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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

SEP 15 2020
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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

SYCAMORE RESTAURANT GROUP, LLC,

Plaintiff,

v.

CENTURY NATIONAL INSURANCE CO.;
UNICO INSURANCE AGENCY, INC., and
DOES 1 to 25, inclusive,

Defendants.

Case No. **CIV DS 2019730**

**COMPLAINT FOR BREACH OF
CONTRACT OR, IN THE
ALTERNATIVE, BROKER
PROFESSIONAL NEGLIGENCE

DEMAND FOR TRIAL BY JURY**

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1 The Sycamore Restaurant Group, LLC (“Plaintiff”) brings this complaint against
2 Defendant Century National Insurance Company (“Century National”), Unico Insurance Agency,
3 Inc. (“Unico”), and DOES 1 through 25 and pleads as follows:

4 **NATURE OF THE ACTION**

5 1. Sycamore Restaurant Group, LLC operates the Great Maple restaurant in San
6 Diego, California.

7 2. To protect its business in the event it suddenly had to suspend operations for
8 reasons outside of its control, Plaintiff purchased business interruption coverage from Defendant
9 Century National that was procured by Plaintiff’s trusted broker Unico. The policy that Unico
10 procured included property coverage as set forth in Century National’s Business Income (And
11 Extra Expense) Form (Form CP 00 30 04 02) (“Business Income Coverage Form”). In the course
12 of their special relationship, Plaintiff made it known to Unico that it wished to have business
13 interruption protection in the event that customer access to its restaurant was impaired.

14 3. The Business Income Coverage Form is in effect and has a policy period of
15 February 15, 2020 through February 15, 2021. Under the Business Interruption Coverage Form,
16 Century National—in return for substantial premium payments made by the Plaintiff—agreed to
17 indemnify Plaintiff for losses, including but not limited to Business Income losses at the Great
18 Maple Restaurant in San Diego, California (the “Insured Property”).

19 4. Century National’s Business Income Coverage Form provides “Business Income”
20 coverage, which promises to pay for loss due to the necessary suspension of operations.

21 5. Century National’s Business Income Coverage Form also provides “Extended
22 Income” coverage, which promises to pay for loss due to the necessary suspension of operations.

23 6. Century National’s Business Income Coverage Form also provides “Extra
24 Expense” coverage, which promises to pay the expenses incurred to avoid or minimize the
25 suspension of business and to continue operations.

26 7. Century National’s Business Income Coverage Form also provides “Civil
27 Authority” coverage, which promises to pay for losses caused by the action of a civil authority that
28 prohibits access to the Insured Property.

1 8. Century National’s Business Income Coverage Form, under a section entitled
2 “Duties In The Event Of Loss” mandates that Century National’s insured “must see that the
3 following are done” in the event of loss: “[t]ake all reasonable steps to protect the Covered
4 Property from further damage.”

5 9. Plaintiff suspended its business at its San Diego restaurant due to the physical loss
6 and damage caused by COVID-19 (a.k.a. the “coronavirus” or “SARS-CoV-2”) and the resultant
7 orders issued by the Governor of California and the County of San Diego mandating that
8 businesses like Plaintiff’s suspend and limit operations and take necessary steps to prevent further
9 damage, minimize the suspension of business, and continue operations.

10 10. Plaintiff made a claim with Century National for its covered losses, and Century
11 National denied that claim on May 6, 2020.

12 11. Century National breached its contract in refusing to cover Plaintiff’s losses.
13 However, if the Court concludes Century National did not breach the parties’ contract, broker
14 Defendant Unico is liable for broker professional negligence because it held itself out as an
15 insurance expert and created a special relationship with Plaintiff, but then failed to use the skill
16 and care that a reasonably careful insurance broker would have used in procuring sufficient
17 insurance coverage for Plaintiff.

