

LOUIS P. GIAMASIS
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STARK COUNTY, OHIO

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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

GERVASI 1700, LLC
1700 – 55th Street, N.E.
Canton, Ohio 44721

Plaintiff,

-vs.-

**NATIONAL TRUST INSURANCE
COMPANY**
6300 University Parkway
Sarasota, Florida 34240

-and-

**FRANCHISE INSURANCE AGENCY,
INC., dba Leavitt Group Midwest**
c/o Corporation Service Company
50 West Broad Street
Suite 1330
Columbus, Ohio 43215

-and-

BRADLEY W. STAMMLER
5909 Clark State Road
Gahanna, Ohio 43221

Defendants.

Now comes Plaintiff, Gervasi 1700, LLC (“Gervasi”), and for its Complaint against Defendants National Trust Insurance Company (“NTIC”), Franchise Insurance Agency, Inc., dba Leavitt Group Midwest (“FIA”), and Bradley W. Stammler (“Stammler”) (NTIC, FIA, and Stammler are collectively referred to herein as the “Defendants”), hereby states as follows:

CASE NO:
2020 CV 00818
JUDGE:
Heath

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

FILED BY 7.

INTRODUCTION

1. Gervasi is a family business operated by Stark County residents, Ted and Scott Swaldo. Since 2009, Gervasi has owned and operated Stark County's premier destination, Gervasi Vineyard, and a number of restaurants and hotels primarily in Canton, Ohio that employs between 400 and 500 people, many of them long-time employees.

2. Like many hospitality-based businesses, Gervasi has been deeply affected by the recent government shutdowns, has suffered substantial economic damages, and has had no choice but to lay off 350 of its employees.

3. Since March of 2020, Gervasi has been unable to hold weddings, conferences, special events, allow shopping in its marketplace, or even host guests in any of its five restaurant locations. To date, over 230 events that had been booked at Gervasi's facilities were required to be cancelled or rescheduled.

4. Also, like many hospitality-based businesses, for years Gervasi has faithfully paid hundreds of 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, Gervasi has learned that Defendants claim that Gervasi does not have any insurance coverage for the staggering losses it has suffered, and is continuing to suffer.

THE PARTIES

6. Gervasi is an Ohio limited liability company with its principal place of business located at 1700 – 55th Street, N.E., Canton, Stark County, Ohio. Gervasi operates Gervasi Vineyard, the Marketplace, the Bistro restaurant, the Crush House restaurant, the Piazza restaurant, the Still House cocktail lounge and coffeehouse, the Villas luxury accommodations and conference center, the Casa

hotel, and the Farmhouse inn at said location in Canton and the Twisted Olive restaurant at 5430 Massillon Road, Green, Summit County, Ohio.

7. NTIC is an Indiana domestic insurance corporation with its principal office located at 6300 University Parkway, Sarasota, Florida. NTIC is a property and casualty insurer and although NTIC 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. FIA is an Ohio corporation with its principal office located at 4942 Reed Road, Columbus, Franklin County, Ohio.

9. Stammler is a citizen of the State of Ohio, residing at 5909 Clark State Road, Gahanna, Franklin County, Ohio, and is the Vice President of Commercial Property & Casualty of FIA.

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

12. Venue is proper in Stark 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 Gervasi's claims for relief in Stark County, because all or part of Gervasi's claims for relief arose in Stark County, and because all or part of Gervasi's damages were suffered in Stark County.

FACTUAL BACKGROUND

The Policy: Gervasi 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, NTIC insured Gervasi under a commercial business owner policy drafted by NTIC, bearing policy, number CPP100032803-02 ("Policy"). The certified Policy is in the possession of NTIC, and while not attached hereto because it consists of hundreds of pages, it is incorporated herein by reference.

14. Since approximately 2009, Gervasi has relied upon FIA to provide business insurance advice and expertise and to procure business insurance on Gervasi's behalf.

