

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

AMINI BROTHERS, LLC, AMINI FAMILY, LLC, and
BELLA JEWELRY, LLC,

Plaintiffs,

v.

Case assigned to Wilson, Matthew Justin

No.D-101-CV-2020-01215

THE CINCINNATI INSURANCE COMPANY,
SENTINEL INSURANCE COMPANY, LIMITED,
dba THE HARTFORD, and SCOTT A. LOPEZ,

Defendants.

**PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT,
BREACH OF FIRST-PARTY INSURANCE CONTRACT AND COMMON LAW
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING,
VIOLATION OF THE NEW MEXICO INSURANCE PRACTICES ACT, AND
VIOLATION OF THE NEW MEXICO UNFAIR PRACTICES ACT**

Plaintiffs Amini Brothers, LLC, Amini Family, LLC, and Bella Jewelry, LLC (collectively, "Amini"), by and through their undersigned counsel of record, for their Complaint for Declaratory Judgment, state as follows:

PARTIES, JURISDICTION AND VENUE

1. Amini Brothers, LLC, dba SFA Enterprises, is a New Mexico limited liability company doing business in Santa Fe, New Mexico.

2. Amini Family, LLC, dba Cowboys and Indians of Santa Fe, is New Mexico limited liability company doing business in Santa Fe, New Mexico.

3. Bella Jewelry, LLC, dba Bella Fine Jewelry and Art ("Bella Fine Jewelry") is a New Mexico limited liability company doing business in Santa Fe, New Mexico, located on the historic Santa Fe Plaza at 50 E San Francisco St, Suite B, Santa Fe, New Mexico 87501. Jointly,

Amini Brothers LLC, Amini Family LLC, and Bella Fine Jewelry are referred to herein as “the Amini Family.”

4. Upon information and belief, Defendant Cincinnati Insurance Companies (“CIC”) is a duly licensed insurance company authorized to conduct business in the State of New Mexico.

5. Upon information and belief, Defendant Sentinel Insurance Company, Limited, dba The Hartford (“Hartford”) is a duly licensed insurance company authorized to conduct business in the State of New Mexico.

6. Upon information and belief, Defendant Scott A. Lopez (“Lopez”) is a duly licensed insurance adjuster for Hartford, doing business in the State of New Mexico. He participated in the adjustment and investigation of the claim against Hartford (referred to collectively as “Hartford” hereafter).

7. This is an action against CIC and Hartford for first-party coverage for failure to provide coverage for property damage caused by (1) a first occurrence in October of 2019 in which Hartford failed to provide approximately \$220,000 in damage to personal property of Bella Fine Jewelry (hereafter, “first occurrence”); and (2) a second occurrence stemming from the March 23, 2020, in which the Governor of the State of New Mexico issued Executive Order 2020-004, effective March 24, 2020, closing all non-essential businesses, *inter alia*, as set forth therein (**Ex. 1**) (hereafter, “second occurrence”).

8. Both occurrences occurred in Santa Fe, New Mexico, at Plaintiffs’ respective business locations set forth in the CIC and Hartford commercial property coverage policies.

9. Because the insured risk and premises are located in Santa Fe County, State of New Mexico, New Mexico law applies. Further, the New Mexico Superintendent of Insurance is the statutory registered agent for CIC and for Hartford.

10. NMSA §§ 59A-16-20/30 prohibits certain unfair insurance claims practices which occur in New Mexico.

11. This Court has jurisdiction over this matter and venue is proper in Santa Fe County, State of New Mexico pursuant to NMSA § 38-3-1.

GENERAL ALLEGATIONS

12. Frank Amini is the general manager and one of the owners of all three Plaintiff entities:

(1) Amini Brothers LLC dba SFA Enterprises, which owns the building at 50 E. San Francisco Street, Santa Fe, New Mexico, 87501-2108, with a number of tenants, including Bella Fine Jewelry;

(2) Amini Family LLC dba Cowboys and Indians of Santa Fe, at 72 E. San Francisco Street, Santa Fe, New Mexico, 87501-2108; and

(3) Bella Jewelry LLC dba Bella Fine Jewelry and Art at 50 E. San Francisco Street, Santa Fe, NM 87501.