18 **JURISDICTION AND VENUE**

19 12. This Court has subject-matter jurisdiction over this action and the matters alleged
20 herein. In addition, Defendants Century National and Unico are citizens of the State of California,
21 and thus pursuant to the Forum Defendant Rule, *see Lively v. Wild Oats Markets, Inc.*, 456 F.3d
22 933, 939 (9th Cir. 2006), removal to federal court would not be proper. Moreover, there is no
23 diversity of citizenship that would permit filing of this case in federal court.

24 13. Venue is proper in this Court because Defendant Century National in one or more
25 filings with the State of California has identified Ontario, California (in San Bernardino County)
26 as its principal place of business.

1 **THE PARTIES**

2 14. Plaintiff The Sycamore Restaurant Group, LLC is a California company, whose
3 members are California residents. Plaintiff's principal place of business is in San Diego County,
4 California. Plaintiff operates a restaurant in San Diego, California.

5 15. Defendant is informed and believes, and on that basis alleges, that Century
6 National is a California company that in one or more filings with the State of California has
7 identified Ontario, California (in San Bernardino County) as its principal place of business.
8 Defendant Century National provides property and business income coverage to California
9 businesses and properties. At all times material hereto, Century National conducted and transacted
10 business through the selling and issuing of insurance policies within California, including but not
11 limited to, selling and issuing property coverage for Plaintiff's San Diego restaurant.

12 16. Plaintiff is informed and believes, and on that basis alleges, that Defendant Unico is
13 a California corporation with its principal place of business in Cypress, California.

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

21 **FACTUAL BACKGROUND**

22 18. Plaintiff operates the Great Maple restaurant in San Diego, California.

23 19. One of the creators of The Great Maple restaurant is San Diego restaurateur,
24 Johnny Rivera. Great Maple restaurants have received numerous accolades, including a 2019
25 Michelin star, Diner's Choice in 2019, and the 2019 Certificate of Excellence from Trip Advisor.
26 Mr. Rivera is an expert in creating amazing food.

1 ***The Century National Policy Terms***

2 20. Because Plaintiff was not an expert in insurance matters, it asked Unico to
3 recommend and procure insurance that would include business interruption coverage. Unico
4 recommended the Century National policy, and relying upon Unico's expertise and the parties'
5 special relationship, Plaintiff purchased the policy.

6 21. In return for the payment of a premium, Century National issued Policy No.
7 77A1007778-03 to Plaintiff for a policy period of February 15, 2020 to February 15, 2021,
8 covering the Great Maple property located at 1451 Washington Street, San Diego, CA 92103 (the
9 "Covered Property"). The policy included a Business Interruption Coverage Form.

10 22. Plaintiff's Business Income Coverage Form includes coverage for Business
11 Income, Extra Expense, Extended Business Income, and Civil Authority.

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

19 24. Losses due to COVID-19 are a Covered Cause of Loss under the policy.

20 25. Plaintiff reasonably believed that the policy it had been sold would cover losses
21 unless they fell within a specific exclusion, and the property policy at issue does not have a virus
22 or pathogenic organism exclusion.

23 26. Any reading of the policy that does not provide coverage for losses due to COVID-
24 19 would render Policy No. 77A1007778-03 an illusory contract.

25 27. In the Business Income Coverage Form, Century National agreed to pay Plaintiff's
26 loss of Business Income sustained due to the necessary suspension of Plaintiff's operations during
27 the "period of restoration" due to "direct physical loss or damage to" the Insured Property.

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1 28. “Business Income” includes the net income that Plaintiff would have earned or
2 incurred and continuing normal operating expenses incurred, including payroll had it not been for
3 the suspension of its operations.

4 29. In the Business Income Coverage Form, Century National also agreed to pay any
5 “Extra Expense” that Plaintiff incurs to “[a]void or minimize the ‘suspension’ of business and to
6 continue operations,” “to minimize the suspension of business” if Plaintiff cannot continue
7 operations, and to “[r]epair or replace property.”

