

Cause No. 2020CI10721

**POB, LP, DOING BUSINESS AS
PAT O'BRIEN'S SAN ANTONIO**

IN THE DISTRICT COURT

VS.

**AMCO INSURANCE COMPANY,
WILLIAM RANDALL WADE,
DBA BKCW, ALEC NIEMEYER,
NATIONWIDE MUTUAL
INSURANCE COMPANY**

73rd **JUDICIAL DISTRICT**

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

PLAINTIFF, POB, LP, DOING BUSINESS AS PAT O'BRIEN'S SAN ANTONIO ("Plaintiff") files this Original Petition against AMCO INSURANCE COMPANY ("AMCO"), WILLIAM RANDALL WADE, DBA BKCW, ("WADE"), ALEC NIEMEYER ("NIEMEYER"), and NATIONWIDE MUTUAL INSURANCE COMPANY ("NATIONWIDE") and in support of this instrument would respectfully show as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery. Therefore, Plaintiff will ask the Court to order that discovery be conducted in accordance with a

discovery control plan tailored to the particular circumstances of this suit.

II.
PARTIES AND SERVICE

2. Plaintiff's principal place of business is in Bexar County, Texas.

3. Defendant AMCO INSURANCE COMPANY is in the business of insurance in the State of Texas. Defendant AMCO INSURANCE COMPANY's business in Texas includes, but is not limited to, the following:

The making and issuing of contracts of insurance with Plaintiff;

The taking or receiving of application for insurance, including Plaintiff's application for insurance;

The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Plaintiff; and

The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including Plaintiff.

Defendant AMCO INSURANCE COMPANY can be served with citation, via certified mail, at the following address:

**1100 Locust Street, Department 1100, Des Moines, IA 50391 and at
P.O. Box 182068, Columbus, OH 43218-2068**

Service is requested at this time.

4. Defendant WILLIAM RANDALL WADE, DBA BKCW is in the business of insurance in the State of Texas. Defendant WILLIAM RANDALL WADE, DBA BKCW's business in Texas includes, but is not limited to, the following:

The making and issuing of contracts of insurance with Plaintiff;

The taking or receiving of applications for insurance, including Plaintiff's application for insurance;

The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Plaintiff; and

The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including Plaintiff.

Defendant **WILLIAM RANDALL WADE, DBA BKCW** is a Texas resident, conducts business in Texas and may be served with citation, via certified mail, at his business address at:

P.O. Box 996, Killeen, Texas 76540-0996

Service is requested at this time.

5. Defendant **ALEC NIEMEYER** is in the business of insurance in the State of Texas.

Defendant ALEC NIEMEYER's business in Texas includes, but is not limited to, the following:

The making and issuing of contracts of insurance with Plaintiff;

The taking or receiving of application for insurance, including Plaintiff's application for insurance;

The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Plaintiff;

The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including Plaintiff; and

The adjusting of claims on behalf of Defendants AMCO and Nationwide presented by insureds, including Plaintiff.

Defendant **ALEC NIEMEYER** conducts business in the State of Texas and may be served with citation, via certified mail, at his business address at:

P.O. Box 182068, Columbus, OH 43218-2068

Service is requested at this time.

6. Defendant **NATIONWIDE MUTUAL INSURANCE COMPANY** is in the business of insurance in the State of Texas. Defendant Nationwide Mutual Insurance Company's business in

Texas includes, but is not limited to, the following:

The making and issuing of contracts of insurance with Plaintiff;

The taking or receiving of application for insurance, including Plaintiff's application for insurance;

The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Plaintiff;

The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including Plaintiff;

The underwriting of insurance policies in the State of Texas for insureds, including Plaintiff; and

The adjusting of claims on behalf of Defendants AMCO and Nationwide presented by insureds, including Plaintiff.

Defendant **Nationwide Mutual Insurance Company** can be served with citation, via certified mail, at the following business address:

One West Nationwide Boulevard, Columbus, OH 43215-2220.

Service is requested at this time.

III.