The Amini family has been doing business in Santa Fe at the historic Old Town Plaza for over 25 years. The 50 and 72 E. San Francisco Street locations cater to high volumes of tourist and fine art activity on the historic Santa Fe Plaza. The significant portion of out-of-state tourist traffic to the Santa Fe Old Town Plaza ended with the COVID-19 shutdown.

13. The CIC and Hartford commercial property coverage policies protect the insureds against a loss of business income due to a suspension of out-of-state travel, both air and ground, known as Business Interruption Coverage.

14. On March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency

Response Act, and invoked her authority under the All Hazards Emergency Management Act.

(Ex. 1.)

15. After Executive Order 2020-004 was issued, COVID-19 infections continued to spread in New Mexico and nationally to over 30,000 confirmed cases. **(Ex. 1.)**

16. The spread of COVID-19 in the State of New Mexico posed a threat and continues to pose a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment, potential displacement of persons, and closures of schools or other places of public gathering.

(Ex. 1.)

17. Social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico. **(Ex. 1.)**

18. The New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health. **(Ex. 1.)**

19. The March 23, 2020, Governor's Public Health Order (issued by the New Mexico Department of Health, effective March 24, 2020) ordered and directed, *inter alia*:

- (1) All Mass Gatherings are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto.¹
- (2) All businesses, except those entities identified as "essential businesses", are hereby directed to reduce the in-person workforce at each business or business location by 100%. "Essential businesses" may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall, to the greatest extent possible, adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. Further, all essential businesses shall ensure that all surfaces are cleaned routinely.
- (3) This Order only requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.

(Ex. 1.)

20. The insureds' retail businesses were ordered and directed to closed on March 24, 2020, as "non-essential" retail spaces.

21. The insureds' business suspension and interruption is continuing and the period of restoration is unknown at this time. Medical experts have opined that the COVID-19 business suspension and interruption may continue into the fall or beyond.

22. The coronavirus causes actual property damage, loss of intended use, and physical contamination which causes or threatens to cause physical impurity, unwholesomeness, and threatens human health and welfare. Medical experts are in agreement that the coronavirus attaches and remains on building surfaces, causing actual damage to health and property through the spread of the virus. The spread of the virus, both airborne and on physical surfaces, has

¹ " 'Mass gathering' means any public or private gathering that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space where individuals are within six (6) feet of each other,..." (Ex. 1.)

caused the shutdown of retail businesses, airlines, interstate travel, etc., and indeed shut down interstate travel and commerce.

23. The Public Health Order (**Ex. 1**) restricts public gatherings and shuts down surrounding non-essential businesses due to the dangerous physical conditions caused by the coronavirus, both airborne and on the actual physical property. Not only does it restrict access, it closes non-essential businesses immediately surrounding Plaintiffs' businesses.

First Occurrence

24. On or about October 19, 2019, Bella Fine Jewelry experienced a sewer water line break at Plaintiff's leased premises in which handmade Persian rugs, Native American rugs, and other expensive art inventory were damaged and/or destroyed by sewer water flooding. An end cap on a sewer line in the building broke. The plumber reportedly fixed the sewer line and left at 9 pm that night. However, the next morning the lower retail floor containing the rugs and art inventory was flooded, causing damage and/or total destruction of the art inventory.

25. Immediately after the October 19, 2019, occurrence, Bear Restoration took pictures and inventoried each of the damaged art items that Mr. Amini (principal manager and owner of Bella Fine Jewelry) had acquired over the course of 25 years of business.

26. The claim was promptly reported to Hartford under Policy No. 34 SBA PM4445 SC.

27. The claim was adjusted and investigated by external third-party administrators for Hartford, Loss Solutions Group, and Defendant Lopez, causing and/or contributing to the violations of NMSA § 59A-16-20 (below).

28. The internal adjuster for Hartford was Marcia Tanner.

29. Tanner and Frank Amini (principal manager and owner of Bella Fine Jewelry) agreed to designate two professional fine art appraisers to appraise the damaged art inventory.

