

SECTION 11

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2021-04196

NO.

DIV. "

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2021 MAR 17 PM 4:17

FILED

DISTRICT COURT

AMMARI OF LOUISIANA, L.L.C.

versus

CIVIL DISTRICT COURT

STARR SURPLUS LINES INSURANCE
COMPANY, JOHN O'BRIEN, JR., and
ARTHUR J. GALLAGHER RISK
MANAGEMENT SERVICES, INC.

PARISH OF ORLEANS

STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

JURY

Plaintiff, Ammari of Louisiana, L.L.C., respectfully avers as follows:

CLERK, CIVIL DISTRICT COURT

Parties

402 CIVIL COURTS BUILDING

421 LOYOLA AVENUE - ROOM 402

1. NEW ORLEANS, LA 70112

504-407-0000

Plaintiff, Ammari of Louisiana, L.L.C. ["Ammari"], is a Louisiana limited liability company

Receipt Number 857235

with its principal place of business located in Louisiana. The members of Ammari are Marviani G.

Register CDC Cash Register 1

Ammari, Ghaith G. Ammari, and Zeid G. Ammari, each of whom is domiciled in Louisiana.

Case Number 2021-04196

2. Grand Total \$ 1286.00

Amount Received \$ 1286.00

Defendant, Starr Surplus Lines Insurance Company, ["Starr"], is an Illinois insurance

Over Payment \$ 0.00

company with its principal place of business in New York.

Payment/ Transaction List

3. Check # 30154 \$1286.00

Defendant, John O'Brien, Jr. ["O'Brien"], is an individual who is domiciled in Louisiana.

Item Charged Paid Bal

4. Petition for Damages \$444.50 \$444.50 \$0.00

Judicial College \$0.50 \$0.50 \$0.00

Defendant, Arthur J. Gallagher Risk Management Services, Inc. ["Gallagher"], is an Illinois

Indigent Legal Fee \$10.00 \$10.00 \$0.00

corporation with its principal place of business in Illinois.

\$26.00 \$26.00 \$0.00

Request for Trial by \$780.00 \$780.00 \$0.00

Venue

5.

Venue is proper in this Court in accordance with Louisiana Code of Civil Procedure article

76, as a loss occurred in this Parish.

VERIFIED
06-18-21

Background

6.

Ammari operates several restaurants, bars, and event venues located in the New Orleans, Louisiana metropolitan area, including the following:

- 1) Broussard's
819 Conti Street, New Orleans, Louisiana 70112
- 2) Kingfish
337 Chartres Street, New Orleans, Louisiana 70130
- 3) Tommy's Cuisine
746 Tchoupitoulas Street, New Orleans, Louisiana 70130
- 4) New Orleans Social House
752 Tchoupitoulas Street, New Orleans, Louisiana 70130
- 5) Bombay Club
830 Conti Street, New Orleans, Louisiana 70112
- 6) Curio
301 Royal Street, New Orleans, Louisiana 70130
- 7) Café Maspero
601 Decatur Street, New Orleans, Louisiana 70130
- 8) Pierre Maspero's
440 Chartres Street, New Orleans, Louisiana 70130
- 9) Ernst Café
600 S. Peters Street, New Orleans, Louisiana 70130
- 10) The Governor
301 Chartres Street, New Orleans, Louisiana 70130
- 11) Pier 424 Seafood Market
424-26 Bourbon Street, New Orleans, Louisiana 70130
- 12) Chartres House
540 Chartres Street, New Orleans, Louisiana 70130
- 13) Crescent City Pizza Works
407 Bourbon Street, New Orleans, Louisiana 70130
- 14) Gumbo Ya-Ya
600 Decatur Street, New Orleans, Louisiana 70130
- 15) Boulevard American Bistro
4241 Veterans Boulevard, Metairie, Louisiana 70006