15. For the past 2½ (two and a half) years Stammler has been the agent responsible for Gervasi's account.

16. Every year, since 2011 FIA through its agents, including Stammler, has provided Gervasi with an annual comprehensive written review of its existing insurance coverages and recommendations for additional or expanded insurance coverages.

17. Once FIA and its agents prepare the annual written review and recommendations, the agent meets face-to-face with Gervasi'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. During the past two years the annual written review and recommendations were presented to Gervasi by Stammler, and Stammler conducted the extensive face-to-face coverage review and recommendation meetings with Gervasi.

19. In addition, FIA through its agents, including Stammler, visit Gervasi's business properties two or three times each year to review Gervasi's business operations and discuss with Gervasi's representatives any insurance needs, questions, or concerns that Gervasi may have.

20. Gervasi relied upon FIA and Stammler, as its trusted insurance agents, to assess Gervasi's insurance needs, advise Gervasi of available coverages, accurately and fully explain to Gervasi available coverages and any potential exclusions, and to secure for Gervasi the broadest available coverage to protect Gervasi, its employees, and its customers.

21. Most recently, consistent with its desire to secure the broadest and most comprehensive business interruption insurance coverage possible, Gervasi, upon the recommendation and advice of FIA, increased the limit on its business interruption coverage from twelve to eighteen months and increased the limit on the Premier Business Income Endorsement from \$250,000 to \$500,000.

22. FIA and Stammler recommended the Policy to Gervasi and secured the Policy from NTIC on Gervasi's behalf.

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

23. NTIC, FIA and Stammler delivered the Policy to Gervasi in Stark County.

24. However, neither FIA nor Stammler ever advised Gervasi that the Policy of insurance that it recommended to Gervasi and secured on Gervasi's behalf contained an endorsement entitled "Exclusion of Loss Due to Virus or Bacteria".

25. Further, neither FIA nor Stammler ever advised Gervasi that NTIC may deny coverage paid for by Gervasi for claims for Business Interruption, Extra Expense, Civil Authority, and/or Premier Business Income coverages for losses due to virus or bacteria.

26. Further, neither FIA nor Stammler, advised or disclosed to Gervasi 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, Gervasi agreed to make premium payments to NTIC in exchange for NTIC's promise to indemnify Gervasi for losses including, but not limited to, business income loss at its commercial property locations (collectively "Property").

Gervasi 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 November 1, 2019 to November 1, 2020 and Gervasi faithfully paid premiums to NTIC, specifically to provide additional coverage for loss of Business Income including Rental Value ("BI"), Extra Expense coverage ("EE"), coverage for loss due to actions of a Civil Authority, and a "Premier Business Income Endorsement".

29. Relevant portions of the Policy provide that NTIC will:

- a. "pay for the actual loss of Business Income you [Gervasi] 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 premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.
- b. "... necessary expenses you [Gervasi] incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss of damage to property caused by or resulting 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. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Property is specifically prohibited by order of Civil Authority as the direct result of a covered loss to property in the immediate area of Gervasi's Property. The covered physical loss includes, without limitation, loss of use.

31. COVID-19's actual or suspected physical presence at or in the vicinity of Gervasi's Property prevents Gervasi 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 loss to the Property in that there has been a loss of use of the Property. Moreover, the COVID-19 virus is a "physical" thing. For example, restaurants and event venues, such as those operated by Gervasi, forced to close due to COVID-19 in or near the restaurants and event venues have suffered a "physical loss" of use of its Property, with resulting business interruption loss.

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

33. 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 Gervasi's claims.

Gervasi 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

34. While the Policy was in force, Gervasi 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 Gervasi's premises described in the Policy which includes Gervasi's facilities in Stark and Summit counties.

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

36. While the Policy was in force, Gervasi 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.

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

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

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

40. While the Policy was in force, Gervasi 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

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

42. 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.

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

44. 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.

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

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

47. COVID-19 is a physical substance.

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

49. COVID-19 can and does live on and/or remains capable of being transmitted and active on inertphysical surfaces.

50. 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.

