

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X Index No.:

VISCONTI BUS SERVICE, LLC, VISCONTI FAMILY LLC,
ROBIN ALLY LLC, 145-147 MILL ST., LLC,

Plaintiffs,

VERIFIED COMPLAINT

-against-

UTICA NATIONAL INSURANCE GROUP and UTICA
NATIONAL INSURANCE OF TEXAS,

Defendants.

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Plaintiffs, VISCONTI BUS SERVICE, LLC, VISCONTI FAMILY LLC, ROBIN ALLY LLC, 145-147 MILL ST., LLC (“VISCONTI” or, collectively, “Plaintiffs”), by and through their undersigned attorneys, as and for their Verified Complaint against UTICA NATIONAL INSURANCE GROUP and UTICA NATIONAL INSURANCE OF TEXAS (“Defendants” or, collectively, “UTICA”), upon information and belief, allege as follows:

INTRODUCTION

1. This action for breach of contract arises out of UTICA’s denial of VISCONTI’s claim for insurance coverage under their “all risk” policy for its significant business interruption losses and extra expenses suffered as a direct result of the nationwide and statewide government shutdown orders designed to mitigate the COVID-19 pandemic by, in part, restricting all or part of the insured’s business at the insured premises in order to save lives and protect property.

2. The losses, including the loss of use of the insured premises and loss of business income therefrom, were caused by these Executive Orders designed to mitigate the imminent threat to person and property posed by COVID-19, which is an unexcluded covered cause of loss

under the subject “all risk” policy, which defines “covered cause of loss” as “risk of direct physical loss unless the loss is “excluded or otherwise limited.

3. VISCONTI also purchased with the policy coverage for business income and extra expense losses.

4. VISCONTI purchased commercial property insurance from UTICA, namely policy No. CPP 4619398 (the “Policy” attached as **Exhibit A**), for which it paid significant monthly premiums, and was and continues to be in effect from March 1, 2020 to March 1, 2021. For the convenience of the Court and easier reference, the pages of the Policy have been Bates numbered.

5. VISCONTI is a bus contractor that owns a fleet of transportation vehicles, including buses. VISCONTI’s headquarters are located in Newburgh, New York. Their mechanics service their vehicles, including buses, at headquarters. Buses must be scheduled and dispatched at headquarters. Buses cannot be dispatched remotely due to internal safety protocols.

6. Based on preliminary information available, VISCONTI has already suffered hundreds of thousands of dollars in lost proceeds, as well as other costs in connection with the emergency government shutdown orders responding to the coronavirus outbreak. Depending on how long these conditions and government orders last, and how many “waves” occur, those losses could increase substantially.

7. Regardless of what one may think about the efficacy or necessity of the emergency government shutdown orders, it was reasonable and necessary for VISCONTI to comply with the emergency government shutdown orders in order to mitigate the effects of a pandemic disaster and imminent risks of danger that COVID-19 posed to person and property.

8. VISCONTI promptly made a claim for coverage of these losses under the Policy

and was notified by UTICA via letter dated June 4, 2020, that its claim was denied. Denial letter attached as **Exhibit B**. UTICA presented portions of the policy and said there was no coverage without attempting to integrate all policy terms; judicial or regulatory interpretations of relevant language, without presenting the facts correctly, without adhering to well settled rules of construction, including reading the policy as a whole, and without investigating the property or investigating properly in general.

JURISDICTION AND VENUE

9. VISCONTI is a limited liability formed under the laws of New York, with its principal place of business located at 17-23 Dickson Street, Newburgh, New York.

10. At all relevant times, VISCONTI owned and operated a bus contracting business located at 17-23 Dickson Street, Newburgh, Orange County, New York.

11. At all relevant times, Defendant UTICA NATIONAL INSURANCE GROUP is a domestic corporation, duly licensed, registered and authorized to conduct business in the State of New York and maintains its principal place of business in New Hartford, Oneida County, New York.

12. At all relevant times, UTICA NATIONAL INSURANCE GROUP is and was licensed to issue insurance policies in the State of New York, subject to the laws of the State of New York.

13. At all relevant times, UTICA NATIONAL INSURANCE GROUP maintained an office in the State of New York.

14. At all relevant times, UTICA NATIONAL INSURANCE GROUP either directly or through an agent, transacted business within the State of New York and/or contracted outside the State of New York to offer goods or services within the State of New York.

