**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

UNIVERSITY MANAGEMENT, INC., COLUMBUS DELI, INC., GRILL TUPELO, LLC AND BBC, LLC — **PLAINTIFFS**

VERUS — **CIVIL CAUSE NO.** 1:20cv138-SA-RP

STATE AUTOMOBILE MUTUAL INSURANCE COMPANY AND STATE AUTO PROPERTY & CASUALTY INSURANCE COMPANY d/b/a STATE AUTO INSURANCE COMPANIES — **DEFENDANTS**

**COMPLAINT FOR DAMAGES AND OTHER RELIEF
(JURY TRIAL DEMANDED)**

The Plaintiffs, University Management, Inc., Columbus Deli, Inc., Grill Tupelo, LLC and BBC, LLC, bring this action against State Automobile Mutual Insurance Company and State Auto Property & Casualty Insurance Company d/b/a State Auto Insurance Companies for damages and other relief. In support hereof, UMI shows the following:

PARTIES

1. University Management, Inc. is a Mississippi corporation authorized to do and doing business in Mississippi with its principal place of business located in Columbus, Mississippi.

2. Columbus Deli, Inc. ("Deli") is a Mississippi corporation authorized to do and doing business in Mississippi with its principal place of business located in Columbus, Mississippi.

3. Grill Tupelo, LLC ("Grill") is a Mississippi Limited Liability Company authorized to do and doing business in Mississippi with its principal place of business located in Columbus, Mississippi.

4. BBC, LLC ("BBC") is a Mississippi Limited Liability Company authorized to do and doing business in Mississippi with its principal place of business located in Columbus, Mississippi.

5. University Management, Inc., Deli, Grill and BBC own and/or lease the businesses and/or premises which are insured by Defendants pursuant to those certain policies and/or endorsements identifying University Management, Inc. as the named insured and Deli, Grill and BBC as additional insureds (hereinafter, University Management, Inc., Deli, Grill and BBC are referred to collectively as "Plaintiff" or "UMI").

6. State Automobile Mutual Insurance Company and State Auto Property & Casualty Insurance Company, doing business as State Auto Insurance Companies (hereinafter, "Defendant" or "State Auto") are insurance companies incorporated in Ohio with their principal place of business located at 518 East Broad Street, Columbus, Ohio, that are registered to do and doing business in Mississippi which may be served with process by service upon its registered agent, United States Corporation Company at 7716 Old Canton Road, Suite C, Madison Mississippi 39110 or as otherwise provided by the Federal Rules of Civil Procedure.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

8. This Court has personal jurisdiction over State Auto pursuant to the Mississippi "long arm statute" because State Auto has submitted to jurisdiction in this state by: (a) transacting business in Mississippi; (b) contracting to insure a person, property or risk located within Mississippi at the time of contracting; (c) making a contract substantially connected with Mississippi; and/or (d) committing a tort and/or breaching a contract, in whole or in part, in Mississippi. See Miss. Code Ann. §13-3-57. In addition, State Auto exercises substantial, systematic and continuous contacts with Mississippi by doing business in Mississippi, serving insureds in Mississippi, and seeking additional business in Mississippi.

9. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within the Northern District of Mississippi.

INTRODUCTION

10. UMI is owner and operator of restaurants and bars located in Columbus, Mississippi; Starkville, Mississippi; Tupelo, Mississippi; Corinth, Mississippi; Hattiesburg, Mississippi; and Olive Branch, Mississippi who has been forced, by recent orders issued by the State of Mississippi, to cease their operations – through no fault of their owner – as part of the State's efforts to slow the spread of the COVID-19 global pandemic. The closures mandated by these orders present an existential threat to these small, local businesses that employ hundreds of Mississippi residents. To protect their business from situations like these, which threaten their livelihoods based on factors wholly outside of their control, Plaintiff obtained business owners insurance from State Auto covering their restaurants and bars located in Mississippi. In blatant breach of its insurance obligations that it voluntarily undertook in exchange for UMI's premium payments, State Auto has denied UMI's claims for coverage resulting from covered causes of loss.

11. As a result, UMI brings this action against State Auto due to its failure to honor its obligations under commercial businessowners insurance policies issued to UMI, which provide coverage for losses incurred due to a "suspension" of their operations, including when their businesses are forced to close due to a government order and/or adverse public communications or media reports resulting from the actual or alleged exposure of the insured premises to a contagious or infectious disease.

