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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.

DIVISION “ ”

GERTLER LAW FIRM, L.P.

VERSUS

CONTINENTAL CASUALTY COMPANY

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

**PETITION FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, comes Gertler Law Firm, LP, whose Petition for Damages respectfully represents as follows:

1. Plaintiff herein, **Gertler Law Firm, L.P.** (the “Gertler Firm”), is a domestic corporate entity – a limited partnership law firm, – who, at all material times hereto, was authorized to do and doing business in the Parish of Orleans, State of Louisiana.
2. Made defendant herein is **Continental Casualty Company** (“CCC”), a foreign insurer authorized to do and doing business in the Parish of Orleans, State of Louisiana, who did issue and subscribe to certain policies of insurance affording insurance coverage to your Petitioner, the Gertler Firm, in connection with its aforesaid law practice and who did breach its contractual obligations to your Petitioner pursuant to said policies.
3. To wit, at all material times hereto, your Petitioner, the Gertler Firm, leased immovable property located at 935 Gravier Street, Suite 1900, in New Orleans, Louisiana (70112), which property served as the physical location of its commercial law practice.
4. Defendant CCC, through CNA Commercial Insurance, did enter into contracts of indemnity with the Gertler Firm in Louisiana whereby the Gertler Firm paid monetary premiums to CCC in exchange for CCC’s promise to indemnify and compensate the Gertler Firm in the event of a covered loss, including but not limited to loss of business personal

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property, business interruption loss(es), and related extra expense(s).

5. Those subject policies are identified on information and belief as Policy No. B6020974406, which policy was in full force and effect March 2, 2019 through March 2, 2020, and, then, on subsequent renewals, in full force and effect March 2, 2020, through March 2, 2021, and again March 2, 2021, through March 2, 2022.

6. At all material times hereto your Petitioner did faithfully pay the agreed-upon monetary premiums to CCC and did otherwise meet all obligations imposed upon it as agreed to in the subject policies, rendering same in full force and effect as set forth above.

7. In pertinent part, the subject policies designate Gertler Law Firm, LP, as the named insured and 935 Gravier Street, Suite 1900, New Orleans, LA 70112 as the covered property.

8. In pertinent part, the subject policies provide that CCC

will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from a Covered Cause Of Loss.

9. As defined by the policies, "Covered Causes of Loss" includes (all) "RISKS OF DIRECT PHYSICAL LOSS" (emphasis in original) except as otherwise specifically excluded or limited.

10. That is, in pertinent part, the subject policies are "all risk" policies that cover all risks "unless clearly and specifically excluded." See *Cajun Conti LLC, et al. v. Certain Underwriters at Lloyd's, London*, 21-0343 (La.App. 4 Cir. 6/15/22), not yet reported, citing *Wilder v. Louisiana Citizens Prop. Ins. Corp.*, 11-0196, p.4 (La.App. 4 Cir. 8/10/11), 82 So.3d 294, 296, writ denied, 11-2336 (La. 12/02/11), 76 So.3d 1179.

11. "Direct physical loss" is not defined in the subject policies.

12. Additionally, in expressly providing coverage for the Gertler Firm's loss of business income, the subject policies provide that CCC will pay the actual loss of business income sustained by the insured due to the necessary "suspension" of the insured's "operations,"

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provided that the “suspension” is caused by “direct physical loss of or damage” to the covered property.

13. “Direct physical damage” is not defined by the subject policies.

14. Separate from and/or in addition to the coverage set forth above, the subject policies also provide that CCC will pay the insured’s sustained loss of business income and “reasonable and necessary” extra expense(s) caused by action of civil authority that prohibits access to the insured premises due to the direct physical loss of or damage to property other than the insured premises.

15. Significantly, while the subject policies do contain multiple coverage exclusions, none of which exclude the coverage sued upon herein, the subject policies do *not* contain *any* exclusion for otherwise covered losses occasioned by a virus, such as SARS-CoV-2, the coronavirus that causes COVID-19, despite such exclusions being both known and available to CCC at the time the subject policies were drafted.

16. Commencing on or about March 18, 2020, your Petitioner, the Gertler Firm, did sustain covered losses payable to it under the subject policies, which losses were continuous, ongoing, and/or reoccurring.