JURISDICTION AND VENUE

7. Venue is appropriate in Bexar County, Texas because all or a substantial part of the conduct giving rise to the causes of action were committed in Bexar County, Texas and because Plaintiff and its insured property, which are the subject of this suit are located in Bexar County, Texas. Accordingly, venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002.

IV.

FACTUAL BACKGROUND

8. Plaintiff is the owner of a commercial property insurance policy underwritten by

Defendant NATIONWIDE. In exchange for substantial premiums paid over the course of years, Defendants AMCO AND WADE sold a commercial “all risk” policy, number CPA 4779624-12 (“the Policy”), promising to indemnify Plaintiff for losses resulting from occurrences, including the necessary suspension of business operations at the insured location caused by a government order, civil authority and other risks. The Policy was renewed for the policy period of August 12, 2019 through August 12, 2020 after being continuously in full force and effect since inception, with Plaintiff faithfully paying premiums for the promised coverage for property, business personal property, business income, extra expense and additional coverages, including Civil Authority, certain Ordinance and Laws and certain Governmental Action. The Policy insures Plaintiff’s well known and popular business in Bexar County, located at 121 Alamo Plaza, San Antonio, Texas 78205, (“the Property”). Plaintiff secured the Policy to protect its financial interests from any loss of income has performed all of its obligations under the Policy which provides broad coverage for losses caused by any cause unless expressly excluded.

9. For decades, the Center for Disease Control and the World Health Organization (“WHO”) have been warning about the possibility of an airborne virus that could cause a worldwide pandemic. The United States has seen the effects of other health issues over the past century and insurance carriers have analyzed risks for typhoid fever, MERS, polio, AIDS, influenza, SARS, Ebola, tuberculosis and other medical crises. After actuaries have calculated the risks for insuring individuals and businesses against different risks, insurance companies like Defendants NATIONWIDE and AMCO have negotiated policy terms and rates in Texas. Plaintiff and other consumers have purchased the policies without an ability to negotiate terms or rates for decades. The possibility of a COVID-19 virus or something similar has been a calculated risk underwritten by insurance companies like Defendant NATIONWIDE and premiums for such risks have been

profitably accepted by the insurance industry in exchange for the promise to insure Texas residents against losses that were anticipated if any of many calculated risks manifested themselves.

10. On February 7, 2020, the federal government sent American evacuees who had been exposed to COVID-19 in or near Wuhan, China, to Lackland-Joint Base San Antonio for quarantine. On February 13, 2020, the first evacuee tested positive and a second wave of evacuees from the Diamond Princess cruise ship arrived at Lackland-Joint Base San Antonio. On March 1, 2020, a positive evacuee was released into the public spending approximately eleven hours in the community, including North Star Mall's food court. On March 2, 2020, the Mayor of San Antonio declared a Public Health Emergency designed to prevent Lackland evacuees from being released into the general public. Concerns regarding San Antonio's COVID-19 exposure combined with the governmental declarations, resulted in large events being cancelled and affected the tourist industry.

11. In a rapid series of declarations and orders at the city, county and state level, the ability of restaurants, bars and other industries to generate income was severely impaired by governmental restrictions and the public's reluctance to venture out during these unprecedented times. On March 13, 2020, Texas Governor Greg Abbott issued a Declaration of State Disaster pursuant to the Texas Disaster Act of 1987. Government Code, Title 4, Chapter 418, Sec. 418.012. As defined by the Texas Disaster Act of 1987, Sec. 418.004(1):

"Disaster" means *the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public*

calamity requiring emergency action, or energy emergency.” (Emphasis added).

Both the City of San Antonio and Bexar County issued orders prohibiting mass gatherings of more than 500 people. On March 16, 2020, the City of San Antonio and Bexar County issued orders prohibiting mass gatherings of more than 50 people. On March 18, 2020, the City of San Antonio and Bexar County issued orders closing all bars and restricting restaurant dine-in service. On March 19, 2020, Plaintiff laid off all staff and closed the business because of the Orders.

