

Manhattan's Blue Moon Hotel presses business-interruption claim against Travelers

By **Gwen Everett**

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The Lower East Side's Blue Moon Hotel is hoping that it has something very rare indeed: a winning claim against its insurance company.

The Orchard Street inn, like many other pandemic-racked business, filed suit against their insurer, Travelers Insurance, to force payments on a business-interruption claim.

The Blue Moon, however, may have one thing that the others don't—a provision that covers losses that result from acts of civil authority.

“Defendant [Traveler’s] accepted the policy premiums with no intention of providing coverage for business income losses resulting from orders of a Civil Authority,” according to the Oct 9th law suit, filed in Manhattan Federal Court. Traveler’s attorney did not respond to request for comment.

Business interruption claims have been routinely rejected by insurers and so far, courts tend to side with them. Insurers have successfully argued that the pandemic is not the right kind of interruption because it produced no physical damage.

Courts are currently working through more than 1,000 business interruption claims, according to Loretta Worters, spokeswoman at Insurance Information Institute.

The Blue Moon case may have promise because virus exceptions in insurance policies do not always extend to civil authority protections and because businesses can invoke the coverage even if their premise was not specifically contaminated with Covid-19.

“The issue of having to deal with loss arising out of a pandemic such as Covid-19 is going to be very complicated,” said Marc Dedman, partner at Barton LLP, adding that much will come down to the specific facts of a case and legal particularities in each state.

“I think that New York has taken a fairly insured-favorable position in other cases. And so New York is a jurisdiction that can be sympathetic to other insureds,” said Stephen Younger, adding that the single case that’s been decided in New York went in favor of an insured business, though its facts differed from this case.

“It’s always going to harder for the insured in these cases,” he said, adding that the hotel can only win if it can prove it wouldn’t have shutdown anyway if not for the governor’s order. “The question is, did the virus shut this hotel down, or did the Governor’s order shut the hotel down?”

Meanwhile hotels as a sector are facing a host of challenges in light of the pandemic. Of the roughly 2,300 hotels in New York, 1,565 are facing closure if another stimulus bill does not come from congress, according to the American Hotel & Lodging Association.