

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

357 W. TURKEYFOOT LAKE, LLC

151 Bayview Terrace
Akron, Ohio 44319

CASE NO:

JUDGE:

Plaintiff,

-vs.-

ILLINOIS CASUALTY COMPANY

225 20th Street
Rock Island, Illinois 61201

COMPLAINT:

DECLARATORY JUDGMENT; BREACH
OF CONTRACT; BAD FAITH;
NEGLIGENCE; BREACH OF FIDUCIARY
DUTY

-and-

**UNITED STATES INSURANCE GROUP,
LLC**

c/o Michael Grossi
4526 Stow Road
Stow, Ohio 44224

-and-

MICHAEL T. GROSSI

2261 East Gilwood Drive
Stow, Ohio 44224

Defendants.

Now comes Plaintiff, 357 W. Turkeyfoot Lake, LLC (“Plaintiff”), and for its Complaint against Defendants Illinois Casualty Company (“ICC”), United States Insurance Group (“U.S. Insurance Group”), and Michael T. Grossi (“Grossi”) (ICC, U.S. Insurance Group, and Grossi are collectively referred to herein as the “Defendants”), hereby states as follows:

INTRODUCTION

1. Plaintiff is engaged in the restaurant and bar business under the name The Upper Deck located in Summit County, Ohio and has been operated by Summit County residents, Timothy Adkins and James House for years.

2. Like many hospitality-based businesses, Plaintiff has been deeply affected by the recent government shutdowns and has suffered substantial economic damages.

3. Since 9:00pm on March 15, 2020, Plaintiff has been either completely shut down or has done substantially less business, unable to host guests in the restaurants or bars.

4. Also, like many hospitality-based businesses, for years Plaintiff has faithfully paid thousands of dollars in insurance payment premiums to Defendants, and believed that it was insured to the fullest extent possible to protect itself, its employees, and its customers in the event of any losses.

5. In recent weeks, Plaintiff has learned that Defendants claim that Plaintiff does not have any insurance coverage for the staggering losses they have suffered and are continuing to suffer.

THE PARTIES

6. Plaintiff is an Ohio limited liability company doing business as The Upper Deck located at 357 West Turkeyfoot Lake Road, New Franklin, Summit County, Ohio.

7. ICC is, upon information and belief, an Illinois domestic insurance corporation with its principal office located at 225 20th Street, Rock Island, Illinois 61201. ICC is a property and casualty insurer that specializes in insuring businesses engaged in the restaurant and bar industry. Although ICC regularly sells insurance in the State of Ohio it has not registered as foreign corporation doing business in the state, nor has it registered a statutory agent in the State of Ohio.

8. U.S. Insurance Group is an Ohio limited liability company with its principal place of business at 4526 Stow Road, Stow, Summit County, Ohio 44224.

9. Grossi is a citizen of the State of Ohio, residing at 2261 East Gilwood Drive, Stow, Summit County, Ohio 44224, and is the President and CEO of U.S. Insurance Group.

JURISDICTION AND VENUE

10. This Honorable Court has jurisdiction over the parties and this dispute, including for

declaratory relief, pursuant to Ohio Revised Code § 2307.382, *et seq.*, Ohio Revised Code § 2721.02, *et seq.* and Rule 57 of the Ohio Rules of Civil Procedure.

11. An actual controversy between Plaintiff and ICC exists within the meaning of Ohio Revised Code § 2721.02, *et seq.* regarding whether ICC has a duty to provide Plaintiff coverage and indemnity for, among other things, business income loss pursuant to the terms and conditions of the ICC policy of insurance, due to issues surrounding the COVID-19 pandemic, as more particularly described below.

12. Venue is proper in Summit County, Ohio under Ohio Rules of Civil Procedure 3(C)(3), 3(C)(6), and 3(C)(5) because Defendants conducted activity giving rise to Plaintiff's claims for relief in Summit County, because all or part of Plaintiff's claims for relief arose in Summit County, and because all or part of Plaintiff's damages were suffered in Summit County.

FACTUAL BACKGROUND

The Policy: Plaintiff Relied Upon Defendants to Provide it with the Broadest Possible Insurance Coverage to Protect Itself, Its Employees, and Its Customers.

