

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CAMMIE’S SPECTACULAR SALON,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

MID-CENTURY INSURANCE
COMPANY,

Defendant.

Civil Action No. _____

NOTICE OF REMOVAL

TO THE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Mid-Century Insurance Company (“Mid-Century”), by its attorneys, hereby removes this action from the Superior Court of New Jersey Law Division, County of Burlington, to the United States District Court for the District of New Jersey, and as grounds for removal states as follows:

1. On August 5, 2020, Mid-Century was served, via the New Jersey Department of Insurance, with a Summons and Complaint in a putative class action filed by Plaintiff Cammie’s Spectacular Salon (“Plaintiff” or “Cammie’s”), individually, and on behalf of all others similarly situated, in the Superior Court of

New Jersey Law Division, County of Burlington, Case No. BUR-L-001467-20 (the “State Court Action”).

2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Complaint and Summons are attached hereto as Exhibits 1 and 2, respectively.

3. On August 24, 2020, Plaintiff filed a Notice of Motion to Opt into Complex Business Program Pursuant to Rule 4:102-4(a). A true and correct copy of this filing is attached hereto as Exhibit 3.

4. Other than these documents, no pleadings, process, or orders have been served upon Mid-Century in the State Court Action.

Procedural Requirements for Removal

5. Removal of the State Court Action to this Court satisfies the procedural requirements of 28 U.S.C. § 1446. This Court is the “district court of the United States for the district and division within which [this] action is pending.” 28 U.S.C. § 1446(a).

6. Removal of the State Court Action is proper under 28 U.S.C. § 1441(a) because Burlington County, where this action was filed, is within the District of New Jersey. *See* 28 U.S.C. § 110.

7. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it was filed within 30 days after the receipt by Mid-Century, through service or otherwise, of a copy of the initial pleading setting forth the claim for

relief upon which such action or proceeding is based or, if the case stated by the initial pleading was not removable, within 30 days after receipt by Mid-Century, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

8. Pursuant to 28 U.S.C. § 1446(d), Mid-Century will serve this Notice of Removal on counsel of record for Cammie's, Bethany L. Barrese, Saxe Doernberger & Vita, P.C., 35 Nutmeg Drive, Suite 140, Trumbull, CT 06611.

9. Pursuant to 28 U.S.C. § 1446(d), Mid-Century will also file a copy of this Notice of Removal with the Clerk of the Superior Court of New Jersey Law Division, County of Burlington, with a copy to Cammie's counsel.

General Diversity Jurisdiction

10. The State Court Action is properly removed to this Court under 28 U.S.C. §§ 1441(a) and 1332(a)(1) because the matter in controversy exceeds \$75,000, exclusive of interests and costs, and is between citizens of different states.

11. The Complaint asserts causes of action for breach of contract and declaratory relief arising from Plaintiff's claim for coverage under a commercial property insurance policy issued by Mid-Century. Ex. 1 at 14-17. The Complaint alleges that Plaintiff is entitled to coverage under the policy for "the actual loss of 'business income' sustained by Cammie's and other members of the class" and

“the necessary ‘extra expense’ that Cammie’s and other members of the class incurred” as a result of Covid-19 and New Jersey governmental orders issued in response to it. *Id.*; *see also id.* ¶¶ 24-33.

12. The Complaint does not specify the amount of Cammie’s alleged damages, but in its August 24, 2020 Notice of Motion to Opt in to Complex Business Program Pursuant to Rule 4:102-4(a), Plaintiff states that the amount in controversy on its breach of contract and declaratory judgment claims “will exceed \$200,000[,]” thus satisfying the jurisdictional threshold for diversity jurisdiction under 28 U.S.C. § 1332(a). *See* Ex. 3 ¶¶ 4, 5.

13. Mid-Century is citizen of the State of California, where it is incorporated and where it has its principal place of business.

14. According to the Complaint, Cammie’s is a limited-liability company, organized and existing under the laws of the State of New Jersey, with its principal place of business in New Jersey. Ex.1 ¶ 8.

15. For purposes of diversity jurisdiction, the citizenship of an LLC is determined by the citizenship of each of its members. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010). According to the Complaint, Cammie’s is owned and operated by Trina Stroman. Ex.1 ¶ 8. On information and belief, Trina Stroman is a citizen of the State of New Jersey and is not a citizen of the State of California.