- 16) Boulevard American Bistro
5171 Citrus Boulevard, Elmwood, Louisiana 70123
- 17) Royal House Restaurant & Oyster Bar
441 Royal Street, New Orleans, Louisiana
- 18) Creole House Restaurant & Oyster Bar
509 Canal Street, New Orleans, Louisiana 70130
- 19) Le Bayou Restaurant & Oyster Bar
503 Bourbon Street, New Orleans, Louisiana 70130
- 20) Bourbon Vieux
501 Bourbon Street, New Orleans, Louisiana 70130
- 21) Marché
914 N. Peters Street, New Orleans, Louisiana 70116
- 22) The Gallery Venue at Tomas
755 Tchoupitoulas Street, New Orleans, Louisiana 70130
- 23) Flamingo A-Go-Go
869 Magazine Street, New Orleans, Louisiana 70130
- 24) Bourbon Street Beer House
605 Bourbon Street, New Orleans, Louisiana 70130
- 25) Big Easy Daiquiris
409 Decatur Street, New Orleans, Louisiana 70130
- 26) Big Easy Daiquiris
617 Decatur Street, New Orleans, Louisiana 70130
- 27) Big Easy Daiquiris
216-18 Bourbon Street, New Orleans, Louisiana 70130
- 28) Big Easy Daiquiris
501A Bourbon Street, New Orleans, Louisiana 70130
- 29) Big Easy Daiquiris
619-21 Bourbon Street, New Orleans, Louisiana 70130
- 30) Slush Frozen Cocktails
401 Bourbon Street, New Orleans, Louisiana 70130
- 31) Slush Frozen Cocktails
601-03 Bourbon Street, New Orleans, Louisiana 70130
- 32) Daiquiri Paradise
201 W. Judge Perez Drive, Chalmette, Louisiana 70043
- 33) Daiquiri Paradise
1535 Lapalco Boulevard, Harvey, Louisiana 70058

7.

Ammari also leases several properties to other businesses located in the New Orleans, Louisiana metropolitan area, including the following:

- 1) Cuban Creations Cigar Bar
533 Toulouse Street, New Orleans, Louisiana 70130
- 2) The Swamp
508-16 Bourbon Street, New Orleans, Louisiana 70130
- 3) Boot Scootin' Rodeo
522-522½ Bourbon Street, New Orleans, Louisiana 70130
- 4) The Gumbo Krewe
4517 W. Esplanade Avenue, Metairie, Louisiana 70001
- 5) La Hacienda de Leon
5131 Lapalco Boulevard, Marrero, Louisiana 70072
- 6) TLC Laundromat
203 W. Judge Perez Drive, Chalmette, Louisiana 70043
- 7) Vacant (formerly New Orleans Hamburger & Seafood Company)
539-41 Decatur Street, New Orleans, Louisiana 70130
- 8) Vacant
319 Royal Street, New Orleans, LA 70130

Coronavirus Outbreak

8.

In late 2019, a contagious novel coronavirus, identified as SARS-CoV-2 and causing the disease COVID-19, emerged and quickly spread throughout the world. On January 30, 2020, the World Health Organization declared the coronavirus outbreak a “public health emergency of international concern.”

9.

The coronavirus is a pathogen and a physical substance.

10.

The Centers for Disease Control and Prevention, of the United States Department of Health and Human Services [“CDC”], has reported that a person can become infected with the coronavirus by touching a surface or object that has the virus on it, and then touching his or her own mouth, nose,

or eyes. The coronavirus can and does live on and remains capable of being transmitted and active on inert physical surfaces.

11.

More specifically, the coronavirus spreads through physical infection, including physical infection of surfaces through droplets, which can be deposited on surfaces and objects. Traces of the coronavirus can remain on physical surfaces for weeks in some situations.

12.

The CDC also has reported that once an object is contaminated with the coronavirus, that object becomes a “fomite” that can transmit the coronavirus to others, thus altering the physical condition of contaminated objects and surfaces.

13.

The CDC also has reported that while surfaces can be cleaned, the efficacy depends on the type of cleaner used, and is still not 100% effective.

14.

Medical studies also have found that the coronavirus can be distributed through droplets in the air.

15.

The presence of any coronavirus particles renders items of physical property unsafe and the premises unsafe.

16.

The presence of any coronavirus particles on physical property also results in a loss of its use, value, usefulness, and/or normal function.

17.

The presence of any coronavirus particles causes direct physical loss and damage to property.

18.

The presence of people infected with or carrying coronavirus particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss and damage to that

property.

19.

The presence of people infected with or carrying coronavirus particles at premises renders the premises, including property located at that premises, unsafe, resulting in direct physical loss and damage to the premises and property.

20.

