

CAUSE NO. 366-06258-2020

<b>AGGIE INVESTMENTS, L.L.C.</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
	§	<b>____ JUDICIAL DISTRICT</b>
<b>v.</b>	§	
<b>CONTINENTAL CASUALTY</b>	§	
<b>COMPANY</b>	§	
	§	
<b>Defendant.</b>	§	<b>COLLIN COUNTY, TEXAS</b>

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE:**

Aggie Investments, L.L.C., Plaintiff, files this Original Petition against Continental Casualty Company, and would respectfully show:

**I.  
DISCOVERY CONTROL PLAN**

Plaintiff intends for discovery to be conducted under Level II of Rule 190 of the Texas Rules of Civil Procedure.

**II.  
PARTIES**

Plaintiff Aggie Investments, L.L.C. ("Aggie Investments" or "Plaintiff") is a Texas Limited Liability Company doing business in Collin County, Texas.

Defendant Continental Casualty Company ("Continental" or "Defendant") is engaged in the business of insurance in the State of Texas. Continental is incorporated in the state of Illinois, with its principle place of business in Illinois. It may be served with process by delivering a copy to its Registered Agent CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

### **III. JURISDICTION AND VENUE**

Venue is proper in Collin County, Texas, because all or a substantial portion of the events involved in this lawsuit occurred in Collin County, Texas.

Jurisdiction is proper in this Court as the relief requested falls within the jurisdictional limits of the Court. This Court has jurisdiction to grant declaratory relief under Chapter 37 of the Texas Civil Practice and Remedies Code because an actual controversy exists between the parties as to their respective rights and obligations under the policy of insurance issued by Continental.

Further, this Court has personal jurisdiction over Continental pursuant to the Texas long arm statute because Continental has submitted to jurisdiction in this state by transacting business in Texas, contracting to insure a person, property or risk located in Texas at the time of the contracting, and making a contract substantially connected with Texas. In addition, Continental exercises substantial, systematic and continuous contacts with Texas by doing business in Texas, and by serving insureds in Texas.

### **IV. RELIEF SOUGHT**

Aggie Investments sues for an amount in excess of the jurisdictional minimums of this Court. Pursuant to Texas Rule of Civil Procedure 47, Aggie Investments sues for monetary relief of \$100,000 or less and non-monetary relief. Specifically, Aggie Investments seeks recovery of less than \$75,000 and declaratory relief.

### **V. BACKGROUND**

#### **A. The Continental Policy.**

Aggie Investments is the owner and operator of a spice and tea room, Spice & Tea Merchants of McKinney, located at 110 S. Tennessee St., McKinney Texas (“the Property”).

Continental sold an insurance policy to Aggie Investments, providing insurance for the Property (“the Policy”). The Policy was in effect between November 15, 2019 and November 15, 2020, and has been renewed for the period from November 15, 2020 to November 15, 2021. A true and accurate copy of the 2019/2020 Policy is attached hereto as Exhibit A.

The Policy is an all-risk policy and has been continuously in full force and effect since inception, providing coverage for property, business personal property, and business income and extra expense.

**B. The COVID-19 Pandemic and Aggie Investments’ Claim.**

The World Health Organization (“WHO”) identified the disease caused by the 2019 Novel Coronavirus as “COVID-19” on February 11, 2020. On March 11, WHO characterized COVID-19 as a pandemic. WHO representatives stated, “[W]e have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus. And we have never before seen a pandemic that can be controlled, at the same time.” The Center for Disease Control (“CDC”) has stated that a “pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide.”

While the Policy was in force, Aggie Investments sustained covered losses during the COVID-19 outbreak and while several governmental orders and laws were in effect, including a March 25, 2020 “Shelter in Place” ordinance by the City of McKinney and an Executive Order by Texas Governor Greg Abbott issued on or about April 27, 2020.<sup>1</sup> Aggie Investments promptly submitted its claim for such losses to Continental, but Continental wrongfully denied coverage for the losses in writing on April 14, 2020.

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<sup>1</sup> Collectively referred to as the “Orders.”

In his April 27, 2020 Executive Order, Governor Abbott allowed the reopening of “[i]n-store retail services, for retail establishments that operate up to 25 percent of the total listed occupancy of the retail establishment.” Consequently, 75 percent of the total listed occupancy was prohibited access to the Property for the duration of the Executive Order. Collectively, these Executive Orders are referred to as “the Orders.” As a result, Plaintiff experienced a substantial reduction in sales and loss of business income.

### **C. The Policy Provides Coverage for Loss of Business Income.**

Under “Covered Causes of Loss,” the Policy insures for “direct physical loss” unless the loss is excluded or limited. Further, the Policy provides coverage for Loss of Business Income and Extra Expense as follows:

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 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. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 1,000 feet of the site at which the described premises are located.

