

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

INSPIRED CONCEPTS, LLC,
AND KJ ENDEAVORS LLC
Plaintiffs,

v.

CERTAIN UNDERWRITERS OF LLOYD'S
OF LONDON and UNDERWRITERS
KNOWN AS SYNDICATE 2623;
SYNDICATE 0623; SYNDICATE 2987;
SYNDICATE 2988; SYNDICATE 1967;
SYNDICATE 2001; SYNDICATE 0727;
SYNDICATE 1084; SYNDICATE 0435;
SYNDICATE 2791; SYNDICATE 1183;
SYNDICATE 0510; SYNDICATE 1729;
SYNDICATE 2488; SYNDICATE 4141;
SYNDICATE 1686; AND SYNDICATE
0609,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, Inspired Concepts, LLC (Inspired) and KJ Endeavors LLC (KJ) ("Plaintiffs") bring this Complaint, alleging relief against Defendants, Certain Underwrites of Lloyd's of London and Underwriters Known as Syndicate 2623; Syndicate 0623; Syndicate 2987; Syndicate 2988; Syndicate 1967; Syndicate 2001; Syndicate 0727; Syndicate 1084; Syndicate 0435; Syndicate 2791; Syndicate 1183; Syndicate 0510; Syndicate 1729; Syndicate 2488; Syndicate 4141; Syndicate 1686; and Syndicate 0609 ("Defendants") and avers as follows:

NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiffs' contract of insurance with Defendants.

2. In light of the Coronavirus global pandemic and state and local orders mandating that all non-essential in store businesses must shut down on March 23, 2020, Plaintiffs' restaurants have suffered business losses.

3. Plaintiffs' insurance policy provides coverage for all non-excluded business losses, and thus provide coverage here.

4. As a result, Plaintiffs are entitled to declaratory relief that its business is covered for all business losses that have been incurred in an amount greater than \$150,000.00.

JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiffs and Defendants. Further, Plaintiffs have suffered business losses in an amount greater than \$150,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of those business losses. *Id.* § 1332(a).

6. This Court has personal jurisdiction over Defendants. Defendants have engaged in substantial business in this District, including the formation of the Policy underlying Plaintiffs' claims, and Defendants have therefore personally availed itself of jurisdiction in this District.

7. 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 the claim occurred in this District, including the formation of the Policy underlying Plaintiffs claims.

PARTIES

8. Plaintiff Inspired owns and operates restaurants in the State of Michigan. Inspired's principal place of business is 555 Mission Street, Mt. Pleasant, Michigan 48858. Plaintiff is a limited liability company owned by Jeffrey Neely and Patti Neely. Jeffrey and Patti Neely are citizens of Michigan.

9. Plaintiff KJ owns and operates restaurants in the State of Michigan. KJ's principal place of business is 555 Mission Street, Mt. Pleasant, Michigan 48858. Plaintiff is a limited liability company owned by Jeffrey Neely and Patti Neely. Jeffrey and Patti Neely are citizens of Michigan.

10. Defendants are Certain Underwrites of Lloyd's syndicates which include Syndicate 2623; Syndicate 0623; Syndicate 2987; Syndicate 2988; Syndicate 1967; Syndicate 2001; Syndicate 0727; Syndicate 1084; Syndicate 0435; Syndicate 2791; Syndicate 1183; Syndicate 0510; Syndicate 1729; Syndicate 2488; Syndicate 4141; Syndicate 1686; and Syndicate 0609. Upon information and belief, Defendants are not citizens of Michigan.

11. At all relevant times, Defendants issued a policy to Plaintiffs to cover business interruption loss from October 1, 2019 until October 1, 2020. The policy number is TNR198471. *See Exhibit 1 for Declaration page of policy (hereinafter "The Policy").* The Policy identifies both KJ and Inspired as insureds.

12. The Policy covers Plaintiffs for the following properties (Insured Properties):

- Bennigan's; 2424 S. Mission, Mt. Pleasant, MI (owned by Inspired)
- Bennigan's; 3095 Tittabawassee, Saginaw, MI (owned by Inspired)
- Big Apple Bagels; 318 S. Saginaw Rd., #3; Midland, MI (owned by Inspired)
- Big Apple Bagels; 2024 S. Mission St., Mt. Pleasant, MI (owned by Inspired)
- Cracked: An A.M. Addiction, 17933 Haggerty Rd., Northville, MI (owned by Inspired)
- Italian Oven; 2336 S. Mission St., Mt. Pleasant, MI (owned by Inspired)
- Noodles & Company; 7007 Eastman Avenue, Midland, MI (owned by Inspired)
- Noodles & Company; 4459 E. Blue Grass Rd., Ste E, Mt. Pleasant, MI (owned by Inspired)