15. That at all times herein mentioned, UTICA NATIONAL INSURANCE GROUP

regularly did or solicited business, or engaged in any other persistent course of conduct, or derived substantial revenue from services rendered, in the State of New York.

16. That at all times herein mentioned, UTICA NATIONAL INSURANCE GROUP had sold insurance policies, namely the Policy, to Plaintiffs.

17. At all relevant times, State executive emergency orders permeated every aspect of the use of the insured property located in Newburgh, New York.

18. That at all times herein mentioned, UTICA NATIONAL INSURANCE GROUP and Plaintiffs entered into valid insurance contracts, namely the Policy, for the insurance of Plaintiffs' premises located in Newburgh, New York, and the business income derived therefrom.

19. At all relevant times, Defendant UTICA NATIONAL INSURANCE OF TEXAS is a domestic corporation, duly licensed, registered and authorized to conduct business in the State of New York and maintains its principal place of business in New Hartford, Oneida County, New York.

20. At all relevant times, UTICA NATIONAL INSURANCE OF TEXAS is and was licensed to issue insurance policies in the State of New York, subject to the laws of the State of New York.

21. At all relevant times, UTICA NATIONAL INSURANCE OF TEXAS maintained an office in the State of New York.

22. At all relevant times, UTICA NATIONAL INSURANCE OF TEXAS either directly or through an agent, transacted business within the State of New York and/or contracted outside the State of New York to offer goods or services within the State of New York.

23. That at all times herein mentioned, UTICA NATIONAL INSURANCE OF

TEXAS regularly did or solicited business, or engaged in any other persistent course of conduct, or derived substantial revenue from services rendered, in the State of New York.

24. That at all times herein mentioned, UTICA NATIONAL INSURANCE OF TEXAS had sold insurance policies, namely the Policy, to Plaintiffs.

25. At all relevant times, State executive emergency orders permeated every aspect of the use of the insured property located in Newburgh, New York.

26. That at all times herein mentioned, UTICA NATIONAL INSURANCE OF TEXAS and Plaintiffs entered into valid insurance contracts, namely the Policy, for the insurance of Plaintiffs' premises located in Newburgh, New York, and the business income derived therefrom.

27. Upon information and belief, UTICA NATIONAL INSURANCE GROUP and UTICA NATIONAL INSURANCE OF TEXAS issued the Policy to VISCONTI together, shared and assumed the risks and liabilities accruable under the Policy together with each Defendant having a certain percentage of the total risk of the Policy, shared the premiums paid by VISCONTI for the insurance provided by the Policy, and both profited directly from the premiums paid by VISCONTI for the insurance provided by the Policy.

28. Pursuant to CPLR § 503 (c), venue is proper in Orange County as both VISCONTI and UTICA maintain and conduct their respective businesses here.

FACTUAL ALLEGATIONS

A. Introduction

29. This case is about whether Plaintiffs' insurance policy provides coverage for the damages sustained and expenses incurred by Plaintiffs as a result of unprecedented emergency orders by state and local officials restricting Plaintiffs' business activities.

30. Plaintiffs, like other people and businesses, bought insurance to help when

disaster occurs.

31. During such times, individuals and businesses (including Plaintiffs) are at their most vulnerable and desperate, a fact of which insurance companies (including Defendants) are keenly aware.

32. Essentially, insurance companies promise, warrant and sell “peace of mind” that in the unlikely event of a catastrophe or disaster the policyholder will be fully and promptly indemnified.

33. The contract of insurance carried with it a duty of utmost good faith on the part of the insurer, because of the vulnerability of policyholders during and following a disaster.

34. This duty includes Defendants’ obligation to fairly and quickly adjust Plaintiffs’ insurance claims, determining coverage and amount of loss, and providing prompt payment.

35. Here no such good faith investigation or adjustment occurred because Defendants reached a pre-determined conclusion to deny coverage.

B. The Policy

36. On or about March 1, 2020, Plaintiffs renewed their all risk insurance policy, Policy Number CPP 4619398, issued by UTICA.

37. According to the policy Declaration, Plaintiffs’ business is “bus contractor.” Exhibit 1 at POLICY_004. Plaintiffs agreed to pay premiums to Defendants in exchange for Defendants’ promise of insurance coverage for all risks, except those specifically excluded.