16. Because Cammie's is a citizen of the State of New Jersey and Mid-Century is a citizen of the State of California, there is complete diversity jurisdiction in the State Court Action.

17. The citizenship of members of the Class other than Plaintiff, as named class representative, is not considered. *See Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002).

18. For all of the foregoing reasons, removal is proper under 28 U.S.C. § 1441(a) and 1332(a)(1).

Diversity Jurisdiction under CAFA

19. CAFA permits removal of putative class actions pending in state court if the aggregate matter in controversy exceeds \$5,000,000, any member of the alleged plaintiff class is a citizen of a state different from any defendant, and the proposed class has at least 100 members. *See* 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453(b). To remove under CAFA, "a defendant's notice of removal need include only a plausible allegation" that these requirements are met. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

20. The State Court Action is a class action under CAFA. Plaintiff alleges that she represents a class defined as follows:

All New Jersey persons and entities that had an insurance policy issued by Mid-Century that included a Building and Personal Property Coverage Form; suffered a suspension or closure of business related to SARS-COV-2 and/or

COVID-19 at the premises covered by their Mid-Century insurance policy, and had their claim for coverage denied by Mid-Century for the suspension or closure of business resulting from the presence or threat of SARS-COV-2 and/or COVID-19 (“the “Class”).

Ex. 1 ¶ 44.

21. Plaintiff alleges that “the Class consists of thousands of members or more[.]” Ex. 1 ¶ 48. As defined and described by Plaintiff, the putative Class exceeds 100 members, satisfying the numerosity requirement of 28 U.S.C. § 1332(d)(5)(B).

22. CAFA’s minimal diversity requirement is satisfied when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). According to the Complaint, Cammie’s is a limited-liability company organized and existing under the laws of the State of New Jersey with its principal place of business in New Jersey. Ex. 1 ¶ 8. For purposes of diversity, the citizenship of a limited-liability company is determined by the citizenship of all of its members. *Zambelli Fireworks*, 592 F.3d at 420. According to the Complaint, Cammie’s is owned and operated by Trina Stroman. Ex. 1 ¶ 8. On information and belief, Ms. Stroman is Cammie’s sole member and a citizen of the State of New Jersey.

23. Mid-Century is not a citizen of New Jersey. For purposes of federal jurisdiction, corporations and unincorporated associations are deemed to be

citizens of the states in which they were incorporated and the states in which they have principal places of business. 28 U.S.C. §§ 1332(c)(1), (d)(10). Mid-Century is an insurance company organized under the laws of California with its principal place of business in California.

24. Accordingly, because one or more of the members of the putative class is a citizen of New Jersey, and Mid-Century is not a citizen of New Jersey, CAFA's minimal diversity requirement is satisfied.

25. The Complaint does not specify the amount of Cammie's alleged damages, but in its August 24, 2020 Notice of Motion to Opt in to Complex Business Program Pursuant to Rule 4:102-4(a), Plaintiff states that the amount in controversy on its breach of contract and declaratory judgment claims "will exceed \$200,000." See Ex. 3 ¶¶ 4, 5. Plaintiff alleges that other class members are "similarly situated" to Plaintiff, Ex. 1 at 1; that Plaintiff's claims are "typical" of those of other class members, *id.* ¶ 50; and that "common legal or factual questions" among class members include "[t]he appropriate measure of damages." *Id.* ¶ 47(e). The complaint seeks recovery of damages and attorney's fees. *Id.* at 17.

26. With a class size of 100 members or more, average alleged damages per putative class member of a quarter of the amount claimed by Plaintiff would meet CAFA's matter-in-controversy requirement of \$5,000,000.

27. Therefore, CAFA's matter-in-controversy requirement of 28 U.S.C. § 1332(d) is satisfied, according to Plaintiff's allegations and submissions.

28. For all of the foregoing reasons, removal of this State Court Action is proper under CAFA.

29. Nothing in this Notice of Removal constitutes a waiver or admission of any allegation, defense, argument, or principle of equity available to Mid-Century.