13. At all relevant times, ICC insured Plaintiff under a single commercial businessowners policy drafted by ICC, bearing policy number BP41669 ("Policy"). The certified Policy is in the possession of ICC, and while not attached hereto because it consists of hundreds of pages, it is incorporated herein by reference.

14. Since approximately April 2018, Plaintiff has relied upon U.S. Insurance Group to provide business insurance advice and expertise and to procure business insurance on Plaintiff's behalf.

15. For the past two years Grossi has been the agent responsible for Plaintiff's account.

16. Every year, since April 2018 U.S. Insurance Group through its agents, including Grossi, has provided Plaintiff with an annual comprehensive written review of its existing insurance coverages and recommendations for additional or expanded insurance coverages.

17. Once U.S. Insurance Group and its agents prepare the annual written review and recommendations, Grossi meets face-to-face with Plaintiff's representatives and reviews, in detail, the entirety of the written review and recommendations including all of the coverages and exclusions and recommendations for additional or more comprehensive coverage.

18. Plaintiff relied upon U.S. Insurance Group and Grossi, as its trusted insurance agents, to assess Plaintiff's insurance needs, advise Plaintiff of available coverages, accurately and fully explain to Plaintiff available coverages and any potential exclusions, and to secure for Plaintiff the broadest available coverage to protect Plaintiff, its employees, and its customers.

19. U.S. Insurance Group and Grossi recommended the Policy to Plaintiff and secured the Policy from ICC on Plaintiff's behalf.

Grossi promised Plaintiff's Representatives that Its Income, Including Costs of Goods Sold, Rent, Payroll, and Other Expenses Would be Covered

20. On or about April 12, 2018, Plaintiff's representatives met with Grossi to discuss its Policy with Defendants.

21. At that time, Grossi stated that Plaintiff's income, including costs of goods, rent, payroll, and other expenses would be covered by Defendants in the event of a loss.

22. Grossi further stated that they, meaning ICC, would match Plaintiff's receipts for the loss of income.

Defendants Never Disclosed to Plaintiff that the Policy Recommended by Defendants Purported to Exclude Loss Due to Virus or Bacteria

23. ICC, U.S. Insurance Group and Grossi delivered the Policy to Plaintiff in Summit County.

24. However, neither U.S. Insurance Group nor Grossi ever advised Plaintiff that the Policy of insurance that it recommended to Plaintiff and secured on Plaintiff's behalf contained an exclusion for "Loss Due to Virus or Bacteria".

25. Further, neither U.S. Insurance Group nor Grossi ever advised Plaintiff that ICC may deny coverage paid for by Plaintiff for claims for Business Interruption, Extra Expense, Civil Authority, and/or Spoilage coverages for losses due to virus or bacteria.

26. Further, neither U.S. Insurance Group nor Grossi, advised or disclosed to Plaintiff that there were insurance policies available in the marketplace that did not contain an exclusion of loss due to virus or bacteria.

27. Under the Policy, Plaintiff agreed to make premium payments to ICC in exchange for ICC's promise to indemnify Plaintiff for losses including, but not limited to, business income loss at its commercial property location ("Property").

Plaintiff Has Paid for Business Interruption Coverage Recommended by Defendants Including Coverage for Losses Sustained from Physical Conditions Affecting Property and/or Losses Sustained from the Orders or Actions of Governmental Authorities

28. The Policy is in effect from April 16, 2019 to April 16, 2020 and April 16, 2020 to April 16, 2021 and Plaintiff faithfully paid premiums to ICC, specifically to provide additional coverage for loss of Business Income ("BI"), Extended Business Income ("EBI"), Extra Expense coverage ("EE"), coverage for loss due to actions of a Civil Authority, and Spoilage.