The coronavirus reached the United States, and the first presumptive case of the coronavirus in Louisiana was identified on March 9, 2020 through a Jefferson Parish resident who was hospitalized in Orleans Parish.

21.

On March 10, 2020, two more Orleans Parish residents were diagnosed with the coronavirus.

22.

The coronavirus was transmitted by way of human contact with surfaces and items of physical property located at premises in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes.

23.

The coronavirus was transmitted by way of human contact with airborne coronavirus particles emitted into the air in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes.

24.

Employees at business locations listed above have tested positive for infection with the coronavirus. Thus it is more likely than not, and indeed highly likely, that the coronavirus has been present at the business locations listed above, thus damaging that property.

25.

On March 11, 2020, the World Health Organization declared the coronavirus outbreak a global pandemic.

Civil Authority Actions

26.

On March 11, 2020, Louisiana Governor John Bel Edwards issued Proclamation No. 25 JBE 2020, declaring a public health emergency for the State of Louisiana as a result of the coronavirus pandemic.

27.

On March 11, 2020, New Orleans Mayor LaToya Cantrell issued a proclamation filed at Civil District Court docket number 2020-2449, declaring a state of emergency in the City of New Orleans as a result of the coronavirus pandemic.

28.

On March 12, 2020, Jefferson Parish President Cynthia Lee Sheng issued Proclamation No. 01 CLS 2020, declaring a state of emergency in Jefferson Parish as a result of the coronavirus pandemic.

29.

On March 13, 2020, St. Bernard Parish President Guy McInnis issued a proclamation filed in the St. Bernard Parish public records at COB 1190, folio 488, declaring a state of emergency in St. Bernard Parish as a result of the coronavirus pandemic.

30.

Thereafter, both Governor Edwards and Mayor Cantrell continued to issue a series of proclamations to deal with the coronavirus pandemic, including the closures of businesses and schools in Louisiana and in New Orleans to protect the health and safety of the public. Jefferson Parish President Sheng issued proclamations regarding the manner in which governmental operations responded to the coronavirus pandemic, and thus followed the proclamations issued by Governor Edwards with regard to non-governmental matters, including business closures. St. Bernard Parish President McInnis also followed the proclamations issued by Governor Edwards with regard to non-governmental matters, including business closures.

31.

For example, on March 16, 2020, Governor Edwards issued Proclamation No. 30 JBE 2020, in which he declared that as of March 17, 2020, certain business establishments, including restaurants, bars, and by extension event venues that served food and drinks, were deemed unable to continue operations without unacceptable risks to the health and safety of the public, and thus those business establishments were ordered to cease operations for on-premises consumption of food and beverages.

32.

Also in Proclamation No. 30 JBE 2020, Governor Edwards stated that the measures related to business closures, including that of restaurants, bars, and event venues, were necessary because of physical contamination of property due to the coronavirus's propensity to attach to surfaces for prolonged periods of time.

33.

On March 16, 2020, Mayor Cantrell issued a proclamation filed at Civil District Court docket number 2020-2602, in which she declared that as of March 17, 2020, all public and private gatherings in non-emergency situations were prohibited, and also that all restaurants were to cease operations for on-premises consumption of food and beverages, and that all bars were to cease operations completely, which necessarily included event venues.

34.

In that same proclamation, Mayor Cantrell stated that the measures were needed because the coronavirus has the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage.

35.

On March 20, 2020, the New Orleans Health Department, in further guidance and implementation of Mayor Cantrell's March 16, 2020 proclamation, directed that all individuals in New Orleans were under a stay-at-home order, unless performing an essential activity.

36.

On March 22, 2020, Governor Edwards issued Proclamation No. 33 JBE 2020, declaring that all individuals in Louisiana were under a stay-at-home order and were directed to stay at home, unless performing an essential activity, starting March 23, 2020. Restaurant, bar, and event venue operations were not categorized as essential activities.

37.

On April 2, 2020, Governor Edwards issued Proclamation No. 41 JBE 2020, extending the stay-at-home order to April 30, 2020.

38.

On April 15, 2020, Mayor Cantrell issued a proclamation filed at Civil District Court docket number 2020-3129, extending the stay-at-home order and other aforementioned restrictions to May 16, 2020.

39.

