

CAUSE NO. 366-01851-2021

ARGLYE FINE ARTS PRESCHOOL LL § IN THE DISTRICT COURT
AND JUSTIN FINE ARTS PRESCHOOL §
OF TEXAS, LLC §
V. § _____ JUDICIAL COURT
§
TRUCK INSURANCE EXCHANGE § COLLIN COUNTY, TEXAS

PLAINTIFFS’ ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, ARGLYE FINE ARTS PRESCHOOL LL AND JUSTIN FINE ARTS PRESCHOOL OF TEXAS, LLC and files this Original Petition against TRUCK INSURANCE EXCHANGE, member of The Farmers Insurance Group of Companies (“Farmers”), and in support thereof, would show as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

1. Plaintiffs intend for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery. Therefore, Plaintiffs will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

II.
PARTIES AND SERVICE

2. Plaintiffs are doing business in Denton County, Texas.
3. Farmers is in the business of insurance in the State of Texas. The insurance business done by Farmers in Texas includes, but is not limited to, the following:

- The making and issuing of contracts of insurance with the Plaintiffs;

- The taking or receiving of application for insurance, including the Plaintiffs' application for insurance;
- The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from the Plaintiffs;
- Systematically maintaining contractual relationships with numerous agents who sell contracts of insurance on its behalf; and
- The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including the Plaintiffs.

4. Defendant **Truck Insurance Exchange** can be served at through its registered agent at the following address: Christine Granger at 15700 Long Vista Drive, Austin, Texas 78728-3822. Service is requested at this time.

III. **JURISDICTION AND VENUE**

5. Venue is appropriate in Collin County, Texas because all or part of the conduct giving rise to the causes of action were committed in Collin County, Texas. Accordingly, venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002.

IV. **BACKGROUND FACTS**

6. Plaintiffs are the owners of an Insurance Policy (hereinafter referred to as "the Policy"). Defendant provided the Plaintiffs' business insurance for the businesses located at 805 W. Front Street, Argyle, Texas 76226; 1050 Harrison Lane, Argyle, Texas 76226; 800 Eagle Drive, Argyle, Texas 76226; 1741 Old Justin Road, Argyle, Texas 76226; and 801 W. Front Street, Argyle, Texas 76226 (hereinafter referred to as "the Properties"). Farmers sold the Policy insuring the Properties to Plaintiffs. The Declarations pages for the Policy and the policy provided to Plaintiffs are attached hereto as Exhibit A. The Policy is an all-risk policy and has been

continuously in full force and effect since inception, providing coverage for property, business personal property, business income, extra expense and additional coverages including Civil Authority.

7. During the terms of said Policy, Plaintiffs have sustained and will sustain covered losses during the Covid-19 outbreak and subsequent Denton County and State of Texas Orders (hereinafter the “Orders”), attached hereto as Exhibits B and C, and Plaintiffs reported same to Farmers pursuant to the terms of the Policy. Plaintiffs asked that Farmers cover the cost for business interruption pursuant to the Policy. Farmers assigned Jonathan Mark Kouba to adjust the claim and investigate the loss related to business interruption; however, no investigation or adjustment of the claim was done and the claim has been wrongfully denied. To date, Farmers has mishandled Plaintiffs’ claim and caused and will continue to cause Plaintiffs further and additional damages.

8. The World Health Organization (“WHO”) identified the disease caused by the 2019 Novel Coronavirus as “COVID-19” on February 11, 2020. On March 11, WHO characterized COVID-19 as a pandemic. WHO saw “alarming levels of spread and severity, and by the alarming levels of inaction.” WHO representatives stated, “[W]e have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus. And we have never before seen a pandemic that can be controlled, at the same time.” The Center for Disease Control (“CDC”) has stated that a “pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide.”

9. Plaintiffs own two education facilities. On March 24, 2020, Andy Eads, Denton County Judge, issued an executive order closing all businesses unless “exempted” beginning on

March 25th. *See* Exhibit B. Plaintiffs’ businesses were not exempt. *Id.* On March 31, 2020, the State of Texas Governor Greg Abbott signed an executive order closing all “non-essential” businesses beginning April 2, 2020. *See* Exhibit C. Plaintiffs’ businesses are not considered “essential” by Governor Abbott’s order even though Plaintiffs could offer take out service. *Id.* Plaintiffs were beginning to lose business income even before March 25, 2020 because of peoples’ fear of Covid-19.

