

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
MANGIA RESTAURANT CORP.,

Index No.

Plaintiffs,

VERIFIED COMPLAINT

-against-

UTICA FIRST INSURANCE COMPANY,

Defendants.

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The Plaintiff, by its attorneys of record, Sacco & Fillas, LLP, as and for its Verified Complaint against the Defendant, respectfully alleges, upon information and belief, as follows:

I. PARTIES AND JURISDICTION

1. That, at all times hereinafter mentioned, the Plaintiff MANGIA RESTAURANT CORP., dba OVELIA (“OVELIA”) is located at 3401 30th Avenue Astoria, NY 11103.

2. That, at all times hereinafter mentioned, the Defendant UTICA FIRST INSURANCE COMPANY (“UTICA”) is located at 5981 Airport Rd., Oriskany, NY 13424.

3. Jurisdiction exists in the Supreme Court, County of Queens because Queens County is the county in which the subject premises of this action is located.

4. The basis of venue is CPLR § 503(c): Venue Based on Corporation. Plaintiff is a domestic corporation authorized to transact business in the state and as such is deemed a resident of the county in which its principal office is located, that being Queens County.

II. NATURE OF THE ACTION

5. Plaintiff Mangia Restaurant Corp., owns and operates a full-service bar and restaurant known as OVELIA, also known as “OVEILA” in the Policy. OVELIA’s futures are

now threatened by COVID-19 (a.k.a. the “coronavirus” or “SARS-CoV-2”).

6. To protect its business in the event that they suddenly had to suspend operations for reasons outside of its control, or in order to prevent further property damage, Plaintiff purchased insurance coverage from UTICA, including special property coverage, as set forth in UTICA’s Business Income (and Extra Expense) Coverage Form (“Coverage Policy Form BP-200”).

7. UTICA’s Coverage Policy Form BP-200 provides “Business Income” coverage, which promises to pay for loss due to the necessary suspension of operations following physical loss or damage to property.

8. UTICA’s Coverage Policy Form BP-200 also provides “Civil Authority” coverage, which promises to pay for loss caused by the action of a civil authority that prohibits access to the insured premises.

9. UTICA’s Coverage Policy Form BP-200 also provides “Extra Expense” coverage, which promises to pay the expense incurred to minimize the suspension of business and to continue operations.

10. UTICA’s Coverage Policy Form BP-200, under a section entitled “Duties in the Event of Loss” mandates that the insured “must see that the following are done in the event of loss”. . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.”

11. Plaintiff OVELIA was forced to suspend or reduce business due to COVID-19 and the resultant orders issued by civil authorities in New York mandating the suspension of business for on-site services, as well as in order to take necessary steps to prevent further damage

and minimize the suspension of business and continue operations.

12. Upon information and belief, UTICA has denied Plaintiff's claim submitted pursuant to its policy, and refused to pay its insured under its Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages for losses suffered due to COVID-19, any executive orders by civil authorities that have required the necessary suspension of business, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations.

III. FACTUAL BACKGROUND

A. The Coverage Policy Form BP-200

13. In return for the payment of a premium, UTICA issued Policy No. BOP 4469347 to OVELIA, for a policy period of June 1, 2019 to June 1, 2020. Policy No. BOP 4469347 is attached hereto as **Exhibit A**. OVELIA has performed all of its obligations under Policy No. BOP 4469347, including the payment of premiums.

14. In context to the insurance industry in the majority of the world, property insurance is sold on a specific peril basis. Such policies cover a risk of loss if that risk of loss is specifically listed (e.g., hurricane, earthquake, H1N1, etc.). Most property policies sold in the United States, however, including those sold by UTICA insurance, are all-risk property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded. Under the heading "Covered Causes of Loss," UTICA agreed to pay for direct physical loss "unless the loss is excluded or limited" in the policies.

15. In the Coverage Policy Form BP-200, UTICA agreed to pay for its insured's actual loss of Business Income sustained due to the necessary suspension of its operations during

the “period of restoration” caused by direct physical loss or damage. A “slowdown or cessation” of business activities at the Covered Property is a “suspension” under the policy, for which UTICA agreed to pay for loss of Business Income during the “period of restoration” that begins 72 hours after the time of direct physical loss or damage.