WHEREFORE, pursuant to 28 U.S.C. § 1332, 1441, 1446, and 1453, Mid-Century hereby removes the State Court Action to the United States District Court for the District of New Jersey.

Dated: September 3, 2020

HOGAN LOVELLS US LLP

s/ Jessica K. Jacobs

Jessica K. Jacobs (NJ ID No. 038002011)

jessica.jacobs@hoganlovells.com

Jason M. Russell (NJ ID No. 294212019)

jason.russell@hoganlovells.com

David Newmann

(pro hac vice application to be filed)

david.newmann@hoganlovells.com

HOGAN LOVELLS US LLP

1735 Market Street, 23rd Floor

Philadelphia, PA 19103

Telephone: (267) 675-4600

*Attorneys for Defendant Mid-Century
Insurance Company*

CERTIFICATE OF SERVICE

I, Jessica K. Jacobs, hereby certify that, on September 3, 2020, I served via overnight and electronic mail a true and correct copy of the foregoing Notice of Removal, and all documents filed therewith, on Plaintiff's counsel.

Bethany L. Barrese, Esq.
SAXE DOERNBERGER & VITA P.C.
35 Nutmeg Drive, Suite 140
Trumbull, CT 06611
blb@sdrvlaw.com

s/ Jessica K. Jacobs
Jessica K. Jacobs

EXHIBIT 1

Bethany L Barrese
NJ Bar No 017622012
SAXE DOERNBERGER & VITA, P C
35 Nutmeg Drive, Suite 140
Trumbull, Connecticut 06611
(203) 287-2100
Attorneys for Plaintiff

CAMMIE’S SPECTACULAR SALON, individually, and on behalf of all others similarly situated, Plaintiff, -against- MID-CENTURY INSURANCE COMPANY, Defendant.
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BURLINGTON
COUNTY

DOCKET ID NO.:

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

This is a putative class action on behalf of Plaintiff Cammie’s Spectacular Salon (“Plaintiff” or “Cammie’s”), and all others similarly situated, by and through counsel, against Mid-Century Insurance Company (“Defendant” or “Mid-Century”)

NATURE OF THE ACTION

1. This case arises from the wrongful denial of insurance coverage by Mid-Century.
2. Plaintiff Cammie’s Spectacular Salon is a hair salon owned and operated by Trina Stroman. Founded in 1998 and named “Cammie’s” in honor of Ms. Stroman’s older sister, the salon now has 2 employees and provides a wide range of styling services to many loyal patrons.
3. Like so many other businesses across the United States, the nationwide spread of the SARS-CoV-2 virus and the resulting COVID-19 disease (the “COVID-19 pandemic”) have stopped Cammie’s success in its tracks.

4. In March 2020, New Jersey Governor Phil Murphy declared a State of Emergency and Public Health Emergency in New Jersey and issued an executive order closing, *inter alia*, hair salons to the public indefinitely and generally ordering residents to shelter in place with a limited number of exceptions for necessary activities (“Governor Murphy’s Orders”).

5. On or about March 31, 2020, Ms Stroman notified Mid-Century that Cammie’s had been forced to close due to the COVID-19 pandemic and/or Governor Murphy’s Orders, and that she was entitled to coverage pursuant to her Mid-Century insurance policy

6. Just a few days later and without any apparent investigation, on April 2, 2020, Mid-Century wrongfully denied Ms Stroman’s claim

7. On information and belief, Mid-Century has wrongfully denied numerous other policyholders’ claims

THE PARTIES

8 Cammie’s is a limited-liability company owned and operated by Trina Stroman and is organized and exists under the laws of the State of New Jersey, with its principal place of business at 7 East Main Street, Wrightstown, NJ 08562.

9 Mid-Century is an insurance company organized and existing under the laws of the State of California and is authorized to conduct business in New Jersey. Mid-Century is in the business of providing insurance, including business interruption insurance, to commercial insureds

JURISDICTION AND VENUE

10. Venue lies in Burlington County, New Jersey because Mid-Century has agents in this County, this is where the cause of action accrued, and this is where the property in litigation is located

11. This Court has personal jurisdiction over Mid-Century because: (a) Plaintiff's claim arises out of Mid-Century's conducting, engaging in and carrying on business in New Jersey, (b) Mid-Century has agents and brokers with offices in New Jersey, (c) Mid-Century breached its contract in New Jersey by failing to perform its contractual obligations that the Policy requires to be performed in New Jersey, and (d) Mid-Century contracted to insure Plaintiff's property located in New Jersey at issue in this action.