*See Exhibit A.* Plaintiff suffered lost income when, as a result of the Orders, Plaintiff was required to close its business. The pandemic, consumer fear, and the Orders have caused Plaintiff physical loss of the Property and loss of business income and are not specifically excluded by the Policy. Plaintiff has lost the ability to utilize the Property, resulting from a given cause without the intervention of other conditions.

### **D. The Policy Provides Coverage for Actions of Civil Authority.**

The Policy also provides additional coverage for Actions of Civil Authority: When the Declarations show that you have coverage for Business Income and Extra Expense, you may extend that insurance to apply to the actual loss of Business Income you sustained and reasonable and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises. The civil authority action must be due to direct physical loss of or damage to

property at locations, other than the described premises, caused by or resulting from a Covered Cause of Loss.

See Exhibit A. The Orders are clearly “actions of civil authority” which have caused Aggie Investments’ loss of business income described above. The Orders, along with their stated purposes, qualify as a Covered Cause of Loss under the Policy, especially given that “physical loss” can occur without accompanying “damage” to the Property.

**E. Continental’s Wrongful Denial of Aggie Investment’s Claim.**

Continental’s denial of coverage for business income was based on its assertion that “there is no indication that Aggie Investments, LLC operations were suspended as a result of direct physical loss of or damage due to a Covered Cause of Loss to the property . . .” Continental denied coverage for Actions of Civil Authority for essentially the same reason, having “determined that the State of Texas governmental orders were not due to direct physical loss of or damage to property at locations, other than the described premises, caused by or resulting from a Covered Cause of Loss.” In a June 19, 2020 letter to Plaintiffs, Continental elaborated on the basis for its denial, stating that it received no evidence of “actual, demonstrable harm of some form to the insured premises.” However, the Policy does not require a loss solely caused by physical “damage,” as it also provides coverage for “physical loss” of property.

The Policy does not define the phrase “physical loss” or “direct physical loss,” nor does it individually define the words “direct,” “physical,” or “loss.” Giving the words in the Policy their ordinary meaning, the phrase “direct physical loss” means that coverage is afforded for the inability to utilize or possess the Property, resulting from a given cause without the intervention of other conditions. That standard applies here. Plaintiff clearly suffered physical loss to Covered Property because it was unable to use the Property to its full extent. At the very least, Plaintiff

suffered a physical loss of the Property as a result of fear and actions taken to limit the impact of the pandemic on the health, safety and welfare of Collin County citizens.

## **VI. CAUSES OF ACTION AGAINST CONTINENTAL**

### **A. Breach of Contract**

Aggie Investments incorporates and realleges each allegation set forth above.

Continental and Aggie Investments entered into a valid and enforceable contract, the Policy. Continental's denial of Aggie Investments' claim, and its refusal to pay the claim, constitutes a material breach of its insurance contract with Aggie Investments. Continental's breach has proximately caused damages to Aggie Investments, for which it now seeks recovery.

### **B. Declaratory Judgment**

Aggie Investments incorporates and realleges each allegation set forth above.

Continental is obligated to pay claims for which the Policy affords coverage, and will be obligated to pay similar claims to Aggie Investments as the pandemic continues. Continental has not fulfilled that obligation. An actual and justiciable controversy exists between Continental and Aggie Investments which requires a judicial declaration of the parties' rights and obligations under Chapter 37 of the Texas Civil Practice and Remedies Code. Accordingly, under the Texas Declaratory Judgment Act, Aggie Investments requests that this Court issue judgment declaring: (1) the meaning of the phrase "direct physical loss of or damage to property" as used in the Policy, and (2) that Continental is obligated under the Policy's terms to pay Aggie Investment's claim for loss of business arising from the civil authority.

### **C. Attorneys' fees**

For prosecution and collection of this claim, all Aggie Investments has been compelled to engage the services of the attorney whose name is subscribed to this pleading. Therefore, under

Civil Practice and Remedies Code Chapters 37 and 38, Aggie Investments is entitled to recover a sum for the reasonable and necessary services of its attorney in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.

**VII.  
CONDITIONS PRECEDENT**

Pursuant to Rule 54 of the Texas Rules of Civil Procedure, Plaintiff would respectfully show that all conditions precedents have been performed, have occurred, or have been waived.

**VIII.  
REQUEST FOR DISCLOSURE**

Under Texas Rule of Civil Procedure 194, Aggie Investments requests that Continental disclose, within 50 days of the service of this Request, the information or material described in Rule 194.2.

**IX.  
PRAYER**

Plaintiff Aggie Investments, L.L.C. respectfully requests judgment against Defendant Continental Casualty Company for the following:

1. Actual damages;
2. Declaratory relief as set forth above;
3. Attorney's fees and costs of court;
4. Pre-judgment and post-judgment interest; and
5. All other and further relief to which Aggie Investments shows itself justly entitled.

Respectfully submitted,

/s/ Mark D. Johnson

Mark D. Johnson

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**SAUNDERS, WALSH & BEARD**

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