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Section 16
JURY

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**STATE OF LOUISIANA**

NO.

DIVISION “ ”

SIGNET JEWELERS LTD., AND STERLING JEWELERS INC.**VERSUS****STEADFAST INSURANCE COMPANY****FILED:** __________
DEPUTY CLERK**PETITION FOR DAMAGES, DECLARATORY JUDGMENT, AND JURY DEMAND**

The plaintiffs, Signet Jewelers Ltd. (“Signet Jewelers”) and Sterling Jewelers Inc. (“Sterling”) (collectively, “Signet”), by and through their undersigned attorneys, as and for their petition against the defendant, Steadfast Insurance Company (“Steadfast”), allege as follows:

INTRODUCTION

1. This action for breach of contract and declaratory judgment arises out of Signet’s pursuit of—and Steadfast’s failure and refusal to provide—insurance coverage for Signet’s significant losses arising out of the novel coronavirus outbreak.

2. Signet is the world’s largest retailer of diamond jewelry and operates over 3,000 stores worldwide under household brand names such as Kay, Zales, and Jared. Signet’s North America operations alone include approximately 2,750 stores, and are operated by and through Sterling, a subsidiary of Signet Jewelers.

3. Due to the 2020 coronavirus outbreak, Signet was forced to close thousands of stores beginning in March 2020, including all stores in North America, the United Kingdom, and Ireland. The closures affected nearly 40 stores in Louisiana, including many in Orleans Parish. Most of these stores remain closed and some may never reopen. This has resulted in an unprecedented interruption of Signet’s business operations and significant losses.

VERIFIED

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A**Section 16**

4. Fortunately, Signet Jewelers purchased both primary and excess commercial property insurance from Steadfast in the form of Zurich Edge Global Policy IPR3460384-06 and Zurich Edge Global Policy XPP6556066-10, respectively (collectively, the “Policy,” attached hereto as Exhibits A and B).¹ In exchange for a significant premium, the Policy provides up to \$197,500,000 in coverage for property damage as well as all manner of business interruption losses that Signet could experience. For example, the Policy provides coverage for:

- Loss caused by the physical loss of or damage to Signet’s stores;
- Loss caused by a suspension of Signet’s business activities;
- Loss caused by the inability of Signet’s customers, suppliers, or employees to access stores;
- Loss caused by restriction of access to Signet’s property, including specifically if caused by an order issued by a civil authority;
- Extra expenses incurred to continue Signet’s business as nearly normal as practicable; and
- Rental loss Signet incurred if a leased property is untenable or unusable.

5. Signet has experienced losses that fall squarely within these coverages. Due to the actual and/or threatened presence of the coronavirus at and/or near Signet’s stores, all of Signet’s North American retail locations have been shuttered by governmental orders, deeming Signet’s business to be “non-essential” during the outbreak to avoid further spread of the pandemic, or by landlord directives, and/or based on Signet’s concerns about the health and safety of its team members and customers due to the actual and/or threatened presence of the coronavirus at those locations. Many of these locations are in areas of North America with extremely high concentrations of documented coronavirus cases, such as New Orleans, New York City, New Jersey, and California. This includes nearly 40 locations in Louisiana. Hundreds of Signet’s locations in the United Kingdom and Ireland have also been closed. Signet’s customers, employees, and suppliers, including thousands of customers in Louisiana, have also been affected by stay-at-home orders. Considering the above, Signet already has experienced

¹ These policies share a common form. Therefore, unless stated otherwise, references to the “Policy” refer to the provisions of both the primary and excess policies issued by Steadfast.

A

Section 16

losses due to a physical loss of and/or damage to property insured under the Policy including significant losses in Louisiana and, more specifically, in Orleans Parish.

6. Furthermore, based on Signet's preliminary assessment, Signet expects to suffer many millions of dollars in lost revenue, as well as other loss and costs in connection with the coronavirus outbreak in the future. Depending on how long the conditions caused by the outbreak last, those losses could increase substantially.

