

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

FEDERAL INSURANCE COMPANY,
Plaintiff,

v.

BD HOTELS LLC,
Defendant.

INDEX NO: _____

JURY TRIAL DEMANDED

**COMPLAINT FOR
DECLARATORY RELIEF**

Plaintiff Federal Insurance Company (“Federal”), by and through its attorneys, Clyde & Co US LLP, as and for its Complaint for a Declaratory Judgment against Defendant BD Hotels LLC (“BD Hotels”), and upon information and belief alleges as follows:

NATURE OF THE ACTION

1. This action seeks a declaratory judgment declaring that Federal owes no duty to provide insurance coverage, pursuant to the explicit provisions of the insurance policy that Federal issued to BD Hotels — policy number 3605-29-13 LIO (the “Federal Policy”) — for business losses and damages allegedly sustained by BD Hotels as a result of the COVID-19 pandemic (the “COVID-19 Loss”). Annexed hereto as **Exhibit A** is a true and accurate copy of the Federal Policy.

2. BD Hotels has sought insurance coverage from Federal claiming that, due to the governmental orders regarding COVID-19 that were issued by the State of New York and New York City (collectively the “New York Orders”), BD Hotels was mandated to close, suspend and/or limit its business operations at the numerous locations in New York City and New York State where it operates. BD Hotels further claims that these closures coupled with the

corresponding bans against non-essential travel and public gatherings have caused its alleged “COVID-19 Loss.”

3. BD Hotels has improperly commenced an action seeking insurance coverage for its COVID-19 Loss by filing a Complaint against Federal in the Superior Court of New Jersey Law Division, Bergen County Index Number BER-L-000355-21 (the “New Jersey Action”) on January 15, 2021.

4. Federal thus brings this lawsuit in order to obtain a declaration that there is no insurance coverage for BD Hotels’ COVID-19 Loss.

THE PARTIES

5. Federal is an Indiana corporation and has a principal place of business in New Jersey. Federal is licensed to conduct insurance business in New York.

6. BD Hotels is a New York domestic limited liability company with a principal office located at 60 East 54th Street, New York, NY 10022.

JURISDICTION AND VENUE

7. Jurisdiction in this Court is proper pursuant to CPLR §§ 301 and 3001 and all other applicable provisions of the CPLR and New York State Insurance Law.

8. Venue in this Court is proper pursuant to CPLR § 503(a) and (c), as Defendant BD Hotels maintains its principal place of business in New York County, New York; and all parties are subject to personal jurisdiction in New York.

THE INSURANCE POLICY

9. The Federal Policy is a Customarq Classic Insurance Program policy issued to BD Hotels that was effective from July 1, 2019 to July 1, 2020.

10. The Federal Policy provides “Blanket Limits” for the “Premises Coverage.” Specifically, the Federal Policy provides “Limits of Insurance” of \$151,676,909 for coverage under “Business Income with Extra Expense” on all of the Covered Premises in the Federal Policy that are identified as having “Blanket 2” Limit of Insurance.

11. As such, the following properties of the Covered Premises have this Blanket 2 Limit of Insurance under the Federal Policy (the “Blanket 2 Properties”): (1) 335 Bowery St., a/k/a. 2-4 E. 3rd Street, New York, NY 10003; (2) 505-507 West Street, a/k/a 113-119 Jane, New York, NY 10014; (3) 135 W. 55th St., New York, NY 10019; (4) 145 E. 39th St., a/k/a 141-147 East 39th St., New York, NY 10016; (5) 230 E. 51st St. a/k/a 230-238 E 51st Street, New York, NY 10022; (6) 440 W. 57th St., New York, NY 10019; (7) 361 W. 16th St., a/k/a 361-369 West 16th St. a/k/a 88 9th Ave. New York, NY 10011; (8) 871 7th Ave. a/k/a 867-871 7th Ave b/a 859-865 7th Ave, b/a 147-149 West 55th Street, New York, NY 10019; (9) 5 W. 8th St. a/k/a 305 West 9th St., New York, NY 10012; (10) 547 Metropolitan Ave., Brooklyn, NY 11211; (11) 147 Mercer St. a/k/a 99 Prince St., New York, NY 10012; (12) 180 Ludlow St., New York, NY 10002; (13) 377 Greenwich St. (383 Greenwich Street, (a/k/a 68-72 N. Moore St)), New York, NY 10013; (14) 400 W. 42nd St., New York, NY 10036; and (15) 13-15 W. 56th St., New York, NY 10019.

GENERAL ALLEGATIONS

Notice of COVID-19 Loss and Declination of Coverage

12. On March 1, 2020, BD Hotels tendered a claim to Federal, apprising Federal of its alleged COVID-19 business income loss and requesting coverage under the Federal Policy.

13. By letter, dated May 13, 2020, Federal denied BD Hotels’ coverage claims (the “Denial Letter”) for its alleged COVID-19 Loss. In particular:

- a. Federal advised BD Hotels that there was no coverage under the Federal Policy's Premises Coverage for Building Or Personal Property because there was no evidence of direct physical loss or damage to buildings or personal property.
- b. Federal also advised BD Hotels that there was no coverage under the Federal Policy's Premises Coverage for Business Income And Extra Expense because there was no evidence of direct physical loss or damage to buildings or personal property.
- c. Federal also advised BD Hotels that there was no coverage under the Federal Policy's Additional Coverage for Civil Authority because access to BD Hotels' premises was not prohibited.
- d. Federal also advised BD Hotels that there was no coverage under the Federal Policy's Additional Coverage for Dependent Business Premises because there was no evidence of direct physical loss or damage to a property or personal property of a dependent business premises.
- e. Federal also advised BD Hotels that there was no coverage under the Federal Policy's Additional Coverage for Prohibition of Access because there was no prohibition of access to a premises by a Civil Authority and that even assuming that access to a premises was prohibited, which it was not, such prohibition was not the direct result of the fact that COVID-19 had occurred at or within 1,000 feet of said premises.
- f. Federal also advised BD Hotels that it reserved the right to rely on the Acts or Decisions Exclusion and the Legal Action Against Us Condition in the Federal Policy.

COUNT I
(Declaratory Judgment)

14. Federal repeats and re-alleges paragraphs 1 through 17 as if fully set forth herein.
15. Upon information and belief, BD Hotels has asserted that Federal has an obligation to provide coverage to BD Hotels under the Federal Policy for its alleged COVID-19 Loss.
16. Federal disputes this assertion and further avers that no coverage obligation exists in connection with BD Hotels' alleged COVID-19 Loss under the Federal Policy.

17. An actual controversy exists between Federal, on the one hand, and BD Hotels, on the other, as to the foregoing issues.

18. Federal is entitled to judgment in the form of one or more declarations that:

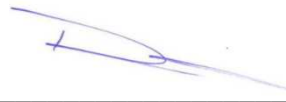
- a. Federal does not have a duty to cover BD Hotels for its alleged COVID-19 Loss under the provisions of the Federal Policy; and
- b. Federal has no adequate remedy at law.

WHEREFORE, Federal prays for judgment as follows:

1. That this Court adjudge, determine and declare that there is no insurance coverage for BD Hotels' alleged COVID-19 Loss under any provision of the Federal Policy;
2. Awarding Federal its attorneys' fees and costs in prosecuting this action to the extent permitted by law; and
3. Awarding Federal such other relief as this Court deems just and proper.

Dated: February 5, 2021

CLYDE & CO US LLP



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