16. “Business Income” means net income (or loss) before tax that Plaintiff would have earned and continuing normal operating expenses incurred, including payroll.

17. The presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, ISO, circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

18. In the Coverage Policy Form BP-200, UTICA also agreed to pay necessary Extra Expense that its insureds incur during the “period of restoration” that the insureds would not have incurred if there had been no direct physical loss or damage to the Covered Property.

19. “Extra Expense” includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

20. UTICA also agreed to “pay for the actual loss of Business Income” that Plaintiff sustains “and any Extra Expense caused by action of civil authority that prohibits access to” the Covered Property when a Covered Cause of Loss causes damage to property near the Covered

Property, the civil authority prohibits access to property immediately surrounding the damaged property, the Covered Property is within the prohibited area, and the civil authority action is taken “in response to dangerous physical conditions.”

21. UTICA’s Coverage Policy Form BP-200, under a section entitled “Duties in the Event of Loss” mandates that UTICA’s insured “must see that the following are done in the event of loss. . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.” This is commonly referred to as “Sue and Labor” coverage.

22. Losses caused by COVID-19 and the related orders issued by local, state, and federal authorities triggered the Business Income, Extra Expense, Civil Authority, and Sue and Labor provisions of the UTICA policy.

B. The Covered Cause of Loss

23. In December 2019, a novel (new) coronavirus known as SARS-CoV-2 was first detected in Wuhan, Hubei Province, China, and which caused an outbreak of a disease now known as COVID-19.

24. The coronavirus causing COVID-19 is thought to spread mainly from person to person, primarily through respiratory droplets produced when an infected person coughs or sneezes.¹

25. The coronavirus spread globally, and on January 30, 2020, the World Health Organization designated the COVID-19 outbreak as a Public Health Emergency of International

¹ See generally CDC Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last visited June 1, 2020).

Concern.²

26. On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19.³

27. To date, there have been more than 3 million confirmed cases of COVID-19 in the United States, including more than 399,000 in New York State and more than 160,000 in New York City. As a result of COVID-19, there have been more than 133,000 deaths in the United States, including more than 22,000 in New York State and more than 17,000 in New York City.⁴

28. In New York, on March 7, 2020, Governor Andrew Cuomo declared a state disaster emergency for the entire state in effect until September 7, 2020.⁵

29. On March 12, 2020, Governor Cuomo signed Executive Order 202.1, which, among other things, ordered that any large gathering or event for which attendance is anticipated to be in excess of five hundred people be cancelled or postponed for a minimum of thirty days. Executive Order 202.1 also required that any place of business or public accommodation, and any gathering or event for which attendance is anticipated to be fewer than five hundred people, operate at no greater than 50% occupancy, and no greater than 50% of seating capacity, for thirty

² [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))

³ Press Release, Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus (Jan. 31, 2020), available at <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

⁴ See Johns Hopkins Coronavirus Resource Center, available at <https://coronavirus.jhu.edu/map.html> (last visited June 1, 2020); N.Y. Dep't of Health COVID-19 Tracker, available at <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last checked April 28, 2020); New York City Dep't of Health COVID-19: Data, available at <https://www1.nyc.gov/site/doh/covid/covid-19-data.page> (last visited June 1, 2020).

⁵ <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>.

days effective on Friday, March 13, 2020.⁶

30. On March 16, 2020, Governor Cuomo signed Executive Order 202.3, which amended Executive Order 202.1 to require that, until further notice, any large gathering or event at any location in New York State be cancelled or postponed if more than fifty persons are expected in attendance. Executive Order 202.3 also ordered that any restaurant or bar in the state Executive Order No. 202, 202.1-48: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency, March 12, 2020. of New York cease serving patrons food or beverage on-premises effective at 8 p.m. on March 16, 2020 until further notice.⁷

31. On March 18, 2020, Governor Cuomo signed Executive Order 202.6, which required, among other things, that any non-essential business reduce its in-person workforce at any work locations by 50% no later than March 20, 2020 at 8 p.m.⁸

