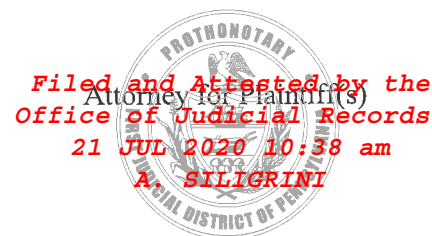


WHEELER, DiULIO & BARNABEI, P.C.

BY: Jonathan Wheeler, Esquire
Attorney I.D. No.: 12649
One Penn Center - Suite 1270
1617 JFK Boulevard
Philadelphia, PA 19103
Phone: (215) 568-2900
Email: jwheeler@wdblegal.com



BRANZINO, INC
259-261 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

vs

SENECA INSURANCE COMPANY, INC
160 WATER STREET
NEW YORK, NY 10038-4922

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JULY TERM, 2020

NO.

**JURY TRIAL DEMANDED
COMMERCE PROGRAM**

CIVIL ACTION COMPLAINT

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the Claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral Service
1101 Market St., 11th Floor
Philadelphia, PA 19107-2911
Telephone: 215-238-6333
Fax: 215-238-1159

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFIA
Servicio De Referencia E Informacion Legal
1101 Market Street, 11th Floor
Filadelfia, Pennsylvania 19107
(215) 238-6333

WHEELER, DiULIO & BARNABEI, P.C.

BY: Jonathan Wheeler, Esquire

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Attorney for Plaintiff(s)

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CIVIL ACTION COMPLAINT

Branzino, Inc ("Branzino"), by its attorneys, Wheeler, DiUlio & Barnabei, P.C., files this Complaint against Seneca Insurance Company, Inc ("Seneca") as follows:

THE PARTIES:

1. Branzino is a corporate entity, duly created under and pursuant to the laws of the Commonwealth of Pennsylvania, which maintain its principal place of business at the address set forth above.

2. Seneca is a corporate entity which is licensed to issue policies of insurance in the Commonwealth of Pennsylvania which maintains its principal place of business for that purpose

at the address set forth above. Seneca regularly conducts business and issues policies of insurance in the City and County of Philadelphia.

3. At all times material hereto, Seneca was acting by and through its duly authorized agents, servants, workmen or employees, including, but not limited to Wil Desir (“Desir”) who acted at all times material hereto within their authority as authorized representatives of Seneca.

JURISDICTION AND VENUE

4. Jurisdiction and venue are properly laid in the Court of Common Pleas of Philadelphia, since Seneca regularly conducts business and issues policies of insurance in Philadelphia and the material events giving rise to this action took place in Philadelphia. This action is properly before the Commerce Court since the dispute arises from a commercial transaction between business entities.

THE POLICY:

5. Policy No. CMP 4702916 issued by Seneca through its agent, Provantage, provides coverage for the Restaurant Premises operated by Branzino at 259-61 South 17th Street, Philadelphia, PA 19103 (hereafter the “Premises”) under terms and conditions set forth in language copy-written by the Insurance Services Office, Inc. (“ISO”) which provides standard forms for insurance companies including Seneca. A true and correct copy of the Declarations page for the Policy identifying its insuring provisions is attached hereto and incorporated herein as Exhibit 1.

6. In consideration for the premium paid, the Policy provides coverage for Business Interruption and Extra Expense in the amount of \$150,000 subject to a 1/6 monthly limit of \$ 25,000.

7. The Policy includes ISO Form CP 00 10 (10-12) which states:

“We 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.”

8. The Policy includes ISO “Special” Cause of Loss form CP 10 30 06 (09-17) which states that:

“ **COVERED CAUSE OF LOSS** “ ... means Risks of Direct Physical Loss unless the loss is: 1. Excluded in Section **B**, Exclusions; or 2. Limited in Section **C**, Limitations; that follow.”

9. The Policy includes ISO form Endorsement CP 01 40 07 06 which states:

“B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.”

10. The Policy includes PROPERTY PLUS ENHANCEMENT ENDORSEMENT Form 17-250 (05/10) which is a “stand alone” policy provision which provides coverage for Business Income and Extra Expense Losses which does not have an exclusion for Virus caused losses.