10. The described purposes of the Orders are to protect the “health, safety and welfare” of Dallas County and Texas residents, and to slow the spread of Covid-19 by “minimizing social gatherings” and “minimize in-person contact.” *See* Exhibits B and C. According to the Texas Department of Health and Human Services, Covid-19 has been and continues to be present in Dallas County.

11. Beginning on March 25, 2020, Plaintiffs could no longer open and conduct business and was losing all business income. Plaintiffs submitted its claims to Farmers, and it denied the claim without conducting an investigation. The pandemic and health care crises has resulted in the Plaintiffs suffering a direct physical loss to the insured Property, and alternatively damage to the insured Property and suspension of its business that are covered under the Business Income Loss provisions of the Policy. Alternatively, coverage is available under Civil Authority coverage under the Policy.

A. Coverage for Business Income

12. Plaintiffs’ Policy under “Covered Causes of Loss” insures for “physical loss” unless the loss is excluded or limited. *See* Exhibit A, pdf pg. 84. Further, Plaintiffs’ Policy provides coverage for Loss of Business Income and Extra Expense as follows:

“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 of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.”

Id at pdf pg. 86. Plaintiffs suffered lost income when the Orders closed the business, and on information and belief Plaintiffs will continue to suffer lost income even after the Orders are lifted due to fear of Covid-19. The pandemic, consumer fear, and the stay at home Orders have caused Plaintiffs physical loss of the Properties and loss of business income and are not specifically excluded by the Policy. Plaintiffs’ businesses have been transformed by external events, not specifically excluded, from a sustainable, revenue generating operation to the unsatisfactory state of closure and now slowed business. The presence of the Covid-19 in Denton County alone triggers coverage because it renders the Property unsafe or makes it unusable for its intended purpose.

B. Coverage for Civil Authority

14. Plaintiffs’ Policy also provides additional coverage for 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. The coverage for Business Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.”

Id at pdf pg. 88. The Orders are clearly acts of Civil Authority which have caused Plaintiffs loss of business income as described above. The Orders, along with their stated purposes, qualify as a Covered Cause of Loss under the Policy, especially given that there is precedent that holds “physical loss” can occur without actual tangible physical damage to a property. The premises not more than one mile from Plaintiffs’ Property has suffered the same physical loss as Plaintiffs have suffered due to the pandemic. As well, damage is not defined by the Policy and other premises have suffered damage as the term is defined in its common, ordinary meaning.

C. Farmers' Wrongful Denial

15. Farmers and its agents made no request to Plaintiffs for documents or information relating to the claim, and it denied Plaintiffs' claim shortly after the claim was presented meaning it could not have done a proper or thorough investigation or have any evidence that any exclusions apply.

16. Farmers' denial was based, in part, on a lack of "physical damage" to Plaintiffs' Properties. *See* Exhibit D. But the Policy does not require a loss solely caused by physical "damage" as it also provides coverage for physical "loss." The Policy does not define "physical loss" and that term has been broadly defined in property policies for decades to include losses that are not actual tangible damage to physical property. At the very least, Plaintiffs suffered a physical loss of the covered Property as a result of fear and actions taken to limit the impact of the pandemic on the health, safety and welfare of Denton County citizens. Further, Plaintiffs clearly suffered physical loss to Covered Property because it was unable to operate. Farmers failed to conduct any investigation and then wrongfully denied the coverage for Civil Authority without considering damage to property other than Plaintiffs'. The Policy does not define "damage" in the property coverage section, and "damage" is broadly defined in its common ordinary meaning. It could have, but did not, so define "physical loss" under the Property coverage portion of the Policy.