38. VISCONTI has made all required premium payments.

39. The Policy is an all-risk insurance policy. In an all-risk insurance policy, all risks of loss are covered unless they are specifically excluded.

40. Building and Personal Property Coverage Form “will pay for direct physical loss

of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.” Exhibit 1 at POLICY_007.

41. Plaintiffs’ premises are described in the Declarations and are covered. These include two offices located at 17-23 Dickson Street, Newburgh, New York. Specially, an office building and an office trailer. It is here that VISCONTI’s bus fleet is maintained, serviced by VISCONTI mechanics, and dispatched.

42. Direct physical loss or physical damage is not defined in terms of structural damage, for example, by “theft” is covered but limited.

43. Business Income coverage promises to “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 premises which are described in the Declarations. . .” Exhibit 1 at POLICY_021.

44. The Policy defines “suspension” to include the “slowdown or cessation of your business activities.” Exhibit 1 at POLICY_029.

45. The Policy’s use of the disjunctive “or” clearly indicates that loss and damages are different.

46. The Policy does not define loss or damage.

47. Actions, such as those taken by VISCONTI and the incidental loss of business income, including compliance with a reasonable and necessary Executive Order to limit the use of their premises in order to prevent or mitigate an imminent risk of direct physical loss or damage to people and property, in the face of a widespread pandemic, are the cause of Plaintiffs’ loss of utility of its property and attendant business income loss.

48. The Policy also provides “Extra Expense” coverage under which Defendants

promised to pay expenses incurred that “would not have been incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.”

Exhibit 1 at POLICY_021. Pursuant to this section of the Policy, UTICA promised to pay for “necessary expenses you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.” *Id.*

49. The Policy also provides coverage for “Extended Business Income.” *See* POLICY_022. Specifically, Defendants promised to pay for the actual loss of Business Income incurred during the period that “(a) Begins on the date property is actually repaired, rebuilt or replaced and ‘operations’ are resumed; and (b) Ends on the earlier of: (i) the date you could restore your ‘operations’, with reasonable speed, to the level which generate the business income amount that would have existed if no direct physical loss or damage had occurred; or (ii) 30 consecutive days after the date determined in (1)(a) above.” *Id.*

50. Additionally, the Policy provides “Civil Authority” coverage under which Defendants promised to pay for loss of business income sustained when the action of a civil authority prohibits access to the business premises. *See* Exhibit 1 at POLICY_022. Specifically, the Policy provides “Civil Authority” coverage for “the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.” *Id.* The coverage for Business Income begins “72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.” *Id.* The coverage for Extra Expense beings “immediately after the time of that action and will end: (1) 3 consecutive weeks after the time of that action; or (2) when your Business Income coverage ends; whichever is later.” *Id.* This Civil

Authority provision is an independent basis for business interruption coverage. That is, it can be triggered even when the standard business interruption coverage is not.

51. The Policy does not contain any exclusion that would apply to allow Defendants to deny coverage for losses caused by the interruption of Plaintiffs' business and the actions of civil authorities.

52. Ordinance or Law Coverage Endorsement illuminates that in this policy, "virus" is different from "contamination by 'pollutants'." Exhibit 1 at POLICY_39.

53. Accordingly, because the Policy is an all-risk policy and a covered loss has occurred and the Policy does not specifically exclude the losses that Plaintiffs have and continue to suffer, those losses are covered.

54. In addition, the Policy requires Plaintiffs to "[t]ake all reasonable steps to protect the Covered Property from further damage." Exhibit 1 at POLICY_015. Plaintiffs have complied by following and adhering to the Executive Orders restricting their business.

C. History of Business Interruption Insurance

55. At its core, business interruption insurance (or 'business income' insurance as it is known today) ("BI") is meant to return an insured's business; the amount of profit it would have earned had there been no interruption of business or suspension of operations. To better understand its context and role in Plaintiff's overall Policy, what follows is some background information as to BI.

56. BI was developed in the United Kingdom in the early 19th century as a supplement to fire insurance, whereby insurers would compensate commercial building owners not only for the physical damage but for the insured's inability to utilize the building to collect rent (the primary business of the insured). The first loss of 'rent' coverage was offered by the English Hamburg Fire Office in 1817.

57. BI continued to evolve, and by the mid-19th century insurers in Europe began offering ‘stoppage or cessation’ insurance, that provided coverage for lost business income due to the inability to utilize property, typically a fixed percentage of what the company’s stock on hand would have generated for the business during that time.

