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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

NAIAS, L.L.C.,
a Michigan limited liability company,

Plaintiff,

v.

HOUSTON CASUALTY COMPANY,
a Texas domiciled surplus lines property
and casualty insurer,

Defendant.

2021-186977-CB

JUDGE MICHAEL WARREN

Case No.: 2021 - - CB

Hon.:

Douglas Young (P43808)
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There is no pending or resolved civil action arising out of the same transaction or occurrence as alleged in this Complaint.

This case qualifies for the Business Court pursuant to MCR 2.112(O)(1) and MCL 600.8031(2).

/s/ Douglas Young
Douglas Young (P43808)

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COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff NAIAS, L.L.C., by and through its attorneys, YOUNG INSURANCE LAW and ABBOTT NICHOLSON, P.C., and for its Complaint and Jury Demand against Defendant HOUSTON CASUALTY COMPANY, states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff NAIAS, L.L.C. (“NAIAS”) is a Michigan limited liability company with its principal place of business in the State of Michigan, County of Oakland, City of Troy.

2. Defendant Houston Casualty Company (“HCC”) is a Texas corporation authorized to issue surplus lines property and casualty insurance policies in the State of Michigan, having its principal place of business in Houston, Texas, and it has regularly conducted business at all pertinent times in the State of Michigan, County of Oakland.

3. This action seeks a declaratory judgment as to the rights and duties of NAIAS and HCC under an Event Cancellation Insurance policy issued by HCC to NAIAS under Policy No. 19/7004321, with a policy period of December 16, 2019 to June 21, 2020 (the “HCC Event Cancellation Policy” or “Policy”). This Policy is attached as **Exhibit A**.

4. The Policy was issued to NAIAS by HCC in the State of Michigan and County of Oakland.

5. This Court has jurisdiction over this matter pursuant to MCR 2.605 and because NAIAS seeks damages against HCC in an amount in excess of \$25,000.

THE CANCELLATION OF THE AUTO SHOW

6. On March 28, 2020, the 2020 North American International Auto Show (“Auto Show”), scheduled to be held during June 2020, was cancelled due to the COVID-19 pandemic

and the Federal Emergency Management Agency's ("FEMA") utilization of the Auto Show venue, the TCF Center, as a field hospital.

7. HCC was timely advised of the 2020 Auto Show's cancellation.

8. The cancellation of the 2020 Auto show was an insured event under the HCC Event Cancellation Policy.

THE HCC EVENT CANCELLATION POLICY

9. The HCC Event Cancellation Policy's (**Exhibit A**) material terms and conditions are:

* * * *

SECTION I - COVERAGE A, B & C [Page 1 of 14]

A. INSURING AGREEMENTS:

COVERAGE A. EVENT CANCELLATION

We¹ will indemnify you², up to the combined Limit of Insurance for Coverage A³ . . . for your loss as a direct result of **cancellation**⁴. . . of the **insured event** ["The Gallery Event and NAIAS Auto Show & Preview Days"]

* * * *

B. APPLICATION OF COVERAGES:

In order for insurance to apply to Section I, all of the following conditions must be met:

¹ Houston Casualty Company

² NAIAS, LLC

³ \$250,000 - The Gallery Event

\$5,320,294 - NAIAS Auto Show & Preview Days

⁴ **Cancellation** means the physical or legal inability to commence the insured event at the regularly scheduled date and time of commencement. [Section VI - DEFINITIONS, 5.; Page **10 of 14**]

1. the loss must be the direct result of an unexpected cause beyond your control, the control of the organizers of the **insured event**, the control of the attendees or exhibitors at the **insured event**, and the control of your financial supporters;
2. the loss must not be the direct or indirect result of any excluded cause as shown in:
 - a. Section I, Part D Exclusions; and
 - b. Section V. - General Exclusions of this insurance;
and
 - c. you must comply with all other terms and conditions of this policy.

C. CALCULATION OF LOSS [Page 2 of 14]

Subject to the limit of insurance with respect to Coverage A, we will indemnify you for the greater of:

- 1) The total of **expenses** incurred plus actual loss from **insured financial commitments**, less any recoveries obtained, and less **gross revenue** retained after refunds, whether such refunds are contractual or voluntary; [the “Total Expenses Calculation”] or
- 2) The loss of **gross revenue**⁵ (including **gross revenue** returned, whether contractual or voluntary) that would have been received had the **insured event** taken place as originally scheduled and the loss from

⁵ **Gross revenue** means all monies paid or payable to you from ticket sales, Any Day Passes, Supplier Preview Days, and Parking passes for the Auto Show and ticket sales for the Gallery Event only arising out of the insured event. [Endorsement #3]
[Endorsement #3]

insured financial commitments⁶, less any recoveries made and **expenses**⁷ not incurred. [the “Gross Revenue Calculation”]

* * * *

E. EXTENSIONS OF COVERAGE: [Page 4 of 14]

4. Additional Marketing Expenses - subject to a maximum limit of, but not exceeding, \$100,000, we will indemnify you for marketing expenses incurred by you for public relations and marketing of the rescheduled **insured event** or if not rescheduled, the corresponding **insured event** that is held the following year, in order to reduce the adverse effect of the **cancellation, abandonment, postponement, curtailment or relocation** of the insured event, subject to:

a. Cancellation, abandonment, postponement, curtailment or relocation of the insured event for reasons covered under this policy; and

b. all of the following conditions: [Page 5 of 14]

- (1) The **insured event** has been held for at least three (3) consecutive years; and
- (2) There have been at least two (2) other competitors in the marketplace staging events of similar size; and
- (3) You demonstrate that the expenses incurred for the public relations and marketing are equitable and of practical benefit; and
- (4) All expenses incurred are agreed upon in writing by us.