29. Relevant portions of the Policy provide that ICC will:
- a. "pay for the actual loss of Business Income you [Plaintiff] sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described "premises". The loss or damage must be caused by or result from a Covered Cause of Loss."
 - b. "... necessary Extra Expense you [Plaintiff] incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described "premises". The loss or damage must be caused by or result from a Covered Cause of Loss."
 - c. "When a Covered Cause of Loss causes damage to property other than property at the described "premises", we will pay for the actual loss of

Business Income you sustain and necessary Extra Expense caused by action of a civil authority that prohibits access to the described 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 the described “premises” are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

30. COVID-19's actual or suspected physical presence at or in the vicinity of Plaintiff's Property prevents Plaintiff from making full use of the Property, especially in cases where the business must close in part or in full. Under the terms and condition of the Policy, this kind of loss constitutes a physical damage to the Property in that the Property has been rendered unusable. Moreover, the COVID-19 virus is a “physical” thing. For example, restaurants and event venues, such as that operated by Plaintiff, forced to close due to COVID-19 have suffered a “physical loss” of their Property, with resulting business interruption loss.

31. Under the terms and conditions of the Policy, physical loss does not mean and/or require tangible physical damage.

32. The Policy is an “all-risk” policy, as it provides that a covered cause of loss under the policy means direct physical loss of or damage to the property unless the loss is specifically excluded or limited in the Policy. Here, no specific exclusion applies to reasonably justify the denial of Plaintiff's claims.

Plaintiff has Suffered – and Continues to Suffer – Substantial Losses from the Physical Presence or Contamination of COVID19 and/or the Business Suspension Orders of the Government

33. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss(es) due

to the issues created by the physical spread and/or contamination of COVID-19 at, in, on, and/or around Plaintiff's premises described in the Policy which includes the Property.

34. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss(es) due to the issues surrounding the spread of COVID-19 in the community (the "Pandemic").

35. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing COVID-19 and the Pandemic.

36. Based upon information and belief, ICC has accepted the policy premiums from Plaintiff with no intention of providing any coverage under the Policy's Business Income, Extra-Expense, Civil Authority, or Spoilage Coverage Sections due to a loss and/or shutdown from a pandemic, i.e. the issues surrounding the COVID-19 pandemic.

37. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss(es) due to the issues created by COVID-19 at, in, on, and/or around Plaintiff's premises described in the Policy which includes Plaintiff's facilities in Summit County.

38. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss(es) due to the issues created by the spread of COVID-19 in the community.

39. While the Policy was in force, Plaintiff sustained, and continues to sustain, a loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing the COVID-19 Pandemic.

The COVID-19 Pandemic: The Policy Does Not Contain any Pandemic Exclusion

40. In late 2019 and early 2020, an outbreak of respiratory illness caused by a novel COVID-19 started to infect humans across the globe.

41. On January 31, 2020, under §319 of the Public Health Service Act (42 U.S.C.247d), The

Secretary of Health and Human Services ("HHS") declared a public health emergency in response to COVID-19.

42. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a pandemic (i.e. a global outbreak of disease).

43. On March 13, 2020 the President of the United States of America, Donald J. Trump, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak ("Proclamation"), proclaiming the COVID-19 outbreak constituted a national emergency in the United States, beginning March 1, 2020.

44. Various states, including the State of Ohio have issued and implemented mandatory Stay-At-Home Orders, requiring businesses, such as Plaintiff, to shut down or severely curtail its operations, thus suffering a loss of use of its Property, and resulting in substantial loss of business income.

45. On March 29, 2020 President Donald J. Trump announced the extension of his Administration's social distancing guidelines until April 30, 2020.

46. COVID-19 is a physical substance.

47. COVID-19 can be present outside the human body in viral fluid particles.

48. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces.

49. COVID-19 can and does live on and/or remains capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touch screens, cardboard packages, food items, silverware, plates, serving trays, glasses, straws, menus, pots, pans, kitchen utensils, faucets, refrigerators, freezers, and other items of property for a period of time.

50. COVID-19 can be transmitted by way of human contact with surfaces and items of physical property on which COVID-19 particles are physically present.

51. COVID-19 has been transmitted by way of human contact with surfaces and items of physical property located at premises in Summit County.

52. COVID-19 can be transmitted by human to human contact and interaction at premises in Summit County, including places like restaurants.

53. COVID-19 has been transmitted by human to human contact and interaction at premises in Summit County.

54. COVID-19 can be transmitted through airborne viral particles emitted into the air at premises.

55. COVID-19 has been transmitted by way of human contact with airborne COVID-19 particles emitted into the air at premises in Summit County.

