

**STATE OF MICHIGAN  
IN THE THIRD JUDICIAL CIRCUIT COURT, COUNTY OF WAYNE  
CIVIL DIVISION**

SEA LAND AIR TRAVEL SERVICE, INC  
d/b/a Sea Land Air Travel, individually and  
on behalf of all others similarly situated,

*Plaintiff,*

v.

AUTO-OWNERS INSURANCE  
COMPANY, a Michigan corporation,

*Defendant.*

Case No. 20-

-CZ

Hon.

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Sea Land Air Travel Service, Inc. (“Sea Land Air Travel”), brings this Class Action Complaint and Demand for Jury Trial against Defendant Auto-Owners Insurance Company (“Defendant” or “Auto-Owners Insurance”) for wrongfully denying their claims for Business Income and Extra Expense coverage resulting from losses sustained due to the ongoing COVID-19 pandemic. Plaintiff alleges as follows upon personal knowledge as to itself and its own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by its attorneys:

**NATURE OF THE ACTION**

1. Plaintiff Sea Land Air Travel is a family owned and operated travel agency founded in 1961 and located in Paw Paw, Michigan. It is now struggling to survive as the COVID-19 global pandemic has brought its business to a standstill.
2. To protect its business in unexpected situations like this, Plaintiff obtained business interruption insurance from Defendant, which includes special property coverage, as set

forth in Auto-Owners Insurance's Businessowner's Special Property Coverage Form, Form BP 00 02 01 87 (the "Special Property Coverage Form"). The Special Property Coverage Form provides, *inter alia*, "Business Income" coverage and "Extra Expense" coverage, in the event Plaintiff incurs loss due to a necessary suspension of its operations, including when its business is forced to close due to direct physical damage or loss.

3. However, in blatant breach of the insurance obligations that Defendant voluntarily undertook in exchange for Plaintiff's premium payments, Defendant issued a blanket denial to Plaintiff's claim for any business income losses or other covered expenses related to the COVID-19 pandemic, without first conducting a meaningful coverage investigation.

4. As a result of Defendant's wrongful denial of coverage, Plaintiff brings this action, on behalf of itself and all those similarly situated, for (i) declaratory judgment establishing that the COVID-19 pandemic has caused physical property loss and damage to property and triggers coverage under the Special Property Coverage Form; and (ii) for breach of Defendant's contractual obligation under the Special Property Coverage Form to indemnify Plaintiff and others similarly situated for business income losses and Extra Expense.

## **PARTIES**

5. Plaintiff Sea Land Air Travel Service, Inc., d/b/a Sea Land Air Travel, is a corporation incorporated and existing under the laws of the State of Michigan with its principal place of business located at 513 East Michigan Avenue, Paw Paw, Michigan 49079.

6. Defendant Auto-Owners Insurance Company is a corporation incorporated and existing under the laws of the State of Michigan with its principal place of business in Lansing, Michigan. Defendant is an insurance company engaged in the business of selling insurance contracts to commercial entities such as Plaintiff in Michigan and elsewhere, and otherwise

conducts business throughout this County, the State of Michigan, and the United States.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over Defendant pursuant to MCL 600.605 because this action is based on Michigan common law and statutes and because the amount in controversy exceeds \$25,000, exclusive of interest and costs. Plaintiff also seeks Declaratory Judgment that is within this Court's jurisdiction pursuant to MCL 600.601 and MCR 2.605.

8. Venue is proper in this county pursuant to MCL 600.1621 because Defendant has a place of business in this county and conducts business transactions in this county.

### **FACTUAL BACKGROUND**

#### **I. The Auto-Owners Insurance All-Risk Policy.**

9. In exchange for a substantial premium, Defendant sold Sea Land Air Travel Policy No. 45-153-225-00 for the policy period between March 1, 2020 to March 1, 2021. The policy is attached as Exhibit A (hereinafter, the "Policy").

10. The Policy contains the Special Property Coverage Form, which Defendant sold (in an identical version) to various other business owners with commercial property policies issued by Defendant.