8 30. “Extra Expense” means the necessary expenses that Plaintiff would not have
9 incurred if there had been no direct physical loss or damage to the Covered Property caused by
10 from a Covered Cause of Loss.

11 31. In the Business Income Coverage Form, Century National also agreed to pay for
12 the loss of “Extended Business Income,” which is the actual loss of Business Income that Plaintiff
13 sustained during the period that begins when operations are resumed and ends the earlier of thirty
14 days later or the date when Plaintiff could have restored operations with reasonable speed.

15 32. In the Business Income Coverage Form, Century National also agreed to pay for
16 the “loss of Business Income” and “Extra Expense” that Plaintiff sustains caused by or resulting
17 from action of Civil Authority that prohibits access to the Covered Property when a Covered
18 Cause of Loss causes damage to property other than the Covered Property.

19 33. Plaintiff has performed all of its obligations under Policy No. 77A1007778-03,
20 including the payment of premiums.

21 ***Physical Loss of and Damage to Plaintiff’s Property Triggered Plaintiff’s Business***
22 ***Interruption Coverage***

23 34. The COVID-19 virus causes physical loss or damage to property through the well-
24 documented fact that it physically infects and stays on surfaces of objects and materials for up to
25 twenty-eight days and thereby facilitates transmission by touching of such surfaces. The fact that
26 policyholders expect and believe that a Pandemic related to a virus would constitute physical loss
27 of or damage to property has been recognized in the insurance industry since at least 2006.

28

1 35. Losses caused by COVID-19 and the related orders issued by local, state, and
2 county authorities triggered the Business Income, Extra Expense, Extended Business Income, and
3 Civil Authority provisions under the policy.

4 ***The Closure Orders Also Triggered Plaintiff's Civil Authority Coverage***

5 36. 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 Insured Property (the "Closure Orders").

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

10 38. On March 19, 2020, California Governor Newsom issued Executive Order N-33-
11 20, which he found was necessary "for the preservation of public health and safety throughout the
12 entire State of California." The order requires "all individuals living in the State of California to
13 stay home or at their place of residence except as needed to maintain continuity of operations of
14 the federal critical infrastructure sectors." That same day, the Mayor of Los Angeles Eric Garcetti
15 issued a "Safer at Home" Public Order requiring all residents of the City of Los Angeles to remain
16 in their homes, requiring all businesses using in person workers to cease operations, and
17 prohibiting public gatherings and travel except for certain essential activities and later extended
18 that order, expressly stating that "the COVID-19 virus can spread easily from person to person"
19 and "**is physically causing property loss or damage** due to its tendency to attach to surfaces for
20 prolonged periods of time."

21 39. On or about May 15, 2020, California Governor Newsom stated that restaurants
22 could reopen for dine-in service in counties certified as meeting state benchmarks for addressing
23 the pandemic while implementing changes to guard against spreading the virus. Governor
24 Newsom requested that restaurants primarily focus on take-out and delivery services.

25 40. On July 13, 2020, due to the spike of the virus after the state's soft reopening,
26 California Governor Newsom ordered all counties to re-close indoor operations in several sectors,
27 including restaurants. The State of California issued its *COVID-19 Industry Guidance for*
28

1 *Restaurants Providing Takeout, Drive Through, and Delivery.* That order is in effect until further
2 notice.

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

4 41. The presence of COVID-19 caused “direct physical loss or direct physical damage
5 to” Plaintiff’s Insured Property and the immediately surrounding areas under the Plaintiff’s policy
6 by denying use of and rendering untenable and damaging the Insured Property and by causing a
7 necessary interruption of operations during a period of restoration.

8 42. On or about March 16, 2020, Plaintiff closed its doors and its business.

9 43. Due to the dangerous and ubiquitous nature of COVID-19, it caused physical loss
10 and damage to Plaintiff’s property.