56. The presence of any COVID-19 particles renders items of physical property unsafe.

57. The presence of any COVID-19 particles on physical property impairs its value, usefulness and/or normal function.

58. The presence of any COVID-19 particles causes direct physical harm to property.

59. The presence of any COVID-19 particles causes direct physical loss to property.

60. The presence of any COVID-19 particles causes direct physical damage to property.

61. The presence of any COVID-19 particles at a premises renders the premises unsafe, thereby impairing the premises' value, usefulness and/or normal function.

62. The presence of people infected with or carrying COVID-19 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

63. The presence of people infected with or carrying COVID-19 particles at premises renders the premises, including property located at that premises, unsafe, resulting in direct physical loss to the premises and property.

***Various Civil Authorities Have Issued Orders Which Required
the Suspension of Plaintiff's Business Operations***

64. In response to COVID-19 and the Pandemic, the Governor of Ohio has issued multiple executive orders pursuant to the authority vested in him by the Ohio Constitution and the laws of Ohio.

65. In response to COVID-19 and the Pandemic, the Ohio Department of Health, pursuant to its authority under Ohio law, has issued multiple orders, including a Stay At Home Order.

66. The term "civil authority" is not defined in the Policy.

67. The State of Ohio is a civil authority as contemplated by the Policy.

68. The Ohio Department of Health is a civil authority as contemplated by the Policy.

69. The Summit County Health Department and the Stark County Health Department are civil authorities as contemplated by the Policy.

70. The Governor of the State of Ohio is a civil authority as contemplated by the Policy.

71. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020- 01D that declared a state of emergency in response to the physical presence of COVID-19 and the Pandemic.

72. On March 15, 2020, Ohio restricted food and beverage sales to carry-out and delivery only, with no onsite consumption permitted. Further, Ohio prohibited social gatherings of more than ten people. The stated goal of these orders was to slow the spread of COVID-19 by minimizing in-person interaction "in an environment with a multitude of hard surfaces." The order reiterated that "It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes." Also that:

Previously studied human coronaviruses (including SARS, which is very closely related to COVID-19) can survive on paper, wood, glass, plastic up to 4-5 days. *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251.

73. On March 22, 2020, the Ohio Department of Health issued a Stay At Home Order, effective March 23, 2020, ordering Ohio residents to stay at home. By way of this order the State of Ohio ordered all non-essential businesses in Ohio to cease all activities.

74. Plaintiff's businesses do not qualify as Essential Businesses and Plaintiff was required to cease and/or significantly reduce operations.

75. The civil authority orders, including, but not limited to the Stay At Home Order, prohibit access to Plaintiff's premises described in the Policy.

76. The State of Ohio, through the Governor and the Department of Health, have issued, and continue to issue, authoritative orders governing Ohioans and Ohio businesses, including Plaintiff, in response to COVID-19 and the Pandemic, the effect of which have required and continue to require Plaintiff to cease and/or significantly reduce operations at, and that have prohibited and continue to prohibit access to, the premises described in the Policy.

The Presence of COVID-19 Is Uniformly Recognized to Cause Contamination, Loss and Damage to Property

77. State and local governmental authorities, and public health officials around the Country, acknowledge that the issues surrounding COVID-19 and the Pandemic cause direct physical loss and damage to property. Foreexample:

- 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 period of time, thereby spreading from surface to person and *causing property loss and damage* in certain circumstances." (Emphasis added);
- g. The State of Illinois issued an Executive Order describing COVID-19's "propensity to *physically* impact surfaces and personal *property*." (Emphasis added);
- h. The State of New Mexico issued a Public Health Order acknowledging the "threat" COVID-19 "poses" to "*property*." (Emphasis added);
- i. North Carolina issued a statewide Executive Order in response to the Pandemic not only "to assure adequate protection for lives," but also to "assure adequate protection of... *property*." (Emphasis added); and
- j. 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).

78. The issues surrounding COVID-19 and the Pandemic are physically impacting public and private property in Ohio and throughout the country.