On April 16, 2020, the White House Coronavirus Task Force issued guidelines titled “Opening Up America Again” that provided guidance to the states regarding how various parts of the economy could be re-opened, which guidance called for the re-opening to occur in phases.

40.

On April 30, 2020, Governor Edwards issued Proclamation No. 52 JBE 2020, extending the stay-at-home order to May 15, 2020.

41.

On May 14, 2020, Governor Edwards issued Proclamation No. 58 JBE 2020, which set forth Louisiana’s Phase 1 Order, which eased some stay-at-home restrictions and allowed some businesses to re-open under certain conditions as of May 15, 2020. Restaurants were allowed to re-open dine-in service, but only at 25% of the total occupancy, which included not only patrons but also employees. Bars without a Louisiana Department of Health food service permit remained closed.

42.

On May 15, 2020, Mayor Cantrell issued a proclamation filed at Civil District Court docket number 2020-3129, which allowed New Orleans to enter Phase 1, one day after the rest of the state, generally in line with the Phase 1 guidelines above.

43.

On June 4, 2020, Governor Edwards issued Proclamation No. 74 JBE 2020, which set forth Louisiana's Phase 2 Order to begin as of June 5, 2020. Restaurants were allowed to continue dine-in service, but only at 50% of the total occupancy. Bars without a Louisiana Department of Health food service permit were allowed to re-open, but only at 25% of the total occupancy.

44.

On June 9, 2020, the New Orleans Health Department issued guidelines by which New Orleans would enter Phase 2, beginning on June 9, 2020, modifying slightly the State's comprehensive Phase 2, but in line with the Phase 2 guidelines referenced above.

45.

On July 8, 2020, the New Orleans Health Department, in further guidance and implementation of Mayor Cantrell's May 15, 2020 proclamation, placed additional restrictions on restaurants, bars, and by extension event venues, due to an increase in the number of coronavirus cases. Restaurants and bars could provide the aforementioned service at tables, but no service at a physical bar. Further, indoor gatherings were restricted to twenty-five persons or fewer.

46.

On July 11, 2020, Governor Edwards issued Proclamation No. 89 JBE 2020, which kept the above restrictions in place, but also issued an order that all individuals in Louisiana must wear a face covering while inside any commercial establishment, due to a second surge in the number of coronavirus cases.

47.

On July 23, 2020, Governor Edwards issued Proclamation No. 96 JBE 2020, which once again placed restrictions on bars due to an increase in the number of coronavirus cases. That

proclamation ordered that no bar, with or without a food service permit from the Louisiana Department of Health, was permitted to allow on-premises consumption of any food or drinks. That proclamation also restricted gatherings to fifty people or fewer. Mayor Cantrell followed the bar closure, and New Orleans continued its stricter restriction on indoor gatherings to twenty-five persons or fewer.

48.

On September 11, 2020, Governor Edwards issued Proclamation No. 117 JBE 2020, which set forth Louisiana's Phase 3 Order to begin as of September 11, 2020. Restaurants were allowed to continue dine-in service, but only at 75% of the total occupancy. Bars were allowed to re-open, but only at 25% of the total occupancy or fifty patrons, whichever was fewer; bar service was allowed to patrons only at seated tables; and all service of alcoholic beverages was required to conclude at 10:00 p.m., with the bar closing at 11:00 p.m. New Orleans did not enter Phase 3 at that time.

49.

On October 1, 2020, the New Orleans Health Department issued guidelines by which New Orleans would enter Phase 3, beginning on October 3, 2020, modifying slightly the State's comprehensive Phase 3, which New Orleans called Phase 3.1. Restaurants were allowed to continue dine-in service, but only at 75% of the total occupancy. Bars were allowed to re-open, but only for the sale of to-go drinks between 8:00 a.m. and 11:00 p.m.

50.

On October 15, 2020, the New Orleans Health Department issued guidelines by which New Orleans would enter Phase 3.2, beginning on October 17, 2020. Restaurants were allowed to continue dine-in service, but still only at 75% of the total occupancy. Bars were allowed to have service for outdoor seating only at 25% occupancy of fifty patrons, whichever was fewer, with sales limited to hours between 8:00 a.m. and 11:00 p.m.

51.