30. Bella Fine Jewelry's appraiser appraised the damaged art inventory at approximately \$220,000 wholesale value, and Hartford's appraiser appraised the damaged art inventory at approximately \$180,000 to \$190,000 wholesale value.

31. The appraisal process took place during December 2019 and January 2020.

32. Mr. Amini, seeking to resolve the claim, agreed to accept the lesser appraisal value of \$180,000-\$190,000 to fully and completely resolve the adjustment of the claim at wholesale value not retail.

33. On January 22, 2020, Tanner accepted Mr. Amini's offer to resolve the case and sent an agreement for Hartford to make and advance payment of \$50,000. Tanner indicated that Loss Solutions Group would continue to "price" the inventory, however "with no inventory records we can only do the best we can." Tanner wired the \$50,000 to the account of Bella Fine Jewelry.

34. Instead of resolving the adjustment of the claim and honoring Mr. Amini's acceptance of the Hartford appraisal at \$180,000-\$190,000, Tanner demanded a local investigator and adjuster from Hartford (Defendant Lopez) to interview Mr. Amini, which was conducted and recorded on or about February 28, 2020.

35. Rather than paying Mr. Amini the remaining agreed-upon monies, Tanner demanded a recorded interview, the 2018 tax returns (including a statement of deductions) for Bella Fine Jewelry (which have nothing to do with the damaged art inventory), and the monthly income for 2019 and for January of 2020 of Bella Fine Jewelry.

36. Mr. Amini complied, and supplied Tanner with the demanded tax returns and monthly income figures.

37. On April 10, 2020, Tanner continued to renege on her agreement with Mr. Amini, and

demanding an examination under oath (“EUO”) by Hartford’s local attorneys, the law firm of Riley, Shane & Keller.

38. Mr. Amini continued to comply with such EUO, which was scheduled in May of 2020 to occur on June 8 or 9, 2020, as the earliest possible date due to the State restrictions under COVID-19.

39. As of this filing, Tanner has not disclosed the investigatory reason for such examination under oath of Hartford’s local counsel.

40. The photographs of Bear Restoration document the damaged art inventory and both appraisals document the value of the lost art inventory.

41. Hartford and its adjusters/investigators have not disclosed any reason to examine under oath Mr. Amini twice (first unsworn, second sworn), and the continued delay (now reaching 8 months), with the additional inexplicable demand for an EUO of Hartford’s local counsel.

42. Tanner, Lopez, and Hartford have:

- (1) failed to admit or deny coverage within a reasonable time;
- (2) failed in good faith to honor the resolution and agreement accepting the lower wholesale value of the damaged art inventory and have made only a partial payment;
- (3) failed to inform the insured why they are continuing to investigate the insured’s income taxes, and require the EUO of Hartford’s local counsel (Riley, Shane & Keller);
- (4) failed to disclose any facts or policy provisions that would justify breach of the insured’s agreement with Tanner;

- (5) failed to act promptly on communications from the insured concerning the reasons for Hartford's delay or any implied wrongdoing by the insured;
- (6) failed to explain, without any basis whatsoever, their reason for their quasi-forensic examination of the insured; and
- (7) continued to attempt to reduce Hartford's payment to the insured even after the insured agreed to accept Hartford's lower wholesale appraisal amount.

43. Contemporaneously herewith, Mr. Amini has made a claim to Hartford for loss business income caused by the COVID-19 shutdown.

Second Occurrence: Business Suspension and Interruption

44. On March 20, 2020, Amini as manager and owner of Amini Family LLC dba Cowboys and Indians of Santa Fe submitted a claim to CIC for loss of business income due to COVID-19 issues based on CIC's Policy Number ECP0376537 effective March 4, 2019 to March 4, 2022.

45. On June 2, 2020, CIC denied coverage to Amini Family. **(Ex. 3.)**

46. On March 21, 2020, Amini as manager and owner of Amini Brothers LLC dba SFA Enterprises submitted a claim to CIC for loss of business income due to COVID-19 issues based on CIC's Policy Number ECP0477399 effective February 28, 2018, to February 28, 2021.