32. On March 19, 2020, Governor Cuomo signed Executive Order 202.7, which, among other things, amended Executive Order 202.6 to require that any non-essential business reduce its in-person workforce at any work locations by 75% no later than March 21, 2020 at 8 p.m.⁹

33. On March 20, 2020, Governor Cuomo signed Executive Order No. 202.8, which ordered, among other things, that effective at 8 p.m. on Sunday, March 22, 2020, all non-essential businesses statewide would be closed.¹⁰

34. For the purposes of the Executive Orders 202.6 and subsequent orders, non-

⁶ <https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

⁷ <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

⁸ <https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

⁹ <https://www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

¹⁰ <https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

essential businesses include, among other things, “Any large gathering or event venues, including but not limited to establishments that host concerts, conferences, or other in-person performances or presentations in front of an in-person audience” and “Any dine-in or on-premise restaurant or bar service, excluding take-out or delivery for off-premise consumption.”¹¹

35. On March 23, 2020, Governor Cuomo signed Executive Order No. 202.10, which ordered that “Non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations or other social events) are canceled or postponed at this time.”¹²

C. The Impact of COVID-19 and the Closure Orders

36. The presence of COVID-19 caused direct physical loss of or damage to the covered property under the Plaintiffs’ policies, and the policies of the other Class members, by denying use of and damaging the covered property, and by causing a necessary suspension of operations during a period of restoration.

37. The Closure Orders prohibited access to Plaintiff’s Covered Property, and the area immediately surrounding Covered Property, in response to dangerous physical conditions resulting from a Covered Cause of Loss.

38. As a result of the presence of COVID-19 and the Closure Orders, Plaintiff lost Business Income and incurred Extra Expense.

D. Covered Losses Under the Policy

39. Defendants issued Plaintiff’s Policy No. BOP 4469347 for the policy period between December 16, 2019 to December 16, 2020 (the “Policy”).

¹¹ See Empire State Development, Guidance for Whether a Business Enterprise Is Subject to a Workforce Reduction Under Recent Executive Orders (last updated April 24, 2020), available at <https://esd.ny.gov/guidance-executive-order-2026>

¹² <https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

40. Parts of the Policy are standardized forms that are used by UTICA for all insureds having applicable coverage.

41. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means direct physical loss or direct physical damage unless the loss is specifically excluded or limited in the Policy.

42. Among the coverages provided by the Policy, which is currently in full effect, is business interruption insurance, which, generally, would indemnify Plaintiff for lost income and profits in the event that its business was shut down.

43. Specifically, Plaintiff's Coverage Policy Form BP-200, Form ed. 1-87, provides coverage for loss of Business Income as follows:

We provide the Earnings and Extra Expense Coverage shown below when your business is necessarily interrupted by loss or damage to real or personal property caused by a peril covered during the policy period. This coverage applies only when the loss or damage to real or personal property is at the described premises or in the open within 100 feet thereof.

UTICA Policy, Coverage Policy Form BP-200 § ed. 1-87.

44. Under this coverage in the Policy, "Business Income" is defined as:

Income Loss means financial loss you sustain, as determined in accordance with the provisions of Coverage Agreement F(2) or Coverage Agreement H.

UTICA Policy, Coverage Policy Form BP-200 § GG.

45. The Policy also provides Civil Authority coverage as follows:

"We" extend "your" coverage to include loss while access to the described premises is specifically denied by an order of civil authority. This order must be a result of damage to property other than at the described premises and caused by a covered peril.

This extension of coverage:

- a. For Earnings, starts 72 hours after the time the order is issued and will apply for a period of up to three consecutive weeks after the order is issued; and
- b. For Extra Expense, starts immediately after the order is issued, and will apply for:
 - i. A period of up to three consecutive weeks after the order is issued; or
 - ii. until “your” Earnings coverage ends;whichever is later.

46. Plaintiff has suffered a direct physical loss of and damage to their property as a result of COVID-19 and the orders of civil authorities because, among other things, they have been unable to use their property for its intended purpose, and they have been denied access to their property, causing a suspension of business operations on the premises and the function of their property to be nearly eliminated or destroyed.

