

**N.W. MATTIACCI LAW, LLC**  
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Attorney for Plaintiff



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<b>Walnut Ace, LLC d/b/a</b>	:	COURT OF COMMON PLEAS
<b>Toasted Walnut Bar &amp; Kitchen</b>	:	PHILADELPHIA COUNTY
1316 Walnut Street	:	
Philadelphia, PA 19107	:	JUNE TERM, 2020
	:	
vs.	:	
	:	No.
<b>Seneca Insurance Company</b>	:	
160 Water Street, 16 <sup>th</sup> Floor	:	
New York, NY 10038	:	

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**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, Walnut Ace, LLC d/b/a Toasted Walnut Bar & Kitchen (“Toasted Walnut”), by way of a Complaint for Declaratory Judgment against Defendant, Seneca Insurance Company (“Seneca”), alleges and states as follows:

**THE PARTIES**

1. Plaintiff Walnut Ace, LLC doing business as Toasted Walnut Bar & Kitchen (“Toasted Walnut”), is a Commonwealth corporation with a registered address of 1316 Walnut Street, Philadelphia, Pennsylvania 19107.

2. Defendant, Seneca Insurance Company, is a corporation registered to do business in the Commonwealth of Pennsylvania and maintains a registered address located at 160 Water Street, 16<sup>th</sup> Floor, New York, New York 10038.

**INTRODUCTION**

3. This is a Complaint for Declaratory Judgment pursuant to the Pennsylvania

Declaratory Judgment Act, 42 Pa. §§7531 through 7541, in which Plaintiff seeks a determination of their rights under certain policies of insurance issued to Toasted Walnut, a corporation duly authorized to conduct business in the Commonwealth of Pennsylvania.

4. At all times material hereto, this case or controversy arose out of an Executive Order issued by Philadelphia Mayor James Kenney requiring all Philadelphia-based restaurants and bars to cease dine-in business, made effective 5:00 p.m., March 16, 2020.

5. Defendant Seneca Insurance Company issued a Business Income Other Than Rental Value Policy (No. SCC2901165) to Plaintiff, effective October 14, 2019 through October 14, 2020.

6. Defendant Seneca Insurance Company issued an insurance policy to Plaintiff, Walnut Ace, LLC d/b/a Toasted Walnut Bar & Kitchen, pursuant to the Certificate of Liability Insurance, Seneca Business Income Other Than Rental Value Policy No. SCC2901165 (“Policy”) is attached hereto as Exhibit “A.”

7. Plaintiff has demanded insurance coverage and indemnity for claims as controlled under certain policies of insurance in place at all times material to the underlying claims herein.

8. There is a real, substantial and justiciable issue in controversy between the parties hereto with respect to the application of insurance coverage for the underlying actions under the policy of insurance issued by Seneca.

9. A judicial determination and a declaration of the rights and obligations of the parties is necessary and appropriate at this time because Plaintiff has no adequate remedy at law which will resolve the current controversy.

10. Pursuant to the Policy, Defendant agreed to pay benefits to all corporations legally and contractually entitled to receive same.

11. Plaintiff has demanded that Defendant pay Business Income Other Than Rental Value benefits and/or excess insurance coverage pursuant to said contract of insurance.

12. At all times material hereto, Defendant has refused pay Business Income Other Than Rental benefits, pursuant to said contract of insurance and applicable law.

13. At all times material hereto, the Business Income Other Than Rental Value insurance policy provided by Defendant was in full force and effect.

14. Accordingly, Plaintiff is entitled to all Business Income Other Than Rental benefits set forth in the applicable contract of insurance and all excess insurance coverage applicable in the contract of insurance.

**COUNT I**  
**PLAINTIFF WALNUT ACE, LLC D/B/A TOASTED WALNUT BAR & KITCHEN VS.**  
**DEFENDANT SENECA INSURANCE COMPANY**  
**DECLARATORY ACTION**

15. Plaintiff repeats and realleges each and every one of the preceding paragraphs and incorporates each and every one of those paragraphs by this reference as though fully set forth in this cause of action.

16. Defendant has breached its contractual and statutory obligations to pay Business Income Other Than Rental Value benefits to Plaintiff, who is an Insured under the applicable policy of insurance maintained with Defendant.

17. Defendant's refusal to acknowledge that Plaintiff is covered under the applicable Policy is a violation of its contractual and statutory obligations, as well as a failure to act in the best interests of the insured and in good faith.

