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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

WALTER FAMILY PARTNERSHIP D/B/A
HILTON PALM SPRINGS RESORT

Plaintiff,

v.

AMERICAN AUTOMOBILE INSURANCE
COMPANY and DOES 1 to 25, inclusive

Defendant.

Case No. **PSC2003695**

**COMPLAINT FOR DECLARATORY
RELIEF**

FILED

Superior Court of California
County of Riverside

8/13/2020

B. Tucker

Electronically Filed

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1 Walter Family Partnership d/b/a Hilton Palm Springs Resort (“Plaintiff”) brings this
2 complaint against Defendant American Automobile Insurance Co. (“American Automobile” or
3 “Defendant”) and DOES 1 through 25 as follows:

4 **NATURE OF THE ACTION**

5 1. Walter Family Partnership d/b/a Hilton Palm Springs Resort owns and operates the
6 Hilton Palm Springs Resort in Palm Springs, California.

7 2. To protect business in the event it suddenly had to suspend operations at its hotels
8 for reasons outside of its control, Plaintiff purchased insurance coverage from Defendant,
9 including business interruption coverage as set forth in Defendant’s Business Income Coverage
10 Form (and Extra Expense) (Form CP 00 30 10 91) (“Business Income Coverage Form”).

11 3. Defendant’s Business Income Coverage Form provides “Business Income”
12 coverage, which promises to pay for loss during a suspension of operations.

13 4. Defendant’s Business Income Coverage Form also provides “Extra Expense”
14 coverage, which promises to pay the expenses incurred to minimize the suspension of business
15 and to continue operations.

16 5. Defendant’s Business Income Coverage Form also provides “Civil Authority”
17 coverage, which promises to pay for losses caused by the action of a civil authority that prohibits
18 access to the insured premises.

19 6. Defendant’s Business Income Coverage Form also provides “Extended Business
20 Income” coverage, which extends the period of Business Income coverage provided in the
21 Business Income Coverage Form.

22 7. Defendant’s Business Income Coverage Form, under a section entitled “Duties in
23 the Event of Loss” mandates that Defendant’s insured must “[t]ake all reasonable steps to protect
24 the Covered Property from further damage by a Covered Cause of Loss” and “ keep a record of
25 your expenses . . . for consideration in the settlement of the claim.” This type of coverage has
26 historically been known as “Sue and Labor” coverage or a “Sue and Labor” provision, and
27 property policies have long provided coverage for these types of expenses.

28 8. Unlike many policies that provide Business Income coverage, the Business Income

1 Coverage Form does not include, and is not subject to, any exclusion for losses caused by viruses.

2 9. Plaintiff was forced to suspend or reduce business due to COVID-19 (a.k.a. the
3 “coronavirus” or “SARS-CoV-2”) and the resultant orders issued by the Governor of California
4 and the County of Riverside mandating that businesses like Plaintiff’s suspend and limit
5 operations and take necessary steps to prevent further damage, minimize the suspension of
6 business, and continue operations.

7 10. A declaratory judgment determining that coverage is provided under the policy will
8 prevent Plaintiff from being left without vital coverage acquired to ensure the survival of its
9 business.

10 **JURISDICTION AND VENUE**

11 11. This Court has subject-matter jurisdiction over this action and the matters alleged
12 herein.

13 12. Venue is proper in this Court because Defendant is obligated to perform the
14 contract at issue in Riverside County, California, and the acts, omissions, loss and harm
15 complained of took place at least in part in Riverside County, California.

16 **THE PARTIES**

17 13. Plaintiff Walter Family Partnership d/b/a Hilton Palm Springs Resort is a California
18 limited partnership with its principal place of business in Palm Springs, California. The partners of
19 the Walter Family Partnership are the Walter Hotel Corporation (a California corporation with its
20 principal place of business in California) and two individuals who are California domiciliaries.

21 14. Defendant American Automobile Insurance Co. is a Missouri company with its
22 principal place of business in Novato, California. Defendant provides property and business
23 income coverage to California businesses and properties. At all times material hereto, Defendant
24 conducted and transacted business through the selling and issuing of insurance policies within
25 California.