On November 9, 2020, the New Orleans Health Department issued guidelines by which New Orleans would enter Phase 3.3, beginning on November 11, 2020. Restaurants were allowed to continue dine-in service, but still only at 75% of the total occupancy. Bars were allowed to have service for indoor seating only at 25% occupancy or fifty patrons, whichever was fewer, and service for outdoor seating at 100% occupancy or fifty patrons, whichever was fewer, with sales limited to hours between 8:00 a.m. and 11:00 p.m.

52.

On November 24, 2020, Governor Edwards issued Proclamation No. 168 JBE 2020, which ordered a return to Phase 2 due to a third surge of coronavirus cases in Louisiana. Dine-in service at restaurants was reduced again to 50% of the total occupancy. Bars were allowed to have service for indoor seating only at 25% occupancy or fifty patrons, whichever was fewer, and service for outdoor seating at 100% occupancy or fifty patrons, whichever was fewer, with sales limited to hours between 8:00 a.m. and 11:00 p.m.

53.

On January 6, 2021, the New Orleans Health Department issued guidelines by which New Orleans would return to a modified Phase 1, beginning on January 8, 2021. Restaurants were allowed to continue dine-in service, but still only at 25% of the total occupancy. Bars were closed for indoor service, and were allowed only to sell to-go drinks, with sales limited to hours between 8:00 a.m. and 11:00 p.m.

54.

On January 27, 2021, the New Orleans Health Department issued guidelines by which New Orleans would enter a modified Phase 2, beginning on January 29, 2021. Restaurants were allowed to continue dine-in service, but only at 50% of the total occupancy. Bars remained closed for indoor service, and still were allowed only to sell to-go drinks, with sales limited to hours between 8:00 a.m. and 11:00 p.m.

55.

On February 12, 2021, Mayor Cantrell ordered that all bars in New Orleans were to be closed through February 16, 2021, both inside and outside, including a prohibition on the sale of to-go drinks, and no sales of packaged liquor in the French Quarter.

56.

On February 17, 2021, the New Orleans Health Department issued guidelines by which New Orleans would enter another modified Phase 2, beginning on February 19, 2021. Restaurants were allowed to continue dine-in service, but only at 50% of the total occupancy. Bars were allowed to have service for indoor seating only at 25% occupancy, with sales limited to hours between 8:00 a.m. and 11:00 p.m.

57.

On March 2, 2021, Governor Edwards issued Proclamation No. 29 JBE 2021, which allowed a return to Phase 3. Dine-in service at restaurants was allowed to return to 75% of the total occupancy. Bars were allowed to have service for indoor seating only at 25% occupancy, or 250 patrons, whichever was fewer, with sales limited to hours between 8:00 a.m. and 11:00 p.m. New Orleans did not enter Phase 3 at that time.

Insurance Policies

58.

Starr issued Policy No. SLSTPTY11193919 to Ammari, with an effective policy period of June 20, 2019 to June 20, 2020. The Policy consists of property coverage and liability coverage in favor of Ammari as the named insured.

59.

Starr issued Endorsement No. 54 to the Policy, extending the effective policy period to January 20, 2021. The Policy consists of property coverage and liability coverage in favor of Ammari as the named insured.

60.

The Policy contains a Schedule of Locations Endorsement, which states that the locations insured by the Policy are listed on a Schedule of Locations on file with Starr. Upon information and belief, all the locations for the businesses listed above are contained in the Schedule of Locations.

61.

The Policy is an “all risk” insurance policy for the insured locations.

62.

Included in the Policy’s property coverage is coverage for lost business income caused by a covered cause of loss, as well as reasonable and necessary expenses incurred, which would not have been incurred but for the covered cause of loss.

63.

The Policy insures covered business income losses and extra expenses incurred for up to twelve months of the actual loss sustained.

64.

Also included in the Policy’s property coverage is coverage for business income losses and extra expenses incurred as a result of the action of a civil authority and caused by a covered cause of loss.

65.

The Policy insures covered business income losses and extra expenses incurred resulting from the action of a civil authority for thirty days after coverage is triggered.

Insurance Agents

66.

O’Brien and Gallagher have acted as Ammari’s insurance agent and broker for its insurance needs, including the procurement of the Starr Policies issued to Ammari and listed above.

67.

On the website for the Gallagher family of companies, in the “About Us” section and “How We Work,” it states that “Gallagher’s expertise spans nearly every industry and leverages data and

analytics tools to create the right program for you today while helping you plan for a stronger tomorrow.”