11. The Policy includes ISO Form CP 00 30 06 07 BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM which states:

“ When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay 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, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area not more than one mile from the damaged property; and
- (2) The action of the civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.”

STATEMENT OF FACTS:

12. In March 2020, the United States was struck with an insidious invisible disease identified as SARS-CoV-2 and COVID-19 (hereafter “Disease”) which caused an unprecedented Pandemic and afflicted millions of people, raising serious concerns among the general public as to its spread and containment.

13. On March 19, 2020, Pennsylvania Governor Tom Wolf issued an Executive Order closing all “businesses that are not life sustaining” effective March 21, 2020 based, in part on a declaration by the World Health Organization and the Centers for Disease Control and Prevention that the virus had created a “public health emergency of international concern” and had been declared by the U.S. Department of Health and Human Services Secretary to “create a public health emergency.” A true and Correct copy of this Executive Order is attached hereto and incorporated herein as Exhibit 2.

14. In his Order, Governor Wolf declared a “disaster emergency throughout the

Commonwealth of Pennsylvania” and ordered the closure of all “non-life sustaining businesses” for “...the prevention and suppression of disease.”

15. Pursuant to this Executive Order, Branzino immediately closed the Restaurant Premises insured under the Seneca Policy and ceased all business operations.

16. As a result of this closure Business Income from this location ceased and Branzino has spent and incurred substantial Extra Expenses to maintain these premises to minimize the suspension of operations and continue business when possible. This includes periodic maintenance to disinfect these premises and clean surfaces potentially infected with the disease.

17. Claims for Business Income Loss and Extra Expense benefits under the Policy were submitted to Seneca through its agent Provantage, which established a date of Loss for the claim of March 15, 2020.

18. Thereafter, Branzino has done and performed all things required under the terms of the Policy.

19. Despite Branzino’s performance in accordance with the contract terms, Seneca through its representative, Desir, sent correspondence dated April 29, 2020 denying Branzino’s claims for Business Interruption and Extra Expense. A Copy of this letter is attached hereto as Exhibit 3.

20. Desir sent this letter denying coverage and benefits owed under the Policy without conducting any investigation whatsoever and in spite of the clear policy language granting coverage for these losses to Branzino.

21. Desir’s letter misstates the “Covered Cause of Loss” language set forth in the Policy in conjunction with the Civil Authority coverage as a pretext to deny coverage.

22. Desir's assertion that there has been no direct physical damage to insured property (even though this is not required under the "Causes of Loss" provision of the Policies) is plainly untrue since the pandemic has been declared to constitute a "Disaster Emergency" which has affected all property located in the Commonwealth of Pennsylvania, including the premises insured under the Lloyds Policy. This is especially true since the Cause of Loss under the Policy is "...Risk of Direct Physical Loss."

23. Desir's assertion that the Policy does not cover the acts of Civil Authority to close Branzino's businesses because of the pandemic causing "dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss" is plainly untrue since the "Disaster Emergency" is clearly set forth in Governor Wolf's Order as the cause of the closures.

24. Desir's denial of Coverage completely ignores the PROPERTY PLUS ENHANCEMENT ENDORSEMENT Form 17-250 (05/10) which does not include "Virus" as an exclusion to coverage under the Policy

25. As a direct result of Seneca's denial of coverage and benefits, Branzino has suffered damages and losses in an amount in excess of the limits of the Seneca Policy.

COUNT I
BRANZINO V SENECA - BREACH OF CONTRACT AND DUTY OF GOOD FAITH AND FAIR DEALING

26. Branzino incorporates by reference herein the averments set forth above, as fully as those same were here set forth at length.

27. The Policy issued by Seneca to Branzino is a contract of adhesion and any ambiguity in its terms or doubts with regard to the application of coverage are to be resolved in favor of the

policyholder and coverage granted in accordance with the reasonable expectations of the policyholder.

28. Branzino reasonable believed and relied on the terms of the Policy to afford coverage and benefits in the event that the businesses were closed as a result of the damage to the premises and acts of civil authority in response to a disease pandemic such as occurred here.

29. Seneca has breached its contract of insurance and violated its duty of good faith and fair dealing by denying coverage and benefits to Branzino which are clearly owed under the terms of the Policies.