FACTUAL ALLEGATIONS

A. The COVID-19 Pandemic

12. The SARS-CoV-2 virus causes the COVID-19 disease. COVID-19 is a respiratory illness with symptoms including fever, shortness of breath, and a dry cough. For hospitalized individuals, these symptoms only become more severe, often requiring the use of a ventilator in order to keep the lungs filled with oxygen.

13. The SARS-CoV-2 virus is contagious, spreading rapidly through both human contact and respiratory transmission. The virus is spread when an infected individual breathes, coughs, or sneezes. Contagious droplets are released into the air. These droplets are too heavy to float in the air and fall onto hard surfaces below, making that surface dangerous and highly contagious. Scientists have determined that the virus can last for extended periods of time on hard surfaces and have stated that individuals should avoid direct contact with any un-sanitized or potentially contaminated surfaces.

14. Because, *inter alia*, the SARS-CoV-2 virus is thought to be able to survive on surfaces for multiple days, civil authorities have become concerned with the high probability that contaminated property in public locations would contribute substantially to the rapid spread of the virus, and the resulting COVID-19 disease.

15 On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID-19 outbreak. On March 16, 2020, President Trump released new federal guidelines to limit damage caused by the SARS-CoV-2 virus to both people and property, including “social distancing” measures that severely limited gatherings of individuals.

16 Governors throughout the country have issued substantially similar orders requiring the suspension of operations at a wide range of establishments and businesses within their respective jurisdictions.

17 In New Jersey, Governor Phil Murphy first issued such an order on March 16, 2020. On this date, Governor Murphy signed an Executive Order implementing “social distancing” measures within New Jersey, limiting gatherings to fifty (50) persons or fewer and requiring non-essential retail businesses to cease daily operations from 8:00PM to 5:00AM. On March 21, 2020, Governor Murphy issued a “Stay at Home” Executive Order, requiring New Jersey residents to shelter in place with a limited number of exceptions for necessary activities. The March 21, 2020 Executive Order also required that all recreational and entertainment businesses, including but not limited to “cosmetology shops, barber shops, beauty salons, hair braiding shops, [and] nail salons,” close to the public indefinitely. Governor Murphy noted that “restricting the physical presence of individuals in office environments and work sites is critical to preventing future spread of COVID-19.”

18 New Jersey is but one example. Nearly all states issued similar orders effectively shutting down non-essential businesses for a period of time.

19. Despite the implementation of such orders, the death toll in the United States remains high. The COVID-19 pandemic has claimed more than 130,000 lives in the United States in just a few months.

B. Cammie's Purchased Insurance Coverage to Cover Business Losses

20 Ms Stroman purchased for Cammie's a comprehensive Precision Portfolio Policy, Policy No PAS 08069710 (the "Policy") from Defendant Mid-Century Insurance Company. In return for the payment of a premium, for a policy period of May 22, 2019 to May 22, 2020, the Policy covers Cammie's location of business at 7 East Main Street, Wrightstown, NJ 08562, and protects against losses arising out of the business or at the business's premises. A copy of the Policy is attached as Ex. A.

21. The Policy includes a Building and Personal Property Coverage Form. The Building and Personal Property Coverage Form is an all-risk policy, providing coverage for all causes of loss unless specifically excluded.

22. The Building and Personal Property Coverage Form states in part.

COVERAGE

We will pay for direct physical loss of or damage to Covered Property caused by or resulting from a Covered Cause of Loss.

I. COVERED PROPERTY

The following items are Covered Property in this policy if shown in the Declarations along with a Limit of Insurance.

A. **Building**, meaning buildings and structures scheduled in the Declarations at a "described premises".

* * *

II. COVERED CAUSE OF LOSS

RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE unless the loss or damage is excluded or limited as described below.