7. Signet promptly made a claim for coverage for its losses to Steadfast under the Policy.

8. In response, Steadfast identified various bases it claimed barred coverage under the Policies for Signet's losses. In doing so, Steadfast also misrepresented the scope of coverage available under the Policy and relevant facts.

9. Steadfast has not paid any portion of Signet's losses.

10. Based on this response, Steadfast plainly does not intend to honor its contractual obligations to Signet. Therefore, Signet has been forced to bring this action for breach of contract and a declaratory judgment that it is entitled to the full amount of coverage for its losses.

THE PARTIES

11. Plaintiff Signet Jewelers is a limited company organized under the laws of Bermuda with a principal place of business in Ohio.

12. Plaintiff Sterling is a corporation organized under the laws of Delaware with a principal place of business in Ohio. Sterling is a wholly owned subsidiary of Signet Jewelers and operates its North American retail locations through additional, wholly owned subsidiaries.

13. Defendant Steadfast is a corporation organized under the laws of Delaware, with its principal place of business in Illinois. Upon information and belief, at all relevant times hereto, Steadfast was authorized to underwrite insurance policies covering risks in the State of Louisiana. Upon information and belief, Steadfast has, at all relevant times, conducted business in the State of Louisiana, including engaging in the business of selling insurance and investigating claims dealing with policyholders, property, or activities located in the State of Louisiana. Upon

A

Section 16

information and belief, Zurich American Insurance Company (“Zurich”), Steadfast’s parent company, negotiated with and sought approval from the Louisiana Department of Insurance regarding certain of the terms and conditions included in and made part of the Policy.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over the matters alleged herein.

15. Personal jurisdiction over Steadfast exists pursuant to Louisiana’s “long-arm” statute, La. Rev. Stat. § 13:3201. Personal jurisdiction over Steadfast also exists pursuant to the terms of the Policy, under which Steadfast agreed to “submit to the jurisdiction of a court of competent jurisdiction within the United States” and that “[i]n any suit instituted against [Steadfast] upon this policy, [Steadfast] will abide by the final decision of such court or of any appellate court in the event of an appeal.”

16. Venue is proper under La. Code Civ. Proc. art. 76, because Signet has suffered losses in Orleans Parish, and under La. Code Civ. Proc. art. 76.1, because Steadfast was required to investigate and adjust Signet’s claims in Orleans Parish.

17. This petition for declaratory judgment and damages is being brought pursuant to (1) La. Code Civ. Proc. art. 1871, *et seq.*, seeking declaration and construction of coverage under insurance policies at issue and as more fully described below, and (2) La. Code Civ. Proc. art. 893, *et seq.*, and La. Civ. Code art. 1994, *et seq.* seeking damages.

FACTUAL ALLEGATIONS

I. The Coronavirus Outbreak and Signet’s Losses

18. Signet is the world’s largest retailer of diamond jewelry and operates over 3,000 stores worldwide under household brand names such as Kay Jewelers, Zales, and Jared. Signet’s North America operations, which include approximately 2,750 stores, are operated by and through Signet Jewelers’s subsidiary, Sterling, and its subsidiaries.

19. From the first reported case in the United States in January 2020 to the present, the impact of the coronavirus has been staggering. As of May 13, 2020 more than 1,300,000

A

Section 16

Americans have had confirmed cases of COVID-19 and more than 80,000 have died. State and local governments have taken drastic actions to stem the tide of the disease. For example:

- On March 23, 2020, Louisiana Governor John Bel Edwards signed a statewide order directing Louisiana citizens to remain at home unless performing essential activities and ordering the closure of numerous businesses, including shopping malls. On April 2, 2020, the Governor expanded that order to require closure of all non-essential businesses. At present, that order has been extended through May 15, 2020.
- On March 20, 2020, Illinois Governor J.B. Pritzker signed a statewide stay-at-home order that also ordered all non-essential business and operations to cease.
- On March 21, 2020, New Jersey Governor Philip Murphy issued Executive Order No. 107, directing all residents to stay at home unless for certain essential activities, and specifically closing “[t]he brick-and-mortar premises of all non-essential businesses.”
- On March 22, 2020, New York Governor Andrew Cuomo issued the “New York State on PAUSE” executive order, ordering the closure of all non-essential businesses and prohibiting non-essential gatherings. On April 16, Governor Cuomo extended the order through May 15, 2020, meaning it will be in place, even if not extended further, for more than fifty days.

20. These orders are consistent with orders issued by state and local authorities throughout the United States.

21. Most of the brick-and-mortar business premises that Signet owns, leases, and/or operates, including all stores in North America, the United Kingdom, and Ireland have been shuttered by these various stay-at-home orders relating to the actual or threatened presence of the coronavirus. This includes nearly 40 locations throughout Louisiana, including locations in Orleans Parish. Signet has also closed its company support centers. As a result, Signet has suffered and will continue to suffer millions of dollars in business interruption losses in the form of lost retail sales across the country, including millions of dollars in lost sales at its Orleans Parish retail locations.

II. The Policy

22. The Policy covers Signet and its subsidiaries for the period of November 15, 2019 through November 15, 2022 and collectively provides a maximum limit of liability of \$197.5

A

Section 16

million, with various sublimits, time limits, and deductibles for certain coverages. *See* Exhibits A and B at Declarations.²

23. The Policy defines “**Occurrence**” as “[a]ll loss(es) or damage that is attributable directly or indirectly to one cause or a series of similar or related causes.” *Id.* at 7.45.

A. The Policy provides property damage coverage.

24. The Policy broadly provides property damage coverage for “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property, at an Insured Location . . .” *Id.* at 1.01. Unless otherwise provided, the full \$197.5 million limit of liability is available for such losses.

25. The Policy defines a “Covered Cause of Loss” as “[a]ll risks of direct physical loss of or damage from any cause unless excluded.” *Id.* at 7.11.

26. The Policy defines an “Insured Location” as a location listed on a “Schedule of Locations” filed with Steadfast, as well as “Miscellaneous Unnamed Locations,” which the Policy defines as a location “owned, leased or rented by the Insured, but not specified in the Schedule of Locations.” *Id.* at 2.01, 5.02.19. The Policy further provides that “Covered Property” includes Signet’s interest in real or personal property at an Insured Location or within 1000 feet thereof. *Id.* at 3.01.

27. All of Signet’s stores, including all stores in Louisiana, are Insured Locations under the Policy.

B. The Policy provides time element coverage.

28. In addition to the Policy’s coverage for Property Damage, the Policy’s Time Element section provides coverage for lost “Gross Earnings” (or lost “Gross Profits” for Insured Locations outside of the United States and its territories) during the “Period of Liability” as a result of the suspension of Signet’s business activities at Insured Locations “due

² The primary Steadfast policy (Exhibit A) offers a total limit of liability of \$15 million. The excess Steadfast policy (Exhibit B) offers \$182.5 million in excess coverage.

A

Section 16

to direct physical loss of or damage to Property (of the type insurable under this Policy).” *Id.* at 4.01.01.

29. In determining the amount of Time Element loss, Steadfast “will evaluate the experience of the business before and after the loss or damage and the probable experience had no direct physical loss or damage occurred at an Insured Location during the Period of Liability.” *Id.* at 4.01.05.

30. The Policy defines the Period of Liability for all Time Element coverage other than Gross Profit and Leasehold Interest as starting from the date of physical loss or damage and continuing until “with due diligence and dispatch the building and equipment could be repaired or replaced, and made ready for operation under the same or equivalent physical and operating conditions that existed prior to the damage.” *Id.* at 4.03.01.