30. As the direct and foreseeable result of Seneca's breach of contract and its duty of good faith and fair dealing, Branzino has been deprived of the benefit of its bargained for benefits due and owing as a result of its covered loss, including, but not limited to Loss of Business Income, Extra Expenses and from its business operations. In addition, Branzino has suffered other consequential damages by reason of damage to its business operations for an amount in excess of the coverage set forth in the Seneca Policy, including, but not limited to damage to its business operations, reduction in the value, and profitability of its business operations and assets, a diminution of its cash reserves and credit standing, as well as its ability to exist in a competitive business environment

WHEREFORE, Branzino demands judgment against Seneca for an amount in excess of \$50,000.00 together with interest, costs of suit, counsel fees and such other relief as the Court may deem equitable and just.

COUNT II
BRANZINO V SENECA - BAD FAITH VIOLATION OF 42 Pa §8371

31. Branzino incorporates by reference herein the averments set forth above, as fully as those same were here set forth at length.

32. Seneca has engaged in bad faith conduct with respect to its adjustment of Plaintiffs' covered loss, in violation of 42 Pa. C.S.A §8371 et seq.

33. In furtherance of its bad faith and wrongful denial and refusal to pay benefits for Branzino's covered loss, Seneca, acting by and through its duly authorized agents, servants, workmen or employees, including, but not limited to, Desir, has engaged in the following conduct:

- a) by sending correspondence dated April 29, 2020, a true and correct copy of which is attached hereto, made part hereof, and marked Exhibits 2 , falsely representing that Branzino's losses, caused by perils insured against under the Policies were not entitled to benefits due and owing under the Policy;
- b) by refusing to reconsider and afford benefits and coverage under the Policies despite the inaccuracy of its position and persisting in its refusal to afford coverage and pay benefits which it knew were due and owing;
- c) in failing to complete a prompt and thorough investigation of Branzino's claim before representing that such a claim is not covered under the Policy;
- d) in failing to pay benefits for Branzino's covered loss in a prompt and timely manner;
- e) in failing to objectively and fairly evaluate Branzino's claim;

- f) in asserting policy defenses without a reasonable basis in fact;
- g) in flatly misrepresenting pertinent facts or policy provisions relating to coverages at issue and placing unduly restrictive interpretations on the Policy and/or claim forms;
- h) in unreasonably withholding policy benefits;
- i) in acting unreasonably and unfairly in response to Branzino's claim;
- j) in unnecessarily and unreasonably compelling Branzino to institute this lawsuit to obtain policy benefits for a covered loss, that Seneca should have paid promptly and without the necessity of litigation.

34. As the direct and proximate result of Seneca's Bad Faith misconduct, as aforesaid, Branzino has been required to retain counsel and incur the costs of this lawsuit.

35. For the reasons set forth above, Seneca's Bad Faith actions in violation of 42 Pa. C.S.A. §8371, have rendered Seneca liable for statutory damages including interest from the date the claim was made in an amount equal to the prime rate of interest plus three percent, court costs, attorney's fees, punitive damages, and such other compensatory and/or consequential damages as are permitted by law.

WHEREFORE, Branzino demands judgment against Seneca for an amount in excess of \$50,000.00 together with interest, costs of suit, counsel fees, punitive damages and such other relief as the Court may deem equitable and just.

WHEELER, DiULIO & BARNABEI, P.C.

BY: /s/ Jonathan Wheeler
JONATHAN WHEELER, ESQUIRE
Attorney for Plaintiff(s)

Civil Action Complaint

VERIFICATION

The undersigned hereby states that it is the Plaintiff in this action and that the statements of fact made in the foregoing document are true and correct to the best of his information and belief. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

DATE: 7/16/20

BRANZINO, INC


By: LUAN TOTO, President

EXHIBIT “1”

COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS PAGE

POLICY NO. CMP 4702916

EFFECTIVE DATE 01/31/2020

☐ "X" If Supplemental
Declarations Is Attached

NAMED INSURED

Branzino, Inc.
DBA: Branzino Italian Ristorante

DESCRIPTION OF PREMISES

Prem. Bldg. Location, Construction And Occupancy
No. No.