11 44. Moreover, the Closure Orders prohibited access to and use of Plaintiff’s Insured
12 Property, and the area immediately surrounding these Insured Property, in response to dangerous
13 physical conditions resulting from a Covered Cause of Loss.

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

16 46. Plaintiff has notified Century National of the above-described loss.

17 47. On May 6, 2020, Century National Insurance Company denied Plaintiff coverage
18 and declined to pay any amount in response to this notification.

19 ***If Plaintiff Is Not Covered, the Broker Defendants Acted Negligently***

20 48. While Plaintiff is an expert in food and operating restaurants, it did not have the
21 necessary expertise in choosing proper insurance coverage for its business and, thus, relied heavily
22 on its insurance broker to ensure Plaintiff’s business had full coverage, including coverage in the
23 case its business operations were suspended for reasons outside its control.

24 49. During the time of the Pandemic, Plaintiff’s insurance broker was Unico.

25 ***Defendants Unico Held Itself out As an Expert in Insurance and Risk Management***

26 50. Unico held itself out as an expert in insurance and risk management. Unico
27 promised to provide a business owner’s policy, and “[f]rom there, an On Your Side Review”
28

1 would “assess any additional coverage options or policies that would help round out [Plaintiff’s]
2 risk management.”

3 51. Unico advised Plaintiff that it did not “need to know everything there is to know
4 about insurance coverage to be secure. *That’s what our agents are here for[.]*” “This combination
5 of *expertise* and access to the customizable coverage makes certain that [Unico’s] agents are ready
6 to advise you about your insurance needs.”

7 52. Plaintiff relied on Unico’s touted expertise to ensure Plaintiff had the right
8 coverage for its business.

9 ***Renewal of the Century National Policy***

10 53. Unico became the agent of Plaintiff at all times material to the procurement of the
11 Century National policy.

12 54. Plaintiff dealt with Unico’s agent, Frank Stipati, when renewing its insurance
13 policy.

14 55. Plaintiff and Mr. Stipati met to go over potential policies and discuss what was
15 covered. Business interruption coverage was always discussed and focused upon because Plaintiff
16 considers business interruption an “existential risk.”

17 56. Unfortunately, Mr. Stipati did not go into detail and explain any potential gaps that
18 might exist in Plaintiff’s coverage. Particularly, Mr. Stipati failed to inform Plaintiff about the
19 coverage gap that Century National claims to exist and relies upon as the basis for its coverage
20 denial.

21 57. Plaintiff relied on the broker’s expertise and purchased terrorism coverage as Mr.
22 Stipati suggested. Yet, there was no mention of pandemic coverage or any other solution to bridge
23 the coverage gap that Century National claims to exist and relies upon as the basis for its coverage
24 denial.

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FIRST CAUSE OF ACTION

BREACH OF CONTRACT

(Against Defendant Century National)

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

59. To establish breach of contract, the insured must show (1) the existence of a contract, (2) the plaintiff’s performance or excuse for nonperformance, (3) the defendant’s breach, and (4) resulting damages.

60. As described above, a contract existed between Plaintiff and Century National.

61. Plaintiff fully performed under the parties’ contract, including paying all premiums.

62. Century National has breached the contract by denying Plaintiff coverage for its losses by falsely claiming the suspension of Plaintiff’s business was not caused by a “Direct Physical Loss of or Damage to” Plaintiff’s covered property. Indeed, on April 10, 2020, Mayor Garcetti specifically and expressly stated that the COVID-19 virus “*is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.*”

63. Century National has further breached the contract by claiming that the Closure Orders “at issue did not ‘Prohibit Access’ to [Plaintiff’s] designated premises and did not result from a Loss or Damage at a premises ‘Other Than’ [Plaintiff’s] designated premises.”

64. Century National’s breach has caused Plaintiff’s losses. Had Century National not breached the contract, Plaintiff would be made whole after suffering the physical loss of and damage to its Insured Property. Plaintiff would also have been made whole for the losses it sustained from the Closure Orders, which closed down nonessential businesses located all throughout the County of Los Angeles and San Diego.