* * *

III. ADDITIONAL COVERAGES

The following Additional Coverages apply only if they are indicated in the Declarations

A Business Income and Extra Expense

We will pay for the actual loss of "business income" you sustain due to the necessary suspension of "operations" during the "period of restoration," but not to exceed 12 consecutive months. The suspension must be caused by direct physical loss of or damage to property at the "described premises," including personal property in the open, or in a vehicle, within 1000 feet, caused by or resulting from a Covered Cause of Loss.

We will also pay necessary "extra expense" you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss of or damage to such property caused by or resulting from a Covered Cause of Loss.

* * *

Extensions:

- 1. Business Income From Dependent Properties** - We will also pay for the actual loss of "business income" you sustain due to the necessary suspension of "operations" caused by direct physical loss of or damage by a Covered Cause of Loss to "dependent property" at a premises you do not own, lease or operate.

* * *

- 4. Civil Authority** - 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" 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.

This coverage will begin after the action by civil authority for a period of up to three consecutive weeks after coverage begins.

* * *

DEFINITIONS

* * *

B. "Business Income" means the.

1. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
2. Continuing normal operating expenses incurred, including payroll if there had

been no direct physical loss or damage

* * *

C. "Dependent Property" means premises operated by others on whom you depend to

1. Deliver materials or services to you, or to others for your account (not including water, communication, or power supply services),
2. Accept your products or services,
3. Manufacture products for delivery to your customers under contract of sale, or
4. Attract customers to your business

E "Extra Expense" means necessary costs incurred to.

1. Avoid or minimize the suspension of business and continue "operations".
 - a. At the "described premises"; or
 - b. At replacement premises or temporary locations, including
 - (1) Relocation expenses; and
 - (2) Costs to equip and operate the replacement or temporary locations.
2. Minimize the suspension of business if you cannot continue "operations".
3. a. Repair or replace any property, or
 - b. Research, replace or restore the lost information on damaged Valuable Papers and Records to the extent it reduces the amount of loss that otherwise would be payable under paragraphs 1 and 2. above, or as "business income".

23. Notably, the Policy does not limit or exclude coverage for losses resulting from viruses or diseases.

C. Cammie's Suffered a Covered Loss and Mid-Century Wrongfully Denied Coverage

24 On March 19, 2020 Cammie's was forced to completely shut down due to the COVID-19 pandemic and/or Governor Murphy's Orders requiring all salons to cease operations in an effort to prevent the spread of COVID-19 at these locations.

25. The SARS-CoV-2 virus is extremely contagious and hazardous to public health insofar as it is able to spread quickly through casual human contact and by means of human contact with

surfaces, and because its long incubation period within a host allows it to transmit to new hosts without the presence of symptoms, making it extraordinarily difficult to trace.

26 The extremely contagious nature of the SARS-CoV-2 virus and the difficulty of reliably tracking its progress through local communities rendered hazardous all public places where close human-to-human and human-to-property contact occurs.

27. The presence of the SARS-CoV-2 virus, the COVID-19 disease, and/or the implementation of Governor Murphy's Orders caused "direct physical loss of or damage to" Cammie's under the Policy in that Cammie's was rendered completely unusable. Due to the presence of the SARS-CoV-2 virus, the COVID-19 disease, and/or the implementation of Governor Murphy's Orders, Cammie's was rendered completely unusable and, accordingly, suffered "direct physical loss of or damage to" its property under the Policy.

28 Such direct physical loss and property damage, which rendered Cammie's completely unusable, caused a necessary suspension of operations at Cammie's, causing Cammie's to lose substantial income, and to incur a variety of additional expenses that it would not have otherwise incurred, including, but not limited to, expenses for deep cleaning of the salon, replacement of equipment to comply with social distancing requirements, repainting of the salon, and the addition of new "Point of Sale" machines

29. The presence of the SARS-CoV-2 virus and/or the COVID-19 disease also caused "direct physical loss of or damage to" to premises on which Cammie's depends, causing Cammie's to lose substantial income. For example, Cammie's was unable to access its salon for three and a half months. One or more of the circumstances outlined in the above paragraph qualifies as having caused direct physical loss of or damage to Cammie's under the Policy

30. Moreover, the closure orders from local government prohibited access to Cammie's and the area immediately surrounding it. These orders were issued due to the "direct physical loss of or damage" that the area immediately surrounding Cammie's suffered as a result of the SARS-CoV-2 virus and/or the COVID-19 disease, rendering it unusable. For example, the proprietors were unable to access the strip mall in which the store is located for three and a half months. These closure orders also caused Cammie's to lose substantial income and incur extra expenses.