See Description of Premises Schedule

COVERAGES PROVIDED Insurance At The Described Premises Applies Only For Coverages For Which A Limit Of Insurance Is Shown

Prem. No.	Bldg. No.	Coverage	Limit Of Insurance	Covered Causes Of Loss	Coinsurance*
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See Coverages Provided Schedule

*If Extra Expense Coverage, Limits On Loss Payment

OPTIONAL COVERAGES Applicable Only When Entries Are Made In The Schedule Below

Prem. No.	Bldg. No.	Expiration Date	Agreed Value		Replacement Cost (X)		
			Cov.	Amount	Building	Pers. Prop.	Including Stock

See Optional Coverages Schedule

Inflation Guard (%)
Bldg. Pers.
No. Prop.

*Monthly Limit Of
Indemnity

Maximum Period
Of Indemnity

*Extended Period
Of Indemnity

*Applies to Business Income Only

MORTGAGEHOLDERS

Prem. No.	Bldg. No.	Mortgageholder Name And Mailing Address
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DEDUCTIBLE

\$5,000

Exceptions:

COVERAGES PROVIDED **Insurance At The Described Premises Applies Only For Coverages For Which
A Limit Of Insurance Is Shown**

Prem. No.	Bldg. No.	Coverage	Limit Of Insurance	Covered Causes Of Loss	Coinsurance*
Location Level Coverages					
001	001	Personal Property of Insured	\$350,000	Special Form Including Theft	80%
		Business Income Other Than Rental Value	\$150,000	Special Form Including Theft	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROPERTY PLUS ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

**Commercial Property Coverage Part
Cause of Loss – Special Form
Water Exclusion Endorsement**

The following additional provisions are applicable to this endorsement:

A. LIMITS OF INSURANCE

The Limits of Insurance stated in the attached schedule are granted by us as additions to your insurance program. These Limits of Insurance apply separately at each of your premises. Unless otherwise noted these limits apply per occurrence.

The total amount payable in any one occurrence shall not exceed the Limit of Insurance or Increased Limit of Insurance specified on the Schedule of this form, regardless of the number of locations insured.

B. DEDUCTIBLE

Each loss shall be adjusted separately and from the amount of such adjusted loss, the sum of \$500.00 (unless otherwise indicated) shall be deducted.

Optional Deductible: \$1,000

List exception, if any, to the application of the optional deductible amount.

- 1.
- 2.
- 3.

C. CONDITIONS

1. When not in conflict with the provisions of this endorsement, all of the conditions of the policy to which this form is attached shall apply.
2. If any of the property covered by this form is also covered under any other provisions of the policy of which this form is made a part, you, in the event of loss or damage, may elect to make claim:
 - a. under such other provisions in which case none of the provisions of this form are applicable; or
 - b. under the provisions of this form in which case coverage as provided by this form becomes sole coverage on such property.
3. Where not otherwise indicated, we shall not pay beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for

EXHIBIT “2”



ORDER OF

THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA REGARDING THE CLOSURE OF ALL BUSINESSES THAT ARE NOT LIFE SUSTAINING

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention ("CDC") have declared a novel coronavirus ("COVID-19") a "public health emergency of international concern," and the U.S. Department of Health and Human Services ("HHS") Secretary has declared that COVID-19 creates a public health emergency; and

WHEREAS, as of March 6, 2020, I proclaimed the existence of a disaster emergency throughout the Commonwealth pursuant to 35 Pa. C.S. § 7301(c); and

WHEREAS, I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania that result from disasters. 35 Pa. C.S. § 7301(a); and

WHEREAS, in addition to general powers, during a disaster emergency I am authorized specifically to control ingress and egress to and from a disaster area and the movement of persons within it and the occupancy of premises therein; and suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, and combustibles. 35 Pa. C.S. § 7301(f); and

WHEREAS, in executing the extraordinary powers outlined above, I am further authorized during a disaster emergency to issue, amend and rescind executive orders, proclamations and regulations and those directives shall have the force and effect of law. 35 Pa. C.S. § 7301(b); and

WHEREAS, in addition to my authority, my Secretary of Health has the authority to determine and employ the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a), 71 P.S. 1403(a); and

WHEREAS, these means include isolation, quarantine, and any other control measure needed. 35 P.S. § 521.5.