47. Beginning in March 2020, Plaintiff was forced to suspend business operations as a result of COVID-19 and the related actions of civil authorities. This suspension, which is ongoing, has caused Plaintiff to suffer significant losses and incur significant expenses.

48. Plaintiff provided notice of its losses to Defendants consistent with the terms and procedures of the Policy.

49. Notwithstanding the foregoing, by way of letter dated May 11, 2020, UTICA denied Plaintiff’s claim for business interruption, extra expense, and civil authority losses under the Policy because UTICA contends that Plaintiff’s Policy excludes said losses. **Exhibit B.**

IV. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

BREACH OF CONTRACT – BUSINESS INCOME COVERAGE

50. Plaintiff repeats and realleges Paragraphs 1-50 as if fully set forth herein.

51. Plaintiff's UTICA policy, is a contract under which UTICA were paid premiums in exchange for their promise to pay Plaintiff's losses for claims covered by the policy.

52. In the Coverage Policy Form BP-200, UTICA agreed to pay for its insured's actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration."

53. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the policy, for which UTICA agreed to pay for loss of Business Income during the "period of restoration" that begins within 72 hours after the time of direct physical loss or damage.

54. "Business Income" means net income (or loss) before tax that Plaintiff would have earned "if no physical loss or damage had occurred" and continuing normal operating expenses incurred. COVID-19 caused direct physical loss and damage to Plaintiff's Covered Properties, requiring suspension of operations at the Covered Properties. Losses caused by COVID-19 thus triggered the Business Income provision of Plaintiff's policy.

55. Plaintiff has complied with all applicable provisions of its policy and/or those provisions have been waived by UTICA, or UTICA is estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the policy's clear and unambiguous terms.

56. By denying coverage for any Business Income losses incurred by Plaintiff in connection with the COVID-19 pandemic, UTICA has breached its coverage obligations under the policy.

57. As a result of UTICA's breach of the policy, Plaintiff has sustained substantial damages for which UTICA is liable, in an amount to be established at trial.

SECOND CAUSE OF ACTION
BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE

58. Plaintiff OVELIA repeats and realleges Paragraphs 1-50 as if fully set forth herein.

59. Plaintiff's UTICA policy is a contract under which UTICA was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the policy.

60. UTICA agreed to "pay for the actual loss of Business Income" that its insured sustains "and any Extra Expense caused by action of civil authority that prohibits access to" the Covered Property when a Covered Cause of Loss causes damage to property near the Covered Property, the civil authority prohibits access to property immediately surrounding the damaged property, the Covered Property is within the prohibited area, and the civil authority action is taken "in response to dangerous physical conditions."

61. The Closure Orders triggered the Civil Authority provision under Plaintiff's Civil Authority's UTICA insurance policy.

62. Plaintiff has complied with all applicable provisions of the policy, and/or those provisions have been waived by UTICA, or is UTICA estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

63. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, UTICA has breached its coverage obligations under the policy.

64. As a result of UTICA's breach, Plaintiff has sustained substantial damages for which UTICA is liable, in an amount to be established at trial.

**THIRD CAUSE OF ACTION
BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**

65. Plaintiff OVELIA repeats and realleges Paragraphs 1-50 as if fully set forth herein.

66. Plaintiff's UTICA insurance policy is a contract under which UTICA was paid premiums in exchange for its promise to pay Plaintiff's Extra Expense losses for claims covered by the policy.

67. In the Coverage Policy Form BP-200, UTICA also agreed to pay necessary Extra Expense that Plaintiff incurs during the "period of restoration" that the insured would not have incurred if there had been no direct physical loss or damage to the Covered Property.

68. "Extra Expense" includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

69. Due to COVID-19 and the Closure Orders Plaintiff incurred Extra Expense at Covered Property

70. Plaintiff has complied with all applicable provisions of the policy and/or those provisions have been waived by UTICA, or UTICA is estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

71. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, UTICA has breached its coverage obligations under the policy.

72. As a result of UTICA's breach, Plaintiff has sustained substantial damages for which UTICA is liable, in an amount to be established at trial.