- Old Chicago Pizza & Taproom; 3333 28th Street, SE, Ste. A, Kentwood, MI (owned by KJ)
- Old Chicago Pizza & Taproom; 6603 Eastman Avenue, Midland, MI (owned by KJ)
- Old Chicago Pizza & Taproom; 1938 W. Grand River Avenue, Okemos, MI (owned by KJ)
- Old Chicago Pizza & Taproom; 5314 S. Westnedge Avenue, Portage, MI (owned by KJ)
- Old Chicago Pizza & Taproom; 15321 Trenton Road, Southgate, MI (owned by KJ)
- Pixie; 302 N. Mission St., Mt. Pleasant, MI (owned by Inspired)
- Ponderosa, 1301 E. Pickard, Mt. Pleasant, MI (owned by Inspired)
- Smashburger; 205 E. Livernois Rd., Rochester Hills, MI (owned by Inspired)
- Smashburger; 1735 East Big Beaver Rd., Troy, MI (owned by Inspired)
- Smashburger; 6919 Orchard Lake Rd., West Bloomfield, MI (owned by Inspired)

13. This policy was intended to cover losses to business interruption. *See* Exhibit 1 (“Policy”).

14. The Policy is currently in full effect in providing, among other things, personal property, business income and extra expense, contamination coverage and additional coverage.

15. Plaintiffs submitted a claim for a date of loss pursuant to its policy seeking coverage under this policy. It is upon information and belief that Defendants will reject Plaintiffs’ claim.

FACTUAL BACKGROUND

I. Insurance Coverage

16. Plaintiffs faithfully paid policy premiums to Defendants, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority and for business loss for property damage.

17. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Insured Properties is specifically prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiffs Insured Properties. This additional coverage is identified as coverage under “Civil Authority.”

18. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means coverage for all covered losses, including but not limited to direct physical loss or direct physical damage, unless the loss is specifically excluded or limited in the Policy.

19. The Policy also covers for damages resulting from business interruption when there is property damage. The exclusion for viruses does not apply to this pandemic. The Policy does identify any exclusions for a pandemic.

20. Based on information and belief, Defendants have accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown and property damage.

II. The Coronavirus Pandemic

21. The scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage. It is clear that contamination of the Insured Properties would be a direct physical loss requiring remediation to clean the surfaces of the dental practice.

22. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. *See* <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited April 9, 2020).

23. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.

24. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, "fomites," for up to twenty-eight (28) days.

25. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

III. Civil Authority

26. On February 28, 2020, Michigan's State Emergency Operations Center was activated by Governor Gretchen Whitmer to assist with coordination.

27. On March 13, 2020, with Executive Order, all gatherings of above 250 people were banned.

28. On March 23, 2020, Governor Whitmer issued a statewide stay-at-home order which was extended until May 30, 2020.

29. On May 22, 2020, Governor Whitmer extended the stay-at-home order until June 12, 2020.

30. Plaintiffs' restaurants are unable to operate due to the stay-at-home orders for public safety issued by the State of Michigan. Plaintiffs have submitted a claim to its insurance carrier related to such losses.

31. Further, on April 10, 2020, President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiffs.

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. *Business interruption insurance*, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. *But if I had it I'd expect to be paid.* You have people. I speak mostly to the restaurateurs, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot of money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

See <https://youtu.be/cMeG5C9TjU> (last visited on April 17, 2020) (emphasis added).

32. The President is articulating a few core points:

- a. Business interruption is a common type of insurance.
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
- c. This pandemic should be covered unless there is a specific exclusion for pandemics.
- d. If insurers deny coverage, they would be acting in bad faith.

33. These Orders and proclamations, as they relate to the closure of all “non-life-sustaining businesses,” evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiffs, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated.

IV. Impact on Plaintiffs

34. As a result of the Orders referenced herein, Plaintiffs shut the doors to its restaurants.

35. Plaintiffs' business losses occurred when the State of Michigan issued its order on March 23, 2020 banning any gatherings at an establishment.

36. Prior to March 23, 2020, Plaintiffs' restaurants were open. Plaintiffs' restaurants are not closed environment,s and because people – staff, customers, community members, and others – constantly cycle in and out of the restaurant, there is an ever-present risk that the Insured Properties is contaminated and would continue to be contaminated.