26 15. Removal of this action would be improper under the forum defendant rule and
27 because Plaintiff and Defendant are citizens of the same state.
28

1 16. Plaintiff does not know the true names and capacities of the defendants named
2 herein as Does 1 through 25, inclusive, and therefore sues these defendants by such fictitious
3 names. Plaintiff will amend this complaint to allege their true names and capacities when
4 ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
5 named defendants took some part in the actions and/or omissions alleged in this Complaint or are
6 otherwise legally responsible in some manner for the occurrences herein alleged, and that
7 Plaintiff's losses as alleged herein were proximately caused by such wrongful acts.

8 17. At all times herein mentioned, each of the defendants was the agent, employee,
9 partner, or successor of each of the remaining defendants, and in doing the things alleged herein,
10 was acting within the purpose, scope, and course of such relationship.

11 **FACTUAL BACKGROUND**

12 ***The Business Income Coverage Form Protecting Plaintiff***

13 18. In return for the payment of a premium, Defendant issued Policy No. 8 17 MXG
14 80996712 (the "policy") to Plaintiff for a policy period of May 1, 2019, to May 1, 2020.

15 19. Plaintiff has performed all of its obligations under Policy No. 8 17 MXG
16 80996712, including the payment of premiums.

17 20. The Covered Properties, with respect to the policy, are 400 E. Tahquitz Canyon
18 Way, Palm Springs, CA 92262, and 650 Tahquitz Canyon Road, Palm Springs, CA 92262.

19 21. Plaintiff's policy includes Business Interruption, Extra Expense, and Civil
20 Authority coverages.

21 22. In many parts of the world, property insurance is sold on a specific peril basis. Such
22 policies cover a risk of loss if that risk of loss is specifically listed (e.g., hurricane, earthquake,
23 H1N1). Most property policies sold in the United States, however, including those sold by
24 Defendant, are all-risk property damage policies. These types of policies cover all risks of loss
25 except for risks that are expressly and specifically excluded. In the "Causes of Loss Form" in the
26 policy provided to Plaintiff, Defendant agreed to pay for all "Risks of Direct Physical Loss"
27 "unless loss is excluded or limited."

28 23. Losses due to COVID-19 are a covered Cause of Loss under the policy.

1 24. Any reading of the policy that does not provide coverage for losses due to COVID-
2 19 would render Policy No. 8 17 MXG 80996712 an illusory contract.

3 25. In the Business Income Coverage Form, Defendant agreed to pay Plaintiff's loss of
4 "Business Income" sustained due to interruption of or interference with its business as a result of
5 physical loss or damage.

6 26. "Business Income" means the net profit or loss before tax that Plaintiff would have
7 earned or incurred, as well as continuing normal operating expenses, including payroll.

8 27. In the Business Income Coverage Form, Defendant also agreed to pay any "Extra
9 Expense" that Plaintiff incurs "to avoid or minimize the suspension of business and to continue
10 operations," "to minimize the suspension of business" if Plaintiff cannot continue operations, and
11 to "[r]epair or replace any property."

12 28. "Extra Expense" means the expenses Plaintiff would not have incurred if there had
13 been no physical loss or damage to property.

14 29. In the Business Income Coverage Form, Defendant also agreed to pay for the "loss
15 of Business Income" and "Extra Expense" that Plaintiff sustains caused by action of Civil
16 Authority that prohibits access to a Covered Property when a Covered Cause of Loss causes
17 damage to property other than the Covered Property.

18 30. Defendant's Business Income Coverage Form, under a section entitled "Duties in
19 the Event of Loss" mandates that Defendant's insured must "[t]ake all reasonable steps to protect
20 the Covered Property from further damage by a Covered Cause of Loss" and " keep a record of
21 your expenses . . . for consideration in the settlement of the claim." This type of coverage has
22 historically been known as "Sue and Labor" coverage or a "Sue and Labor" provision, and
23 property policies have long provided coverage for these types of expenses.

24 31. The COVID-19 virus causes physical loss or damage to property through the well-
25 documented fact that it physically infects and stays on surfaces of objects and materials for up to
26 twenty-eight days and thereby facilitates transmission by touching of such surfaces. The fact that
27 virus or disease constitutes physical loss or damage to property has been recognized in the
28 insurance industry since at least 2006.