12. On March 23, 2020, “Stay Home /Work Safe” orders were issued in Bexar County and San Antonio. On March 31, 2020, Texas Governor Greg Abbott signed an executive order requiring the public to stay home and closing all “non-essential” businesses beginning April 2nd through April 30th of 2020. The described purposes of the Orders were to protect the “health, safety and welfare” of Bexar County and San Antonio residents, and to slow the spread of COVID-19 by “minimizing social gatherings” and “minimizing in-person contact.” According to the Texas Department of Health and Human Services, COVID-19 has been and continues to be present in Bexar County and San Antonio. The “Stay Home Stay/Work Safe” orders closed Plaintiff’s business. Recently, Bexar County and the City of San Antonio have issued orders to “reopen” businesses in stages. On May 22, 2020, bars in San Antonio were allowed to open and permit 25% occupancy under limited conditions, including required “social distancing.” On May 22, 2020, restaurants and bars in San Antonio were allowed a 50% occupancy limit, again under limited conditions, including required “social distancing” for dine-in service. On June 12, 2020, restaurants and bars in San Antonio will be allowed a 75% occupancy limit, again under limited conditions, including required “social distancing” for dine-in service. City, County and State requirements for restaurants, bars and other non-essential businesses continue to change in the hope of reopening restaurants, bars and all business to a pre-pandemic status.

13. Government orders issued to address the pandemic and health care crises have resulted in Plaintiff suffering a physical loss of the insured Property, and alternatively, damage to the insured Property and suspension of the business that is covered under the Business Income Loss provisions of the Policy, the Civil Authority provisions, the Ordinance and Laws provisions of the Policy, the Governmental Action provisions of the Policy and extended coverage provisions under the Policy.

14. During the term of the Policy, Plaintiff sustained and will continue to sustain covered losses during the COVID-19 pandemic and the period enforcing subsequent orders from the State of Texas, Bexar County and the City of San Antonio, attached hereto as Exhibits A, B, C, D and E and incorporated for all purposes. Plaintiff brings this suit for declaratory relief, breaches of Defendants' promises and agreements, anticipated continued breaches of Defendants' agreements and promises and for relief from the damages caused by Defendants to Plaintiff.

V.

COVERAGE ISSUES

A. Coverage for Business Income

15. As noted above, Plaintiff paid significant annual premiums for different coverage provisions under the Policy for many years. Defendants AMCO, WADE and NATIONWIDE sold and delivered to Plaintiff and other Texas residents an annual policy and routinely described the Loss of Business Income Coverage in a manner consistent with Plaintiff's understanding and ultimate claim. The Declarations pages/schedules outlined Special Causes of Loss for Business Income. A \$300,000.00 base limit of coverage was identified with itemized charges for the "Special" coverage. Additional coverage is available via Policy extensions, including damages for spoilage, extra expenses and costs during restoration. Under the "Coverage," provision, Plaintiff's Policy

provides:

“We will pay for direct Physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.”

Defendants AMCO’s, WADE’s and NATIONWIDE’s agreements, representations and promises to pay covered Plaintiff’s “Building” and “Your Business Personal Property.” The covered Business Personal Property included, *inter alia*, **“(5) Labor, materials or services furnished or arranged by you on personal property of others;”** and **“(6) Your use interest as tenant in improvements and betterments.”**

16. Additionally, Defendants AMCO, WADE and NATIONWIDE represented, agreed and promised in the Business Income (And Extra Expense) Coverage Form Endorsement that Plaintiff had coverage for the Loss of “Business Income. Business Income means the:

“a. Net Income (Net Profit of Loss before income taxes) that would have been or incurred; and

b. Continuing normal operating expenses incurred, including payroll.”

The Business Income Endorsement further provided **“If limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.”** In other words, the \$300,000.00 limits of coverage are applied to each type of Business Income Loss. The Endorsement also provided for “Extra Expense Coverage,” “Civil Authority” Coverage, “Extended Business Income” Coverage and extensions of coverage. Under the Policy, Defendants NATIONWIDE, WADE and AMCO represented, agreed and promised to pay for “direct physical *loss* unless the loss is excluded or limited in this policy.” Further, Plaintiff’s Policy provides coverage for Business Income (and Extra Expense) in Endorsement CP 00301012

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 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.” (emphasis added).