31. The Policy includes an “Extended Period of Liability” for Gross Earnings, which provides that upon termination of the Period of Liability for Gross Earnings, the Policy will continue to cover Gross Earnings until the earlier of the date the Insured could “restore its business with due diligence, to the condition that would have existed had no direct physical loss or damage occurred to the Insured’s Covered Property,” or 365 days. *Id.* at 4.02.02.

32. The Period of Liability for Gross Profit starts from the date of physical loss or damage and continues for 12 months. *Id.* at 4.03.02.02.

33. The Time Element coverage also provides “Extra Expense” coverage, which covers the reasonable and necessary Extra Expenses incurred by Signet during the Period of Liability, “to resume and continue as nearly as practicable the Insured’s normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage” *Id.* at 4.02.03.

34. The Time Element section also includes several potentially applicable coverage extensions:

a. The LEASEHOLD INTEREST coverage provides, in part:

The Company will pay for the actual Leasehold Interest loss incurred by the Insured (as lessee) resulting from direct physical

A

Section 16

loss of or damage caused by a **Covered Cause of Loss** to a building (or structure) which is leased and not owned by the Insured... If the building (or structure) becomes partially untenable or unusable and the lease agreement requires continuation of the rent, the Company will pay the Insured for the present value of the proportionate amount of the actual rent payable for the unexpired term of the lease, not including any options.

Id. at 4.02.04.02.

b. The CIVIL OR MILITARY AUTHORITY coverage provides:

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by order of civil or military authority that prohibits access to the **Location**. That order must result from a civil authority's response to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured's Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time the order remains in effect, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

Id. at 5.02.03. CIVIL OR MILITARY AUTHORITY coverage extends for a 30-day period of liability, and to property within five miles of Insured Property.

c. The CONTINGENT TIME ELEMENT coverage provides:

This Policy covers the actual Time Element loss as provided by the Policy, sustained by the Insured during the Period of Liability directly resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** results from direct physical loss of or damage caused by a **Covered Cause of Loss** to Property (of the type insurable under this Policy) at **Direct Dependent Time Element Locations....**

Id. at 5.02.05. The Policy defines **Direct Dependent Time Element Locations** to include "Any **Location** of a direct: customer, supplier, contract manufacturer or contract service provider to the Insured." *Id.* at 7.16.

d. The INGRESS/EGRESS coverage provides:

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an

A

Section 16

Insured Location if ingress or egress to that Insured Location by the Insured's suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured Location as stated in the Declarations. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time ingress or egress remains prevented by physical obstruction but not to exceed the number of consecutive days as stated in the Declarations following such obstruction up to the limit applying to this Coverage.

Id. at 5.02.15. The INGRESS/EGRESS coverage extends for a 45 day period of liability and to property within five miles.

C. The Policy's contamination exclusion does not apply.

35. The Policy's original form, prior to amendment, purported to exclude coverage for "**Contamination** and any cost due to **Contamination** including the inability to use or occupy property" (the "Contamination Exclusion"). *Id.* at 3.03.01.01.

36. As originally drafted, the Policy's form definition of **Contamination (Contaminated)** was:

Any condition of property due to the actual presence of an foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, **Fungus**, mold or mildew.

Id. at 7.09.

37. However, the Policy's "Louisiana Amendatory Endorsement" deletes the Contamination Exclusion and the definition of **Contamination (Contaminated)** in their entirety.

38. In contrast to certain other state-specific endorsements in the Policy that "appl[y] to those risks in" the respective state, the Louisiana Amendatory Endorsement simply provides that it "changes the policy."

39. Following amendment by virtue of the Louisiana Amendatory Endorsement, the Policy excludes coverage for:

A

Section 16

Contamination or asbestos, and any cost due to **Contamination** or asbestos including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.

See Louisiana Amendatory Endorsement.

