

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>MOHAVE GC, LLC; CORRAL FIVE, LLC, d/b/a GOLDEN CORRAL; CORRAL FOUR, LLC, d/b/a GOLDEN CORRAL; CORRAL THREE, LLC, d/b/a GOLDEN CORRAL; CORRAL ONE, LLC, d/b/a GOLDEN CORRAL,</p> <p style="text-align: center;">Plaintiffs</p> <p>v.</p> <p>DEPOSITORS INSURANCE COMPANY, ALLIED INSURANCE CO. OF AMERICA and NATIONWIDE MUTUAL INSURANCE COMPANY,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. _____</p> <p style="text-align: center;"><b>PETITION AND JURY DEMAND</b></p>
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COME NOW the Plaintiffs, and for their Petition at Law and Jury Demand state as follows:

**PARTIES AND JURISDICTION**

1. This Petition is for a civil action in which Plaintiffs seek declaratory relief regarding the coverage provided under Plaintiffs' insurance policies and seek to recover damages for breach of contract and bad faith caused by the Defendants' denial of business interruption insurance claims.

2. Plaintiff, Corral One, LLC, d/b/a Golden Corral, is a California limited liability company located at 2050 Diamond Blvd., Concord, California.

3. At all material times hereto Plaintiff, Corral One, LLC was insured by Nationwide Mutual Insurance Company, Policy No. ACP CPP 3019082773. A copy of the cover page of the policy for Corral One is attached hereto as Exhibit A.

4. Plaintiff, Corral Three, LLC, d/b/a Golden Corral, is an Illinois limited liability company located at 1591 South Randall Rd., Algonquin, Illinois.

5. At all material times hereto, Plaintiff, Corral Three, LLC was insured by Allied Insurance Company of America, Policy No. ACP BPFL3028304861. A copy of the cover page of the policy for Corral Three is attached hereto as Exhibit B.

6. Plaintiff, Corral Four, LLC, d/b/a Golden Corral, is a Kansas limited liability company located at 13440 S. Blackbob Rd., Olathe, Kansas.

7. At all material times hereto Plaintiff, Corral Four, LLC was insured by Depositors Insurance Company, Policy No. ACP BPDFD 3028582869. A copy of the cover page of the policy for Corral Four is attached hereto as Exhibit C.

8. Plaintiff, Corral Five, LLC, d/b/a Golden Corral, is an Arizona limited liability company located at 590 E. 16<sup>th</sup> Street, Yuma, Arizona.

9. At all material times hereto Plaintiff, Corral Five, LLC was insured by Allied Insurance Company of America, Policy Po. ACP BPFL 3028582916. A copy of the cover page of the policy for Corral Five is attached hereto as Exhibit D.

10. Plaintiff, Mohave GC, LLC, d/b/a Golden Corral, is an Arizona limited liability company located at 3580 N. Stockton Hill Rd., Kingman, Arizona.

11. At all material times hereto Plaintiff, Mohave GC, LLC was insured by Allied Insurance Company of America, Policy No. ACP BPFL 3038007165. A copy of the cover page of the policy for Mohave GC, LLC is attached hereto as Exhibit E.

12. Upon information and belief, each of the insurance companies who have issued the policy coverages at issue in this matter are located and authorized to transact business in Des

Moines, Polk County, Iowa. Each Defendant insurance company represents their address to be 1100 Locust Street, Dept. 1100, Des Moines, IA 50391-2000. See Exhibits A, B, C, D and E.

13. Upon information and belief, each of the Defendants are companies authorized to sell property/casualty insurance in Iowa, to include business owner coverages, under the Nationwide umbrella

14. Each Defendant is a subsidiary company collectively owned by Nationwide Mutual Insurance Company or Nationwide Corp. GRP.

15. Each of the insurance policies issued to Plaintiffs are identical in form, provisions, and are policies based upon copyrighted material of Insurance Services Offices, Inc. which have been utilized by each Defendant with the permission of Insurance Services Offices, Inc.

16. There is a commonality of facts of each Plaintiff's claims, in addition to a commonality of Defendants who were doing business in Iowa and issuing identical insurance policies to Plaintiffs.

17. Likewise, each of the LLCs are owned by Limited Liability Investors that include Julio Hossein, Hamideh Manshadi, Rey Vasquez, and Sean Kelly.

18. Defendants are properly joined together in this action and in this venue as Depositors Insurance Company is domiciled in Iowa, they sold identical policies, and conducted their operations, including review and declination of coverage, out of Polk County, Iowa.

19. That pursuant to Iowa Code § 617.3, foreign corporations contracting with residents of Iowa such as issuing insurance policies are deemed as doing business in Iowa.

20. The damages giving rise to this Petition are sufficient to meet the jurisdictional requirements for the amount in controversy.