58. By the late 19th century, BI had come to the United States. In 1880, Boston-based insurer Dalton introduced ‘Use and Occupancy’ insurance, which insured the loss of production following a covered peril. Typically, these insurance policies provided for a set dollar amount or recovery for each day the insured was prevented from conducting operations. ‘Use and Occupancy’ continued to be the nomenclature adopted by American insurers up until the 1940s.

59. In the late 1930s, insurers began offering “Gross Earnings” insurance. This was an iteration of BI which compensated insureds for the reduction in gross earnings due to a business interruption caused by a covered peril.

60. In 1986, the Insurance Services Office (“ISO”) recommended replacing the ‘Gross Earnings’ policy form with the ‘Business Income Coverage’ form, which although modified and varied in particular policies is still frequently used today.

61. The emergence of coverage in certain policies, such as Plaintiff’s, tied to the insured’s interest in its income stream in many policies gave protection to business losses tied to a particular policy’s language and covered causes of loss.

62. Though it has evolved over centuries, and varies between policies, the crux of BI insurance has always been to return to insureds (such as Plaintiffs) the losses of business income resulting from the slowdown or cessation of their business.

**THE DEVASTATING SLOWDOWN AND/OR CESSATION
OF PLAINTIFFS' BUSINESS ACTIVITIES**

A. Pandemic Dangers

63. From the first reported case in the United States in January 2020 to the present, the impact of the coronavirus has been devastating. More than 1,500,000 Americans have had confirmed cases of COVID-19, and more than 100,000 have died.

64. In New York State there have been approximately 400,000 confirmed cases of COVID-19 and almost 25,000 deaths. There have been more than 11,000 cases and nearly 500 deaths in Orange County alone. This evidence indicates the pervasive presence of the virus.

65. Severe acute respiratory syndrome coronavirus 2 ("COVID-19") has spread, and continues to spread, rapidly across the United States and has been declared a pandemic by the World Health Organization. See <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>.

66. The global COVID-19 pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials for many days, and its airborne component permeates the insured property and premises. Studies indicate that COVID-19's spread is, in part, because of its aerosol transport in and throughout buildings and their airways. See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7293495/>

67. Notably, the virus manifests differently in different people. Some infected persons display symptoms, ranging from minor to severe, while others are asymptomatic and never show symptoms of the disease. Symptoms may appear 2-14 days after exposure to the virus. See <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

68. According to a study published in *The New England Journal of Medicine*,

COVID-19 is widely accepted as a cause of real physical loss and damage. It remains stable and transmittable in aerosols for at least three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. *See*

<https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>

69. According to a study conducted by Tulane National Primate Research Center, the virus was able to survive in air for 16 hours. *See*

<https://www.medrxiv.org/content/10.1101/2020.04.13.20063784v1.full.pdf>

70. Business establishments like the Plaintiffs' Covered Property are highly susceptible to being or becoming contaminated, as both respiratory droplets and fomites are likely to be retained on the Covered Property and remain viable for an extended period of time.

71. Plaintiffs' business is also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the nature of a sitting in an enclosed bus, necessarily places large numbers of people, mostly schoolchildren, in a highly social context in close proximity to the property, to one another, and to the existing load of COVID-19 presence at surfaces or aerosol. This imminent risk to person and property is what the emergency executive orders aimed to mitigate.

72. It is well recognized that a pandemic is a disaster. In upholding the Governor of Pennsylvania's Proclamation of a state-wide disaster and the Executive Orders mandating the closure of businesses within Pennsylvania, the Pennsylvania Supreme Court noted the significant risk of the spread of the COVID-19 virus, even in locations where the disease has not been detected, based on the virus' ability to attach onto surfaces and survive in the air:

COVID-19 does not spread because the virus is "at" a particular location. Instead it spreads because of person-to-person contact, as it has an incubation period of up to fourteen days and that one in four carriers of the virus are asymptomatic. Respondents' Brief at 4 (citing Coronavirus Disease 2019, "Symptoms," CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>)

(last accessed 4/9/2020)). The virus can live on surfaces for up to four days and can remain in the air within confined areas and structures. *Id.* (citing National Institutes of Health, “Study suggests new coronavirus may remain on surfaces for days,” (Mar. 27, 2020) <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last accessed 4/9/2020) and Joshua Rabinowitz and Caroline Bartman, “These Coronavirus Exposures Might be the Most Dangerous,” *The New York Times* (Apr. 1, 2020) <https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html>). See *Friends of DeVito v. Wolf*, ___ A.3d ___, 2020 WL 1847100, *15-16 (April 13, 2020).