17. Farmers relies on the exclusion for "Virus or Bacteria" as a basis for denial, but contrary to its assertion, this is not a pandemic exclusion. *See* Exhibit D. Farmers ignores the fact that the exclusion applies only where a virus is the fully realized and actual cause of the loss. It does not state that it applies to a loss caused by the need to prevent against the threat of viral transmission or fear of virus. Farmers' denial admits that this claim relates to concern

over the spread of the Covid-19 and preventing exposure. *See* Exhibit D. Preventing the threat or risk of the presence or recurring presence of the virus is not specifically excluded under the Policy.

18. The exclusion for virus has no application to Plaintiffs' claim in light of its plain language. Alternatively, the exclusion is vague and ambiguous and must be construed in the light most favorable to Plaintiffs.

19. Farmers failed to give proper, advance notice and disclosure of the Exclusion and is thus barred from reliance upon it.

20. On information and belief, Farmers is barred from relying on the Exclusion as a result of regulatory and/or administrative estoppel.

21. Alternatively, the Exclusion as interpreted by Farmers is unconscionable and/or contrary to public policy and cannot be enforced as written.

22. Farmers made material misrepresentations about Policy provisions, coverage and the law in Texas applying thereto with regard to Plaintiffs' Loss of Business Income and Civil Authority additional coverages.

23. Farmers considered only its own interests, proceeded only according to its one-sided and self-serving interpretation of the Policy, and attempted to conceal from Plaintiffs that Farmers made no effort to consider its interests. Farmers pre-textually looked only for ways to avoid coverage rather than first trying to find coverage.

24. Farmers wrongfully denied Plaintiffs' claims for business interruption even though the Policy provides coverage for losses such as those suffered by Plaintiffs. Furthermore, by information and belief, Farmers engaged its agents to misrepresent Policy provisions and coverage. To date, Farmers continues to deny the payment for Plaintiffs' loss of business.

V.
CAUSES OF ACTION AGAINST FARMERS

A. BREACH OF CONTRACT

25. Plaintiffs re-allege the foregoing paragraphs. Farmers and its agents' conduct constitute a breach of the insurance contracts between it and Plaintiffs. Farmers' failure and/or refusal, as described above, to pay Plaintiffs adequate compensation as it is obligated to do under the terms of the Policy in question pursuant to the additional coverages of Loss of Business Income and Civil Authority, and under the laws of the State of Texas, constitutes a breach of the insurance contracts with Plaintiffs.

26. Farmers failed to perform its contractual duty to adequately compensate Plaintiffs under the terms of the Policy pursuant to the additional coverages of Loss of Business Income and Civil Authority. Specifically, Farmers wrongfully denied coverage and refused to offer the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiffs' business loss, and all conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiffs. Farmers' conduct constitutes a breach of the insurance contracts between it and Plaintiffs.

B. NONCOMPLIANCE WITH TEXAS INSURANCE CODE

1. UNFAIR SETTLEMENT PRACTICES

27. Plaintiffs re-allege the foregoing paragraphs. Texas law is clear that insurance companies and anyone engaged in the business of insurance by investigating and adjusting a claim must conduct a reasonable, full and fair claim investigation. Farmers violated Chapter 541 of the Texas Insurance Code, in one or more of the following particulars:

§ 541.061. Misrepresentation of Insurance Policy.

- Making an untrue statement of material fact;
- Failing to state a material fact necessary to make other statements made not misleading;
- Making a misleading statement; and
- Failing to disclose a material matter of law.

As alleged above, Farmers misrepresented to Plaintiffs that the Policy required actual physical, tangible damage to its Property in order for it to have coverage for Business Income. In the same letter, Farmers also misrepresented that the Civil Authority Additional Coverage in the Policy (along with others) applied only when there was direct physical loss of or damage to Plaintiffs' Property, and not properties around Plaintiffs. These statements are not only false, they are incongruous.

2. THE PROMPT PAYMENT OF CLAIMS

28. Plaintiffs re-allege the foregoing paragraphs. Farmers' conduct constitutes and will continue to constitute multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by TEX. INS. CODE §542.060.

29. Farmers failed to meet its obligations under the Texas Insurance Code regarding timely beginning an investigation of Plaintiffs' claim, and requesting all information reasonably necessary to investigate Plaintiffs' claim within the statutorily mandated time of receiving notice of Plaintiffs' claim. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.055.