37. Businesses like the Plaintiffs' restaurants are more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Insured Properties and remain viable for far longer as compared to a facility with open-air ventilation.

38. Plaintiffs' businesses are also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the service nature of the business places staff and customers in close proximity to the property and to one another and because the nature of the restaurant and activity exposes to high level of respiratory droplets and fomites being released into the air of the property.

39. The virus is physically impacting Plaintiffs. Any effort by Defendants to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger Plaintiffs and the public.

40. A declaratory judgment determining that the coverage provided under the Policy exists and is necessary so as to prevent Plaintiffs from being left without vital coverage acquired to ensure the survival of the businesses due to the shutdown caused by the civil authorities'

response. As a result of these Orders, Plaintiffs have incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

CAUSE OF ACTION

DECLARATORY RELIEF

41. Plaintiffs re-allege and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

42. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

43. An actual controversy has arisen between Plaintiffs and Defendants as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiffs contend and, on information and belief, the Defendants disputes and denies that:

- a. The Orders constitute a prohibition of access to Plaintiffs’ Insured Properties;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- c. The Policy’s Exclusion of Loss Due to Virus or Bacteria does not apply to the business losses incurred by Plaintiffs here. These exclusions do not apply to the pandemic;
- d. The Orders trigger coverage;
- e. The Policy provides coverage to Plaintiffs for any current and future civil authority closures of business in Michigan due to physical loss\or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters. The policy does not exclude the pandemic;
- f. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Insured Properties; and

- g. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

44. Plaintiffs seek a Declaratory Judgement to determine whether the Orders constitute a prohibition of access to Plaintiffs' Insured Properties as Civil Authority as defined in the Policy.

45. Plaintiffs further seek a Declaratory Judgement to affirm that the Order triggers coverage.

46. Plaintiffs further seek a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiffs for any current and future Civil Authority closures of businesses in the State of Michigan due to physical loss or damage from the Coronavirus and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the Insured Properties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs herein prays as follows:

- a. For a declaration that the Orders constitute a prohibition of access to Plaintiffs' Insured Properties.
- b. For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- c. For a declaration that the Orders trigger coverage under the Policy.
- d. For a declaration that the Policy provides coverage to Plaintiffs for any current, future and continued civil authority closures of businesses in Michigan due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.
- e. For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiffs' Insured Properties or the immediate area of the Plaintiffs' Insured Properties.
- f. For such other relief as the Court may deem proper.

TRIAL BY JURY IS DEMANDED

Plaintiffs hereby demand trial by jury.

Dated: June 8, 2020

Respectfully submitted,

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Counsel for Plaintiffs

EXHIBIT 1

LLOYD'S

DECLARATIONS**TRADE NAME RESTORATION®, LOSS OF BUSINESS INCOME AND
INCIDENT RESPONSE INSURANCE FOR FOOD BORNE ILLNESS****A. Insured, Trade Name(s), Policy Certificate No. and Period of Insurance:**

Policy Certificate No.: <u>TNR 19 8471</u>	
Insured Name and Address:	<u>Inspired Concepts, LLC</u> <u>555 Mission St., Mt. Pleasant, MI 48858</u>
Trade Name(s):	<u>Noodles; Smashburger; Bennigan's; Ponderosa; Old Chicago Pizza & Taproom; Big Apple Bagels;</u> <u>Italian Oven; Cracked; An A.M. Addiction; Pixie</u>
Period of Insurance:	from <u>10/01/19</u> at 12:01 A.M. to <u>10/01/20</u> at 12:01 A.M. (Local Standard Time)

B. Limits of Indemnity and Deductible:

Limit of Indemnity for Restaurant Events (Section 2.1):	<u>\$1,000,000</u>	per Period of Insurance
Limit of Indemnity for Supplier Events (Section 2.2):	<u>\$750,000</u>	per Period of Insurance
Limit of Indemnity for Workplace Violence Events (By Endorsement Only):	<u>\$250,000</u>	per Covered Location
	<u>\$250,000</u>	per Period of Insurance
Limit of Indemnity for Incident Response Expenses (Section 2.3):		
as respects Restaurant Events:	<u>50</u> % of the Limit of Indemnity for Restaurant Events	
as respects Supplier Events:	<u>50</u> % of the Limit of Indemnity for Supplier Events	
as respects Workplace Violence Events:	<u>50</u> % of the Limit of Indemnity for Workplace Violence Events	
Limit of Indemnity for Extortion Payments (Section 2.4):	<u>\$250,000</u>	per Period of Insurance
Total Policy Aggregate Limit of Indemnity (Section 2.5):	<u>\$1,000,000</u>	per Period of Insurance
Shared Aggregate Limit of Indemnity (Section 2.6):	<u>N/A</u>	per Period of Insurance
Deductible (Section 4.7):		
as respect Restaurant Events and Supplier Events:	<u>\$5,000</u>	Each and Every Incident
as respect Workplace Violence Events (By Endorsement Only):	<u>\$5,000</u>	Each and Every Covered Location