31. Cammie's has performed all obligations under the Policy.

32. On or about March 31, 2020, Cammie's submitted a claim of loss to Mid-Century in accordance with the terms of the Policy, seeking payment for insured losses. In particular, Cammie's requested repayment for business interruption.

33. On April 2, 2020, and without any apparent investigation, Mid-Century wrongfully denied Cammie's claim and refused to provide coverage for Cammie's Covered Cause of Loss.

D. Mid-Century Has Wrongfully Denied Numerous Policyholders' Legitimate Claims

34. On information and belief, Mid-Century issued form policies to numerous members of the putative class (like Cammie's) that should have provided coverage for tendered losses due to the presence of SARS-CoV-2 and/or COVID-19 and/or the implementation of closure orders, as described above.

35. In particular, on information and belief, Mid-Century has issued the Building and Personal Property Coverage Form referenced above and/or materially identical policies/coverages to numerous policyholders, thereby providing coverage under an all-risk policy for all causes of loss unless specifically excluded. As discussed in more detail above, this Building and Personal Property Coverage Form covers "RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE unless the loss or damage is excluded or limited" by the policy.

36. The Building and Personal Property Coverage Form includes coverage for lost Business Income and Extra Expense. Specifically, regarding Business Income, Mid-Century agreed to pay for the actual loss of “business income” sustained by Cammie’s and members of the putative class due to the necessary suspension of “operations” during the “period of restoration” caused by direct physical loss of or damage at the Covered Property. In addition, regarding Extra Expense, Mid-Century agreed to pay for necessary “extra expense” that Cammie’s and members of the putative class incurred during the “period of restoration” that they would not have incurred if there had been no direct physical loss of or damage at the Covered Property.

37. The Period of Restoration is ongoing until covered businesses, including Cammie’s, are open.

38. Furthermore, the Business Income and Extra Expense coverage includes extensions for Business Income from Dependent Properties and Civil Authority. Specifically, regarding Business Income from Dependent Properties, Mid-Century agreed to pay for the actual loss of “business income” sustained by Cammie’s and members of the putative class due to the necessary suspension of “operations” caused by direct physical loss of or damage to “dependent property” at a premises not owned, leased, or operated by the policyholder. In addition, regarding Civil Authority, Mid-Century also agreed to pay for the actual loss of “business income” sustained by Cammie’s and members of the putative class, as well as 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.”

39. Furthermore, the Building and Personal Property Coverage Form *does not* limit or exclude coverage for losses resulting from viruses or diseases.

40. As such, losses or damage caused by a virus or disease are a Covered Cause of Loss within the Building and Personal Property Coverage Form. In fact, numerous courts have recognized that the mere presence of virus or disease constitutes direct physical loss to property. Additionally, the Insurance Services Office (“ISO”) circulated commentary to insurance regulators stating 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

41. Cammie’s and other putative class members suffered losses resulting from the SARS-COV-2 virus, the COVID-19 disease, and/or executive orders such as those issued by Governor Murphy and described above, which constitute direct physical loss of the property and property damage. The losses suffered by Cammie’s and other putative class members triggered the Business Income and Extra Expense, Business Income from Dependent Properties, and Civil Authority provisions of the policies issued by Mid-Century.

42. Mid-Century has wrongfully failed to provide coverage, issuing the same denial to similarly situated members of the putative class.

CLASS ALLEGATIONS

43. Plaintiff, on behalf of itself and all others similarly situated, brings this action pursuant to Rule 4:32 of the New Jersey Rules of Civil Procedure

44. Plaintiff seeks to represent a class defined as

All New Jersey persons and entities that had an insurance policy issued by Mid-Century that included a Building and Personal Property Coverage Form; suffered a suspension or closure of business related to SARS-COV-2 and/or COVID-19 at the premises covered by their Mid-Century insurance policy, and had their claim for coverage denied by Mid-Century for the suspension or closure of business resulting from the presence or threat of SARS-COV-2 and/or COVID-19 (the “Class”).