79. The issues surrounding COVID-19 and the Pandemic have caused and continue to cause direct physical loss and damage to property.

80. People in Summit County have been diagnosed with COVID-19.

81. As of May 20, 2020, Summit County had reported 1,077 cases of COVID-19 and 131 resulting deaths.

82. People in Summit County have, and have had, COVID-19 disease but have not been diagnosed.

83. People in Summit County have COVID-19 particles on or about their person and personal property.

84. Properties and premises throughout Summit County contain the presence of COVID-19 particles on surfaces and items of property.

85. Based on the prevalence of the virus in Summit County, it is probable that Plaintiff sustained direct physical loss of or damage due to the presence of coronavirus, and has unquestionably sustained direct physical loss as the result of the Pandemic and/or civil authority orders issued by the Governor of Ohio.

The Rules of Contract Interpretation Provide Coverage for Plaintiff but Defendants Have Wrongfully Denied Coverage Even Though the Policy Contains No Exclusions for Pandemic Losses

86. Plaintiff submitted a timely insurance claim to ICC.

87. Any effort by ICC to deny the reality that the Pandemic causes physical loss of or damage to property would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders, such as Plaintiff, and the public.

88. However, on April 13, 2020, ICC wrongfully denied Plaintiff's claims for Business Interruption, Extra Expense, Civil Authority, and Spoilage coverage.

89. Prior to the COVID-19 Pandemic, companies throughout the insurance industry specifically used exclusionary language that specifically and expressly excluded loss or damage as a result of a pandemic and Severe Acute Respiratory Syndrome ("SARS"). Defendants knew or should have known of the existence and availability of specific exclusionary riders for pandemics if the intention was to exclude losses resulting from pandemics.

90. For example, In *Meyer Natural Foods, LLC v. Liberty Mutual Fire Insurance Company*,

218 F.Supp.3d 1034, 196 Fed.R.Serv.3d 206, Liberty Mutual Fire Insurance Company denied coverage based on the following exclusion:

"We will not pay for loss or damage caused by or resulting from any of the following, regardless of any other cause or event, including a peril insured against, that contribute to the loss at the same time or in any other sequence:

10. The actual or suspected presence or threat of any virus, organism or like substance that is capable of inducing disease, illness, physical distress or death, whether infectious or otherwise, including but not limited to any epidemic, *pandemic*, influenza, plague, *SARS*, or Avian Flu. (emphasis added.)

91. COVID-19 is a SARS, and the WHO has officially named COVID-19 as SARS CoV-2.

92. In this case, under the coverage forms at issue, ICC based its denial on its claim that there is no direct physical loss of or damage to the premises and on exclusions that are not applicable to a pandemic.

93. Had ICC intended to exclude claims for the Pandemic made under the subject Policy, it would have, and could have, included the express exclusionary language that had been utilized in the insurance industry in the past to deny such claims, which specifically included the term "pandemic" and "SARS," but ICC failed to include such an exclusion in Plaintiff's Policy.

94. ICC knowingly, purposely, and intentionally used inapplicable exclusions to deny claims by Plaintiff for Business Interruption, Extra Expense, Civil Authority, and Spoilage related to the Pandemic.

95. ICC had at its disposal contractual language that specifically excluded pandemics and SARS but did not include those policy exclusions in the subject Policy, yet wrongfully denied claims for those very reasons.

96. ICC has actual knowledge of the different meanings between pandemic, SARS, virus, bacteria, and contamination, by way of its use of those terms and the use of those terms by other companies in the insurance industry in previous cases and policies utilizing those different terms, and

wrongfully and intentionally used the terms "virus" and "bacteria," among others, to exclude Plaintiff's claims when, in fact, Plaintiff's claims are related to a pandemic – which is not expressly excluded in the Policy.

97. Alternatively, the business income losses suffered by Plaintiff were caused by the orders issued by the Governor of Ohio requiring Plaintiff to cease and/or severely curtail its business operations and not COVID-19.

98. Alternatively, the terms and conditions of coverage and exclusionary language relied upon by ICC to deny Plaintiff coverage under the Policy related to the Pandemic are ambiguous and, therefore, must be strictly construed against ICC and in favor of Plaintiff.