47. On June 3, 2020, CIC denied coverage to Amini Brothers. **(Ex. 4.)**

CIC INSURANCE POLICIES

48. CIC issued Policy Number ECP 047 73 99 to Amini Brothers LLC, dba SFA Enterprises, effective February 28, 2018, to February 28, 2021 for Commercial Property Coverage for 50 E. San Francisco Street, Santa Fe, NM 87501-2108. **(Ex. 4.)**

49. CIC issued Policy Number ECP 037 65 37 to Amini Family LLC dba Cowboys and

Indians of Santa Fe effective March 4, 2019 to March 4, 2022 for Commercial Property Coverage for 72 E. San Francisco Street, Santa Fe, NM 87501-2108. (**Ex. 3.**)

50. Except for differences in the Declarations Pages, the CIC Commercial Property Coverage policies are essentially identical. *See* CIC denial letters, **Exs. 3 & 4.**

51. The CIC policies provide loss of business income, extra expense coverage, and civil authority coverage, as follows:

A. There is a Direct Physical Loss:

The Policy's insuring agreement at Section A. Coverage provides the following coverage:

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

The Policy defines "loss" as "accidental physical loss or accidental physical damage." The Policy defines "premises" as "the Locations and Buildings described in the Declarations."

(**Ex. 3** pp. 2-3.)

B. There is Business Income and Extra Expense Coverage

The Policy's Coverage Extensions section contains provisions for Business Income and Extra Expense coverage, included in Form FM 101 05 16:

(1) Business Income

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property In the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" Is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the "premises"; and
- (b) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

(2) Extra Expense

- (a) We will pay Extra Expense you sustain during the "period of restoration". Extra Expense means necessary expenses you sustain (as described in Paragraphs **(2)(b)**, **(c)** and **(d)**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- (b) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **(2)(c)**) to:
 - 1) Avoid or minimize the "suspension" of business and to continue "operations" either:
 - a) At the "premises"; or
 - b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - 2) Minimize the "suspension" of business if you cannot continue "operations".
- (c) We will also pay expenses to:
 - 1) Repair or replace property; or
 - 2) Research, replace or restore the lost information on damaged "valuable papers and records";
 but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.
- (d) Extra Expense does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

Additionally, the Policy at Form FA 213 05 16 provides separate Business Income and Extra Expense coverage provisions:

1. Business Income

- a.** We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at "premises" which are described in the Declarations and for which a "Business Income" Limit of Insurance is shown in the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.
- b.** With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
 - (1)** Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the described "premises".
 - (2)** Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

2. Extra Expense

- a.** Extra Expense coverage is provided at the "premises" described in the Declarations only if the Declarations show that "Business Income" coverage applies at that "premises".
- b.** Extra Expense means necessary expenses you sustain (as described in Paragraphs **2.c.**, **d.** and **e.**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c.** If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **2.d.**) to:
 - (1)** Avoid or minimize the "suspension" of business and to continue "operations" either:
 - (a)** At the "premises"; or
 - (b)** At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - (2)** Minimize the "suspension" of business if you cannot continue "operations".

- d. We will also pay expenses to:
- (1) Repair or replace property; or
 - (2) Research, replace or restore the lost information on damaged "valuable papers and records"

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage Form will be reduced by the salvage value of that property.

- e. Extra Expense as described in Paragraphs **2.a.** thru **2.d.** does not apply to "loss to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

Like the Policy's insuring agreement, the Business Income and Extra Expense coverages require that there be direct physical loss or damage to Covered Property at the premises or within 1,000 feet of those premises. There is no evidence of any such physical loss or damage. Accordingly, the Business Income and Extra Expense requirements are not satisfied and coverage is unavailable under the Policy.

C. The Pollution Exclusion does not exclude viruses.

The CIC policy excludes coverage for pollutants, but does not include the term "virus" in the definition of "pollutants":

(l) Pollutants

Discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" unless the discharge, dispersal, seepage, migration, release, escape or emission is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

The Policy defines "pollutants" as

Any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste. . . .
'Pollutants' include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the 'pollutants'

(Ex. 3.)

