

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

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TINA TURNER MUSICAL LLC,

Plaintiff,

-against-

CHUBB INSURANCE COMPANY OF EUROPE SE,

Defendant.

Index No. _____

COMPLAINT

JURY TRIAL
DEMANDED

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Plaintiff Tina Turner Musical LLC (“TTM”) for its Complaint for declaratory judgment, breach of contract, and damages against Defendant Chubb Insurance Company of Europe SE (“Chubb”), alleges as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. This action arises out of Chubb’s refusal to acknowledge coverage for, and to pay TTM’s losses arising out of the cancellation of performances of the Broadway musical, Tina: The Tina Turner Musical (“The Tina Turner Musical”) at the Lunt-Fontanne Theatre under the contingency and event cancellation insurance policy (the “Event Cancellation Policy”)¹ that Chubb sold to TTM.

2. The Event Cancellation Policy is an “all risk” insurance policy that covers TTM’s losses, including expenses, lost profits and mitigation costs, if any performances of The Tina Turner Musical are “Cancelled, Abandoned, Postponed, Interrupted, Curtailed or Relocated” as a

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Event Cancellation Policy.

result of a cause not excluded under the Event Cancellation Policy.

3. Beginning on March 12, 2020 at 5:00pm, the State of New York barred any theater seating five hundred or more attendees located in a city of one million or more residents from holding any further performances. On March 16, 2020, Mayor di Blasio issued an order closing all theaters in New York City.

4. These state and city orders resulted in the closure of the Lunt-Fontanne Theatre and cancellation of The Tina Turner Musical performances.

5. To date, Broadway theaters in New York City remain closed under New York state and New York City orders.

6. TTM promptly notified Chubb that it had been forced to cancel its future performances of The Tina Turner Musical, and was thus suffering covered losses under the Event Cancellation Policy.

7. Despite TTM having paid substantial premiums to cover the risk of cancellation of performances of The Tina Turner Musical, Chubb placed its own financial interests above those of its policyholder and wrongfully denied TTM's claim.

8. TTM therefore seeks declaratory judgments declaring the scope of Chubb's obligation to pay TTM's's losses under the Event Cancellation Policy.

9. TTM also seeks damages for breach of contract against Chubb for its failure to honor the promises made to its insured in the Event Cancellation Policy.

THE PARTIES

10. Tina Turner Musical LLC is a New York limited liability company and has the citizenship of its members. At least one of its members has United Kingdom citizenship.

11. Upon information and belief, Chubb Insurance Company of Europe SE was formed

under the laws of France and has its principal place of business in the United Kingdom.

JURISDICTION AND VENUE

12. This Court has general personal jurisdiction over Chubb pursuant to CPLR §301, because Chubb carries on a continuous and systematic part of its general business within the State of New York, including but not limited to marketing, selling, and issuing insurance policies to New York businesses and insuring events in New York.

13. This Court has specific personal jurisdiction over Chubb pursuant to CPLR §302, because Chubb, through the Event Cancellation Policy, contracted to insure a risk located within the State of New York at the time of contracting.

14. Venue is proper in this Court pursuant to CPLR §503 because a substantial part of the events and omissions giving rise to the claim occurred in New York County.

FACTUAL BACKGROUND

The Policy

15. Chubb issued TTM a contingency and event cancellation insurance policy, the Event Cancellation Policy, with policy number B13928WIF191073, effective July 24, 2019 to October 13, 2020.

16. Chubb and/or its affiliates drafted the Event Cancellation Policy.

17. The Event Cancellation Policy is an “all risk” policy that in relevant part covers TTM’s “Ascertained Net Loss” “should the [Tina Turner Musical performances] be necessarily Cancelled, Abandoned, Postponed, Interrupted, Curtailed or Relocated, which necessary Cancellation, Abandonment, Postponement, Interruption, Curtailment or Relocation is the sole and direct result of a cause not otherwise excluded which occurs during the period of insurance . . . ”

18. “Ascertained Net Loss” is defined as:

“Expenses which have been irrevocably expended in connection with the Insured Event(s) which has been necessarily Cancelled, Abandoned, Postponed, Interrupted, Curtailed or Relocated, less such part of the Gross Revenue retained less any savings the Assured is able to effect to mitigate such loss; and the reduction in Net Profit (when Net Profit is insured and stated in the Schedule) which the Assured can demonstrate to the Underwriters would have been earned had the Insured Event(s) taken place.”

