

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
21 GROUP INC., and 42-50 21st REALTY, LLC,

Index No.

Plaintiffs,

VERIFIED COMPLAINT

-against-

UNITED NATIONAL INSURANCE COMPANY,
and GLOBAL INDEMNITY GROUP, INC.,

Defendants.
-----X

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

I. PARTIES AND JURISDICTION

1. That, at all times hereinafter mentioned, the Plaintiff 21 Group Inc., Dba Show Palace ("Show Palace") is located at 200 East 135 St Unit #D-1032, NY 10451.
2. That, at all times hereinafter mentioned, the Plaintiff 42-50 21st Realty LLC is located at 42-50 21st St, Long Island City, NY 11101.
3. That, at all times hereinafter mentioned, the Defendant United National Insurance Company, ("UNIC") is located at Three Bala Plaza East, Ste., 300, Bala Cynwyd, Pennsylvania, 19004.
4. That, at all times hereinafter mentioned, the Defendant, Global Indemnity Group, Inc., ("GIGI") is located at 20 Highland Ave #A, Metuchen, New Jersey 08840.
5. Upon information and belief, Defendant United National Insurance Company, the

Policy issuer, is a subsidiary of Global Indemnity Group, Inc.

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

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

II. NATURE OF THE ACTION

8. Plaintiff owns and operates Show Palace, a Nightclub establishment and restaurant. Show Palace is now threatened by COVID-19 (a.k.a. the “coronavirus” or “SARS-CoV-2”).

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

10. UNIC’s Business Income (And Extra Expense) Coverage Form provides “Business Income” coverage, which promises to pay for loss due to the necessary suspension of operations following physical loss or damage to property.

11. UNIC’s Business Income (And Extra Expense) Coverage Form also provides “Civil Authority” coverage, which promises to pay for loss caused by the action of a civil

authority that prohibits access to the insured premises.

12. UNIC's Business Income (And Extra Expense) Coverage Form also provides "Extra Expense" coverage, which promises to pay the expense incurred to minimize the suspension of business and to continue operations.

13. UNIC's Business Income (And Extra Expense) Coverage Form, under a section entitled "Duties in the Event of Loss" mandates that the insured "must see that the following are done in the event of loss". . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim."

14. Unlike many policies that provide Business Income (also referred to as "business interruption") coverage, UNIC's Business Income (And Extra Expense) Coverage Form does not include, and is not subject to, any exclusion for losses caused by viruses or communicable diseases.

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

16. Upon information and belief, UNIC has denied Plaintiff's claim submitted pursuant to its policy, and refused to pay its insured under its Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages for losses suffered due to COVID-19, any executive orders by civil authorities that have required the necessary suspension of business, and

any efforts to prevent further property damage or to minimize the suspension of business and continue operations.

III. FACTUAL BACKGROUND

A. The Business Income (And Extra Expense) Coverage Form

17. In return for the payment of a premium, UNIC issued Policy No. MP1229654 to Show Palace, for a policy period of February 15, 2020 to February 15, 2021. Policy No. MP1229654 is attached hereto as **Exhibit A**. Show Palace has performed all of its obligations under Policy No. MP1229654, including the payment of premiums.

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

19. Losses due to COVID-19 are a Covered Cause of Loss under the UNIC’ policies with the Business Income (And Extra Expense) Coverage Form.

20. In the Business Income (And Extra Expense) Coverage Form, UNIC agreed to pay for its insured’s actual loss of Business Income sustained due to the necessary suspension of its operations during the “period of restoration” caused by direct physical loss or damage. A

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

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

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

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

23. In the Business Income (And Extra Expense) Coverage Form, UNIC also agreed to pay necessary Extra Expense that its insureds incur during the “period of restoration” that the insureds would not have incurred if there had been no direct physical loss or damage to the Covered Property.

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

25. UNIC also agreed to “pay for the actual loss of Business Income” that Plaintiff sustains “and any Extra Expense caused by action of civil authority that prohibits access to” the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.