21. Jurisdiction is conferred upon this Court, pursuant to Iowa Code §602.6101.

22. Venue is conferred pursuant to Iowa Code §616.18.

**DEFENDANTS' BUSINESSOWNERS SPECIAL PROPERTY COVERAGE**

23. In order to protect the businesses from the devastating consequences of suspending their operations, Plaintiffs each purchased the policies described herein, which include business interruption and loss of income coverage.

24. Each of the policies in question are Businessowners Special Property Coverage forms providing for coverage that would pay for direct physical loss of or damage to the premises described in the Declarations.

25. The policies are “all-risk” policies in which covered causes of loss include direct physical loss unless otherwise excluded or limited by the policies.

26. The policies further provide that Defendants will pay for the actual loss of business income sustained due to the necessary suspension of operations during the period of restoration. The suspension must be caused by “direct physical loss of or damage to the covered property at the described premises.”

27. The provisions and exclusions in the policies are not the product of discussions or negotiations between Defendants and the Plaintiffs. Rather, the provisions in the all-risk policy consist of standardized language and terms that have been developed by the insurance industry through its trade association, the ISO, and are used industry and nationwide.

28. The policies do not define the phrase “direct physical loss of or damage to....”, nor do they define “direct”, “physical”, “loss”, or “damage” individually.

29. The use of the disjunctive “or” in the phrase “direct physical loss of or damage to” means that coverage is triggered if either a physical loss of property **or** damage to property occurs.

30. The Policies' use of the disjunctive "or" between the terms "physical loss" and "damage" necessarily means that either a "loss" or "damage" is required, and that "loss" is distinct from "damage."

31. The Policies do not state or otherwise define "loss" to require an actual alteration of property.

32. The Defendants knowingly used a disjunctive phrase in defining covered losses, causing a significant ambiguity in the policies due to their own failure to follow basic grammar and semantic principles of the English language.

### **GOVERNMENT MANDATED CLOSURE OF PLAINTIFFS' RESTAURANTS**

33. Golden Corral considers itself "America's #1 All You Can Eat Buffet" and is known for its endless offerings for breakfast, lunch, and dinner, featuring home-style menus and a family-friendly dining experience.

34. By way of example, prior to March 2020, Corral Three's location was filled with guests strolling through one of their three food bars—filling up on salad at one, sirloin steaks at another, and rolls and sweets at the third. At Golden Corral, guests could choose from hundreds of different hot entrees, sides, soups, pizzas, and desserts.

35. Prior to March 2020, Corral Three's location alone could hold approximately 400 guests who could sit at one of the restaurant's many tables and go to the buffet lines for as many helpings as they wanted, whenever they wanted.

36. In March 2020, between March 16 and March 19, the Governors of California, Arizona, Illinois, and Kansas each entered Proclamations and Orders mandating the closure of dine-in restaurants, thereby resulting in the necessary suspension of Plaintiffs' operations and a substantial loss of business income.

37. Likewise, county and local officials within the counties and cities in which Plaintiffs operate their business issued executive orders restricting operations.

38. As a direct result of the Governors' Proclamations and Orders entered in each state, the Plaintiffs' restaurants at each location were rendered physically nonfunctional as restaurants and buffets.

39. In mid-March 2020, with their dining room and buffet spaces rendered physically nonfunctional for their intended purpose, the Plaintiffs closed their operations and then opened their restaurants for the limited function of providing takeout and delivery service shortly thereafter.

40. Even as the restaurants began to reopen for on-premises dining, the restrictive Reopening Orders left the restaurants physically impaired and required them to make many detrimental physical alterations to their premises.

41. The Shutdown and restrictive Reopening Orders' spatial restrictions required restaurants to, among other things, physically separate tables, rearrange and remove furniture and equipment, and erect new physical structures.

42. For example, many restaurants installed stanchion barriers around buffets to restrict access, eliminated self-serve soft-serve ice cream stations, and removed hundreds of chairs and tables from service, either by placing chairs upside down on tables or stacking them in a former event space rendered nonfunctional for their intended purpose by the restrictive Reopening Orders.

43. The restaurants also installed plexiglass barriers at their locations in front of cashier stations at the front of the restaurants.

44. Some locations were forced to switch to a "cafeteria style" service where guests were no longer able to serve themselves at the buffet, while others moved to "family style" table

service, eliminating the buffet experience altogether and fundamentally changing the Golden Corral dining experience.

45. As a result of the Orders and Proclamations, including restrictive Reopening Orders, the restaurants, which previously fit hundreds of customers each, were forced to make physical changes that drastically reduced their occupancy to as low as twenty five percent of their previous capacity.

**PLAINTIFFS' CLAIMS FOR INSURANCE BENEFITS**

46. Plaintiffs were forced to suspend or reduce business by the Governors in each state mandating the closure of businesses like that of the Plaintiffs for on-site services, as well as an order to take necessary steps to prevent further damage and minimize the suspension of business and continue operations.