COUNT ONE

DECLARATORY JUDGMENT

99. Plaintiff restates each preceding paragraph as if fully rewritten herein.

100. There is a genuine dispute and actual controversy, over which this Honorable Court has jurisdiction, between Plaintiff and ICC concerning their respective rights, duties and obligations for which Plaintiff requests a declaration of rights and obligations under the Policy. Speedy relief is necessary in order to preserve the rights of the parties which may otherwise be impaired or lost. The declaratory judgment sought will settle the controversy between the parties.

101. Since there is a dispute about whether or not Plaintiff has coverage under ICC's Policy for the loss sustained and to be incurred in the future, Plaintiff is entitled to declaratory relief from this Honorable Court pursuant to Ohio Civil Rule 57 and R.C. §2721.01 to 2721.15.

102. Plaintiff is entitled to a declaration including, but not limited to, that:

- a. Plaintiff sustained direct physical loss or damage as a result of the Pandemic;
- b. Physical loss under the Policy does not require tangible physical damage;

- c. COVID-19 is a covered cause of loss under the Policy;
- d. The losses incurred by Plaintiff as a result of the executive orders issued by the Governor of Ohio are covered losses under the Policy;
- e. The prohibition (and/or significant limitation) of access to Plaintiff's Property as Ordered by the Civil Authority Orders, constitutes a prohibition to the insureds' Property;
- f. The Civil Authority Orders trigger coverage because the Policy does not include an exclusion for a pandemic;
- g. The Policy provides coverage to Plaintiff for any current and future civil authority closures of commercial buildings due to physical loss of or damage to property from COVID-19 under the Civil Authority coverage parameters and the Policy provides business income coverage in the event COVID-19 has caused a loss or damage at the insured's Property or immediate area of the insured's Property;
- h. The Civil Authority Orders constitute a prohibition of access to the insureds' Property by a Civil Authority as defined in the Policy;
- i. ICC has not and cannot prove the application of any exclusion or limitation;
- j. Plaintiff is entitled to coverage for its Business Income loss and Extra Expense resulting from coronavirus;
- k. Plaintiff is entitled to coverage for loss due to the actions of Ohio's civil authorities;
- l. Plaintiff has coverage for any substantially similar civil authority order in the future that limits or restricts the public's access to Plaintiff's business establishment; and
- m. Any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

COUNT TWO

BREACH OF CONTRACT

- 103. Plaintiff restates each preceding paragraph as if fully rewritten herein.
- 104. Plaintiff and ICC entered into a valid and enforceable insurance contract.

105. Plaintiff gave valuable consideration in the form of premium payments in exchange for the promise of insurance coverage in the event of, among other things, loss of business income.

106. ICC had an affirmative duty to comply with terms and conditions of the Policy and find coverage wherever possible under the Policy and indemnify Plaintiff for its losses sustained and recoverable under the terms and conditions of the Policy.

107. Plaintiff made a claim for loss of Business Income, Extra- Expense, Civil Authority, and Spoilage arising from the Pandemic, interruption by civil authority and prohibited ingress and loss of use and/or utilization of Plaintiff's businesses.

108. ICC breached the insurance contract by denying coverage for Plaintiff's loss, which was due to a covered and foreseeable peril not subject to any exclusion.

109. Plaintiff complied with all of its obligations under the insurance contract.

110. Plaintiff has been injured and suffered financial harm as a result of ICC's breach of the insurance contract.

111. In addition, in breaching the contract, ICC has violated its implied duty to act in good faith and fair dealing with Plaintiff.

112. As a direct and proximate result of ICC's breach of contract, Plaintiff has incurred substantial and ongoing monetary damages in excess of \$25,000.00.

COUNT THREE

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING (BAD FAITH)

113. Plaintiff restates each preceding paragraph as if fully rewritten herein.

114. Ohio law recognizes the independent tort of bad faith in the context of the insured/insurer relationship.

115. ICC's conduct has breached the implied covenant of good faith and fair dealing implicit to the policy of insurance.

116. Ohio law provides that an insurer's lack of good faith is equivalent to bad faith.

117. Plaintiff is an insured of ICC in the State of Ohio.

118. ICC failed and refused to make an adequate investigation or any investigation regarding Plaintiff's claims which, among other things, has caused a severe delay in full indemnification of Plaintiff, and providing all benefits that Plaintiff is entitled to under the Policy, which has severely prejudiced and damaged Plaintiff, and has further resulted in ICC withholding all recoverable benefits due under the Policy.