⁶ **Insured financial commitments** means, your written financial commitments unless you are released or discharged from such financial commitments, which meet all of the following conditions:

- a. Such commitments are necessary for the operation or commencement of the **insured event** and are intended to be discharged by a third party;
- b. Such commitments are made prior to any incident which could give rise to a covered loss with respect the **insured event** for which the **insured financial commitment** is undertaken.

[Section VI - DEFINITIONS, 12.; Page 10 of 14]

⁷ **Expenses** means your costs and charges in organizing, running and providing services for the **insured event**. [Endorsement #3].

* * * *

10. The HCC Event Cancellation Policy has a Combined Limit of Insurance for Event Cancellation (Coverage A) in the amount of \$5,570,294.

11. The HCC Event Cancellation Policy also contains \$100,000 of insurance coverage for Additional Marketing Expenses.

12. HCC has been investigating and adjusting NAIAS's claim since April 2020.

13. NAIAS has fully cooperated with HCC in its investigation of this claim.

14. On December 23, 2020, HCC paid what it considered to be an undisputed partial claim payment in the amount of \$2,400,000.

15. On March 10, 2021, HCC paid what it considered to be an additional undisputed partial claim payment in the amount of \$878,938.

16. As of today's date, HCC has paid a total of \$3,278,938 of the Event Cancellation Policy Combined Limit of Insurance for Event Cancellation (Coverage A) of \$5,570,294.

17. As of today's date, HCC has paid none of the HCC Event Cancellation Policy's \$100,000 limit for Additional Marketing Expenses.

18. There remains due and owing under the HCC Event Cancellation Policy \$2,391,356 (\$2,291,356 under Coverage A and \$100,000 of insurance coverage for Additional Marketing Expenses).

19. Based upon HCC's willful failure to fully and completely resolve this claim, NAIAS has instituted this action.

COUNT I – DECLARATORY JUDGMENT

20. Plaintiff NAIAS restates and realleges the allegations set forth in paragraphs 1-19 as if set forth herein word-for-word.

21. NAIAS seeks a determination of the rights and duties of the parties and a declaration that insurance coverage exists under the HCC policy up to the full combined policy limit plus the additional coverage for marketing expenses.

WHEREFORE, Plaintiff NAIAS, L.L.C., respectfully requests this Honorable Court declare the rights and duties of the parties under the HCC Event Cancellation policy described above.

COUNT II – BREACH OF CONTRACT

22. Plaintiff NAIAS restates and realleges the allegations set forth in paragraphs 1-21 as if set forth herein word-for-word.

23. Under the HCC Event Cancellation policy, NAIAS is entitled to claim the *greater* of the Total Expenses Calculation or Gross Revenue Calculation above.

24. HCC has failed to calculate and otherwise refused pay NAIAS based upon its claim calculated under the Total Expenses Calculation.

25. HCC has wrongfully asserted inappropriate and/or inapplicable policy defenses, deductions and supposed recoveries to deny full insurance coverage to NAIAS under the HCC Event Cancellation policy.

26. HCC's actions in denying full insurance coverage to NAIAS constitutes a material breach of the HCC Event Cancellation policy.

27. HCC's actions in denying full insurance coverage to NAIAS for a claim that is not reasonably in dispute constitutes a violation of MCL 500.2006.

28. NAIAS has suffered damages and will continue to suffer damages as a direct result of HCC's material breaches of the HCC Event Cancellation policy.

WHEREFORE, Plaintiff NAIAS, L.L.C., respectfully requests this Honorable Court enter a Judgment in its favor against Defendant Houston Casualty Company in an amount in excess of \$25,000, plus pre-judgment, post-judgment interest, penalty interest pursuant MCL 500.2006, costs, attorneys' fees and any other additional relief, which this Court finds to be appropriate, equitable or just.

COUNT III – BAD FAITH

29. Plaintiff NAIAS restates and realleges the allegations set forth in paragraphs 1-28 as if set forth herein word-for-word.

30. HCC is required to act in good faith with respect to their contractual duties under the HCC Event Cancellation policy and in its claims administration under this policy.

31. HCC's assertion that the HCC Event Cancellation policy does not provide for a greater recovery by NAIAS under the Total Expenses Calculation has been asserted in bad faith and in an improper attempt to avoid HCC's contractual obligations as well as to improperly delay and prejudice NAIAS in the adjustment of its claim.

32. HCC's actions in refusing to fully indemnify NAIAS constitutes an action in bad faith in an attempt to avoid HCC's contractual obligations as well as to improperly prejudice and delay NAIAS in the adjustment of its claim.

33. HCC has intentionally disregarded the interests of their insured NAIAS and have asserted false policy defenses motivated by a desire to protect its own financial interests at the expense of their insured NAIAS.

34. As a result of the aforementioned actions of HCC in bad faith, NAIAS has suffered additional damages exceeding its indemnification under the HCC Event Cancellation policy which include additional consequential damages and expense caused by HCC's ongoing failure to fully indemnify its insured NAIAS.

WHEREFORE, Plaintiff NAIAS, L.L.C., respectfully requests this Honorable Court enter a Judgment in its favor against Defendant Houston Casualty Company in an amount in excess of \$25,000, plus pre-judgment, post-judgment interest, penalty interest pursuant MCL 500.2006, costs, attorneys' fees and any other additional relief, which this Court finds to be appropriate, equitable or just.

JURY DEMAND

Plaintiff NAIAS, L.L.C., respectfully requests a jury for all issues of fact raised by any party in this action.

Dated: March 19, 2021

Respectfully submitted,
YOUNG INSURANCE LAW

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