11. The Policy was issued to Plaintiff and cover its premises located at the address listed above.

12. Plaintiff has performed all of its obligations under the Policy, including the payment of premiums.

13. The Policy is an "all-risk" policy, meaning that it covers all risk of loss unless the risk is expressly and specifically excluded. (*See* Special Property Coverage Form, § A.3.)

14. The Policy does not exclude losses from viruses or pandemics. Thus, the Policy

purchased by Plaintiff covers property damage and business losses caused by viruses, such as COVID-19.

15. Under the Special Property Coverage Form, Defendant agreed to “pay for the actual loss of Business Income” sustained by Plaintiff “due to the necessary suspension” of Plaintiff’s “operations” during the period of business interruption (i.e., the “period of restoration”) caused by risks of direct physical loss. (*See* Special Property Coverage Form, § A.5.f.) “Operations” mean: (1) “business activities occurring at the described premises.” (*See id.*, § H.1.) “Business Income” is defined in relevant part under the Special Property Coverage Form as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred” and “continuing normal operating expenses incurred, including payroll.” (*See id.*, § A.5.f.(1) and (2).)

16. Under the Special Property Coverage Form, Defendant also promised to “pay necessary Extra Expense” Plaintiff incurs during the period of interruption that it “would not have incurred if there had been no direct physical loss or damage to property at the described premises.” (*See id.*, § A.5.g.) “Extra Expense” is defined in relevant part under the Special Property Coverage Form as any expense incurred (i) “[t]o avoid or minimize the suspension of business and to continue ‘operations’ [a]t the described premises” or “[a]t replacement premises or at temporary locations”; (ii) “[t]o minimize the suspension of business if you cannot continue ‘operations’”; or (iii) “[t]o repair or replace any property[.]” (*See id.*, § A.5.g.(1), (2), and (3).)

17. The Policy also contains a Business Income and Extra Expense endorsement, Form No. 54227 (8-00) (hereinafter, the “BI/EE Endorsement”) which adds limits of insurance to the coverages provided under the Special Property Coverage Form but does not otherwise materially alter the Business Income or Extra Expense coverage, relevant to this case.



18. Damage caused by the physical presence of the COVID-19 virus to property at and around Plaintiff's insured premises triggered the Business Income and Extra Expense coverages provided by the Special Property Coverage Form.

## **II. The COVID-19 Pandemic.**

19. For years, if not decades, the Center for Disease Control ("CDC") and the World Health Organization have been warning about the possibility that a novel airborne virus could cause a worldwide pandemic.

20. COVID-19 is a highly contagious airborne virus that has rapidly spread and continues to spread across Michigan and the United States.

21. COVID-19 is a physical substance and an organic human pathogen that travels between human hosts through respiratory droplets and contaminated surfaces. The virus can be physically present within parcels of air and can physically attach itself to surfaces and structures.

22. The COVID-19 virus spreads primarily by "fomite"—meaning objects, materials, or surfaces that have been physically contaminated or infected by respiratory droplets—and can survive on surfaces for extended periods of time. Recent information on the CDC's website provides that COVID-19 spreads when people are within six feet of each other or when a person comes in contact with a surface or object that has the virus on it.<sup>1</sup>

23. According to a scientific study in The New England Journal of Medicine, the coronavirus responsible for the COVID-19 disease—SARS-CoV-2—can physically infect and

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<sup>1</sup> *How COVID-19 Spreads*, Ctr. for Disease Control and Prevention (April 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

survive on surfaces for up to 72 hours.<sup>2</sup>

24. Another scientific study documented in the Journal of Hospital Infection found that human coronaviruses, such as COVID-19, can remain infectious on inanimate surfaces at room temperature for up to nine days.<sup>3</sup>

25. On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan.

26. To date, tens of thousands of people in Michigan have been diagnosed with COVID-19, and it is likely that hundreds of thousands (if not millions) more have been infected by COVID-19 but have not been diagnosed. While in some cases asymptomatic, COVID-19 is also known to cause severe and sometimes fatal respiratory failure. This, in addition to the highly contagious nature of COVID-19, renders any property exposed to the contagion unsafe and dangerous.