68.

Under the “Industries” section of the Gallagher website, it lists those industries in which it touts expertise, including in “Restaurants” and in “Real Estate and Hospitality.”

69.

On the “Restaurants” section of the Gallagher website, it states, “From sole proprietors to national chains, the risk management and organizational wellbeing needs of the restaurant industry are as varied as the cuisine and the locations. We have honed practice that is able to pivot and flex to meet the spectrum of challenges the restaurant industry faces.” It further states, “Gallagher has the experience and expertise to help you identify exposures to reduce risk and improve profitability.”

70.

On the “Real Estate and Hospitality” section of the Gallagher website, it states, “Our real estate and hospitality industry expertise allows us to act as an extension of your organization’s operations. By building a high level of familiarity with your company, we confidently approach markets with professionals who best understand your business and can provide the precise insurance and benefits solutions tailored for your needs.”

71.

Under the “Insurance” section of the Gallagher website, it lists the types of insurance in which it specializes, including “Property” insurance.

72.

On the “Property” section of the Gallagher website, it states, “Our process and dedicated team use . . . policy assessment to find gaps and assign precise coverage so your property assets are fully protected. Our approach enables us to mine for information across any industry and all risks. . . . We utilize best practices . . . to fully discover gaps and values for comprehensive coverage.”

73.

O'Brien and Gallagher held themselves out as leaders among insurance agents and brokers for the restaurant, hospitality, and real estate industries.

74.

The Gallagher website also contains information regarding "Guidance on Coronavirus (COVID-19) for Property and Business Interruption Coverage," which states, "The COVID-19 virus is causing mass business disruption around the globe," and recognizes that "contamination of property due to COVID-19 at an insured's location may constitute physical loss or damage."

75.

The Gallagher website also contains coronavirus information specific to the real estate and hospitality industries, stating, "COVID-19 has or will affect the real estate and hospitality businesses in the U.S., and could be the basis for lost income business claims."

76.

Although Ammari maintains that the Starr Policy provides coverage for the damages suffered by Ammari as discussed in this Petition, O'Brien and Gallagher never discussed with Ammari all possible options of specific insurance coverages such as for pandemic, contagion or infectious disease, outbreaks, medical catastrophes, and the like, before O'Brien and Gallagher placed the Policy in favor of Ammari.

77.

In the event there is found to be no coverage or insufficient coverage under the Policy for Ammari's losses, O'Brien and Gallagher are liable to Ammari for those losses by failing to advise Ammari of the availability of other coverage in the insurance markets to which they purport to have access and represent that they advise their clients about industry-specific risks and coverage for those risks.

Losses Covered by Policy

78.

The presence of the coronavirus at Ammari's insured locations caused direct physical loss and damage to the insured locations, both by depriving the use of and damaging the insured locations.

79.

The presence of the coronavirus at properties within one mile of Ammari's insured locations caused direct physical loss and damage to those other locations, both by depriving the use of and damaging those other locations.

80.

The various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans caused direct physical loss to the insured locations by prohibiting access to those locations for their intended purpose and by depriving the use of those locations.

81.

The various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans caused direct physical loss to properties within one mile of Ammari's insured locations by prohibiting access to those locations for their intended purpose and by depriving the use of those locations.

82.

As a result of the presence of the coronavirus in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes, at Ammari's insured locations, and at properties within one mile of Ammari's insured locations, and also as a result of the various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans, Ammari was forced to suspend its business operations for on-premises dining at its restaurants from March 17, 2020 through May 15, 2020 in Orleans Parish and through May 14, 2020 in other parishes (and even then at severely reduced capacity), with limitations on those business operations continuing through the present date.

83.

As a result of the presence of the coronavirus in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes, at Ammari's insured locations, and at properties within one mile of Ammari's insured locations, and also as a result of the various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans, Ammari was forced to suspend its business operations for service at its bars and event venues from March 17, 2020 through June 8, 2020 and from July 23, 2020 through October 16, 2020 in Orleans Parish, and from March 17, 2020 through June 4, 2020 and from July 23, 2020 through September 11, 2020 in other parishes (and even then at severely reduced capacity), with limitations on those business operations continuing through the present date.

84.