119. ICC refused and continues to refuse to give any reasonable interpretation to the provisions in the Policy or any reasonable application of such provisions to Plaintiff's claims and has acted to protect its own financial interests therein at the expense of and detriment to Plaintiff's rights.

120. ICC failed to provide Plaintiff any reasonable or justifiable basis for denying Plaintiff's claims.

121. ICC misrepresented the Policy terms and conditions to Plaintiff including, and without limitation, attempting to use an inapplicable exclusion, i.e. the virus/bacteria exclusion in a knowing and malicious attempt to avoid paying Plaintiff all benefits it is entitled to under the Policy.

122. ICC, knowing that Plaintiff was inexperienced in insurance matters and unable to act to protect its interests, that such benefits were justly due, and that such benefits were necessary to pay Plaintiff's necessities of its use of the Premises, nevertheless has deprived Plaintiff of such benefits.

123. ICC's refusal to properly investigate, adjust, handle, process, and/or pay benefits due Plaintiff compelled Plaintiff to, among other things, engage counsel and to initiate litigation to recover such benefits.

124. Upon information and belief, Plaintiff alleges that ICC intends to and will continue to delay, deny, and withhold, in bad faith, benefits due Plaintiff unless and until compelled to pay such benefits by final judgment of this Honorable Court.

125. As a direct and proximate result of ICC's conduct, Plaintiff has sustained substantial compensable losses, including benefits withheld, and economic losses, such as attorney's fees, out of pocket expenses, loss of business income, personal property loss, out-of-pocket costs and expenses, diminution in value of the insurance policy, all to Plaintiff's detriment and damage in an amount to be proven at trial in excess of \$25,000.00.

126. Further, at all material times and in doing things alleged herein, ICC acted intentionally and with actual malice so as to justify the award of punitive damages against ICC.

COUNT FOUR

Negligence

127. Plaintiff restates each preceding paragraph as if fully rewritten herein.

128. At all times relevant herein, U.S. Insurance Group was and is an insurance agency engaged in the business of providing insurance advice and expertise to and procuring insurance on behalf of its clients, including Plaintiff.

129. From April 2018 through the present, U.S. Insurance Group has acted as an insurance agent to Plaintiff. At all times relevant herein, Grossi was and is an insurance agent employed by U.S. Insurance Group, and, for the past two years, has, within the scope and course of his employment with U.S. Insurance Group, acted as an insurance agent to Plaintiff.

130. At all times relevant herein, U.S. Insurance Group and Grossi had and have a duty to Plaintiff to exercise good faith and reasonable diligence in providing insurance advice and expertise to Plaintiff and securing insurance on Plaintiff's behalf.

131. Further, U.S. Insurance Group and Grossi knew that Plaintiff was relying upon U.S. Insurance Group and Grossi's expertise and advice as to Plaintiff's insurance needs and, therefore, U.S. Insurance Group and Grossi had a duty to exercise reasonable care in advising Plaintiff as to business interruption, extra expense, civil authority, and premier business income insurance coverages and the exclusions thereto.

132. Both U.S. Insurance Group and Grossi breached the duties of care that they had to Plaintiff.

133. U.S. Insurance Group and Grossi's breaches of the duty of care include, but are not limited to, failing to advise Plaintiff that the Policy of insurance that it recommended to Plaintiff and secured on Plaintiff's behalf contained an exclusion titled "Loss Due to Virus or Bacteria;" failing to advise Plaintiff that ICC may deny coverage of claims for Business Interruption, Extra Expense, Civil Authority, and/or Spoilage coverages for losses due to virus or bacteria; failing to advise Plaintiff that there were insurance policies available in the marketplace that did not contain an exclusion of loss due to virus or bacteria; and failing to procure insurance on Plaintiff's behalf that did not contain a virus or bacteria exclusion.