27. On March 11, 2020, the World Health Organization declared that the emerging threat of COVID-19 constituted a global pandemic.<sup>4</sup>

28. The scientific community and those personally and professionally affected by the virus recognize COVID-19 as a cause of real physical loss and damage. And, recently, the Pennsylvania Supreme Court found that the COVID-19 pandemic constitutes a “natural

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<sup>2</sup> See Neeltje van Doremalen, Ph.D., et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, The New England Journal of Medicine (April 16, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973?articleTools=true>.

<sup>3</sup> See G. Kampf, et al. *Persistence of coronavirus on inanimate surfaces and their inactivation with biocidal agents* (February 06, 2020), available at <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3>

<sup>4</sup> See WHO Director-General’s opening remarks at the media briefing on COVID-19, World Health Organization (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

disaster,” namely because, like other identified natural disasters, it involves “substantial damage to property, hardship, suffering or possible loss of life.” *Friends of DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100, at \*10 (Pa. Apr. 13, 2020).

29. On March 24, 2020, in response to the physical presence of the COVID-19 virus in the State of Michigan—including in and around Plaintiff’s premises—the Governor issued a stay-at-home order, stating that “[n]o person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.”<sup>5</sup> The Governor extended the order on April 9, 2020 after Michigan reported 20,346 confirmed cases of COVID-19 throughout the State and 959 deaths resulting from COVID-19.<sup>6</sup>

30. The Governor issued the Closure Orders under “section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.” These laws vest the Governor with broad powers and duties to “cop[e] with dangers to th[e] state or the people of th[e] state presented by a disaster or emergency,” MCL 30.403(1)-(2) and to “promulgate reasonable orders, rules, and regulations as he or she considers necessary *to protect life and property* or to bring the emergency situation within the affected area under control.” MCL 10.31(1) (emphasis added).

31. Only after confirming the widespread presence of the virus within the state did

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<sup>5</sup> See Mich. Exec. Order 2020-21 (March 23, 2020). A copy of the March 23rd Closure Order is attached as Exhibit B.

<sup>6</sup> See Mich. Exec. Order 2020-42 (April 9, 2020). A copy of the April 9th Closure Order is attached as Exhibit C (hereinafter, Mich. Exec Orders 2020-21 and 2020-42 are referred to as the “Closure Orders”).

Michigan issue the first Closure Order. The Closure Orders were issued, specifically, “to suppress the spread of COVID-19,” and acknowledged the “widespread and severe health, economic, and social harms posed by the COVID-19 pandemic.”<sup>7</sup> The Closure Orders, among other things, called the virus “aggressive and persistent” such that it could not be sufficiently remediated with frequent cleaning and mandated the closure of non-essential businesses.”<sup>8</sup>

32. Michigan followed in the footsteps of a growing number of state and local governments that enacted similar stay-at-home orders after observing the widespread and growing presence of COVID-19 in their respective states. These other government and public health officials similarly acknowledged that the spread of COVID-19 causes direct physical loss and damage to property. For example:

- a. The State of Colorado issued a public health order indicating that “COVID-19 ... **physically contributes to property loss, contamination, and damage...**” (Emphasis added);
- b. The City of New York issued an emergency executive order in response to COVID-19 and the pandemic, in part “because **the virus physically is causing property loss and damage.**” (Emphasis added);
- c. Broward County, Florida issued an emergency order acknowledging that COVID-19 “**is physically causing property damage.**” (Emphasis added);
- d. The State of Washington issued a stay-at-home proclamation stating the “COVID-19 pandemic and its progression ... remains a public disaster affecting life, health, [and] **property...**” (Emphasis added);
- e. The State of Indiana issued an executive order recognizing that COVID-19 has the “propensity to **physically impact surfaces and personal property.**” (Emphasis added);
- f. The City of New Orleans issued an order stating “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for prolonged

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<sup>7</sup> See Exhibits B-C.