45 Excluded from the Class are Mid-Century, Mid-Century’s subsidiaries and affiliates, their officers, directors and member of their immediate families and any entity in which Defendant has a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

46 Plaintiff reserves the right to modify or amend the definition of the proposed Class and/or to add a subclass(es), if necessary, before this Court determines whether certification is appropriate.

47. The questions here are ones of common or general interest such that there is a well-defined community of interest among the members of the Class. These questions predominate over questions that may affect only individual class members because Mid-Century has acted on grounds generally applicable to the Class. Such common legal or factual questions include, but are not limited to:

- a) Whether the spread of SARS-CoV-2 constitutes a “COVERED CAUSE OF LOSS,”
- b) Whether the outbreak of COVID-19 constitutes a “COVERED CAUSE OF LOSS,”
- c) Whether SARS-CoV-2 and/or COVID-19 triggered coverage under the Building and Personal Property Coverage Form included in Mid-Century’s insurance policies, including, but not limited to, the Business Income and Extra Expense provision;
- d) Whether Mid-Century breached its insurance policies by denying coverage,
- e) The appropriate measure of damages, and

- f) Whether Plaintiff and the Class are entitled to an award of reasonable attorney fees, interest, and costs under the applicable law

48. The parties are so numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Class consists of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resorting to Mid-Century's records. Mid-Century has the administrative capability through its computer systems and other records to identify all members of the Class, and such specific information is not otherwise available to Plaintiff.

49 It is impracticable to bring Class members' individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action

50. Plaintiff's claims are typical of the claims of the other members of the Class in that they arise out of the same wrongful business practices by Mid-Century, as described herein

51 Plaintiff is a more than an adequate representative of the Class in that Plaintiff has a standard form Mid-Century insurance policy containing the Building and Personal Property Coverage Form and has suffered damages as a result of Mid-Century's breach. In addition:

- a) Plaintiff is committed to the vigorous prosecution of this action on behalf of itself and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions as well as insurance cases,
- b) There is no conflict of interest between Plaintiff and the unnamed members of the Class;

- c) Plaintiff anticipates no difficulty in the management of this litigation as a class action; and
- d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation

52 Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action

53. Mid-Century has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate corresponding declaratory relief with respect to the Class as a whole

54 A class action is a superior means for the fair and efficient adjudication of this controversy, and no unique difficulties are likely to be encountered in the management of this class action. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

55 All conditions precedent to bringing this action have been satisfied and/or waived

COUNT ONE—BREACH OF CONTRACT
(On behalf of Plaintiff and the Putative Class)

56. The allegations in Paragraphs 1 through 55 are repeated and realleged as if set forth fully herein

57. Pursuant to the terms of the Building and Personal Property Coverage Form and in exchange for a premium, Mid-Century promised, under the Business Income and Extra Expense provision, to pay for (1) the actual loss of "business income" sustained by Cammie's and other members of the Class due to the necessary suspension of "operations" during the "period of restoration" caused by direct physical loss of or damage at the Covered Property, and (2) the necessary "extra expense" that Cammie's and other members of the Class incurred during the

“period of restoration” that they would not have incurred if there had been no direct physical loss of or damage at the Covered Property

58 Pursuant to the terms of the Building and Personal Property Coverage Form and in exchange for a premium, Mid-Century promised, under the Business Income from Dependent Properties provision, to pay for the actual loss of “business income” sustained by Cammie’s and other members of the Class due to the necessary suspension of “operations” caused by direct physical loss of or damage to “dependent property” at a premises not owned, leased, or operated by the policyholder

59 Pursuant to the terms of the Building and Personal Property Coverage Form and in exchange for a premium, Mid-Century promised, under the Civil Authority provision, to pay for the actual loss of “business income” sustained by Cammie’s and other members of the Class, as well as 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.”