19. “Net Profit” is defined as “the amount by which Gross Revenue exceeds Expenses.”

20. The Event Cancellation Policy also covers “proven additional costs or charges reasonably and necessarily paid by the [TTM] to avoid or diminish a loss payable hereunder, provided such additional costs or charges do not exceed the amount of loss thereby avoided or diminished.”

21. The Event Cancellation Policy’s coverage limits are \$16,500,000 for costs and expenses and \$6,124,548 for gross revenue.

TTM’s Losses

22. On March 12, 2020, Governor Cuomo issued Executive Order 202.1 banning all events or gatherings as of 5:00pm that day of more than 500 people in the state, including any theater seating 500 or more attendees for a live performance.²

23. Days later, on March 16, 2020, Governor Cuomo directed that “any large gathering or event (concert, conference, worship service, performance before a large audience, etc.) shall be cancelled or postponed if more than fifty persons are expected in attendance, at any location in New York State until further notice.”³

² Executive Order No. 202.1: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (Mar. 12, 2020), <https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency> (last visited Mar. 8, 2021).

³ Executive Order No. 202.3 (Mar. 16, 2020), <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency> (last visited Mar. 8, 2021).

24. Likewise, on March 16, 2020, Mayor di Blasio issued Emergency Executive Order No. 100, closing all theaters in New York City⁴ (collectively, with Executive Order 202.1 and 202.3, the “State and Local Orders”).

25. The State and Local Orders ordering closure of all Broadway theaters remain in effect.

26. As a direct result these State and Local Orders, TTM has been forced to cancel all performances of The Tina Turner Musical since March 12, 2020 to the present.

27. TTM has suffered Ascertained Net Losses under the Event Cancellation Policy, including expenses and a reduction in Net Profits in connection with performances of The Tina Turner Musical which were canceled due to the State and Local Orders.

28. TTM has suffered and continues to suffer millions of dollars in damages, in an amount to be proven at trial.

Chubb’s Wrongful Denial of TTM’s Claim

29. On or about March 16, 2020, TTM timely provided notice of a claim for losses (“Claim”) under the Event Cancellation Policy.

30. In TTM’s notice of Claim, TTM described its losses and damages as: “Insured’s business interrupted by result of civil authority.”

31. On April 2, 2020, Chubb wrongly denied coverage for TTM’s Claim based on an exclusion (“the Communicable Disease Exclusion”) which excludes coverage in relevant part for “any loss directly or indirectly arising out of, contributed to by, or resulting from”:

7.21 **any communicable disease** or threat or fear of communicable disease (whether actual or perceived) **which leads to:**

⁴ Emergency Executive Order No. 100 (Mar. 16, 2020), <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf> (last visited Mar. 8, 2021).

(7.21.1) **the imposition of quarantine or restriction in movement of people or animals by any national or international body or agency**;

(Emphasis added).

32. More specifically, as the sole ground for its denial, Chubb stated that “as Coronavirus is classed as a communicable disease, the exclusion would be applicable and therefore there would be no cover under the policy for the actions taken **by the US Government** in closing the theatre.” (Emphasis added). Chubb did not assert any other basis for its denial and also did not reserve its rights to deny TTM’s Claim on any other basis. TTM responded immediately on April 2, 2020 that it disagreed with Chubb’s denial.

33. Despite TTM’s disagreement, Chubb failed to conduct any investigation of TTM’s Claim. Had it done so, Chubb would have readily discovered that its statement that there was “no cover under the policy for the actions taken by the US Government in closing the theatre” was factually incorrect and the Communicable Disease Exclusion does not apply for numerous reasons.

34. First, the Communicable Disease Exclusion only precludes coverage for losses arising out of a communicable disease that leads to the imposition of quarantine or restriction of movement . . . **by any national or international body or agency.**” Here, even assuming that TTM’s losses arose out of communicable disease (which they did not), the communicable disease did not result in “the US government closing the theatre” or a closure of the theater by any other “national or international body or agency.” In fact, the only orders that caused TTM’s losses were the State and Local Orders. As applicable to TTM, neither the US Government, nor any other national or international body or agency, issued any orders applicable to TTM regarding a communicable disease that caused TTM’s losses. And because an insurer bears the burden of establishing an exclusion applies, and that such an exclusion must be conspicuous, plain, and clear,

and is construed narrowly in favor of finding coverage, Chubb has not and cannot establish that the Communicable Disease Exclusion applies.