<sup>8</sup> See *id.*

period of time, thereby spreading from surface to person and **causing property loss and damage** in certain circumstances.” (Emphasis added);

- g. The State of New Mexico issued a public health order acknowledging the “threat” COVID-19 “poses” to “**property**.” (Emphasis added);
- h. North Carolina issued a statewide executive order in response to the COVID-19 pandemic not only “to assure adequate protection for lives,” but also to “assure adequate protection of... **property**.” (Emphasis added); and
- i. The City of Los Angeles issued an order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person to person and it is **physically causing property loss or damage** due to its tendency to attach to surfaces for prolonged periods of time.” (Emphasis added).

33. As these orders recognize, the presence of people infected with or carrying COVID-19 particles in places, like Plaintiff’s insured premises, where members of the public come to interact with others renders those places unsafe and unusable. The Closure Orders were issued in direct response to these existing dangerous physical conditions in businesses, like Plaintiff’s, throughout the State.

### **III. Plaintiff’s Losses Due to the COVID-19 Pandemic and Resulting Closure Orders.**

34. As a result of the outbreak of the COVID-19 virus in Plaintiff’s community, including the insured premises, Sea Land Air Travel was required to close its doors completely.

35. Human interaction is critical for Plaintiff’s business, where the majority of Plaintiff’s clients seek out Plaintiff’s services because they provide a personal travel planning experience. This service requires in-person appointments. However, the continuous presence of COVID-19 on or around Plaintiff’s premises has damaged the property by infecting it and has rendered the premises unsafe, uninhabitable, and unfit for this use (*i.e.*, for in-person travel planning services).

36. Upon information and belief, people carrying COVID-19 particles in, on, or about

their person, have been physically present at or around Plaintiff's insured premises during the time the Policy was in effect.

37. Upon information and belief, COVID-19 particles have been physically present at or around Plaintiff's insured premises—both airborne and on surfaces and items of property at or around Plaintiff's premises—during the time the Policy was in effect and remained physically present for up to 28 days.

38. Plaintiff has sustained direct physical loss and damage to items of property located at its premises and direct physical loss and damage to its premises as a result of the presence of COVID-19 particles and/or the COVID-19 pandemic. The presence of COVID-19 caused direct physical loss of and/or damage to the premises insured under the Policy by, among other things, damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be physically uninhabitable by customers, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

39. Plaintiff has incurred substantial Business Income losses and Extra Expense caused by the presence of COVID-19 at or around Plaintiff's insured premises.

#### **IV. Auto-Owners Insurance's Denial of Plaintiff's Claims for Coverage**

40. After being forced to close its doors—through no fault of its own—Sea Land Air Travel, like countless other Michigan businesses, submitted timely insurance claims to Auto-Owners Insurance requesting coverage for their business interruption losses promised under the Policy.

41. On April 3, 2020, Auto-Owners Insurance denied Sea Land Air Travel's claim in writing. (*See* April 3, 2020 Denial Letter, attached hereto as Exhibit D.)

42. Upon information and belief, Auto-Owners Insurance has uniformly refused to provide Business Income, Extra Expense, or any other coverage to most, if not all, Michigan businesses that have claimed business interruption losses and/or extra expense under the Special Property Coverage Form or the BI/EE Endorsement as a result of the COVID-19 pandemic.

43. Defendant issued its denials without first conducting a meaningful coverage investigation, let alone a “reasonable investigation based upon the available information,” as Michigan law requires. *See* MCL § 500.2026(d). Upon information and belief, Defendant also instructed insurance brokers to discourage policyholders from filing claims and promulgated the false conclusion that no coverage was available under the Special Property Coverage Form.