SECOND CAUSE OF ACTION

BROKER PROFESSIONAL NEGLIGENCE

(Against Defendant Unico)

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

1 66. If the Court finds that there is no coverage, then Defendant Unico was negligent
2 and committed broker professional negligence in renewing a policy that provided insufficient
3 coverage to protect Plaintiff's business.

4 67. Defendant Unico, through its agent Frank Stipati, was aware of Plaintiff's
5 insurance needs and negligently misrepresented to Plaintiff the nature, scope, or extent of
6 Plaintiff's coverage.

7 68. Defendant Unico failed to disclose that pandemic coverage was available to
8 Plaintiff or the existence of the purported Pathogenic Organism Exclusion and its possible
9 relevance to Plaintiff's coverage.

10 69. Because Defendant Unico held itself out as an insurance and risk management
11 expert, it created a special relationship with Plaintiff, and Plaintiff completely relied upon
12 Defendant Unico to procure business interruption coverage in the event of such a loss.

13 70. Defendant Unico owed a duty of reasonable care, diligence, and judgment in
14 procuring insurance for their clients.

15 71. The standard of care for a broker of insurance is for it to ascertain and understand
16 the needs of its client (the insurance consumer) and provide that advice, which under similar
17 circumstances, the broker would provide to itself. This standard of care requires the broker to
18 communicate such advice in a manner that is reasonably calculated to actually gain the attention
19 and understanding of the client.

20 72. Because Defendant Unico held itself out as having expertise in insurance and risk
21 management, it had a duty, through Mr. Stapati, to advise Plaintiff on specific insurance matters,
22 or point out to Plaintiff advantages or additional coverage, or obtain additional facts applicable to
23 coverage from Plaintiff.

24 73. Defendant Unico acted below the standard of care for brokers of insurance when it
25 failed to accurately communicate the limits of Plaintiff's coverage to Plaintiff. To the extent
26 Plaintiff's losses are deemed outside the coverage scope of the Century National policy, Defendant
27 Unico affirmatively failed to identify and cure these gaps in coverage, giving rise to broker
28 liability.

1 74. Insurance coverage for the types of losses complained of herein was generally
2 available to the insurance industry in 2019 and 2020, and such coverage would have been
3 specifically available to Plaintiff in that time frame. Thus, as a direct and proximate result of and
4 but for the negligence of Defendant Unico, Plaintiff would have had insurance coverage for the
5 losses Plaintiff suffered. Plaintiff has been damaged in a sum that will be proven at the trial of this
6 matter, but well in excess of \$25,000. These damages include Plaintiff's business income, extra
7 expense, extended business income, and civil authority losses (all of which, absent Defendant
8 Unico's negligence, would have been borne by an insurer), and other damages allowed by law.

9 **PRAYER FOR RELIEF**

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

- 12 a. Holding that Defendant Century National breached the insurance contract between
13 the parties; or in the alternative, if the Court finds that there is no coverage, holding
14 Defendant Unico was professionally negligent in procuring an insurance policy that
15 did not provide sufficient coverage to Plaintiff;
- 16 b. Compensatory and general damages, including damages for business losses
17 consistent with those that should have been paid under the policy, in a sum in
18 excess of the jurisdictional minimum of this Court according to proof;
- 19 c. Interest upon any judgment entered as provided by law;
- 20 d. Costs of suit herein incurred as provided by law; and
- 21 e. Such other and further relief as may be just and proper.

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23 Respectfully submitted,

24 DATED: September 14, 2020

25 GLASER WEIL, LLP

26 */s/ Sean Riley*

27 _____
28 Sean Riley
 Attorneys for Plaintiff

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JURY TRIAL DEMAND

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

DATED: September 14, 2020

GLASER WEIL, LLP

/s/ Sean Riley

Sean Riley
Attorneys for Plaintiff