C. Period of Restoration (Section 4.24):

The longest **Period of Restoration** that may be afforded by this Policy is eighteen (18) months

D. Premium:

Annual:	\$5,760.00
Policy Fee:	\$ 150.00
State Surplus Lines Tax:	\$144.00
State Stamping Office Fee:	\$0.00
Total:	\$6,054.00

Covered Locations: 18

There will be a \$320.00 charge per each additional **Covered Location** including Workplace Violence Coverage.

DECLARATIONS ContinuedPolicy Certificate No.: TNR 19 8471Insured(s) Name and Address: Inspired Concepts, LLC
555 Mission St., Mt. Pleasant, MI 48858Period of Insurance: from 10/01/19 at 12:01 A.M. to 10/01/20 at 12:01 A.M. (Local Standard Time)**E. Service of Suit, Claims Notification and Crisis Management:**Service of Suit: Mendes and Mount, 750 Seventh Avenue, New York, New York 10019-6829CLAIMS NOTIFICATION: Professional Liability Insurance Services, Inc. ®
5802 Thunderbird, Building 10, Suite 100, Lago Vista, TX 78645
P: 1-800-761-7547; F: 512-267-6246; Email: claims@plisinc.com

(d/b/a Professional Liability Insurance Services, Inc. – Underwriting Facilities; Professional Liability Insurance Services - Underwriting Facilities; Texas Professional Liability Insurance Services, Inc. - Underwriting Facilities; Professional Liability Insurance Services, Incorporated - Underwriting Facilities; in the state of New York and California, CA License #0G17062 as Texas Professional Liability Insurance Services)

CRISIS MANAGEMENT: Specialty Risk Management, Inc. ®; PHONE: (800) 328-7761; FAX: (512) 328-2486

IF YOU BELIEVE THAT AN INCIDENT HAS OCCURRED, PLEASE CONTACT THE 24-HOUR CRISIS HOTLINE**Forms Included with this Policy:**

Covered Locations Endorsement; Workplace Violence Endorsement; Inoculations, Vaccinations and Testing Endorsement; Loss of Business Income and Incident Response Endorsement for Theft of Private Customer and Employee Data; LSW 1001 Several Liability Notice; LMA 5020 Service of Suit Clause (USA); LMA 5021 Applicable Law (USA); CL 380 (Amended) Institute Cyber Attack Exclusion Clause; NMA 1256 Nuclear Incident Exclusion Clause Liability Direct (Broad); NMA 45 New Short Rate Cancellation Table Endorsement (USA); LMA 5219 as amended U.S. Terrorism Risk Insurance Act of 2002 As Amended Not Purchased Clause; LMA 3100 Sanction Limitation and Exclusion Clause; TNR Policy Form 02-17.

The Declarations and the forms and any Endorsement(s) listed above and attached hereto, together with the completed and signed Application and supplements, shall constitute the contract between the **Insured(s)** and the Underwriters.U.S. CLASSIFICATION: Surplus Lines

Professional Liability Insurance Services, Inc.; 5802 Thunderbird, Building 10, Suite 100, Lago Vista, TX 78645

EFFECTED WITH: 100.00% with Certain Underwriters at Lloyd's:
Individual syndicates are as follows:

15.46464%	Syndicate 2623	2.74317%	Syndicate 2791
3.39468%	Syndicate 0623	6.17214%	Syndicate 1183
12.34428%	Syndicate 2987	5.48635%	Syndicate 0510
3.42897%	Syndicate 2988	2.05738%	Syndicate 1729
7.71518%	Syndicate 1967	1.64590%	Syndicate 2488
6.85793%	Syndicate 2001	6.47835%	Syndicate 4141
2.05738%	Syndicate 0727	13.04894%	Syndicate 1686
3.28838%	Syndicate 1084	2.74317%	Syndicate 0609
1.64419%	Syndicate 1084		
3.42897%	Syndicate 0435		

Countersigned:

David J. Hanley
Authorized Representative