44. In order to justify its categorical denial of Plaintiff’s claim, Defendant misrepresented in its denial letter that Plaintiff’s claim was not based on “the result of direct physical loss of or damage to property at the described premises.” Instead, Defendant purposefully mischaracterized Plaintiff’s claim as “the result of governmental action in response to the COVID-19 virus,” which, according to Defendant, is “expressly excluded by the policy language.” (*See* Exhibit D.)<sup>9</sup>

45. However, Plaintiff unmistakably claimed losses due to the COVID-19 pandemic, including losses stemming from the suspension of its business due to physical loss of or damage to its insured property, as described above. And, unlike many commercial property policies available on the market, the “all-risk” Policy that Defendant sold to Plaintiff does not exclude loss caused by a virus. In fact, Auto-Owners Insurance went so far as to create a “Communicable Diseases Exclusion” for its Business Liability and Medical Expenses Coverage but did not apply

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<sup>9</sup> After receiving Defendant’s denial letter, Plaintiff contacted Defendant to clarify its position that the COVID-19 pandemic caused direct physical loss of or damage to property at its insured premises.

that exclusion to its Special Property Coverage Form.

46. Defendant could have also excluded pandemic-related losses under the Special Property Coverage Form or another endorsement to the Policy, as other insurers regularly do. The Insurance Services Office, Inc. (“ISO”) frequently drafts form endorsements to clarify policy coverage in anticipated disputes, which insurers regularly incorporate into their policies. In 2006, the ISO drafted a new endorsement, CP 01 40 07 06, acknowledging that claims for business interruption losses would be filed under existing policy language for losses resulting from the presence of disease-causing agents. Endorsement CP 01 40 07 06, which a handful of other insurers have since incorporated into their policies, provides that the insurer “will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” Defendant did not include any language to this effect in the Special Property Coverage Form, nor did it include this endorsement in the Policy.

47. That the insurance industry has created and often uses specific exclusions for pandemic-related losses under similar commercial property policies undermines Defendant’s assumption that the presence of a virus, like COVID-19, does not cause “physical loss or damage” to the insured premises. Indeed, if a virus could not result in “physical loss” to property, such specific exclusions for pandemic or virus-related losses would be unnecessary. It would also render Defendant’s explicit communicable diseases exclusion—limited to Business Liability and Medical Expenses Coverage—completely arbitrary. Thus, Plaintiff reasonably expected that business interruption losses stemming from the COVID-19 pandemic constituted a covered cause of loss. Moreover, Plaintiff reasonably did not expect to be swindled by Defendant when stating its claim for business interruption losses related to COVID-19.



48. Instead, Defendant waited until after it collected Plaintiff's premiums, and after a pandemic caused catastrophic business losses to Plaintiff, to attempt to limit its exposure on the back-end through its erroneous assertion that the presence of COVID-19 does not constitute a "physical loss or damage" and is therefore not a covered cause of loss under its Policy.

49. In short, Defendant's swift and wholesale denial of coverage is arbitrary, unreasonable, and inconsistent with the facts and plain language of the Policy. Moreover, Defendant's attempt to mischaracterize Plaintiff's claims in order to justify its denial is deceptive and unfair. Defendant's denial appeared to be driven by Defendant's desire to reduce or extinguish its own financial exposure to the economic fallout caused by the COVID-19 crisis, rather than its obligation to initiate, as is its legal duty, a full and fair investigation of the claims and a careful review of the Policy it sold to Plaintiff in exchange for a valuable premium.

### **CLASS ALLEGATIONS**

50. **Class Definition:** Pursuant to Michigan Court Rule 3.501, Plaintiff brings this action on behalf of itself and a class of similarly situated individuals defined as follows:

All persons and entities that: (1) have business income and/or extra expense coverage under Auto-Owners Insurance Form No. "BP 00 02 01 87," Form No. "54227 (8-00)", or any other coverage form with identical language to insure property in Michigan; (2) suffered business income and/or extra expense losses due to the COVID-19 pandemic; (3) have made an insurance claim for their losses; and (4) have been denied coverage. (the "Class").

The following people are excluded from the Class (1) any Judge or Magistrate presiding over this action and the members of their family; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel

and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

51. **Numerosity:** The exact number of members of the Class is unknown, but individual joinder in this case is impracticable. The Class likely consists of thousands if not hundreds of thousands of members. Members of the Class can be easily identified through Defendant's records.

52. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

- a. Whether Auto-Owners Insurance issued all-risk insurance policies to Plaintiff and members of the Class in exchange for payment of premiums by Plaintiff and the Class members;
- b. Whether Plaintiff and the Class suffered a covered loss based on the common policies issued to Plaintiff and members of the Class;
- c. Whether Auto-Owners Insurance wrongfully denied all claims based on COVID-19;
- d. Whether COVID-19 causes "direct physical loss or damage" to property;
- e. Whether Auto-Owners Insurance's Business Income coverage applies to a suspension of business caused by COVID-19;
- f. Whether the Closure Orders requiring the suspension of business as a result of COVID-19 is a covered loss of Business Income and Extra Expense;
- g. Whether Auto-Owners Insurance's Extra Expense coverage applies to efforts to

minimize a loss caused by COVID-19;

- h. Whether Auto-Owners Insurance has breached its contracts of insurance through a blanket denial of all claims based on business interruption, income loss or closures related to COVID-19 and the Closure Orders; and
- i. Whether Plaintiff and the Class are entitled to an award of reasonable attorneys' fees, interest and costs.

53. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class in that Plaintiff and the members of the Class purchased identical insurance coverage from Defendant containing identical language regarding business income losses and extra expense, their coverage claims for COVID-19 losses were denied by Defendant, and they have sustained damages arising out of Defendant's wrongful denials.

54. **Adequate Representation:** Plaintiff has and will continue to fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and they have the resources to do so. Neither Plaintiff nor their counsel have any interest adverse to those of the other members of the Class.

55. **Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members' Interests:** Plaintiff seeks class-wide adjudication as to the interpretation, and resultant scope, of the Special Property Coverage Form. The prosecution of separate actions by individual members of the Class would create an immediate risk of inconsistent or varying adjudications on this issue, which would establish incompatible standards of conduct for

Defendant in evaluating future claims. Moreover, the adjudications sought by Plaintiff could, as a practical matter, substantially impair or impede the ability of other Class members, who are not parties to this action, to protect their interests.

56. **Declaratory and Injunctive Relief:** Defendant acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class members.

57. **Superiority:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

**FIRST CAUSE OF ACTION**  
**Declaratory Relief**  
**(On behalf of Plaintiff and the Class)**

58. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

59. Plaintiff's Policy, as well as those of the Class members, is an insurance contract under which Defendant was paid a premium in exchange for its promise to pay Plaintiff's and the Class members' losses for claims covered by the Policy.

60. Plaintiff and the Class members have complied with all applicable provisions of

the Policies and/or those provisions have been waived by Auto-Owners Insurance or Auto-Owners Insurance is estopped from asserting them.

61. Defendant has arbitrarily and without justification refused to reimburse Plaintiff and the Class members for any losses incurred by them in connection with the covered business losses and extra expenses related to the necessary interruption of their businesses stemming from COVID-19.

62. Auto-Owners Insurance has denied claims related to COVID-19 on a uniform and class-wide basis, without individual bases or investigations, such that the Court can render declaratory judgment.

63. An actual case or controversy exists regarding Plaintiff's and the Class members' rights and Defendant's obligations under the Policies to reimburse Plaintiff and the Class for the full amount of losses incurred by Plaintiff and the Class in connection with the Closure Orders and the suspension of their businesses stemming from COVID-19.

64. Pursuant to MCR 2.605, Plaintiff and the Class seek a declaratory judgment from this Court declaring the following:

- a. Plaintiff's and the Class members' losses incurred in connection with the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Special Property Coverage Form (or equivalent);
- b. Auto-Owners Insurance has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's and the Class members' losses by issuing blanket coverage denials without conducting a claim investigation as required under Michigan law; and

- c. Auto-Owners Insurance is obligated to pay Plaintiff and the Class for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders during period of restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**SECOND CAUSE OF ACTION**  
**Breach of Contract**  
**(On behalf of Plaintiff and the Class)**

65. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

66. Plaintiff's Policy, as well as those of the Class members, is an insurance contract under which Defendant was paid a premium in exchange for its promise to pay Plaintiff's and the Class members' losses for claims covered by the Policy.