NOW THEREFORE, pursuant to the authority vested in me and my Administration by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

Section 1: Prohibition on Operation of Businesses that are not Life Sustaining

All prior orders and guidance regarding business closures are hereby superseded.

No person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to members of the public. This prohibition does not apply to virtual or telework operations (e.g., work from home), so long as social distancing and other mitigation measures are followed in such operations.

Life sustaining businesses may remain open, but they must follow, at a minimum, the social distancing practices and other mitigation measures defined by the Centers for Disease Control to protect workers and patrons. A list of life sustaining businesses that may remain open is attached to and incorporated into this Order.

Enforcement actions will be taken against non-life sustaining businesses that are out of compliance effective March 21, 2020, at 12:01 a.m.

Section 2: Prohibition on Dine-In Facilities including Restaurants and Bars

All restaurants and bars previously have been ordered to close their dine-in facilities to help stop the spread of COVID-19.

Businesses that offer carry-out, delivery, and drive-through food and beverage service may continue, so long as social distancing and other mitigation measures are employed to protect workers and patrons. Enforcement actions will be taken against businesses that are out of compliance effective March 19, 2020, at 8 p.m.

Section 3: Effective Date and Duration

This order is effective immediately and will remain in effect until further notice.



GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this nineteenth day of March two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.

Tom Wolf
TOM WOLF
Governor

EXHIBIT “3”

SENECA

Seneca Insurance Company
160 Water Street, New York, NY 10038
T + 1.212.344.3000
www.senecainsurance.com

April 29, 2020

VIA U.S. MAIL DELIVERY

Branzino, Inc.
DBA Branzino Italian Ristorante
259-261 S. 17th Street
Philadelphia, PA 19103

Attn: Luan Tota

Re:	Named Insured:	Branzino, Inc. DBA Branzino Italian Ristorante
	Claim No.:	20DDN080
	Policy No.:	CMP 4702916
	Date of Loss:	March 15, 2020
	Location of Loss:	261 S. 17 th Street, Philadelphia, PA 19103

Dear Mr. Tota:

Seneca Insurance Company, Inc., ("Seneca"), is in receipt of Branzino, Inc. DBA Branzino Italian Ristorante's ("you" or "your") claim for a business income other than rental value loss relating to the COVID-19 Virus ("COVID-19"). I am the Property Field Adjuster assigned to handle your claim on behalf of Seneca. Please be advised that for the reasons explained more fully below, Seneca must respectfully deny coverage for this claim pursuant to the terms of the Policy.

RELEVANT FACTS

On April 3rd, 2020, Branzino, Inc. DBA Branzino Italian Ristorante submitted a Loss Notice, ("Notice") to Seneca. The Notice states that Branzino, Inc. DBA Branzino Italian Ristorante sustained (is sustaining) a "loss of business income" occasioned by the Covid-19 virus. Pursuant to my conversation with Mr. Tota, the claim involves potential loss business due to their inability continue operation of the restaurant as a result of the closures and/or travel restrictions enacted by governmental order related to COVID-19.

COVERAGE PROFILE

Seneca issued a Commercial Protection Policy to Branzino, Inc. DBA Branzino Italian Ristorante, policy number CMP 4702916, for the policy period 01/31/2020 to 01/31/2021, with Building limits of \$ 350,000.00 (Location 1, Building 1) and business



CRUM & FORSTER

SENECA

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Case ID: 200701296

* * *

We will 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 or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.

* * *

2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means 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.

* * *

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay 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, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused

the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

* * *

The Policy contains the **Commercial Property Conditions Coverage Form (CP 00 90 07 08)** which provides in pertinent part:

COMMERCIAL PROPERTY
CP 00 90 07 88

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

* * *

The Policy also contains the **Causes of Loss – Special Form (CP 10 30 09 17)** which provides in pertinent part:

COMMERCIAL PROPERTY
CP 10 30 09 17

CAUSES OF LOSS – SPECIAL FORM

* * *

A. Covered Causes of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

B. Exclusions

* * *

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

* * *

- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

* * *

The Policy also contains the **Exclusion of Loss Due to Virus or Bacteria endorsement (CP 01 40 07-06)** which provides:

Commercial PROPERTY
CP 01 40 07 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

A. The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".

D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:

1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and

2. Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.

