

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

DIANE A. LEBEDEFF

PRESENT: _____
Justice

PART 8

Weiss & Associates

INDEX NO.

107384/02

MOTION DATE

11/1/02

MOTION SEQ. NO.

001

MOTION CAL. NO.

- v -

Traveler's Indemnity Co.

The following papers, numbered 1 to _____ were read on this motion to/for OMCA

Notice of Motion/ ~~Order to Show Cause~~ Affidavits — Exhibits ...

X-motion

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

} 1-4

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE _____

Dated: JAN 06 2003

Dh

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: I.A.S. PART 8

-----X

WEISS & ASSOCIATES, P.C.,

Plaintiff,

-against-

Index No. 107384/02
Mot. Seq. No. 001

THE TRAVELERS INDEMNITY COMPANY d/b/a
THE TRAVELERS,

Defendant.

-----X

DIANE A. LEBEDEFF, J.:

Plaintiff Weiss & Associates, P.C. (the “Weiss Firm”), moves for an order certifying this action as a class action (CPLR 901 and 902). Defendant The Charter Oak Fire Insurance Company, sued as The Travelers Indemnity Company (“Charter Oak”), cross-moves for summary judgment dismissing the complaint.

On September 11, 2001, the Weiss Firm was insured under a Commercial Lines policy covering plaintiff’s law firm business located at 419 Park Avenue South in New York. Although the offices of the Weiss Firm suffered no physical loss or damage as a result of the terrorist attack on the World Trade Center, the Weiss Firm submitted a claim for loss of business income to Charter Oak.

After investigation, Charter Oak accepted the claim to the extent it was based on an endorsement to the policy, providing up to \$10,000 coverage for damage to a “dependent property” (cross-motion, exhibit 9, para. A.5.b.). The Firm claimed it suffered a loss of business income as a result of the physical damage to and temporary closing of the Traffic

Violation Bureau, located on Rector Street, because the firm represents hundreds of motorists and attracts clients there (see, cross-motion, exhibit 2).

However, Charter Oak denied the remainder of the Weiss Firm's claim, which sought recovery under a clause of the policy providing "additional coverage" for "loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building" (cross-motion, exhibit 9, para. A.6.b.). Charter Oak explained that the building collapse provision does not provide coverage to the Weiss Firm in these circumstances, because the Firm's offices did not suffer any direct physical damage as a result of the collapse of the World Trade Center towers (see cross-motion, exhibit 3).

The parties agree that the dispute as to coverage involves a question of law that can be decided by the court. The general principles applicable to interpretation of insurance policies are well-established:

"An insurance contract is to be interpreted by the same general rules that govern the construction of any written contract and enforced in accordance with the intent of the parties as expressed in the language employed in the policy (*Breed v. Insurance Co. of N. America*, 46 N.Y.2d 351, 355). Generally, the court will 'construe the limitations of an insurance contract in the light of the speech of common [people]' (*Gittelsohn v. Mut. Life Ins. Co. of NY*, 266 A.D. 141, 145, citing *Lewis v. Ocean Acc. & G. Corp.*, 224 N.Y. 18) and any ambiguities will be resolved against the insurer, as drafter of the policy (*Greaves v. Public Serv. Mut. Ins. Co.*, 5 N.Y.2d 120, 125). The touchstone for interpreting insurance contracts, as with other contracts, is the reasonable expectation of the parties (*Bird v. St. Paul Fire & Mar. Ins. Co.*, 224 N.Y. 47, 51.)" (*Throgs Neck Bagels, Inc. v. GA Ins. Co. of New York*, 241 A.D.2d 66 [1st Dept. 1998]).

The dispute is readily resolved by review of the relevant provisions of the Policy.

The basic coverage provision, Section A, states:

"We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting

from a Covered Cause of Loss.

"We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your 'operations' during the 'period of restoration.' *The suspension must be caused by direct physical loss of or damage to property at the premises described in the Declarations*, including personal property in the open (or in a vehicle) within 100 feet of the described premises, caused by or resulting from a Covered Cause of Loss" (emphasis added).

The term "Covered Cause of Loss" is defined in paragraph A.4 of the Policy, as follows:

"RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

"a. Limited in Paragraph A.5., Limitations; or

"b. Excluded in Section B., Exclusions."

Among the Exclusions listed in Section B is any loss or damage caused by "Collapse, except as provided in the Additional Coverage for Collapse" (paragraph B.2.k.). Following the cross-reference back to the Additional Coverages paragraph of Section A, the Policy provides:

"We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building"


Assuming the World Trade Center towers collapsed as a result of a specified cause listed in the policy, plaintiff still cannot recover for business income loss under the plain language of the Policy. The additional "collapse" coverage does not apply because the towers' collapse did not cause "necessary suspension" of plaintiff's operations "caused by direct physical loss of or damage to property at the premises described in the Declarations," as required by the basic coverage provision of Section A. Reading the relevant policy provisions together, the policy clearly and unambiguously provides coverage only if a

business interruption results from “direct physical loss” or damage to property at the Weiss Firm’s offices (see *Roundabout Theatre Co., Inc. v. 1830 Continental Casualty Co.*, 2002 WL 31662563, 2002 N.Y. Slip Op. 08839 [1st Dept. 2002], policy did not provide business interruption coverage for theatre closed as a result of a construction accident at a building up the block, because the theatre itself suffered no direct physical loss).

Accordingly, defendant’s cross-motion for summary judgment is granted, and plaintiff’s motion for class certification is denied as moot. No sooner than five days after service on plaintiff of a copy of this order with notice of entry and the proposed judgment, the clerk is directed to enter judgment in favor of defendant, together with costs and disbursements upon the presentation of appropriate papers.

This decision constitutes the order of the court

Dated: January 6, 2003



J.S.C.