As a result of the presence of the coronavirus in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes, at Ammari's insured locations, and at properties within one mile of Ammari's insured locations, and also as a result of the various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans, Ammari's lessees were forced to suspend their business operations, with limitations on those business operations continuing through the present date.

85.

As a result of the presence of the coronavirus in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes, at Ammari's insured locations, and at properties within one mile of Ammari's insured locations, and also as a result of the various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans, and as a result of the suspension of Ammari's business operations for on-premises dining at its restaurants from March 17, 2020 through May 15, 2020 in Orleans Parish and through May 14, 2020 in other parishes (and even then at severely reduced capacity), Ammari suffered and continues to suffer business income losses and also has incurred extra expenses that would not have been incurred but for the covered cause of loss.

86.

As a result of the presence of the coronavirus in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes, at Ammari's insured locations, and at properties within one mile of Ammari's insured locations, and also as a result of the various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans, and as a result of the suspension of Ammari's business operations for service at its bars and event venues from March 17, 2020 through June 8, 2020, from July 23, 2020 through October 16, 2020, and from February 12, 2021 through February 16, 2021 in Orleans Parish, and from March 17, 2020 through June 4, 2020 and from July 23, 2020 through September 11, 2020 in other parishes (and even then at severely reduced capacity), Ammari suffered and continues to suffer business income losses and also has incurred extra expenses that would not have been incurred but for the covered cause of loss.

87.

As a result of the presence of the coronavirus in Louisiana and in Orleans, Jefferson, and St. Bernard Parishes, at Ammari's insured locations, and at properties within one mile of Ammari's insured locations, and also as a result of the various proclamations, notices, and orders issued by the Governor of Louisiana and by the Mayor of New Orleans, Ammari's lessees were forced to suspend their business operations, and thus Ammari suffered and continues to suffer business income losses and also has incurred extra expenses as a lessor that would not have been incurred but for the covered cause of loss.

88.

On March 14, 2020, Ammari gave initial notice of its loss and of its insurance claim to Starr.

89.

As of the date of the filing of this Petition for Damages, Starr has not affirmatively accepted coverage for Ammari's claim and has paid no insurance proceeds to pay for Ammari's covered losses.

90.

Under the terms of the Policy, the period of indemnity for business interruption losses is not limited by the date of termination of the Policy.

Count I
Payment of Insurance Proceeds

91.

Ammari's business income losses and its extra expenses incurred have been caused by the presence of the coronavirus at its premises, which is a covered cause of loss under the Policy.

92.

Ammari's business income losses and its extra expenses incurred also have been caused by the loss of use of its premises to conduct its business operations, which in turn has been caused by the coronavirus pandemic, which is a covered cause of loss under the Policy.

93.

Ammari's business income losses and its extra expenses incurred resulting from lost rents have been caused by the presence of the coronavirus at its lessees' premises, which is a covered cause of loss under the Policy.

94.

Ammari's business income losses and its extra expenses incurred resulting from lost rents also have been caused by its lessees' loss of use of their premises to conduct their business operations, which in turn has been caused by the coronavirus pandemic, which is a covered cause of loss under the Policy.

95.

Under these circumstances, the Policy insures Ammari's business income losses and extra expenses incurred, suffered from March 17, 2020 to present and until all such losses and expenses cease, until as long as March 17, 2021.

96.

Alternatively, Ammari's business income losses and its extra expenses incurred have been caused by the aforementioned actions of civil authorities prohibiting Ammari from accessing its

covered properties to use them to conduct its business operations, which civil authority actions have been caused by loss or damage to property at the covered properties and/or at other locations within one mile of the covered properties, which loss or damage is caused by the coronavirus, which in turn is a covered cause of loss under the Policy.

97.

Also alternatively, Ammari's business income losses and its extra expenses incurred have been caused by the aforementioned actions of civil authorities prohibiting Ammari's lessees from accessing their covered properties to use them to conduct their business operations, which civil authority actions have been caused by loss or damage to property at the covered properties and/or at other locations within one mile of the covered properties, which loss or damage is caused by the coronavirus, which in turn is a covered cause of loss under the Policy.

98.

Under these circumstances, the Policy insures Ammari's business income losses and extra expenses incurred suffered from March 17, 2020 to April 16, 2020.

99.

