhesionary” in that Plaintiffs were not participants in negotiating or drafting its content and provisions.

26. Each Plaintiff possessed no leverage or bargaining power to alter or negotiate the terms of each Policy, and more particularly, Plaintiffs had no ability to alter, change or modify standardized language derived from the ISO format.

27. Each Plaintiff purchased each Policy with an exception that it was purchasing a policy that would provide coverage in the event of business interruption and extended expenses, such as that suffered by each Plaintiff as a result of COVID-19.

28. At no time had Defendant, or its agents, notified either Plaintiff that the coverage that either Plaintiff has purchased pursuant to an all-risk policy that included business interruption coverage, contained exclusions and provisions that purportedly undermined the very purpose of the coverage; providing benefits in the occurrence of business interruption and incurring extended expenses.

29. The COVID-19 pandemic caused direct physical loss of or damage to the Covered Property under the Policy by denying use of and damaging the Covered Property and by causing a necessary suspension of operations during the period of restoration. Further, the COVID-19 pandemic renders the Covered Property unsafe, uninhabitable, or otherwise unfit for their intended use, which constitutes direct physical loss.

30. The purported exclusions of each Policy that defendant has or is expected to raise in defense of each Plaintiff's claim under the Civil Authority coverage of each Policy are strained and contradictory to the provision of Civil Authority order coverage.

31. Furthermore, Defendant's expected application of exclusions to undermine each Plaintiff's bargained-for coverage violates public policy of the State of New York as a contract of adhesion and hence not enforceable against each Plaintiff.

32. Access to each Plaintiff's business was prohibited by Civil Authority Orders and each Policy provides for coverage for actual loss of business sustained and actual expenses incurred as a covered loss caused by the prohibitions of the Civil Authority Orders in the Area of each Plaintiff's Insured Property.

33. Plaintiffs had a reasonable expectation that the Policies' business interruption coverage applied where a civil authority forced closure of the business for an issue of public safety in the immediate area surrounding each Insured Property.

34. Each Policy does not exclude the losses suffered by each Plaintiff and therefore each Policy does provide coverage for those losses.

35. Each Plaintiff suffered direct physical loss or damage within the definitions of each Policy as loss of use of property, as in this case, constitutes loss or damage.

36. The Policy also does not define the terms "direct", "physical," "loss," or "damage" within the relevant coverage provisions, rendering those terms ambiguous and requiring them to be construed in favor of the Policyholder.

37. Regardless, Plaintiff did suffer direct physical loss or damage within the definitions of the Policy as loss of use of property, as in this case, constitutes loss or damage, as

does the presence of, or inherent risk of the existence of, the COVID-19 molecule at the Insured Property.

38. Access to Plaintiff's business was prohibited by Civil Authority Orders and the Policy provides for coverage for actual loss of business sustained and actual expenses incurred as a covered loss caused by the prohibitions of the Civil Authority Orders in the area of Plaintiff's Insured Property.

39. Plaintiff had a reasonable expectation that the Policy's business interruption coverage applied where a civil authority forced closure of the business for an issue of public safety in the immediate area surrounding the Insured Property.

40. The Policy does not exclude the losses suffered by Plaintiff and therefore the Policy does provide coverage for those losses.

41. Plaintiff suffered direct physical loss or damage within the definitions of the Policy as loss of use of property, as in this case, constitutes loss or damage.

42. The virus and bacterium exclusions do not apply because Plaintiff's losses were not directly caused by a virus, bacterium or other microorganism. Instead, Plaintiff's losses were caused by the entry of Civil Authority Orders, particularly those by the Governor of New York and state agencies, to mitigate the spread of COVID-19.