B. State and Local Emergency Orders

73. Non-essential businesses were at first required to reduce in-person workforce to fifty-percent, then seventy-five percent to one hundred percent, mandating a maximum effort of telecommuting and work from home procedures. But even businesses classified as “essential” have been severely impacted. For example, essential businesses have had to increase the frequency of cleaning, reduce staff, reduce hours of operation, shut premises to the public and eventually limit the number of customers allowed on the premises, install new protective barriers, and provide personal protective equipment to their workforce.

74. On March 16, 2020, Governor Cuomo issued Executive Order 202.4, which mandated every school in the state of New York to close no later than March 18, 2020 for a period of two weeks.¹ This Order was subsequently modified by the Executive Order 202.11 issued on March 27, 2020, which directed all schools to remain closed until April 15, 2020.² Executive Order 202.14 extended school closures to April 29, 2020³, and Executive Order 202.18 again extended school closures to May 15, 2020.⁴ On May 7, 2020, Executive Order

¹ <https://www.governor.ny.gov/news/no-2024-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

² <https://www.governor.ny.gov/news/no-20211-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

³ <https://www.governor.ny.gov/news/no-20214-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

⁴ <https://www.governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

202.28 directed that all schools remain closed through the remainder of the school year.⁵ As a result, the operation of VISCONTI's bus fleet ceased, with the exception of two buses that operated to deliver meals to students of a closed local school district.

75. On March 18, 2020, Governor Cuomo issued Executive Order 202.6, which required that all businesses utilize telecommuting or work from home procedures to the maximum extent possible, as well as reduce in-person workforce by fifty percent (50%) no later than March 20th at 8 p.m. See <https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>. On March 19, 2020, Executive Order 202.7 required in-person workforce to be reduced by seventy-five percent (75%) (See <https://www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>), and on March 20th, in-person workforce was to be reduced by one reduced by one hundred percent (100%) by March 22nd. See <https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

76. On March 22, 2020, New York Governor Andrew Cuomo issued the "New York State on PAUSE" executive order, ordering the closure of all non-essential businesses, prohibiting non-essential gatherings, and implementing a minimum 6-foot social distance requirement statewide. Governor Cuomo, through a series of executive orders, extended "New York State on PAUSE" and effectively shut down every non-essential business in New York State indefinitely.

77. Mayor Bill de Blasio also issued an executive order on March 12, 2020 in which

⁵ <https://www.governor.ny.gov/news/no-20228-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

he declared a state of emergency for the City of New York “due to the threat posed by COVID-19 to the health and welfare of City residents.” Then on, March 16, 2020 Mayor de Blasio, *inter alia*, extended the state of emergency period declared for the city of New York due to the threat of COVID-19 spreading from person to person and “because the virus physical is causing property loss and damage.” *See* Emergency Executive Order No. 100.

78. The City of New Orleans, similarly, in a March 16, 2020 proclamation acknowledged COVID’19’s “propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances.” *See* <https://nola.gov/mayor/executive-orders/emergency-declarations/03162020-mayoral-proclamation-to-promulgate-emergency-orders-during-the-state-of-emergency-due-to-co/>.

79. New Jersey was among the first states to declare a state of emergency, with Governor Phil Murphy declaring a state of emergency and a public health emergency on March 9, 2020. On March 16, 2020, Governor Murphy, in conjunction with New York Governor Andrew Cuomo and Connecticut Governor Ned Lamont, ordered that as of 8 p.m. that evening, all gyms, movie theaters, bars, and casinos were to be closed. Restaurants were limited to take-out and delivery orders only. Governor Murphy issued a “stay at home” order, ordering New Jersey residents to stay at home except for necessary travel and mandated that all non-essential businesses close until further notice.

80. On March 19, 2020, the City of Los Angeles issued its “Safer at Home” order “because, among other reasons, the COVID-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time. *See* Public Order Under City of Los Angeles Emergency Authority, Issue Date March 19, 2020.