D. There is Civil Authority Coverage under the CIC Policies.

The Policy's Coverage Extensions section contains provisions for Civil Authority coverage, included in Form FM 101 05 16:

When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises", we will pay for the actual loss of "Business Income" and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

This Civil Authority coverage for "Business Income" will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
 - 2) When your "Business Income" coverage ends;
- whichever is later.

Additionally, the Policy at Form FA 213 05 16 provides separate Civil Authority coverage provisions:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "Business Income" will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

(Ex. 3.)

52. The CIC policies provide coverage if there is "direct physical loss or damage" to the insured's property.

53. The Pollution Exclusion (above) does not identify "virus" as a pollutant.

54. There is coverage if the pollutant "results" in a "specified covered loss" that is defined as "aircraft or vehicle; riot or civil commotion."

55. The CIC policies are "Insurance Services Office, Inc." (ISO)-modified policies that do not contain the ISO Exclusion Due to Virus or Bacteria, ISO 2006. **Ex. 5** is the ISO 2006 "Exclusion of Loss Due to Virus or Bacteria." This ISO Exclusion squarely excludes any coverage for virus or bacteria. Had CIC wanted to exclude coverage for virus-induced pandemics, it could have done so using the ISO 2006 Virus Exclusion.

56. CIC had ample notice and the ability to directly exclude virus-induced Business Interruption coverage since 2006, and failed to do so in Plaintiffs' policies.

Count 1: Declaratory Judgment

57. All of the preceding allegations are incorporated herein by reference.

58. The Amini Family seeks declaratory judgment pursuant to NMSA §§ 44-6-1, 44-6-2 and 44-6-4, *et seq.*, for the purpose of determining an actual controversy between CIC and Hartford.

59. An actual controversy exists regarding whether CIC and Hartford are obligated to indemnify its insureds.

60. As a direct and proximate result of the denial letters by CIC (**Exs. 3 & 4**) and its failure to investigate, there exists an actual controversy between the parties that requires an action for declaratory judgment pursuant to NMSA 1978, §§ 44-6-2 and 44-6-4.

61. As a direct and proximate result of Hartford's failure to fully indemnify its insured, there exists an actual controversy between the parties that requires an action for declaratory judgment pursuant to NMSA 1978, §§ 44-6-2 and 44-6-4.

62. The Amini Family requests that this Court review the insurance contracts, the facts and circumstances, and the applicable law, and issue its Order declaring the parties' respective rights and obligations and directing their behavior accordingly, all as permitted by the Declaratory Judgment Act.

63. CIC and Hartford's acts and omissions warrant the entry of a judgment declaring and determining that as a matter of law CIC and Hartford breached their obligations to: act reasonably promptly upon the Amini Family's communications; promptly investigate the claim; affirm or deny coverage within a reasonable time; and indemnify the Amini Family.

Count 2: Breach of First-Party Insurance Contract and Common Law Breach of the Duty of Good Faith and Fair Dealing

64. All preceding allegations are incorporated herein by reference.

65. There is implied in every insurance policy a duty on the part of the insurance company to deal fairly with the policyholder. Fair dealing means to act honestly and in good faith in the performance of the contract. CIC and Hartford failed to give equal consideration to its own interests and the interests of the insured.

66. CIC and Hartford breached their duty of good faith and fair dealing by, including but not limited to: (a) failing to properly investigate the subject claims; (b) refusing to timely pay the claims; (c) ignoring and wrongfully denying Amini's claims; (d) failing to acknowledge coverage

within a reasonable time; (e) failing to settle Amini's claim within a reasonable time; and (f) failing to reconsider the claim denial and ignoring Amini's claim that there was coverage under premises liability. Amini reserves the right to add further allegations of bad faith as more information is learned in discovery.

67. When an insurance company delays and fails to timely provide first-party indemnity to its insureds, it may be deemed to be acting unreasonably and in bad faith.