43. Further, the virus exclusion was first permitted by the state insurance departments due to misleading and fraudulent statements by the ISO that property insurance policies do not and were not intended to cover losses caused by virus, and so the virus exclusion offers mere clarification of existing law. To the contrary, before the ISO made such baseless assertions, courts considered contamination by a virus to be physical damage. Defendant's use of the virus exclusion to deny coverage here shows that the virus exclusion was fraudulently adopted,

adhesionary, and unconscionable. *See* <https://www.propertycasualty360.com/2020/04/07/here-we-go-again-virus-exclusion-for-covid-19-and-insurers/> (last visited July 13, 2020).

44. 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.

B. THE CORONAVIRUS PANDEMIC

45. 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 each Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the healthcare office or facility.

46. The virus that causes COVID-19 remains stable and transmittable to 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 July 13, 2020).

47. 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.

48. On March 11, 2020 the World Health Organization (“WHO”) made the assessment that COVID-19 shall be characterized as a pandemic. *See* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (lasted visited July 13, 2020)

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

50. A particular challenge with the novel coronavirus is that it is possible for a person to be infected with COVID-19 but be asymptomatic. Thus, seemingly, healthy people unknowingly spread the virus via speaking, breathing and touching objects.

51. While infected droplets and particles carrying COVID-19 may not be visible to the naked eye, they are physical objects which travel to other objects and cause harm. Habitable surfaces on which COVID-19 has been shown to survive include, but are not limited to, stainless steel, plastic, wood, paper, glass, ceramic, cardboard, and cloth.

52. 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.

53. Courts in France have ruled that business interruption coverage applies where businesses lost revenue as a result of being forced to close their doors due to orders of civil authority in response to the COVID-19 Pandemic. *See* <https://www.insurancejournal.com/news/international/2020/05/22/569610.htm> (last visited July 13, 2020).

54. The determinations by courts in France and potentially other countries, that coverage exists is consistent with public policy that in the presence of a worldwide Pandemic such as COVID-19, businesses that possess business interruption insurance coverage should recover their losses from the insurance carriers.

C. CIVIL AUTHORITY

55. On March 7, 2020, New York Governor Andrew Cuomo declared a Disaster Emergency for the entire state of New York as a result of COVID-19.

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

57. 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 the COVID-19 pandemic. This order was then extended to at least May 15, 2020.

58. As of March 23, 2020, Governor Cuomo issued an order cancelling all elective surgeries and procedures statewide. *See* Executive Order 202.10 attached hereto as Exhibit 3.

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

60. During this period of Civil Authority Orders, Plaintiffs abided by the state and local orders requiring Plaintiff to close its business.

61. State and local authorities' concerns were echoed at the national level. For example, on April 10, 2020 President Trump seemed to support insurance coverage for business loss like that suffered by each 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 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 though 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 I'd except 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 can tell you very quickly. But business interruption insurance, that's getting a lot of 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).

62. 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.
 - E. Public Policy considerations support a finding that coverage exists and that Defendants' denial of coverage would be in violation of public policy. These Orders and proclamation, 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 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.

63. Plaintiffs did not have the ability or right to ignore these Orders made by agents of civil authority, including the Governor New York, as going so would expose Plaintiffs to fine and sanctions.

64. However, Plaintiffs' adherence to the requirements of these Orders and proclamations was in furtherance of the Orders' intent to protect the public and supportive of public policy to attempt to minimize the risk of spread of COVID-19.

D. IMPACT ON PLAINTIFFS

65. As a result of the Orders referenced herein, each Plaintiff shut its doors to customers on March 24 (Island Endoscopy) and March 25 (Island Gastroenterology), 2020. Aside from a *de minimis* number of emergency procedures, each Plaintiff did not re-open until or about May 26, 2020, and when it did re-open, they continued to abide by all Civil Authority Orders restricting the number of patients permitted inside.

66. As a further direct and proximate result of the Orders, Plaintiffs were forced to furlough employees' salaries for the duration of time the office and facility remained closed.

67. Plaintiffs' businesses are not a closed environment, and because people – physicians, nurses, staff, patients, and others – constantly cycle in and out of the healthcare office and facility, there is an ever-present risk that each Insured Property is contaminated and would continue to be contaminated.