51. 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.

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

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

54. COVID-19 has been transmitted by human to human contact and interaction at premises in Stark and Summit Counties.

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

56. COVID-19 has been transmitted by way of human contact with airborne COVID-19 particles emitted into the air at premises in Stark and Summit Counties.

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

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

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

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

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

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

63. 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.

64. 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 Gervasi's Business Operations***

65. 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.

66. 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.

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

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

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

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

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

72. 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.

73. 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.

74. 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.

75. Gervasi's businesses do not qualify as Essential Businesses and Gervasi was required to cease and/or significantly reduce operations at all its locations.

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

77. 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 Gervasi, in response to COVID-19 and the Pandemic, the effect of which have required and continue to require Gervasi 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 COVID19 Is Uniformly Recognized to Cause Contamination, Loss and Damage to Property

78. 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. 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 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).

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

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

81. People in Stark and Summit Counties have been diagnosed with COVID-19.

82. As of May 20, 2020, Stark County had reported 620 cases of COVID-19 and 79 resulting deaths.

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

84. People in Stark and Summit Counties have, and have had, COVID-19 disease but have not been diagnosed.

85. People in Stark and Summit Counties have COVID-19 particles on or about their person and personal property.

86. Properties and premises throughout Stark and Summit Counties contain the presence of COVID-19 particles on surfaces and items of property.

87. Based on the prevalence of the virus in Stark and Summit Counties, it is probable that Gervasi 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 Gervasi but Defendants Have Wrongfully Denied Coverage Even Though the Policy Contains No Exclusions for Pandemic Losses

88. Gervasi submitted a timely insurance claim to NTIC.

89. Any effort by NTIC 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 Gervasi, and the public.

90. However, on April 27, 2020, NTIC wrongfully denied Gervasi's claims for Business Interruption, Extra Expense, Civil Authority, and Premier Business Income coverage.

91. 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.

92. 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.)

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

94. In this case, under the coverage forms at issue, NTIC based its denial on exclusions that are not applicable to a pandemic.

95. Had NTIC intended to exclude claims for the COVID-19 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 NTIC failed to include such an exclusion in Gervasi's Policy.

96. NTIC knowingly, purposely, and intentionally used inapplicable exclusions to deny claims by Gervasi for Business Interruption, Extra Expense, Civil Authority, and Premier Business Income related to the COVID-19 pandemic.

97. NTIC 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.

98. NTIC 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 Gervasi's claims when, in fact, Gervasi's claims are related to a pandemic - which is not expressly excluded in the Policy.

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

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

COUNT ONE

DECLARATORY JUDGMENT

101. Gervasi restates each preceding paragraph as if fully rewritten herein.

102. There is a genuine dispute and actual controversy, over which this Honorable Court has jurisdiction, between Gervasi and NTIC concerning their respective rights, duties and obligations for which Gervasi 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.

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

104. Gervasi is entitled to a declaration including, but not limited to, that:

- a. Gervasi 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. Loss of use and/or utilization of Gervasi's business constitutes a direct physical loss under the Policy;
- d. COVID-19 is a covered cause of loss under the Policy;
- e. The losses incurred by Gervasi as a result of the executive orders issued by the Governor of Ohio are covered losses under the Policy;
- f. The prohibition (and/or significant limitation) of access to Gervasi's properties as Ordered by the Civil Authority Orders, constitutes a prohibition to the insureds' Properties;
- g. The Civil Authority Orders trigger coverage because the Policy does not include an exclusion for a pandemic;
- h. The Policy provides coverage to Gervasi 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 insureds' Properties or immediate area of the insureds' Properties;

- i. The Civil Authority Orders constitute a prohibition of access to the insureds' Properties by a Civil Authority as defined in the Policy;
- j. NTIC has not and cannot prove the application of any exclusion or limitation;
- k. Gervasi is entitled to coverage for its Business Income loss and Extra Expense resulting from coronavirus;
- l. Gervasi is entitled to coverage for loss due to the actions of Ohio's civil authorities;
- m. Gervasi has coverage for any substantially similar civil authority order in the future that limits or restricts the public's access to Gervasi's business establishments; and
- n. 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

- 105. Gervasi restates each preceding paragraph as if fully rewritten herein.
- 106. Gervasi and NTIC entered into a valid and enforceable insurance contract.
- 107. Gervasi 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.