35. Had Chubb wanted to include within the Communicable Disease Exclusion a communicable disease that led to *any* government response (whether local, state, national or international), it could have done so, but did not. Indeed, in Chubb's travel policies, Chubb included an exclusion for "any expenses incurred as a result of regulations or order made by *any Public Authority or Government*."⁵ But Chubb did not include any such exclusion in the Event Cancellation Policy it issued to TTM. Rather, the Communicable Disease Exclusion, by its own terms, only applies to a communicable disease that leads to actions taken by "any national or international body or agency," and as applied to TTM's losses there was no communicable disease that led to actions by an international or national body.

36. Recognizing that the sole basis for its first coverage denial was the factually incorrect assertion that The Tina Turner Musical had been closed by the "US Government," on March 4, 2021, Chubb attempted to reverse course and change its interpretation of the Communicable Disease Exclusion and the basis for its coverage denial.

37. While Chubb had previously asserted that "as Coronavirus is classed as a communicable disease, the exclusion would be applicable and therefore **there would be no cover under the policy for the actions taken by the US Government in closing the theatre**," Chubb now argued that the Communicable Disease Exclusion in fact did not require that a particular communicable disease lead to the imposition of a national or international order applicable to its insureds. Abandoning its prior contention that no coverage existed because the US Government

⁵ See Chubb Insurance Company of Puerto Rico, *Travel Insurance & Assistance Policy*, (2015), <https://www.chubb.com/content/dam/chubb-sites/chubb-com/personas-y-familias/accidentes-y-salud-personas-y-familias/documents/pdf/Travel%20Policy%20New.pdf> (last accessed Mar. 8, 2021) (emphasis added).

caused the closure of The Tina Turner Musical, Chubb instead asserted that if a communicable disease involved any national or international order in any location throughout the world, then coverage was precluded irrespective of whether the insured or the particular communicable disease in the insured's locale was subject to that order.

38. That is not what the Communicable Disease Exclusion states. Chubb's argument would require reading language into the Communicable Disease Exclusion that is not there. In essence, in its attempt to deny coverage Chubb rewrote the exclusion to preclude coverage of losses resulting from 'any communicable disease . . . which leads to the imposition of quarantine or restriction of movement . . . by any national or international body or agency irrespective of whether the insured is subject to such quarantine or restriction or whether the communicable disease is subject to such quarantine or restriction at the insured's location.' Because Chubb failed to include any such language, however, it cannot now rewrite the Event Cancellation Policy to retroactively preclude coverage for TTM's Claim.

39. Even assuming that the Communicable Disease Exclusion somehow did apply despite the absence of any applicable national or international order, TTM's losses still would not be precluded from coverage because they were not "directly or indirectly arising out of, contributed to by, or resulting from . . . any communicable disease."

40. The sole cause of TTM's losses were the State and Local Orders closing The Tina Turner Musical's theater, and those losses "were not directly or indirectly arising out of, contributed to by, or resulting from . . . any communicable disease." Again, Chubb's argument requires reading language into the Communicable Disease Exclusion that is not there. In fact, Chubb deliberately omitted language used by other insurers in the very same exclusion to extend the exclusion to any government orders related to communicable diseases. Thus, had Chubb

wanted preclude coverage for losses caused by any governmental orders it could have included the following additional language commonly used by other insurers in event cancellation policies containing same Communicable Disease Exclusion:

This insurance does not cover losses directly or indirectly arising out of, contributed to by, or resulting from:

any communicable disease which leads to . . . the imposition of quarantine or restriction in movement of people or animals by any national or international body or agency;

* * *

This insurance also excludes loss directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to a communicable disease.⁶

(Emphasis Added).

41. In fact, Chubb did just that in the Event Cancellation Policy issued to TTM when excluding losses resulting from both terrorism and any governmental actions taken to prevent or control terrorism:

This Insurance does not cover any loss directly or indirectly arising out of, contributed to by, or resulting from:

* * *

(7.23.1) any act of Terrorism and/or the threat thereof (whether actual or perceived) **regardless of any other cause or event contributing concurrently or in any other sequence to the loss.**

(7.23.2) **any loss resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism or fear thereof.**

(Emphasis added).

⁶ Hiscox, *Cancellation and abandonment: Policy wording*, at 2, <https://www.hiscox.co.uk/sites/uk/files/documents/2017-04/11997-conference-exhibitions-cancellation-abandonment.pdf> (last visited Mar. 10, 2021).