12. According to the World Health Organization ("WHO") the "[c]oronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus". On March 24, 2020, during the term of the policies issued by State Auto to Plaintiff, Mississippi Governor Reeves issued an order first closing all restaurants and bars to the public in an effort to address the ongoing COVID-19 pandemic resulting from the contagious or infectious disease. A few days later, on April 1, 2020, Governor Reeves ordered all "non-essential businesses" to close. The March 24, 2020 and April 1, 2020 orders may be hereinafter collectively referred to as the "Closure Orders."

13. As a result of the Closure Orders and/or other adverse public communications or media reports, the Plaintiff was forced to suspend operations, resulting in substantial lost revenues.

14. But despite State Auto's express promise in its policies to cover UMI's business interruption losses due to order of a civil authority and/or adverse public communications or media reports resulting from the actual or alleged exposure of the premises to a contagious or infectious disease, State Auto has issued a blanket denial to UMI for any losses related to the suspension of its operations at the described premises due to the order of a civil authority without first conducting any meaningful coverage investigation, let alone an "adequate

investigation" as required under Mississippi law.

15. Instead, State Auto denied coverage to UMI under the policy asserting Plaintiff was not presenting a claim "for any direct physical loss or damage to property". *See* April 10, 2020 Letter attached hereto as "**Exhibit A**."

16. Unlike many commercial property policies available in the market, the policy and its endorsements sold by State Auto to UMI does not include an exclusion for loss caused by virus. To the contrary, State Auto issued an endorsement to Plaintiff's policy which provides, in relevant part, that Plaintiff is covered for Business Income and Extra Expense for "the suspension of your operations . . . due to the order of a civil authority; or adverse public communications or media reports resulting from the actual or alleged ... exposure of the described premises to a contagious or infectious disease". See the State Auto Endorsement BP 23060512 attached hereto as **"Exhibit B"**. Thus, UMI reasonably expected that the insurance they purchased from State Auto included coverage for business income losses caused by suspension of its operations due to an order of civil authority.

17. If State Auto had wanted to exclude pandemic-related losses under UMI's policy as many other insurers have done in other policies, it easily could have attempted to do so on the front-end with an express exclusion. Instead, State Auto waited until after it collected UMI's premiums, and after a pandemic and the resulting Closure Orders caused catastrophic business losses to UMI, to try to limit its exposure on the back-end through its erroneous assertions that (a) physical loss is required and (b) the presence of the coronavirus disease is not "physical loss" and, therefore, is not a covered cause of loss under its policies.

18. The fact that State Auto issued the Endorsement attached hereto as **"Exhibit B"** undermines State Auto's assertion that UMI's policy requires physical loss or damage. Further,

the fact that the insurance industry has created specific exclusions for pandemic-related losses under similar commercial property policies which State Auto did not employ also undermines State Auto's position for denying coverage to UMI. Indeed, if a virus could never result in a "physical loss" to property, there would be no need for such an exclusion.

19. State Auto seeks to avoid the plain language of their endorsement BP 23060512 to UMIs policy which expressly includes coverage for "Business Income" and "Extra Expense" caused by "the suspension of your operations at the described premises due to the order of a civil authority; or adverse public communications or media reports, resulting from the actual or alleged . . . exposure of the described premises to a contagious or infectious disease".

20. Thus, State Auto's wholesale, cursory coverage denial is arbitrary and unreasonable, done in a willful, malicious, intentional or grossly negligent manner which is inconsistent with the facts and plain language of its Endorsement BP 23060512 it issued to UMI. The denial appears to be driven by State Auto's desire to preempt its own financial exposure to the economic fallout resulting from the COVID-19 crisis, rather than to initiate, as State Auto is obligated to do, a full and fair investigation of the claims and a careful review of the policies they sold to Plaintiff in exchange for valuable premiums.

21. As a result of State Auto's wrongful denial of coverage, Plaintiff files this action to obtain the benefit of the insurance coverage they purchased, for indemnification of the business losses they have sustained, for breach of contract, for bath faith claims handling and/or bad faith denial of a claim and extra-contractual damages.

FACTUAL ALLEGATIONS

22. Plaintiff incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-21 above.

23. In exchange for substantial premiums, State Auto sold a commercial property insurance policy promising to indemnify the Plaintiff for losses, including losses resulting from the "suspension" of business operations at any insured location caused by an order of a civil authority or adverse public communications or media reports resulting from the actual or alleged exposure of the premises to a contagious or infectious disease (the "Policy").