68. The insurance company must give equal consideration to its own interests and the interests of the policyholder.

69. CIC and Hartford's conduct was performed intentionally, willfully, wantonly or with reckless disregard to the interests of its insured.

70. As a result of CIC and Hartford's bad faith breach of the policies, the Amini Family has suffered and will continue to suffer damages in an amount to be established at trial, including noneconomic damages.

71. The Insureds have been damaged by CIC and Hartford's breach of the duty of good faith and fair dealing in an amount to be proved at trial. The Insureds are entitled to punitive damages.

72. CIC and Hartford have breached their first-party commercial property coverage policies, causing actual damages, compensatory and consequential damages, loss of interest (pre-judgment and post-judgment), and statutory attorneys' fees pursuant to NMSA § 39-2-1.

Count 3: Violation of the New Mexico Insurance Practices Act

73. All the preceding allegations are incorporated herein by reference.

74. CIC and Hartford knowingly or with such frequency as to indicate a general business practice violated certain portions of the New Mexico Insurance Practices Act, NMSA § 59A-16-20:

- A. misrepresenting to insureds pertinent facts or policy provisions relating to coverages at issue;
- B. failing to acknowledge and act reasonably promptly upon communications with respect to claims from insureds arising under policies;
- C. failing to adopt and implement reasonable standards for the prompt investigation and processing of insureds' claims arising under policies;
- D. failing to affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured;
- E. not attempting in good faith to effectuate prompt, fair and equitable settlements of an insured's claims in which liability has become reasonably clear;
- ...
- G. compelling insureds to institute litigation to recover amounts due under policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds when such insureds have made claims for amounts reasonably similar to amounts ultimately recovered
- ...
- M. failing to settle an insured's claims promptly where liability has become apparent under one portion of the policy coverage in order to influence settlement under other portions of the policy coverage;
- N. failing to promptly provide an insured a reasonable explanation of the basis relied on in the policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

75. Due to CIC and Hartford's violations of NMSA § 59A-16-30, the Amini Family is entitled to recover its reasonable attorneys' fees and cost.

Count 4: Violation of the New Mexico Unfair Practices Act

76. All preceding allegations are incorporated herein.

77. The New Mexico Unfair Trade Practices Act (UPA), § 57-12-2(D) prohibits unfair, deceptive or unconscionable sales practices. UPA, § 57-12-2(C).

78. UPA § 57-12-2(D)(14) prohibits: “using . . . ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.” Ambiguity exists with respect to coverage offered by CIC and Hartford.

79. UPA § 57-12-2(D)(17) prohibits: “failing to deliver the quality or quantity of goods or services contracted for.” CIC and Hartford promised to indemnify the insureds by offering first-party insurance coverage and charging a premium for coverage, and now denies all or partial coverage.

80. UPA § 57-12-2(E) prohibits any person from engaging in any “act or practice in connection with the sale . . . or in connection with the offering for sale. . . of any goods or services . . . that to a person’s detriment . . . takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree.” The CIC and the Hartford policies are first-party commercial property coverage policies which include coverage for the insureds, for which CIC and Hartford did not provide an explanation of coverage to its insured.

81. CIC and Hartford offered first-party commercial property insurance with an intent not to supply the reasonably expected coverage.

82. At the time and under the circumstances surrounding the sale of the CIC and the Hartford policies, and thereafter, CIC and Hartford knew, or as professional providers of specialty insurance products, should have known through the exercise of reasonable professional diligence, that their policies provided commercial property insurance as covered by the New Mexico UPA.

83. At the time CIC and Hartford sold their policies to the insureds, they knew, or should have known through the exercise of reasonable professional diligence, that downstream

beneficiaries of sales transactions which involve the use, or making, of deceptive or unconscionable sales statements are protected under the New Mexico UPA.

84. The Amini Family was, at all times alleged herein, a reasonably foreseeable or known “downstream beneficiary” of the CIC and Hartford policies at the time of the sales transaction resulting in the issuance of the policies.