60. Cammie’s and other members of the Class submitted claims to Mid-Century and demanded that it honor its obligations and promises under the Building and Personal Property Coverage Form

61. Mid-Century denied coverage under the Building and Personal Property Coverage Form and has failed to honor its obligations or provide prompt payment to Cammie’s and other members of the Class

62. Mid-Century’s denial of coverage constitutes a breach of the Building and Personal Property Coverage Form in its policies

63 As a consequence of Mid-Century's breach, Cammie's and other members of the Class have been, and continue to be, damaged

COUNT TWO—DECLARATORY JUDGMENT
(On behalf of Plaintiff and the Putative Class)

64. The allegations in Paragraphs 1 through 63 are repeated and realleged as if set forth fully herein.

65. Pursuant to the terms of the Building and Personal Property Coverage Form, and, in particular, the Business Income and Extra Expense provision, Mid-Century is obligated to pay for (1) the actual loss of "business income" sustained by Cammie's and other members of the Class due to the necessary suspension of "operations" during the "period of restoration" caused by direct physical loss of or damage at the Covered Property, and (2) the necessary "extra expense" that Cammie's and other members of the Class incurred during the "period of restoration" that they would not have incurred if there had been no direct physical loss of or damage at the Covered Property.

66. Pursuant to the terms of the Building and Personal Property Coverage Form, and, in particular, the Business Income from Dependent Properties provision, Mid-Century is obligated to pay for the actual loss of "business income" sustained by Cammie's and other members of the Class due to the necessary suspension of "operations" caused by direct physical loss of or damage to "dependent property" at a premises not owned, leased, or operated by the policyholder.

67. Pursuant to the terms of the Building and Personal Property Coverage Form, and, in particular, the Civil Authority provision, Mid-Century is obligated to pay for the actual loss of "business income" sustained by Cammie's and other members of the Class, as well as 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"

68. An actual and justiciable controversy exists between Cammie's (and other members of the Class) and Mid-Century regarding Mid-Century's obligations under the Building and Personal Property Coverage Form as a result of losses or damage caused by SARS-CoV-2 and/or COVID-19. A declaratory judgment, N.J.S.A. 2A:16-51, *et seq.*, is necessary and appropriate to determine the rights and duties of Cammie's and Mid-Century pursuant to the Building and Personal Property Coverage Form.

PRAYER FOR RELIEF

WHEREFORE, Cammie's, on behalf of itself and all members of the Class, respectfully requests that this Court issue a judgment for an amount equal to the damages that Cammie's and the Class have suffered, or may suffer, as a result of Mid-Century's breaches, including attorneys' fees and costs in this action, interest, and for all such further relief as this Court deems just and proper. Cammie's, on behalf of itself and all members of the Class, also respectfully requests that this Court issue a declaratory judgment that Mid-Century is obligated to provide coverage under the Building and Personal Property Coverage Form to Cammie's and all members of the class for "business income" and "extra expense" caused by SARS-CoV-2 and/or COVID-19, and for further relief pursuant to N.J.S.A. 2A:16-51 *et seq.*

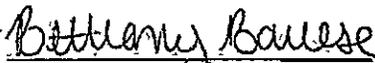
JURY DEMAND

Cammie's, on behalf of itself and all members of the Class, demands a trial on all issues so triable, pursuant to New Jersey Court Rule 1:8-2(b) and 4:35-1(a)

Dated: Trumbull, Connecticut
July 28, 2020

SAXE DOERNBERGER & VITA P.C .

By:



Bethany L. Bause
blb@sdlaw.com
NJ Bar No : 017622012
Attorney for Plaintiff
35 Nutmeg Drive, Ste. 140
Trumbull, CT 06611
Telephone 203-287-2100
Fax: 203-287-8847

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to R. 4:5-1, I hereby certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

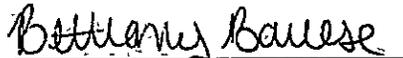
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-4, Plaintiff hereby designates Bethany L. Barrese of Saxe Doernberger & Vita, P.C. as trial counsel for this action.

Dated July 28, 2020

SAXE DOERNBERGER & VITA P.C.

By:



Bethany L. Barrese

blb@sdlaw.com

NJ Bar No. 017622012

Attorney for Plaintiff

35 Nutmeg Drive, Ste. 140

Trumbull, CT 06611

Telephone: 203-287-2100

Fax: 203-287-8847