40. The Louisiana Amendatory Endorsement deleted the definition of **Contamination (Contaminated)** from the Policy and replaced it with the following:

Any solid, liquid, gaseous, thermal or other irritant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), other hazardous substances, Fungus or Spores.

Id.

41. Thus, the operative exclusion in the Policy for **Contamination (Contaminated)** does not extend to a “pathogen or pathogenic organism, bacteria, virus, [and] disease causing or illness causing agent.”

42. This deletion was purposeful. Upon information and belief, Zurich, Steadfast’s parent company, sought approval from the Louisiana Department of Insurance for the policy form issued to Signet. The Louisiana Department of Insurance rejected the original version of the Contamination Exclusion and required that the exclusion not include, *inter alia*, the word “virus.” The Louisiana Department of Insurance further stated: “It is recommended to create separate exclusions and definitions for contaminants such as fungus, mold, asbestos, spores, bacteria, virus, biological substances, medical waste and products that may lead to disease.”

43. To comply with the directives of the Louisiana Department of Insurance, Zurich included the endorsement removing words including “virus” from the Contamination Exclusion.

44. Steadfast did not add any separate exclusion relating to viruses in the Policy it sold to Signet.

45. Furthermore, the Contamination Exclusion (both in its original form and as amended) only applied to coverage for “costs” resulting from the Contamination, not for “Loss” such as business interruption losses.

A

Section 16

III. Signet's Claim to Steadfast

46. On April 2, 2020, Signet gave prompt notice to Steadfast of its claim for losses under the Policy.

47. On May 2, 2020, Steadfast responded to the notice by letter and acknowledged that Signet was seeking coverage for "business impacts during the period of time that various scheduled locations in the US, UK & Ireland were closed as a result of various orders of civil authority issued in connection with the coronavirus/COVID-19 outbreak." Although Steadfast noted that the claim was "at an early stage" and asserted it was "investigating the claim," Steadfast declared that "it does not appear that the presence of the COVID-19 virus constitutes direct physical loss or damage to property," which was a *de facto* denial." Steadfast's May 2, 2020 letter is attached hereto as Exhibit C.

48. Steadfast also wrote that "the presence of the COVID-19 virus falls within the definition of **Contamination**" under the Policy's Contamination Exclusion and, therefore, that "any loss resulting from the presence of the COVID-19 virus may be excluded under the Policy." *Id.* In its letter, Steadfast purported to quote the definition of **Contamination (Contaminated)** but did not quote or even mention the changed definition.

49. Steadfast's response to Signet's notice of claim is a *de facto* denial of coverage under the Policy.

50. Steadfast's letter, which makes plain that it will not cover Signet's losses, was issued before Steadfast performed any investigation and before it even reviewed a proof of loss.

51. Steadfast's position is also inconsistent with the plain terms of the Contamination Exclusion, which (1) as changed by the Louisiana Amendatory Endorsement, does not extend to "viruses," and (2) even if applicable, only applies to "costs," not losses, due to Contamination. Therefore, Steadfast's letter also misrepresents the scope of coverage available to Signet, misrepresents critical facts, and presents an unreasonable and indefensible coverage position.

52. Signet's losses are covered under the Policy, which broadly covers "all risks of direct physical loss of or damage from any cause" to insured property. Specifically, Signet's

A

Section 16

losses are a direct result of physical loss of or damage to Signet's retail locations as a result of the actual and/or threatened presence of the coronavirus at those locations.

53. Further, Signet has paid all required premiums and has otherwise complied with all terms and conditions of the Policy.

54. With Steadfast's unmistakable and unreasonable position that it will not provide coverage for Signet's losses, Signet turns to this Court to obtain the insurance coverage it paid significant premiums for and to which it is entitled.

FIRST CAUSE OF ACTION

(Breach of Contract)

55. Signet repeats and realleges the allegations set forth in the foregoing paragraphs of this petition as if fully set forth herein.