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

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

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

111. Gervasi complied with all of its obligations under the insurance contract.

112. Gervasi has been injured and suffered financial harm as a result of NTIC's breach of the insurance contract.

113. In addition, in breaching the contract, NTIC has violated its implied duty to act in good faith and fair dealing with Gervasi.

114. As a direct and proximate result of NTIC's breach of contract, Gervasi 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)

115. Gervasi restates each preceding paragraph as if fully rewritten herein.

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

117. NTIC's conduct has breached the implied covenant of good faith and fair dealing implicit

to the policy of insurance.

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

119. Gervasi is an insured of NTIC in the State of Ohio.

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

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

122. NTIC failed to provide Gervasi any reasonable or justifiable basis for denying Gervasi's claims.

123. NTIC misrepresented the Policy terms and conditions to Gervasi 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 Gervasi all benefits it is entitled to under the Policy.

124. NTIC, knowing that Gervasi 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 Gervasi's necessities of its use of the Premises, nevertheless have deprived Gervasi of such benefits.

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

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

127. As a direct and proximate result of NTIC's conduct, Gervasi 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 Gervasi's detriment and damage in an amount to be proven at trial in excess of \$25,000.00.

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

COUNT FOUR

Negligence

129. Gervasi restates each preceding paragraph as if fully rewritten herein.

130. At all times relevant herein, FIA 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 Gervasi.

131. From 2011 through the present, FIA has acted as an insurance agent to Gervasi. At all times relevant herein, Stammler was and is an insurance agent employed by FIA, and, for the past 2½ (two and a half) years, has, within the scope and course of his employment with FIA, acted as an insurance agent to Gervasi.

132. At all times relevant herein, FIA and Stammler had and have a duty to Gervasi to exercise good faith and reasonable diligence in providing insurance advice and expertise to Gervasi and securing insurance on Gervasi's behalf.

133. Further, FIA and Stammler knew that Gervasi was relying upon FIA and Stammler's expertise and advice as to Gervasi's insurance needs and, therefore, FIA and Stammler had a duty to exercise reasonable care in advising Gervasi as to business interruption, extra expense, civil authority, and premier business income insurance coverages and the exclusions thereto.

134. Both FIA and Stammler breached the duties of care that they had to Gervasi.

135. FIA and Stammler's breaches of the duty of care include, but are not limited to, failing to advise Gervasi that the Policy of insurance that it recommended to Gervasi and secured on Gervasi's behalf contained an endorsement entitled "Exclusion of Loss Due to Virus or Bacteria;" failing to advise Gervasi that NTIC may deny coverage of claims for Business Interruption, Extra Expense, Civil Authority, and/or Premier Business Income coverages for losses due to virus or bacteria; failing to advise Gervasi 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 Gervasi's behalf that did not contain a virus or bacteria exclusion.

136. FIA and Stammler's breach of their duties to Gervasi have caused damage to Gervasi in that Gervasi has suffered significant business interruption losses and expenses for which no insurance coverage has been provided.

137. As a direct and proximate result of the negligent acts of FIA and Stammler, Gervasi has suffered damages in an amount to be proven at trial in excess of \$25,000.

COUNT FIVE

Breach of Fiduciary Duty

138. Gervasi restates each preceding paragraph as if fully rewritten herein.

139. Since approximately 2011, Gervasi has relied upon and trusted FIA to provide business insurance advice and expertise and to procure business insurance on Gervasi's behalf.