47. The Governors' Proclamations and Orders did cause and continued to cause the ongoing necessary suspension of Plaintiffs' operations, which in turn has caused Plaintiffs to sustain significant losses to its business income.

48. Each of the Plaintiffs lost the physical use of their property for its intended purposes resulting in damages.

49. As a result, Plaintiffs have incurred a net loss of business income, plus additional expenses, which are ongoing.

50. Plaintiffs submitted claims to Defendants for loss of business income under their businessowners' policies as a result of the Governors' Orders closing all restaurants and food and beverage businesses in the states in which Plaintiffs operate.

51. Plaintiffs received letters denying the claims for business income loss based upon the review of the policies. The denial-of-coverage letters are attached hereto as Exhibits F, G, H,

I, and J. The letters are identical, even though authored by two different people, each of whom provided a Des Moines-based phone number (515-508-2198) where they could be contacted.

52. Defendants' denial of coverage is based upon their own self-interest by interpreting an ambiguity they created in the policies. The Defendants did not consider the interest of their insured.

53. The purported reason for the denial of coverage as set forth in the declination letters was that the business income loss must be caused by direct physical damage to the premises, the Civil Authority provision of the policies was not applicable, and the suspension of business was not caused by direct physical loss of or damage to property.

54. An additional purported reason for denial of coverage was that an "Ordinance or Law" exclusion precluded coverage.

55. No one on behalf of the Defendants spoke to any of the Plaintiffs' owners at any time prior to declining coverage as a part of any investigation.

56. Plaintiffs have no knowledge of any of the insured facilities being infected with the coronavirus or any other virus, nor are they aware of any employee or customer having contracted the coronavirus or any other virus at their facilities at any time prior to the Governors' Proclamations and Orders or subsequent to the Governors' Proclamations and Orders.

57. Likewise, the policies do not contain an exclusion for Covered Cause of Loss caused by a pandemic.

**COUNT I**  
**DECLARATORY JUDGMENT AGAINST DEPOSITORS INSURANCE COMPANY,**  
**ALLIED INSURANCE CO. OF AMERICA and NATIONWIDE MUTUAL INSURANCE**  
**COMPANY PURSUANT TO IOWA RULE OF CIVIL PROCEDURE 1.1101**

58. Plaintiffs re-allege the above paragraphs 1 through 57 as if fully set forth herein.

59. Plaintiffs claim damages that are covered under the business interruption and loss of income policies issued to Plaintiffs by the Defendants.

60. Defendants have denied coverage under each of the policies that had been issued.

61. Plaintiffs had reasonable expectations that the loss of business income and additional expenses incurred under these circumstances would be covered by the policies sold to Plaintiffs by an agent of Defendants.

62. An actual justiciable controversy exists between the Plaintiffs and Defendants with regard to whether losses claimed by Plaintiffs are covered under the policies that have been issued to Plaintiffs by Defendants.

63. Likewise, the Defendants' denial erroneously concludes that the Plaintiffs did not sustain a direct physical loss of the Plaintiffs' properties.

64. The term "loss of" is not defined in the policies, and by its inclusion and the use of the word "or," the policies necessarily entail a different definition than the term "damage." Otherwise, the policies would not distinguish the two terms or utilize the term "or."

65. Defendants did not explain in the policies the difference between physical loss of or damage as stated in the policies, nor are the terms defined in the policies. Plaintiffs at all times had the reasonable expectations the losses would be covered.

66. The closure of each Plaintiff's facilities is a direct physical loss, including physical loss of access, customers, use, and utilization for their intended purposes and is not due to the presence of Coronavirus/Covid-19 in Plaintiffs' facilities.

67. Nowhere in any of the policies does it state that there must be a physical alteration of the properties for there to be a loss of use or that loss of use is excluded.

68. Although the policies do not *require* “actual alteration” of the property, as a matter of fact these restaurants were physically altered as a result of the executive orders. For example, they were required to put up physical barriers, block off space, and prevent access to parts of the physical space.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in its favor and against the Defendants, including the relief of:

- a. Entering a Declaratory Judgment acknowledging the rights of the Plaintiffs and obligation of the Defendants under the policies and declaring that the losses claimed by Plaintiffs are covered by the policies, and;
- b. Order payment of loss of income and additional costs as substantiated by the Plaintiffs, and for such other and further relief as the Court deems proper, including costs and attorney fees.

**COUNT II**  
**BREACH OF CONTRACT**

69. Plaintiffs re-allege paragraphs 1 through 68 as fully set forth herein.

70. The necessary suspension of each Plaintiff’s operations was due to the Governors’ Proclamations and Orders requiring the closure of all restaurants, bars, and food and beverage businesses throughout the states in which they operate.