67. Plaintiff and the Class members have complied with all applicable provisions of the Policies and/or those provisions have been waived by Auto-Owners Insurance or Auto-Owners Insurance is estopped from asserting them, yet Defendant has abrogated its insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

68. In the Special Property Coverage Form, Auto-Owners Insurance agreed to pay for Plaintiff's and the Class members' actual loss of Business Income and Extra Expense.

69. By denying coverage for any business losses and extra expense incurred by Plaintiff and the Class in connection with the COVID-19 pandemic, Auto-Owners Insurance has breached its coverage obligations under the Policy.

70. As a result of Defendant's breaches of the Policy, Plaintiff and the Class have sustained, and continue to sustain, substantial damages for which Defendant is liable, in an amount to be established at trial.

**THIRD CAUSE OF ACTION**  
**Violation of the Uniform Trade Practices Act, MCL 500.2006.**  
**(On behalf of Plaintiff)**

71. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

72. Under Michigan law, Defendant must “pay on a timely basis to its insured, a person directly entitled to benefits under its insureds insurance contract[.]” *See* MCL 500.2006.

73. “If benefits are not paid on a timely basis, the benefits paid bear simple interest from a date 60 days after satisfactory proof of loss was received by the insurer at the rate of 12% per annum, if the claimant is the insured or a person directly entitled to benefits under the insured’s insurance contract.” *See id.*

74. Defendant immediately and categorically denied Plaintiff’s claim for coverage despite the fact that the Policy is an “all-risk” policy, it contains no exclusion for virus or pandemic-related causes of loss, and under Defendant’s Special Property Coverage Form, Auto-Owners Insurance agreed to pay for Plaintiff’s actual loss of Business Income and Extra Expense.

75. At all relevant times, Plaintiff was and is still is entitled to benefits under the Policy.

76. As a result of Defendant’s claim denials, Defendant has failed to timely pay Plaintiff’s benefits under the Policy.

77. Therefore, pursuant to MCL § 500.2006, Plaintiff requests that, in addition to entering a judgment in favor of Plaintiff for the amount owed under the Policy at the time of judgment, the Court enter a judgment granting interest at the rate of twelve percent (12%) penalty interest applicable when the insurance benefits are not paid on a timely basis. *See* MCL 500.2006.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the other Class members, respectfully requests that the Court:

1. Enter an order certifying the proposed Class, as defined above, designating Plaintiff as representative of the Class, and appointing Plaintiff's undersigned attorneys as Class Counsel;
2. Enter a declaratory judgment in favor of Plaintiff and the Class and against Defendant, declaring as follows:
  - a. Plaintiff's and the Class members' losses incurred in connection with the necessary interruption of businesses stemming from the COVID-19 pandemic are insured losses under the Special Property Coverage Form;
  - b. Auto-Owners Insurance has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's and the Class members' losses by issuing blanket coverage denials without conducting a claim investigation as required under Michigan law; and
  - c. Auto-Owners Insurance is obligated to pay Plaintiff and the Class for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the necessary interruption of their businesses stemming from the COVID-19 pandemic;
3. Enter a judgment on the Second Cause of Action in favor of Plaintiff and the Class and against Defendant and award damages for breach of contract in an amount to be established at trial;
4. Enter a judgment on the Third Cause of Action in favor of Plaintiff and against



Defendant and granting interest at the rate of twelve percent (12%) penalty interest applicable when insurance benefits are not paid on a timely basis. *See* MCL 500.2006.

5. Award to Plaintiff and the Class additional pre- and post- judgment interest, to the extent allowable; and

6. Award to Plaintiff such other and further relief as may be just and proper.

Respectfully submitted,

**SEA LAND AIR TRAVEL SERVICE, INC.,  
individually and on behalf of all others  
similarly situated,**

Dated: April 30, 2020

By: /s/ Robert W. Kirk (P35627)

One of Plaintiff's Attorneys

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\*Admission *pro hac vice* to be sought