42. So Chubb knew how to exclude coverage for losses resulting from any governmental order related to a communicable disease (as it did in connection with terrorism) but chose not to include that language in the Communicable Disease Exclusion, and therefore did not extend the Communicable Disease Exclusion to preclude coverage for losses resulting from any governmental order issued to control or prevent communicable disease.

43. Thus, for the reasons set forth above and as otherwise provided by the terms of the Event Cancellation Policy, Chubb's denial of coverage for TTM's losses is wrong. Chubb cannot carry its burden of proving that any potentially applicable exclusion is not subject to any other reasonable interpretation and clearly and unambiguously applies to TTM's Claim.

44. Chubb's denial of TTM's Claim without conducting a substantive investigation constitutes a breach of the duty of good faith and fair dealing an insurer owes to its policyholder. In so doing, Chubb placed its own interests above those of its policyholder.

FIRST CAUSE OF ACTION
(Declaratory Judgment as to Coverage)

45. TTM incorporates the above Paragraphs by reference.

46. This is a claim for relief for declaratory judgment pursuant to CPLR §3001. An actual and justiciable controversy exists between TTM and Chubb concerning their respective rights and obligations under the Event Cancellation Policy.

47. The issuance of declaratory relief will terminate the controversy between TTM and Chubb that gave rise to this action.

48. As such, this Court has the authority to issue a declaratory judgment concerning the respective rights and obligations of TTM and Chubb under the Event Cancellation Policy.

49. TTM seeks a declaratory judgment declaring that the Event Cancellation Policy

covers the losses it has suffered and that Chubb is responsible for fully and timely paying TTM's Claim.

50. The burden of proof is upon Chubb to demonstrate that coverage is limited in any way under the Event Cancellation Policy.

SECOND CAUSE OF ACTION
(Declaratory Judgment as to the Communicable Disease Exclusion)

51. TTM incorporates the above Paragraphs by reference.

52. This is a claim for relief for declaratory judgment pursuant to CPLR §3001. An actual and justiciable controversy exists between TTM and Chubb concerning their respective rights and obligations under the Event Cancellation Policy.

53. The issuance of declaratory relief will terminate the controversy between TTM and Chubb that gave rise to this action.

54. As such, this Court has the authority to issue a declaratory judgment concerning the respective rights and obligations of TTM and Chubb under the Event Cancellation Policy.

55. TTM seeks a declaratory judgment that the Communicable Disease Exclusion does not apply to the losses it has suffered.

56. The burden of proof is upon Chubb to demonstrate that coverage is limited in any way under the Policy.

THIRD CAUSE OF ACTION
(Breach of Contract)

57. TTM incorporates the above Paragraphs by reference.

58. The Event Cancellation Policy is a valid and enforceable contract.

59. TTM paid substantial premiums for the Event Cancellation Policy and the promises of coverage contained therein, and otherwise performed all of its obligations owed under the Event

Cancellation Policy or was excused from performance.

60. Chubb has wrongfully denied TTM's Claim and has refused to pay or otherwise honor its promises. In denying coverage for TTM's Claim, Chubb breached the contract (that is, the Event Cancellation Policy). As a result, TTM has suffered and continues to suffer millions of dollars in damages, in an amount to be proven at trial.

61. Chubb has breached the covenant of good faith and fair dealing based on its conduct with respect to TTM, including by failing to investigate TTM's claim. As a result, TTM is entitled to consequential damages for Chubb's breach of the Event Cancellation Policy.

62. Consequential damages for breach of the Event Cancellation Policy were reasonably contemplated by the parties when Chubb issued the Event Cancellation Policy.

PRAYER FOR RELIEF

WHEREFORE, TTM respectfully demands judgment against Chubb as follows:

- 1) On the First Cause of Action, a declaratory judgment that the Event Cancellation Policy covers the losses it has suffered and that Chubb is responsible for fully and timely paying TTM's claim.
- 2) On the Second Cause of Action, a declaratory judgment that the Communicable Disease Exclusion under the Event Cancellation Policy does not apply to TTM's losses;
- 3) On the Third Cause of Action, for an award of damages in favor of TTM in an amount to be proven at trial, plus pre- and post-judgment interest at the maximum legal rate, attorneys' fees, costs and disbursements for this action; and
- 4) For such other equitable and further relief as this Court deems just and proper.

Dated: New York, New York
March 10, 2021

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