68. The virus is physically impacting each Plaintiff. As a result of the Orders, most notably the March 23, 2020 Order cancelling all elective surgeries, Plaintiffs are unstable to perform any elective procedures on patients, which accounts for a sizable share of each

Plaintiff's business; coordinate and have pre-operative patient visits; coordinate and have post-operative patient visits; have therapy and other appointments with patient; as well as perform several other essential business functions.

69. Healthcare offices and facilities like Plaintiff's are more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on each insured Property and remain viable for far longer as compared to a facility with open-air ventilation.

70. Plaintiff's businesses are also highly susceptible to rapid person – to – property transmission of the virus, and vice-versa, because the service nature of the business places staff and patients in close proximity to each property and to no one another.

71. As a healthcare office, Plaintiff Island Gastroenterology's business sees hundreds of patients weekly in a very confined, close-contact setting. As a healthcare facility, Plaintiff Endoscopy Center's business similarly sees scores of patients weekly in a very confined, close-contact setting.

72. The operation of a healthcare office or facility such as Plaintiffs' involves a great deal of person to person interaction between staff and patients as well as repeated and shared uses of surfaces in waiting rooms, treatment rooms, and related spaces.

73. Because of COVID-19's persistence in locations and surfaces, and the prospect of causing asymptomatic responses in some people, the risk of infection to persons is not only high but could also cause persons with asymptomatic responses to come into contact with others who may develop serious illness. The nature of each Plaintiff's practice, as a gastroenterology office or surgical and related center, involved Plaintiff's providing services in a close proximity to one another, using surgical tools and equipment and instruments that must be free from contaminants

because of their direct use in the human body. Almost all of the medical services Plaintiffs provide were suspended or cancelled.

74. Moreover, COVID-19 likely caused physical damage to the inventory of Plaintiffs' business, such as equipment, tools, or similar items that had to be replaced or discarded because of COVID-19.

75. Recognizing the risk, the Civil Authority Orders were the lawful exercise of authority to protect the public and minimize the risk of spread of disease.

76. Even with the entry of these Orders, there remained physical impact not only within each Plaintiff's Insured Property but in and around the surrounding location of each Insured Property due to the difficulty of identifying the presence of COVID-19

77. Upon information and belief, individuals have contracted the COVID-19 illness in New York, Suffolk County, and/or in and around the location of each Insured Property, thereby confirming the presence of COVID – 19 and its impact on property and location in and around each Insured Property, supporting the propriety of the entry of the Civil Authority Orders.

78. The virus is therefore physically impacting each Plaintiff's business. 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 each Plaintiff and the public.

79. A declaratory judgement determining that the coverage provided under the Policies is necessary to prevent Plaintiffs from being left without vital coverage acquired to ensure the survival of Plaintiffs' businesses due to the shutdown caused by the Civil Authority Orders. As a result of these Orders, each plaintiff has incurred, and continues to incur, among

other things, a substantial loss of business income and additional expenses covered under the Policies.

V. CAUSE OF ACTION
DECLARATORY RELIEF

80. Plaintiffs re-allege and incorporate by the reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

81. CPLR 3001 provides that the Supreme Court may render a declaratory judgement having the effect of a final judgements as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed rights, duties, responsibilities and obligations of the parties under the Policies in that each Plaintiff contends and, on information and belief, the Defendant disputes and denies that:

- f. The Orders constitutes a prohibition of access to each Plaintiff's Insured Property;
- g. The prohibition of access by the Orders has specifically prohibited access as defined in the Policies;
- h. Each Policy's Virus Exclusion does not apply to the business losses incurred by Plaintiff here.
- i. The Orders trigger coverage.
- j. The Policies provide coverage to Plaintiffs for any current and future civil Authority closures of healthcare offices or facilities in Suffolk County due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters;

- k. Under the circumstances of the COVID-19 pandemic and the entry of the Civil Authority Orders, Plaintiff had no choice but to comply with the Orders, and each Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute Covered losses;
- l. Defendant's denial of coverage for losses sustained that were caused by the entry of the Civil Authority Orders referenced and each Plaintiff's required compliance with the Orders, violates public policy;
- m. Each 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 each Insured Property; and
- n. 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.