1 32. Losses caused by COVID-19 and the related orders issued by local, state, and
2 federal authorities triggered the Business Income, Business Interruption, Extra Expense, Civil
3 Authority, and Sue and Labor coverage under the policy.

4 ***The Covered Cause of Loss***

5 33. The presence of COVID-19 has caused civil authorities throughout the country to
6 issue orders requiring the suspension of business at a wide range of establishments, including civil
7 authorities with jurisdiction over Plaintiff's businesses (the "Closure Orders"). Relevant examples
8 are set forth below.

9 34. On March 4, 2020, California Governor Gavin Newsom issued a "Proclamation of
10 a State of Emergency."

11 35. On March 16, 2020, the Riverside County Health Officer issued a countywide
12 order prohibiting gatherings of more than 10 people.

13 36. On March 19, 2020, California Governor Newsom issued Executive Order N-33-
14 20, which he found was necessary "for the preservation of public health and safety throughout the
15 entire State of California." The order requires "all individuals living in the State of California to
16 stay home or at their place of residence except as needed to maintain continuity of operations of
17 the federal critical infrastructure sectors."

18 37. On March 27, 2020, the Riverside County Health Officer issued an order closing all
19 hotels except to the extent they are used for COVID-19 mitigation and containment and
20 prohibiting hotels from operating for any other purpose.

21 ***The Impact of COVID-19 and the Closure Orders***

22 38. The presence of COVID-19 caused "direct physical loss or direct physical damage
23 to" each "Covered Property" and the immediately surrounding areas under the Plaintiff's policy by
24 denying use of and rendering untenable and damaging the Covered Property and by causing a
25 necessary interruption of operations during a period of restoration.

26 39. The Closure Orders prohibited access to and use of Plaintiff's Covered Properties,
27 and the area immediately surrounding Covered Property, in response to dangerous physical
28 conditions resulting from a Covered Cause of Loss.

1 40. As a result of the presence of COVID-19 and the Closure Orders, Plaintiff lost
2 Business Income and incurred Extra Expense in an aggregate amount in excess of \$25,000.

3 41. Plaintiff has notified Defendant of the above-described loss. Defendant has
4 declined to pay any amount in response to this notification.

5 **FIRST CAUSE OF ACTION**

6 **DECLARATORY RELIEF**

7 **(Against Defendant and DOES 1 to 25)**

8 42. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein.

9 43. Under CAL. CIV. PROC. CODE §§ 1060 et seq., this Court may declare rights, status,
10 and other legal relations, regardless of whether further relief is or could be claimed.

11 44. An actual controversy has arisen between Plaintiff and Defendants as to the rights,
12 duties, responsibilities and obligations of the parties in that Plaintiff contends and Defendants
13 dispute and deny that the policy provides coverage for Business Interruption, Extra Expense, Civil
14 Authority, and Sue and Labor losses incurred by Plaintiff in connection with the COVID-19
15 pandemic.

16 45. Plaintiff seeks a Declaratory Judgement to determine whether the policy provides
17 coverage for Business Interruption, Extra Expense, Civil Authority, and Sue and Labor losses
18 incurred by Plaintiff in connection with the COVID-19 pandemic.

19 **REQUEST FOR RELIEF**

20 46. WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its
21 favor and against Defendants as follows:

- 22 a. Issuing a Declaratory Judgment that the policy provides coverage for Business
23 Interruption, Extra Expense, Civil Authority, and Sue and Labor losses incurred by
24 Plaintiff in connection with the COVID-19 pandemic;
- 25 b. Ordering Defendants to pay both pre- and post-judgment interest on any amounts;
- 26 c. Ordering Defendants to pay attorneys' fees and costs of suit; and
- 27 d. Ordering such other and further relief as may be just and proper.
- 28

1 DATED: August 13, 2020

GLASER WEIL, LLP

2 */s/ Sean Riley*

3 _____
4 Sean Riley
5 *Attorneys for Plaintiff*

6 **JURY TRIAL DEMAND**

7 Plaintiff hereby demands a trial by jury on all issues so triable.

8
9 DATED: August 13, 2020

GLASER WEIL, LLP

10 */s/ Sean Riley*

11 _____
12 Sean Riley
13 *Attorneys for Plaintiff*