FOURTH CAUSE OF ACTION

BREACH OF CONTRACT – SUE AND LABOR COVERAGE

73. Plaintiff OVELIA repeats and realleges Paragraphs 1-50 as if fully set forth herein.

74. Plaintiff's UTICA policy is a contract under which UTICA was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the policy.

75. In the Coverage Policy Form BP-200, UTICA agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property from further damage.

76. In complying with the Closure Orders and otherwise suspending or limiting operations, Plaintiff incurred expenses in connection with reasonable steps to protect Covered Property.

77. Plaintiff has complied with all applicable provisions of the policy and/or those provisions have been waived by UTICA, or UTICA is estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the policy's clear and unambiguous terms.

78. By denying coverage for any Sue and Labor expenses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, UTICA has breached its coverage obligations under the policy.

79. As a result of UTICA's breach of the policy, Plaintiff has sustained substantial damages for which UTICA is liable, in an amount to be established at trial.

FIFTH CAUSE OF ACTION

DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE

80. Plaintiff repeats and realleges Paragraphs 1-50 as if fully set forth herein.

81. Plaintiff's UTICA policy is a contract under which UTICA was paid premiums in

exchange for its promise to pay Plaintiff's losses for claims covered by the policy.

82. Plaintiff has complied with all applicable provisions of the policies and/or those provisions have been waived by UTICA, or UTICA is estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

83. Therefore, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's Income losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under its policy; and
- ii. UTICA is obligated to pay Plaintiff for the full amount of the Business Income losses incurred and to be incurred in connection with the Closure Orders during the period of restoration and the necessary interruption of their business stemming from the COVID-19 pandemic.

SIXTH CAUSE OF ACTION
DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE

84. Plaintiff OVELIA repeats and realleges Paragraphs 1-50 as if fully set forth herein.

85. Plaintiffs bring this Count individually and on behalf of the other members of the Civil Authority Declaratory Judgment Class.

86. Plaintiff's UTICA insurance policy is a contract under which UTICA was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the policy.

87. Plaintiff has complied with all applicable provisions of the policy and/or those

provisions have been waived by UTICA, or UTICA is estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

SEVENTH CAUSE OF ACTION
DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE

88. Plaintiff OVELIA repeats and realleges Paragraphs 1-50 as if fully set forth herein.

89. Plaintiff's UTICA insurance policy is a contract under which UTICA was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the policy.

90. Plaintiff has complied with all applicable provisions of the policy and/or those provisions have been waived by UTICA, or UTICA is estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the policies clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

91. Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's Extra Expense losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under its policy; and
- ii. UTICA is obligated to pay Plaintiff for the full amount of the Extra Expense losses incurred and to be incurred in connection with the covered losses related to the Closure.

**EIGHTH CAUSE OF ACTION
DECLARATORY JUDGMENT – SUE AND LABOR COVERAGE**

92. Plaintiff OVELIA repeats and realleges Paragraphs 1-50 as if fully set forth herein.

93. Plaintiff's UTICA insurance policy is a contract under which UTICA was paid premiums in exchange for its promise to pay Plaintiff's reasonably incurred expenses to protect Covered Property.

94. Plaintiff has complied with all applicable provisions of the policy and/or those provisions have been waived by UTICA, or UTICA is estopped from asserting them, and yet UTICA has abrogated its insurance coverage obligations pursuant to the policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

V. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- a. Entering judgment on Causes of Action I-IV in favor of Plaintiff OVELIA and awarding damages for breach of contract in an amount to be determined at trial;
- c. Entering declaratory judgments on Causes of Action V-VIII in favor of Plaintiff as follows;
 - i. Business Income, Civil Authority, Extra Expense, and Sue and Labor losses incurred in connection with the Closure Orders and the necessary interruption of Plaintiff's business stemming from the COVID-19 pandemic are insured losses under its policy; and
 - ii. UTICA is obligated to pay for the full amount of the Business Income, Civil

Authority, Extra Expense, and Sue and Labor losses incurred and to be incurred related to COVID-19, the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic;

- d. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded;
- e. Ordering Defendant to pay attorneys' fees and costs of suit; and
- f. Ordering such other and further relief as may be just and proper.

Dated: Astoria, New York
August 17, 2020

/S
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