140. During this time, FIA, and during the past 2½ (two and a half) years Stammler, have become intimately familiar with Gervasi's business operations.

141. Every year, since 2011 FIA through its agents, including Stammler, have provided Gervasi with an annual comprehensive written review of its existing insurance coverages and recommendations for additional or expanded insurance coverages.

142. Once FIA and its agents prepare the annual written review and recommendations, the agent meets face-to-face with Gervasi'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.

143. In addition, FIA through its agents, including Stammler, visit Gervasi's business properties two or three times each year to review Gervasi's business operations and discuss with Gervasi's representatives its operations and any insurance needs, questions, or concerns that Gervasi may have.

144. Gervasi relied upon FIA and Stammler, as its insurance agents, to assess Gervasi's insurance needs, advise Gervasi of available coverages, accurately and fully explain to Gervasi available coverages and any potential exclusions, and to secure for Gervasi the broadest available coverage.

145. FIA, Stammler, and Gervasi understood that Gervasi had placed a special trust and confidence in FIA and Stammler such that a fiduciary relationship had been established between FIA and Stammler, on the one hand, and Gervasi on the other.

146. Accordingly, FIA and Stammler had a fiduciary duty to Gervasi in advising Gervasi as to business interruption, extra expense, civil authority, and premier business income insurance coverages and the exclusions thereto and to procure insurance for Gervasi that would provide the broadest possible coverage.

147. FIA and Stammler breached their fiduciary duty to Gervasi by, among other things, failing to advise Gervasi that the Policy of insurance that it recommended to Gervasi and secured on Gervasi's behalf contained an endorsement entitled "Exclusion of Loss Due to Virus or Bacteria;" failing to advise Gervasi that NTIC may deny coverage of claims for Business Interruption, Extra Expense, Civil Authority, and/or Premier Business Income coverages for losses due to virus or bacteria; failing to advise Gervasi 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 Gervasi's behalf that did not contain a virus or bacteria exclusion.

148. FIA and Stammler's breach of their fiduciary duty to Gervasi have caused damage to Gervasi in that Gervasi has suffered significant business interruption losses and expenses for which no insurance coverage has been provided.

149. As a direct and proximate result of FIA's and Stammler's breach of their fiduciary duties, Gervasi has suffered damages in an amount to be proven at trial in excess of \$25,000.

WHEREFORE, Plaintiff, Gervasi 1700, LLC, demands judgment as follows:

- A. For Count One, a declaratory judgment as set forth in Paragraph 104 of this Complaint;
- B. For Count Two, judgment against NTIC for compensatory damages in excess of \$25,000.00;
- C. For Count Three, judgment against NTIC 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 FIA and Stammler, jointly and severally, for compensatory damages in excess of \$25,000.00;
- E. For Count Five, judgment against FIA and Stammler, 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



Lee E. Plakas (0008628)

Gary A. Corroto (0055270)

Maria C. Klutinoty Edwards (0086401)

Collin S. Wise (0089657)

Jeananne M. Wickham (0097838)

220 Market Avenue South

Eighth Floor

Canton, Ohio 44702

Telephone: (330) 455-6112

Facsimile: (330) 455-2108

Email: lplakas@lawlion.com

gcorroto@lawlion.com

mklutinotyedwards@lawlion.com

cwise@lawlion.com

jwickham@lawlion.com

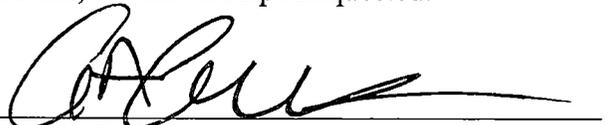
Attorneys for Plaintiff

Gervasi 1700, LLC

INSTRUCTIONS FOR SERVICE

To the Clerk:

Please issue summons and a copy of the Complaint upon the Defendants at the addresses contained in the caption of this Complaint by Certified Mail, Return Receipt Requested.



Gary A. Corroto

Attorney for Plaintiff

Gervasi 1700, LLC