17. Despite notice of said losses and presentation of its claim for timely payment under the subject policies’ coverage(s), defendant CCC has failed to pay the amount(s) owed to the Gertler Firm pursuant thereto, rendering defendant CCC in breach of contract and liable to the Gertler Firm for same.

18. To wit, the initial subject loss of business income was reported to CCC by the Gertler Firm on April 17, 2020.

19. Your Petitioner’s claim was thereafter improperly denied by CCC via correspondence dated August 7 2020, which improper denial constituted breach by CCC of its contractual obligations under the subject policies.

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20. Commencing on or about March 18, 2020, and continuing thereafter on a reoccurring basis, your Petitioner did sustain actual loss of business income and associated extra expense(s) due to the necessary suspension of its law practice, which suspension was caused by the presence and continued contamination of the COVID-19-causing coronavirus, SARS-CoV-2, both at the insured premises and at other premises in the surrounding community.

21. Such losses were and remain covered under the terms and conditions of the subject policies issued to the Gertler Firm by CCC.

22. Further, and due to the aforementioned continuous, ongoing, and reoccurring presence and contamination of other premises in the surrounding community by SARS-CoV-2, multiple actions were taken by civil authorities, including but not limited to the mayor of the City of New Orleans, the governor of the State of Louisiana, and/or the U.S. Center for Disease Control, that prohibited access to the Gertler Firm's law practice (the insured premises) and thereby caused it to sustain loss of business income and associated extra expense(s).

23. Such losses were and remain covered by the terms and conditions of the subject policies issued to the Gertler Firm by CCC.

24. That is, the presence, spread, and recurring contamination by the SARS-CoV-2 virus, both upon the Gertler Firm's insured premises as well as other premises within the surrounding community, did cause direct physical loss of or damage to the insured premises, necessitating the suspension of your Petitioner's law practice (operations) and causing the loss of business income.

25. Because the subject "all-risk" policies did not clearly and specifically exclude such cause, the resulting losses, including but not limited to the actual loss of business income and associated extra expense(s), are covered, owed, and payable by CCC to the Gertler Firm.

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26. Likewise, the presence, spread, and recurring contamination by the SARS-CoV-2 virus (*i.e.*, the direct physical loss of or damage) upon property other than the insured premises did cause action by civil authorities that prohibited access to the Gertler Firm's insured premises, causing your Petitioner to sustain a covered loss of business income and associated extra expense(s) that is owed and payable to it by CCC.

27. As noted above, the instances of loss-causing events, including both the direct physical damage to the Gertler Firm's property occasioned by the SARS-CoV-2 virus and the aforementioned multiple actions by varied civil authority, are, were, and have been continuous, ongoing, and reoccurring through all of 2020 and into 2021, up to and including May of that year, if not ongoing still.

28. Likewise, the Gertler Firm's sustained and properly-compensable covered losses are and have been continuous, ongoing, and reoccurring through all of 2020 and into 2021, up to and including May of that year, if not ongoing still.

29. To date, and in particular at all times following its improper denial of coverage on August 7, 2020, defendant CCC has failed to pay to its insured, your Petitioner, the Gertler Firm, those sums due and payable to it for the above-described losses as contractually required by the terms and conditions of the above-identified subject policies of insurance, rendering defendant CCC in breach thereof and liable to your Petitioner for those full sums, subject to the applicable limits of coverage.

WHEREFORE, your Petitioner, **Gertler Firm, L.P.**, prays for judgment herein in favor of Gertler Firm, L.P., and against defendant **Continental Casualty Company**, in a sum adequate to compensate your Petitioner for its aforementioned damages, together with legal interest thereon from date of judicial demand until paid; for all costs of these proceedings; and for all general and equitable relief.

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LAW OFFICES OF GREGORY P. DILEO, APLC

By:



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*Attorneys for Plaintiff, Gertler Firm, L.P.*

**\*\* Please Serve \*\***

1. **CONTINENTAL CASUALTY COMPANY**  
through its registered agent for service:

Louisiana Secretary of State  
8585 Archives Avenue  
Baton Rouge, LA 70809