134. U.S. Insurance Group and Grossi's breach of their duties to Plaintiff has caused damage to Plaintiff in that Plaintiff has suffered significant business interruption losses and expenses for which no insurance coverage has been provided.

135. As a direct and proximate result of the negligent acts of U.S. Insurance Group and Grossi, Plaintiff has suffered damages in an amount to be proven at trial in excess of \$25,000.

COUNT FIVE

Breach of Fiduciary Duty

136. Plaintiff restates each preceding paragraph as if fully rewritten herein.

137. Since approximately April 2018, Plaintiff has relied upon and trusted U.S. Insurance Group to provide business insurance advice and expertise and to procure business insurance on Plaintiff's behalf.

138. U.S. Insurance Group and Grossi have become intimately familiar with Plaintiff's business operations.

139. Every year, since 2018 U.S. Insurance Group through its agents, including Grossi, have provided Plaintiff with an annual comprehensive written review of its existing insurance coverages and recommendations for additional or expanded insurance coverages.

140. Once U.S. Insurance Group and its agents prepare the annual written review and recommendations, the agent meets face-to-face with Plaintiff's representatives and reviews, in detail, the entirety of the written review and recommendations including all of the coverages and exclusions and recommendations for additional or more comprehensive coverage.

141. Plaintiff relied upon U.S. Insurance Group and Grossi, as its insurance agents, to assess Plaintiff's insurance needs, advise Plaintiff of available coverages, accurately and fully explain to Plaintiff available coverages and any potential exclusions, and to secure for Plaintiff the broadest available coverage.

142. U.S. Insurance Group, Grossi, and Plaintiff understood that Plaintiff had placed a special trust and confidence in U.S. Insurance Group and Grossi such that a fiduciary relationship had been established between U.S. Insurance Group and Grossi, on the one hand, and Plaintiff on the other.

143. Accordingly, U.S. Insurance Group and Grossi had a fiduciary duty to Plaintiff in advising Plaintiff as to business interruption, extra expense, civil authority, and spoilage and the exclusions thereto and to procure insurance for Plaintiff that would provide the broadest possible coverage.

144. U.S. Insurance Group and Grossi breached their fiduciary duty to Plaintiff by, among other things, failing to advise Plaintiff that the Policy of insurance that it recommended to Plaintiff and secured on Plaintiff's behalf contained an exclusion titled "Loss Due to Virus or Bacteria;" failing to advise Plaintiff that ICC may deny coverage of claims for Business Interruption, Extra Expense, Civil Authority, and/or Spoilage coverages for losses due to virus or bacteria; failing to advise Plaintiff that there were insurance policies available in the marketplace that did not contain an exclusion of loss due to virus or bacteria; and failing to procure insurance on Plaintiff's behalf that did not contain a virus or bacteria exclusion.

145. U.S. Insurance Group and Grossi's breach of their fiduciary duty to Plaintiff has caused damage to Plaintiff in that Plaintiff has suffered significant business interruption losses and expenses for which no insurance coverage has been provided.

146. As a direct and proximate result of U.S. Insurance Group's and Grossi's breach of their fiduciary duties, Plaintiff has suffered damages in an amount to be proven at trial in excess of \$25,000.

WHEREFORE, Plaintiff, 357 W. Turkeyfoot Lake, LLC, demands judgment as follows:

- A. For Count One, a declaratory judgment as set forth in Paragraph 102 of this Complaint;
- B. For Count Two, judgment against ICC for compensatory damages in excess of \$25,000.00;
- C. For Count Three, judgment against ICC for compensatory damages in excess of \$25,000.00, punitive damages in an amount to be determined at trial, and attorney fees;
- D. For Count Four, judgment against U.S. Insurance Group and Grossi, jointly and severally, for compensatory damages in excess of \$25,000.00;
- E. For Count Five, judgment against U.S. Insurance Group and Grossi, jointly and severally, for compensatory damages in excess of \$25,000.00;
- F. For judgment against all Defendants for attorneys' fees in an amount to be determined by the

Court, prejudgment and post judgment interest in accordance with the statutory rate; costs of the within action; and

G. Any further relief that this Court deems just and equitable.

DATED: May 21, 2020

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD



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