Starr has failed to comply with its obligations under the Policies to pay insurance proceeds owed to Ammari as a result of business income losses and extra expenses incurred caused by a covered cause of loss. Accordingly, Starr is in breach of its contract of insurance and is liable for all amounts owed under the Policy, including all consequential and/or resulting damages.

Count II
Negligence Against Insurance Agent and Broker

100.

To the extent there is found to be no coverage or insufficient coverage under the Policy for Ammari's losses, that lack of coverage or insufficient coverage is caused by the negligence of O'Brien and Gallagher in the following non-exclusive particulars:

- (a) Failing to advise Ammari about the need for broader virus-related coverage;
- (b) Failing to perform due diligence regarding Ammari at the outset of obtaining the Starr Policy;

- (c) Failing to conduct a feasibility study to look at Ammari's insurable assets and to recommend and bind appropriate coverages.

101.

O'Brien and Gallagher are jointly and solidarily liable with each other for all damages that Ammari has suffered due to their negligence in the event Ammari is not fully compensated by Starr for its coronavirus-related losses.

Count III
Penalties and Attorneys' Fees

102.

Ammari has provided Starr with satisfactory proof of loss of its business income losses and extra expenses incurred. To date, Starr has not paid any funds under the Policy to cover any portion of the insured business income losses and extra expenses incurred.

103.

The delay in payment to Ammari of the amounts owed under the Policy is arbitrary, capricious, without probable cause, and in bad faith.

104.

Starr's breach of the contract of insurance is in bad faith pursuant to Louisiana Civil Code article 1997. As Starr is an obligor in bad faith, Ammari is entitled to all damages, whether foreseeable or not, that are a direct result of Starr's failure to perform, including attorneys' fees.

105.

Pursuant to Louisiana Revised Statutes § 22:1892, Starr was obligated to pay Ammari any amounts owed within thirty days of receipt of satisfactory proof of loss. Starr has failed to do so. As a result of this failure, which was arbitrary, capricious, and without probable cause, Starr is liable to Ammari for all amounts due under the Policy, as well as for attorneys' fees and costs, and a statutory penalty of fifty percent of the amount found to be owed under the Policy to Ammari pursuant to Louisiana Revised Statutes § 22:1892.

106.

Pursuant to Louisiana Revised Statutes § 22:1973, Starr owed Ammari a duty of good faith and fair dealing and had an affirmative duty to adjust Ammari's claims fairly and promptly. Because Starr has breached its duty, Starr is liable to Ammari for all damages as a result of its breach.

107.

Pursuant to Louisiana Revised Statutes § 22:1973, Starr breached its duty of good faith and fair dealing and its affirmative duty to adjust the claims fairly and promptly to the extent it has failed to pay Ammari within sixty days of receipt of satisfactory proof of loss. Such failure is arbitrary, capricious, and without probable cause. As a result of and pursuant to Louisiana Revised Statutes § 22:1973, Starr is liable for penalties in the amount of two times the damages sustained by Ammari.

108.

Pursuant to Louisiana Revised Statutes § 22:1973, Starr breached its duty of good faith and fair dealing and its affirmative duty to adjust the claims fairly and promptly when it misrepresented certain policy provisions, including provisions dealing with coverage for business income losses and extra expenses, as well as the applicability of certain exclusions. Such breach was arbitrary, capricious, and without probable cause. As a result of and pursuant to Louisiana Revised Statutes § 22:1973, Starr is liable for penalties in the amount of two times the damages sustained by Ammari.

109.

Ammari requests a trial by jury.

WHEREFORE, Plaintiff, Ammari, respectfully prays that Starr be held liable to Ammari for all amounts due under the Policy, together with all damages as a result of Starr's breach, including attorneys' fees, and all statutory penalties, together with pre-judgment and post-judgment interest. To the extent there is found to be no coverage or insufficient coverage under the Policy for Ammari's losses, O'Brien and Gallagher are liable to Ammari for all losses that are not compensated by Starr. Ammari also prays for all other general and equitable relief as the nature of this case may permit.


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Hold Service:

Arthur J. Gallagher Risk Management Services, Inc.

Hold Service; Service to Be Made by Plaintiff Pursuant to Contractual Terms of Policy:

Starr Surplus Lines Insurance Company,

Legal Department

Starr Surplus Lines Insurance Company

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New York, New York 10022