71. As a result of the Governors’ Proclamations and Orders, Plaintiffs have sustained and continue to sustain direct physical loss of their properties as required by the policies, including physical loss of access, use, and utilization for their intended purposes.

72. Each Plaintiff attempted to mitigate their damages by partially opening on a limited 50 percent capacity but have not had any substantial revenue that would reduce the damages being suffered by Plaintiffs and have in fact incurred additional losses.

73. The necessary suspension of each Plaintiff's facilities under these circumstances is a covered loss under the policies that are otherwise not excluded.

74. As a result of these covered losses, Plaintiffs have sustained and continue to sustain significant financial loss of income and additional expenses on a monthly basis that are covered under the policies.

75. Each Plaintiff provided timely notice to the Defendants and have otherwise complied with all conditions precedent to the coverage under the policies.

76. Defendants have wrongfully denied coverage of Plaintiffs' claims.

77. Defendants failed to investigate in any manner the claims of the Plaintiffs and have not determined that there was any coronavirus or any other type of virus in the Plaintiffs' facilities, nor was there any employee or customer infected with the coronavirus, or any other virus, at the Plaintiffs' facilities.

78. Defendants have failed to fairly and properly interpret the policies and compensate the Plaintiffs for the losses provided for under the policies. As a result, Defendants have breached their obligations under the provisions of the policies, knowing that ambiguities the Defendants created should result in coverage for the insureds.

79. Defendants failed to acknowledge that the Plaintiffs not only lost the use of their properties, but had Plaintiffs not complied with the Governors' Proclamations and Orders, the Plaintiffs would be subject to loss of their licenses to operate and prosecution for violating the law, with criminal penalties being imposed.

80. As a direct and proximate result of the Defendants' breach of its contractual obligations under the policies issued, the Plaintiffs have been damaged in an amount in excess of the

jurisdictional amount in net income plus additional expenses and will continue to incur significant losses until allowed to be completely opened by law, exclusive of interest, costs and attorney fees.

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment in favor of the Plaintiffs and against the Defendants, including the following relief:

- a. An award to the Plaintiffs and against the Defendants for the loss of income and extra expenses substantiated by the Plaintiffs, and for all other covered damages, and;
- b. Such other and further relief as the Court deems proper, including costs and reasonable attorney fees for having to pursue this matter.

**COUNT III**  
**CONDUCT OF BAD FAITH**

81. Plaintiffs re-allege paragraphs 1 through 80 as if fully set forth herein.

82. Defendants have a contractual obligation to fully and completely investigate a claim of an insured for policies which they have written and for which they have received commissions.

83. Plaintiffs promptly paid all premiums required to effectuate the policies of the Plaintiffs for business loss of income under the policies.

84. Defendants denied coverage for Plaintiffs' claim based on a virus exclusion contained in the policies.

85. Defendants failed to make any investigation of the claims and did not inquire if the facilities that were insured had any evidence of infestation of the coronavirus or any other virus at any time, or if any employee or customer had become infected with the coronavirus or other virus at any time.

86. There was a failure to investigate Plaintiffs' claims in any manner in good faith.

87. The Defendants utilized a “cookie-cutter” approach of declining coverage, as clearly evidenced by the attached declination-of-coverage letters, and did not perform an independent, objective investigation of each claim.

88. The Defendants have acted in bad faith in denying Plaintiffs’ claims.

89. As a direct and proximate result of Defendants’ bad faith in failing to investigate Plaintiffs’ claims, Plaintiffs have been damaged. The amount is in excess of the jurisdictional amount, plus additional expenses, and that Plaintiffs will continue to lose significant income until allowed to be completely opened by law, exclusive of costs and attorney fees.

90. This litigation by Plaintiffs, and all other similarly situated business owners issued policies by the Defendants, has been caused by the Defendants’ bad faith in knowingly drafting ambiguous policies and then applying a self-interested interpretation of the policies to deny coverage after Plaintiffs and other similarly situated business owners have paid premiums in good faith and have been in total compliance with all the requirements of the policies.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in favor of the Plaintiffs and against the Defendants, including the following relief:

- a. An award to the Plaintiffs against the Defendants for the loss of income substantiated by Plaintiffs, plus additional expenses, plus pre-judgment interest, and;
- b. The award of punitive damages as a result of the Defendants acting in bad faith, and for such other relief as the Court deems proper, including costs and reasonable attorney fees.

**JURY DEMAND**

The Plaintiffs hereby make a demand for trial by jury on all issues so triable.

Respectfully submitted,

CARNEY & APPLEBY, P.L.C.

*/s/ James W. Carney*

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JAMES W. CARNEY (AT0001327)

*/s/ Nicholas J. Mauro*

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**ATTORNEYS FOR PLAINTIFFS**