30. Further, Farmers failed to accept Plaintiffs' full and entire claim within the statutorily-mandated time of receiving all necessary information. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056.

31. Farmers failed and will fail to timely pay Plaintiffs' claim, and for all of the covered losses due to its wrongful denial of the policy benefits. TEX. INS. CODE §542.057.

32. Farmers failed and will fail to meet its obligations under the Texas Insurance Code regarding payment of claim without delay due to its wrongful denial. Its conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.058.

33. Because of Farmers' wrongful acts and omissions, Plaintiffs were forced to retain the professional services of the attorney and law firm who is representing it with respect to these causes of action.

C. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

34. Plaintiffs re-allege the foregoing paragraphs. Farmers' conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insureds pursuant to insurance contracts.

35. From and after the time Plaintiffs' loss was presented to Farmers, its liability to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, it has refused to pay Plaintiffs in full and wrongfully denied the claim, despite there being no basis upon which a reasonable insurance company would have relied to deny the full payment. Farmers' conduct constitutes a breach of the common law duty of good faith and fair dealing.

36. Further, Farmers' failure, as described above, to adequately and reasonably investigate and evaluate Plaintiffs' claim, although, at that time, it knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing.

VI.
KNOWLEDGE

37. Each of the acts described above, together and singularly, was done "knowingly" by Defendant as that term is used in the Texas Insurance Code and was a producing cause of Plaintiffs' damages described herein.

VII.
DAMAGES

38. Plaintiffs would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of the damages sustained by Plaintiffs.

39. For breach of contract, Plaintiffs are entitled to regain the benefit of the bargain, which is the amount of the claim, together with attorney's fees.

40. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiffs are entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy but for the wrongful denial, court costs, consequential damages not covered by Plaintiffs' Policy and attorney's fees. For knowing conduct of the acts described above, Plaintiffs ask for three times the actual damages. TEX. INS. CODE §541.152.

41. For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiffs are entitled to the amount of the claim, as well as eighteen (18) percent interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE §542.060.

42. For breach of the common law duty of good faith and fair dealing, Plaintiffs are entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and exemplary damages.

43. For the prosecution and collection of this claim, Plaintiffs have been compelled to engage the services of the attorney whose name is subscribed to this pleading. Therefore, Plaintiffs are entitled to recover a sum for the reasonable and necessary services of Plaintiffs' attorney in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the

Supreme Court of Texas.

VIII.

44. In addition, as to any exclusion, condition, or defense pled by Defendant, Plaintiffs would show that:

45. The clear and unambiguous language of the policy provides coverage for business interruption and other losses to the Property caused by losses made the basis of Plaintiffs' claims;

46. In the alternative, any other construction of the language of the policy is void as against public policy;

47. Any other construction and its use by the Defendant violate the Texas Insurance Code section 541 et. seq. and is void as against public policy;

48. Any other construction is otherwise void as against public policy, illegal, and violates state law and administrative rule and regulation.

49. In the alternative, should the Court find any ambiguity in the policy, the rules of construction of such policies mandate the construction and interpretation urged by Plaintiffs;

50. In the alternative, Defendant is judicially, administratively, or equitably estopped from denying Plaintiffs' construction of the policy coverage at issue;

51. In the alternative, to the extent that the wording of such policy does not reflect the true intent of all parties thereto, Plaintiffs plead the doctrine of mutual mistake requiring reformation.

IX.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs requests that Defendant be cited to appear and answer herein; that, on final hearing, Plaintiffs have judgment against Defendant for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional

limits of this Court. Plaintiffs plead that the damages will be less than \$75,000. See attached Exhibit E. Plaintiffs further plead for costs of suit; for interest on the judgment; for pre-judgment interest; and, for such other and further relief, in law or in equity, either general or special, including the non-monetary relief of declaratory judgment against Defendant, to which Plaintiffs may be justly entitled.

Respectfully submitted,

/s/ Michael R. Steinmark

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PLAINTIFFS REQUEST A TRIAL BY JURY