24. The Policy was issued to Plaintiff at their principal places of business in Mississippi.

25. The Plaintiff's Policy is attached here as **"Exhibit C"** and includes the endorsement attached hereto as **"Exhibit B".**

26. The Policy is an "all risk" policy that provides broad coverage for losses caused by any cause unless expressly excluded.

27. The State Auto Policy does not exclude losses from viruses or pandemics. To the contrary, the State Auto Policy issued to UMI includes the State Auto issued Endorsement BP 23060512 which changes the Policy to add "additional coverage" for business income to include the following causes of loss: "(1) [T]he suspension of your "operations" at the described premises due to the order of a civil authority; or adverse public communications or media reports, resulting from the actual or alleged: . . (b) [E]xposure of the described premises to a contagious or infectious disease". See **"Exhibit B"**.

28. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus disease – otherwise known as COVID-19 – constituted a global pandemic.

29. In response to the pandemic, and the spread of the coronavirus disease throughout Mississippi, the Mississippi State Department of Health issued COVID-19 Update

recommending that all restaurants and bars suspend dine-in service.

30. In response to the pandemic, Mississippi Governor Reeves issued Executive Order 1463 on March 14, 2020 requiring that all bars and restaurants suspend dine-in service in all restaurants and bars beginning March 24, 2020 and continuing through April 17, 2020.

31. On April 1, 2020, Mississippi Governor Reeves issued Executive Order 1466 which extended the provisions of Executive Order 1463 until April 20, 2020.

Like the March 24, 2020, Executive order, the April 1, 2020 Executive Order prohibited the public from accessing Plaintiff's restaurants.

32. As a result of the Closure Orders issued by a civil authority, namely the Mississippi Governor, UMI's dine- in operations were suspended at the described premises.

33. In addition to the suspension of operations by UMI at the described premises due to the Closure Orders, public communications and/or media reports adverse to dine-in services in restaurants began circulating as a result of actual or alleged exposure to the contagious and/or infectious COVID-19 disease requiring suspension of operations at the described premises.

34. The term operations is defined by the Policy to mean "your business activities occurring at the described premises". Dine-in services were "operations" at the described premises owned and operated by UMI and insured by State Auto that were suspended due to the order of a civil authority and/or adverse media reports regarding actual or alleged exposure to the contagious or infectious disease if you dined-in a restaurant, include the described premises.

35. As a result of the Closure Orders and/or adverse public communications or media reports, UMI has suffered substantial Business Income losses. The covered losses incurred by UMI are owed by State Auto to UMI under the Policy, specifically including the State Auto Endorsement BP 23060512 to the Policy which is attached hereto as **"Exhibit B"**.

36. UMI submitted a claim to State Auto requesting coverage for their business income losses promised under the Policy and its Endorsement BP 23060512.

37. State Auto has denied UMI's claim willfully, maliciously, intentionally and/or or as a result of gross negligence.

38. Even if State Auto had not issued Endorsement BP 23060512 to UMI's policy, UMI is entitled to coverage for lost business income under its Policy with State Auto resulting from the coronavirus disease and the COVID-19 pandemic.

39. In addition to the Endorsement BP 23060512 to UMI's policy with State Auto, the Policy also includes "Civil Authority" coverage, pursuant to which State Auto promised to pay for the loss of Business Income and necessary Extra Expense sustained by Plaintiffs "caused by action of civil authority that prohibits access" to Plaintiff's insured premises.

40. This Civil Authority coverage is triggered when any non-excluded cause results in "damage to property other than property" at the Plaintiff's premises, and is intended to cover losses resulting from governmental actions taken in response to dangerous conditions.

41. That continuous presence of the coronavirus disease on or around Plaintiff's premises rendered the premises unsafe and unfit for their intended use and therefore caused physical property damage or loss under the Policy.

42. Executive Order 1463 was issued in direct response to these dangerous physical conditions and suspended dine-in service at Plaintiff's restaurants, thereby causing the necessary suspension of operations and triggering the Civil Authority coverage under the policies. Governor Reeves April 1, 2020 Executive Order 1466 likewise was made in direct response to the continued and increasing presence of the coronavirus disease on property or around Plaintiff's premises.