85. At the time of the sale of the CIC and Hartford policies, they knew, or as professional providers of insurance products in New Mexico should have known through the exercise of reasonable professional diligence, that under New Mexico law it made no difference whether CIC and Hartford intended to deceive or defraud the Amini Family.

86. At the time of the sale of the CIC and Hartford policies, they knew, or as professional providers of specialty insurance products in New Mexico should have known through the exercise of reasonable professional diligence, that under New Mexico law it made no difference to CIC and Hartford’s liability for unfair, deceptive and unconscionable sales practices under the New Mexico UPA whether or not the Amini Family relied to any extent on CIC and Hartford’s statements about their policies.

87. At the time of the sale of the CIC and Hartford policies, they knew, or as professional providers of insurance products for New Mexico should have known through the exercise of reasonable professional diligence, that under New Mexico insurance law their denial or constructive denial of coverage to the Amini Family under the circumstances surrounding these sales would amount to a failure to deliver the quality or quantity of goods and/or services promised at the time of sales.

88. At the time of the sales of insurance policies, CIC and Hartford knew, or as professional providers of insurance products in the New Mexico insurance industry should have

known through the exercise of reasonable professional diligence, that under New Mexico law proof of causation or actual damages was not an element of proof of UPA claims.

89. CIC and Hartford knew or should have known through the exercise of reasonable professional diligence that under New Mexico law it made no difference whether they intended to deceive or defraud the Amini Family.

90. CIC and Hartford knew or should have known through the exercise of reasonable professional diligence that under New Mexico insurance law their coverage statements made to the Amini Family would amount to a failure to deliver the quality or quantity of goods and/or services promised at the time of sale. UPA § 57-12-2(D)(17).

91. CIC and Hartford knew or should have known through the exercise of reasonable professional diligence that making statements and misrepresentations about the coverage of their policies would amount to taking unconscionable advantage of the Amini Family's lack of knowledge to a grossly unfair degree under the circumstances. UPA § 57-12-2(E)(1).

92. The UPA prohibits misrepresentations "made in connection with the sale . . . of services . . . by a person in the regular course of his trade or commerce." UPA § 57-12-2(D). As such, direct representations by CIC and Hartford to the Amini Family that there was coverage under the policies after paying premiums, and then claiming there is no or partial coverage are prohibited misrepresentations made by CIC and Hartford.

93. The Amini Family, a downstream beneficiary of the insurance sales transaction resulting in the CIC and Hartford policies, is entitled under NMSA § 57-12-10(B) to recover its actual damages or statutory damages, which should be trebled due to the willful nature of CIC and Hartford's sales practices, as well as its attorney fees and costs in bringing this action.

94. CIC and Hartford's acts and omissions were unfair and deceptive trade practices, which proximately resulted in damages to the Amini Family, and were otherwise in violation of NM UPA, § 57-12-1, et seq.

Jury Demand

The Amini Family demands a trial by jury of six (6) persons.

WHEREFORE, Plaintiffs pray that this Court declare and adjudge that:

- A. CIC and Hartford shall promptly indemnify first-party Commercial Property Coverage;
- B. CIC and Hartford shall pay Plaintiffs' attorneys' fees/costs to reimburse the Amini Family for CIC and Hartford's unjust enrichment for their failure to indemnify the Amini Family;
- C. CIC and Hartford shall pay consequential and compensatory damages to the Amini Family, including but not limited to business loss, and opportunity lost in the Amini Family's business, including lost profits;
- D. Punitive and exemplary damages shall be awarded against CIC and Hartford;
- E. Treble damages under the UPA, NMSA § 57-12-10;
- F. Statutory attorney's fees and costs;
- G. Pre-judgment and post-judgment interest shall be awarded;
- H. All other relief shall be awarded as the Court deems just and proper.

Respectfully submitted,
BAUMAN & DOW, P.C.

By /s/ Mark C. Dow

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**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL**

MARCH 23, 2020

**Public Health Emergency Order Closing All Businesses and Non-Profit
Entities Except for those Deemed Essential and
Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, COVID-19 infections in the United States have increased from 1,000 confirmed cases to over 30,000 confirmed cases;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering; and

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through



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