81. On March 31, 2020, Dallas County, Texas issued an order stating that “the COVID-19 virus causes property loss or damage due to its ability to attach to surfaces for prolonged periods of time...” *See* Amended Order of County Judge Clay Jenkins, Issue date March 31, 2020.

82. On March 27, 2020, Governor Cuomo issued Executive Order 202.11, which made any violation of an Order limiting operation of a type of facility or limiting the number of persons who may occupy any space a violation of law subject to police enforcement and ticketing. *See* <https://www.governor.ny.gov/news/no-20211-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

83. On March 30, 2020, Governor Cuomo issued Executive Order 202.13, which announced that all prior Orders restricting businesses were extended until April 15, 2020. This date was extended to April 29, 2020, extended a second time to May 15, 2020, and extended a third time to May 28, 2020. On May 28, 2020, the New York on PAUSE was extended indefinitely including the closure of all non-essential business and the prohibition of all non-essential gatherings of more than ten people. <https://www.governor.ny.gov/news/no-20234-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

84. Although certain aspects of the Stay at Home Orders, school closures, and business restrictions have been partially or completely lifted, Plaintiffs are still subject to restrictions on their ability to operate at full capacity.

85. Plaintiffs estimate a loss of \$900,000 in revenue and at least \$2,000 in extra expenses since approximately March 16, 2020.

FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

86. Plaintiffs repeat each and every allegation contained in paragraphs 1 through 85

above as though fully set forth herein.

87. Plaintiffs and Defendant entered into the Policy, a contract for insurance coverage.

88. Plaintiffs performed all of their obligations under the Policy, including making premium payments to Defendant.

89. The Policy was in full force and effect when Plaintiffs sustained the damages described above.

90. Plaintiffs' damages and losses were caused by events covered by the Policy during a period when the Policy was in full force and effect.

91. The damages and losses suffered by Plaintiffs by reason of the COVID-19 pandemic and related civil authority orders described in this Complaint fall within the scope of the Policy's coverage, therefore affording indemnification and insurance benefits in favor of Plaintiffs.

92. Defendant has no valid reason for its refusal to settle and/or pay Plaintiffs' claim.

93. Defendant has failed to perform its obligations under the Policy by, among other things, refusing to provide the coverage requested by and due to Plaintiffs herein.

94. Defendant's failure to pay Plaintiffs under the Policy is a breach of the contract entered between the parties.

SECOND CAUSE OF ACTION
(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

95. Plaintiffs repeat and reallege paragraph 1 through 94 of the Complaint as if fully set forth herein.

96. New York Law imposes on Defendants an implied covenant of good faith and fair

dealing in the Policy.

97. Defendants have breached the implied covenant of good faith and fair dealing in one or more of the following ways: (a) by arbitrarily, and with reckless disregard for the rights of Plaintiffs, refusing to acknowledge coverage and effectuate prompt, fair and equitable settlement of Plaintiffs' claim for coverage by virtue of a decision based on Defendants' economic exposure instead of the terms of the Policy; (b) knew or recklessly disregarding that it was acting unreasonably in failing to honor its obligations under the Policy; and (c) forcing Plaintiffs to sue for coverage.

98. Plaintiffs have been damaged by Defendants' breach of implied covenant of good faith and fair dealing in an amount to be determined at trial.

99. Plaintiffs are entitled to consequential damages flowing from Defendants' violation of implied covenant of good faith and fair dealing, including, without limitation, prejudgment interest on the amount owed under the Policy, and the attorneys' fees, costs and disbursements incurred by Plaintiffs in enforcing its rights as a consequence of Defendant's bad faith conduct.

100. Consequential damages for bad faith breach of the Policy were reasonably contemplated by Plaintiffs and Defendants at the time they entered into the Policy.

WHEREFORE, VISCONTI respectfully demands judgment against UTICA as follows:

- (a) On the First Claim for Relief: an award against UTICA of compensatory, direct and consequential damages to be determined at trial;
- (b) On the Second Claim for Relief: an award against UTICA of compensatory, direct and consequential damages, including, without limitation, attorneys' fees and costs, in an amount to be determined at trial;
- (c) On all Counts: (i) pre- and post-judgment interest; (ii) costs, disbursements and attorneys' fees; and (iii) such other and further relief as this Court deems just and proper.

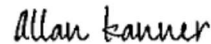
Dated: October 8, 2020

FINKELSTEIN & PARTNERS, LLP



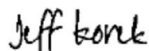
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