COUNT I: BREACH OF CONTRACT

43. Plaintiffs incorporate by reference, as if fully set forth herein, the facts set forth in paragraphs 1-42 above.

44. The Policy is an insurance contract under which State Auto was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the government orders forcing them to suspend operations.

45. Plaintiff has complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policy, and yet State Auto has abrogated its insurance coverage obligations pursuant to the Policy's terms.

46. State Auto has arbitrarily and without justification refused to reimburse UMI for any losses incurred by it in connection with the covered business losses related to the Closure Orders and the suspension of operations stemming from the COVID-19 disease pandemic.

47. The Policy is an insurance contract under which State Auto was paid premiums in exchange for its promise to pay Plaintiff losses for claims covered by the Policy, such as business income lost due to suspension of operations due to an order from civil authority.

48. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, State Auto has breached its coverage obligations under the Policy.

49. As a result of State Auto's breaches of the Policy, Plaintiff has sustained substantial damages for which State Auto is liable, in an amount to be established at trial.

COUNT II: BAD FAITH

50. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in

paragraphs 1-49 above.

51. Upon receipt of the Plaintiff's claims, State Auto immediately denied the claims without conducting any reasonable investigation as required under Mississippi law.

52. To make matters worse, based on information and belief, State Auto made a decision to deny Plaintiff's claims, and claims of those similarly situated to Plaintiff, before the claims were even submitted to State Auto. State Auto took these actions, before claims were even submitted, as part of its plan to discourage claim notifications and to avoid any responsibility for its policyholders' losses, in violation of Mississippi law.

53. State Auto's denial was vexatious and unreasonable. State Auto had no arguable or legitimate basis, either in fact or law, to deny the Plaintiff's claims and did so maliciously, willfully, with malice and/or intentional or gross negligence in disregard of Plaintiff's rights.

54. State Auto's denial constitutes "bad faith denial of an insurance claim" under Mississippi law.

55. Accordingly, Plaintiff requests that, in addition to entering a judgment in favor of Plaintiff and against State Auto for the amounts owed under the Policy at the time of judgment, the Court enter a judgment in favor of Plaintiff and against State Auto for punitive damages.

56. Plaintiff further requests that the Court enter a judgment in favor of Plaintiff and against State Auto in an amount equal to the attorney's fees and costs incurred by Plaintiff for the prosecution of this coverage action against State Auto, which amount will be proved at or after trial.

COUNT III- EXTRACONTRACTUAL DAMAGES

57. Plaintiff incorporates by reference, as if fully set forth herein, the facts set forth in paragraphs 1-56 above.

58. Plaintiff is owed a claim or obligation by State Auto which was wrongfully denied by State Auto.

59. Even if it should be determined that State Auto's denial of the contractual obligation it owed to Plaintiff does not rise to the level of bad faith, Plaintiff is entitled to recover of and from State Auto its economic, consequential and extra-contractual damages as a result of State Auto's wrongful denial of Plaintiff's claim.

60. State Auto acted negligently when it, without a reasonable or arguable basis, denied Plaintiff's claim for coverage under the Policy when Plaintiff's claim should have been paid under the Policy.

61. Accordingly, Plaintiff is entitled to recover its attorneys' fees, costs, expenses and other economic damages of and from State Auto irrespective of whether State Auto is deemed liable for bad faith.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court:

A. Enter a judgment on Count I of the Complaint in favor of Plaintiff and against State Auto and award damages for breach of contract in an amount to be proven at trial;

B. Enter a judgment on Count II of the Complaint in favor of Plaintiff and against State Auto for punitive damages and attorney fees and costs in an amount to be shown at trial;

C. Enter a judgment in favor of Plaintiff and against State Auto on Count III and award damages in an amount equal to all attorneys' fees, costs and expenses and other economic damages to be shown at or after trial;

D. Award to Plaintiff and against State Auto prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by State Auto's wrongful refusal to pay Plaintiff's liquidated claim;

E. Award to Plaintiff and against State Auto post-judgment interest on all amounts awarded to Plaintiff according to law; and

F. Award to Plaintiff such other, further and additional relief to which it may be entitled under the proof and the law and/or which this Court deems just and appropriate.

Respectfully submitted this the 1st day of July, 2020.

UNIVERSITY MANAGEMENT, INC., COLUMBUS DELI, INC., GRILL TUPELO, LLC AND BBC, LLC

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