56. The Policy constitutes a valid and enforceable contract between Signet and Steadfast.

57. Signet suffered losses during the Policy period and is covered under the Policy.

58. Signet provided prompt notice of its losses, performed all obligations required of it under the Policy, and/or was ready, willing, and able to perform its obligations under the Policy at the time Steadfast asserted its position that Signet's losses were not covered.

59. Pursuant to the terms of the Policy, Steadfast is obligated to pay, up to the applicable limit of liability, for property damage or time element losses covered under the Policy and not otherwise excluded from coverage.

60. Signet's losses are not excluded from coverage.

61. As described above, Signet has sustained, and is continuing to sustain, losses covered under the Policy in excess of any applicable deductible, including losses stemming from the closures of its retail locations in Louisiana and, more specifically, locations in Orleans Parish.

62. Steadfast has failed to comply with its obligations under the Policy, including by not paying any amounts to Signet in connection with its claim. Instead, Steadfast has asserted various inapplicable bases to wrongfully deny coverage for Signet's claim.

A

Section 16

63. As a direct and proximate result of Steadfast's breach of contract, Signet has already suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

SECOND CAUSE OF ACTION

(Declaratory Judgment)

64. Signet repeats and realleges the allegations set forth in the foregoing paragraphs of this petition as if fully set forth herein.

65. Pursuant to the terms of the Policy, Steadfast is obligated to pay, up to the applicable limit of liability, for property damage or time element losses covered under the Policy and not otherwise excluded from coverage.

66. As described above, Signet has sustained, and is continuing to sustain, losses covered under the Policy in excess of any applicable deductible, including losses stemming from the closures of its dozens of retail locations in Louisiana.

67. Steadfast disputes its legal obligation to pay Signet's claim.

68. An actionable and justiciable controversy exists between Signet and Steadfast concerning the proper construction of the Policy, and the rights and obligations of the parties thereto, with respect to Signet's claim for damages or losses arising out of the coronavirus outbreak.

69. This Court should enter a declaratory judgment in favor of Signet and against Steadfast, declaring that there is coverage available for Signet's claim under the Policy and that Steadfast is obligated to pay Signet's losses up to the full applicable limits of the Policy. Such a declaration would resolve the current controversy between Signet and Steadfast.

THIRD CAUSE OF ACTION

(Bad Faith)

70. Signet repeats and realleges the allegations set forth in the foregoing paragraphs of this petition as if fully set forth herein.

A

Section 16

71. Steadfast's actions in respect of Signet's claim, which include unreasonably denying coverage, failing to properly investigate, and making misrepresentations in regard to the Policy's actual terms and Signet's claim, are arbitrary, capricious, unreasonable, and otherwise in bad faith. Signet is entitled thereby to all penalties and damages arising from such bad faith actions, including but not limited to statutory or jurisprudential penalties, consequential damages, attorney's fees, interest, and costs.

JURY DEMAND

72. Signet hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Signet prays for relief as follows:

- (a) On the first cause of action, Signet requests that the Court enter judgment against Steadfast, awarding Signet damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;
- (b) On the second cause of action, Signet requests that the Court enter a declaratory judgment in favor of Signet against Steadfast, declaring that Steadfast is required to pay Signet, up to the applicable limits of the Policy, for claimed amounts under the Policy;
- (c) On the third cause of action, Signet requests that the Court enter judgment against Steadfast, awarding Signet treble or other exemplary damages or penalties or other damages to the extent permitted by law, as well as the costs of this action, including Signet's reasonable attorneys' fees to the extent permitted by law; and
- (d) Additionally, Signet requests such other and further relief as the Court deems just and proper, under any theory of liability whatsoever.

A
Section 16

Respectfully submitted,

FLANAGAN PARTNERS, LLP

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³ A motion to enroll McKool Smith, P.C. attorneys Robin L. Cohen, Adam S. Ziffer, and Orrie A. Levy is forthcoming.