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

83. Plaintiffs further seek a Declaratory Judgement to affirm that the Order triggers coverage

84. Plaintiffs further seek a Declaratory Judgement to affirm that the Policies provide coverage to Plaintiffs for any current and future Civil Authority closures due to physical loss or

damage from the Coronavirus and the Policies provide business income coverage in the event that Coronavirus has caused a loss or damage at each Insured Property.

85. Plaintiffs do not seek any determination of whether the Coronavirus is physically in or at each Insured Property, amount of damages, or any other remedy other than declaratory relief.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein pray as follows:

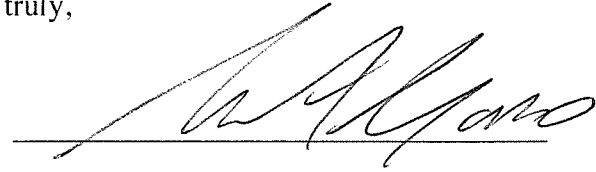
- 1) For a declaration that the Orders constitute a prohibition of access to each Plaintiff's Insured Property.
- 2) For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policies.
- 3) For a declaration that each Policy provides coverage to Plaintiffs for any current and future closures in New York due to any physical loss or damage directly or indirectly arising out of COVID-19 and/or pandemic circumstance under the Civil Authority coverage parameters.
- 4) For a declaration that each Policy provides coverage to Plaintiffs for any current and future closures in New York due to any physical loss or damage directly or indirectly arising out of COVID-19 and/or pandemic circumstances under the Civil Authority coverage parameters.
- 5) For a declaration that the Policy's virus exclusion does not apply to the circumstances presented in this lawsuit and the kind and types of damages and losses suffered by each Plaintiff.

- 6) For a declaration that under the circumstances of the COVID – 19 pandemic and the entry of the Civil Authority Orders, Plaintiffs had no choice but to comply with the Orders and Plaintiffs' compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses.
- 7) For declaration that Defendant's denial of coverage for losses that were caused by entry of the Civil Authority Orders and each Plaintiff's required compliance with those Orders violates public policy.
- 8) For a declaration that the Policies provide coverage to Plaintiffs for any current, future and continued civil authority closures of non-essential businesses due to physical loss or damage directly or indirectly from COVID – 19 under the Civil Authority coverage parameters.
- 9) For declaration that the Policies provide coverage to Plaintiffs for any current, future and continues civil authority closures in New York due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.
- 10) For a declaration that the Policies provide business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at each Plaintiff's Insured Property or the immediate area of each Plaintiff's Insured Property.
- 11) For such other relief as the Court may deem proper

***DATED: WOODBURY, NEW YORK
MARCH 8, 2021***

Yours truly,

By:

A handwritten signature in black ink, appearing to read "S. Alfano", is written over a horizontal line.

SHAWN M. ALFANO, ESQ.

LAW OFFICES OF

BUTTAFUOCO & ASSOCIATES, PLLC

Attorneys for the Plaintiff

144 Woodbury Road

Woodbury, New York 11797

(516) 746-8100

CERTIFICATION


STATE OF NEW YORK)
)
COUNTY OF NASSAU) ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State, state that I am SHAWN M. ALFANO, ESQ. of the LAW FIRM OF BUTTAFUOCO & ASSOCIATES, the attorneys of record for the plaintiff in the within action; I have read the foregoing **summons and verified complaint** in the within action and certify that to my best knowledge or belief, the matters contained in same are not frivolous, the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom, and the matter was not obtained in violation of 22 NYCRR 1200.41-a (DR 7-111).

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Investigation and facts of file.

Dated: Woodbury, New York
March 8, 2021



SHAWN M. ALFANO, ESQ.