18. Defendant's refusal to pay Business Income Other Than Rental Value benefits is a violation of its contractual and statutory obligations, as well as a failure to act in the best interests and in good faith with respect to its insured.

19. Accordingly, Plaintiff seeks recovery of all Business Income Other Than Rental Value benefits, together with all other statutory damages as is legally appropriate, including reasonable attorney's fees, and interest.

20. Plaintiff requests that this Honorable Court declare that Defendant, Seneca Insurance Company, has an obligation to indemnify and provide insurance coverage to Plaintiff in connection with the claims contained herein.

21. Plaintiff requests that this Honorable Court declare that Defendant, Seneca Insurance Company, has an obligation for contribution in connection with the claims under the applicable insurance coverage.

**WHEREFORE**, Plaintiff prays for relief as follows:

- A. For a declaration that Defendant has an obligation to pay Plaintiff's Business Income Other Than Rental Value benefits, pursuant to its Certificate of Liability Insurance, Seneca Policy No.: SCC2901165;
- B. For a declaration that Defendant has an obligation to provide contribution to Plaintiff pursuant to its Certificate of Liability Insurance, Seneca Policy No.: SCC2901165;
- C. For its attorneys' fees and costs pursuant to law;
- D. Interest, cost of suit, and such other further relief as this Court deems proper; and
- E. For such other relief as is just and equitable herein.

**COUNT II**  
**PLAINTIFF WALNUT ACE, LLC D/B/A TOASTED WALNUT BAR & KITCHEN VS.**  
**DEFENDANT SENECA INSURANCE COMPANY**  
**BREACH OF CONTRACT**

22. Plaintiff repeats and realleges each and every one of the preceding paragraphs and incorporates each and every one of those paragraphs by this reference as though fully set forth in this cause of action.

23. Authorized representatives of Plaintiff and Defendant entered into a written Contract whereby Plaintiff was to pay Defendant an insurance premium and, in exchange, Defendant agreed to provide Plaintiff with a “Business Income Other Than Rental Value” insurance policy, beginning October 14, 2019 through October 14, 2020. See Exhibit “A.”

24. Up until Defendant’s breach of their insurance contract, Plaintiff timely made all premium payments to Defendant.

25. Plaintiff has performed all things necessary on its part to be performed under the Contract and all changes and modifications thereto, except for those things excused by the actions or omissions of said Defendant.

26. In April 2020, Defendant breached the Contract, in that although demand therefor has been made, there is now due, owing and unpaid from Defendant to Plaintiff, Business Income Other Than Rental Value, as set forth in the relevant portions of Plaintiff’s Exhibit.

27. On April 2, 2020, Plaintiff made demand for payment but said Defendant has failed to pay.

WHEREFORE, Plaintiff Walnut Ace, LLC d/b/a Toasted Walnut Bar & Kitchen demands judgment against Defendant, Seneca Insurance Company, in an amount in excess of fifty thousand (\$50,000.00) dollars, together with interest, and damages for prejudgment and post-judgment delay.

**COUNT III**  
**PLAINTIFF WALNUT ACE, LLC D/B/A TOASTED WALNUT BAR & KITCHEN VS.**  
**DEFENDANT SENECA INSURANCE COMPANY**  
**UNJUST ENRICHMENT**

28. Plaintiff repeats and realleges each and every one of the preceding paragraphs and incorporates each and every one of those paragraphs by this reference as though fully set forth in this cause of action.

29. Plaintiff has conferred a substantial benefit upon Defendant.

30. Defendant retained and enjoyed the benefit of Plaintiff paying their insurance premium.

31. The retention of Plaintiff's paid insurance premiums without providing Plaintiff with "Business Income Other Than Rental Value" coverage would be unjust.

WHEREFORE, Plaintiff Walnut Ace, LLC d/b/a Toasted Walnut Bar & Kitchen demands judgment against Defendant, Seneca Insurance Company, in an amount in excess of fifty thousand (\$50,000.00) dollars, together with interest, and damages for prejudgment and post-judgment delay.

By: /s/ Nicholas W. Mattiacci

Nicholas W. Mattiacci, Esq., L.L.M.

Dated: June 2, 2020

## VERIFICATION

As an authorized representative of Walnut Ace, LLC d/b/a Toasted Walnut Bar & Kitchen, I verify that I am acquainted with the facts set forth in the foregoing pleading, that the same are true and correct to the best of his information, knowledge and belief, and that this statement is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsification to authorities.

Dated: June 2, 2020

By: Denise M. Cohen