E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

* * *

COVERAGE POSITION

A. Coverage is not Available Under the Building And Business Personal Property and Business Income (And Extra Expense) Coverage Forms

In order for coverage to exist under the Policy for Business Income loss, or extra expense, the claimed damage or loss must be caused by direct physical loss or damage to the covered premises due to a Covered Cause of Loss. Your claim for business income loss and/or extra expense resulting from your inability to operate your business due to government mandates related to COVID-19 does not arise out of direct physical loss or damage to the covered premises due to a Covered Cause of Loss. To that end, the claim does not indicate that any of the Premises were physically damaged in any way. Accordingly, business income loss and/or extra expense coverage does not exist for this claim under the Policy.

B. Coverage is not Available Under the Additional Coverage for Civil Authority

In order for coverage to exist under the Additional Coverage for Civil Authority, access to the insured premises must be prohibited by action of civil authority in response to nearby property damage resulting from a Covered Cause of Loss. Your claim for business income loss and/or extra expense resulting from your inability to operate your business due to government mandates related to COVID-19 does not arise out of action of civil authority which prevents access to the Premises due to nearby property damage due to a Covered Cause of Loss. Accordingly, Additional Coverage for Civil Authority does not exist for this claim.

C. The Virus Exclusion

The Policy contains the Exclusion of Loss Due to Virus or Bacteria endorsement which excludes coverage for any property damage, business income loss, extra expense, or action of civil authority claim “caused by or resulting from any virus that induces or is capable of inducing physical distress, illness or disease.” Your claim for business income loss and/or extra expense resulting from your inability to operate your business due to government mandates related to COVID-19 entirely arises out of such a virus. Accordingly, your claim is also excluded from coverage by the Exclusion of Loss Due to Virus or Bacteria endorsement.

D. The Acts or Decisions Exclusion

The Policy contains the Acts or Decisions exclusion which excludes coverage for all loss or damage caused by or resulting from “[a]cts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.” Your claim for business income loss and/or extra expense resulting from the closure of the Premises and/or travel restrictions due to governmental order related to COVID-19 is caused by and results from the acts and decisions of a governmental body(ies). Accordingly, your claim is also excluded from coverage by the Acts or Decisions exclusion.

CONCLUSION

In summary, there is no coverage under the Policy for Branzino, Inc. DBA: Branzino Italian Ristorante, and Seneca disclaims any coverage obligation accordingly.

Seneca fully reserves and retains all rights that it has under the terms of the Policy and at law. The foregoing statement of Seneca’s position with respect to this claim is based on Seneca’s investigation and review of documents that have been provided to date. This correspondence is not intended, nor shall it be construed as an exhaustive listing of the Policy terms, conditions, definitions, exclusions, or endorsements that might apply. While Seneca has tried to identify and to address all of the coverage considerations that are related to this claim, the foregoing specificity is not intended, nor should it be construed as an estoppel, or waiver of any further right or basis which Seneca may have to disclaim coverage, and Seneca expressly reserves all rights and defenses in this regard. Moreover, there may be other terms and conditions of the Policy which, although not specifically mentioned in this letter, may apply to this claim. The Policy, in its entirety, is incorporated by reference as if it had been stated in full and Seneca reserves the right under the policy and applicable law to cite additional policy provisions as may be appropriate.

Neither this correspondence nor any subsequent communication should be deemed or construed as an admission of coverage under the Policy, or as a waiver of any right or defense to coverage available under such policy or at law or in equity. If you are aware of any additional information or authorities that would require re-evaluation of Seneca’s position, please provide it to us immediately.

If you disagree with our decision on the claim, you may request a review by way of an internal appeal process at Seneca. You may request this review by sending a written request, which includes the Claim Number, to Mr. Frank Donahue at Seneca Insurance Company, Inc., 160 Water Street, New York, NY 10038.

Should you have any questions relative to this claim or coverage determination, please contact the undersigned.

Sincerely,

Wil Desir

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