Plaintiff suffered lost income when the governmental Orders closed its business, and on information and belief, Plaintiff will continue to suffer lost income as a consequence of the government shutdown and pandemic fear even after the Orders are completely lifted. Consumer fear of the virus and the stay at home orders have caused Plaintiff’s physical loss to the property and loss of business income and are not specifically excluded by the Policy. Plaintiff’s business has been transformed by external events, not specifically excluded, from sustainable, revenue generating operations to the unsatisfactory state of semi-operational or full-blown closure of its establishment.

B. Coverage for Civil Authority

17. Under the Business Income (And Extra Expense) Coverage Form, Plaintiff’s Policy also provides additional coverage for Civil Authority:

“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 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 Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the property.”

(emphasis added).

The referenced Orders are clearly acts of Civil Authority which have caused Plaintiff's loss of income as described above. The Orders, along with their stated purposes, qualify as a Covered Cause of Loss under the Policy, especially given that Texas precedent holds "physical loss" can occur without actual physical damage to a property.

C. Wrongful Denial of Coverage

18. Complying with prerequisites for notice and coverage, Plaintiff reported its business interruption losses to AMCO on or about April 28, 2020. Defendants AMCO and NATIONWIDE assigned Defendant NIEMEYER to adjust the claim and investigate the loss related to business interruption. On information and belief, Plaintiff would represent that Defendants AMCO and NATIONWIDE had instructed Defendant NIEMEYER and other adjusting companies to deny claims associated with "virus losses" prior to Plaintiff submitting its claim.

On May 18, 2020, Defendants AMCO, NIEMEYER and NATIONWIDE wrongfully denied Plaintiff's claim without meaningful investigation. The reasons for denying coverage outlined in the denial letter are inconsistent with the Policy language and ignore obvious facts. A copy of the denial letter is attached hereto as Exhibit "F" and incorporated for all purposes. As a result of Defendants AMCO, NATIONWIDE and NIEMEYER mishandling Plaintiff's claim, Defendants AMCO, NATIONWIDE and NIEMEYER caused and continue to cause Plaintiffs further and additional damages.

19. Defendants AMCO, NATIONWIDE and NIEMEYER's denial was based, in part, on a lack of "physical damage;" however, the Policy (Form CP00010 1012) does not require a loss caused by physical "damage" only physical "loss." Defendants are attempting to rewrite the Policy claiming only a physical damage or actual change to the property is covered and would permit coverage for

business income loss. At the very least, Plaintiff suffered a physical loss of the covered property as a result of the governmental actions taken to limit the impact of the pandemic on the health, safety and welfare of San Antonio and Bexar County citizens. Further, Plaintiff clearly suffered physical loss to Covered Property because Plaintiff was unable to operate and use the establishment for its intended purpose of serving alcohol and limited food to patrons. Plaintiff suffered a loss to its “use interest as tenant in improvements and betterments” as outlined in its Policy. Such loss continues to be suffered as San Antonio and Bexar County are trying to return to pre-pandemic conditions. Moreover, the “physical loss or damage” interpretation by Defendants is contrary to well established precedent. By way of example, the accidental release of ammonia into a building will render a building unsafe until the ammonia can be removed. As the insured property has suffered covered property damage, the mere presence of a dangerous substance has been consistently held to constitute “physical loss or damage.” A party’s inability to use, inhabit, access or otherwise avail itself of insured property, the coverage requirement of direct physical loss or damage has been satisfied.

20. Defendants AMCO, NATIONWIDE and NIEMEYER also based their denial of coverage on their misconstruing the Business Income (And Extra Expense) Coverage Form CP0030 (10/12). The Business Income (And Extra Expense) endorsement does not require the business “suspension” be caused by physical “damage” to a building, only a physical “loss.” Plaintiff has suffered a “direct physical loss” and “damage to property” as outlined in the Policy. Defendants are attempting to rewrite the Policy claiming only a physical damage or actual change to the property is covered and would permit coverage for business income loss. Plaintiff suffered a “physical loss of the covered property” and “damage to property” as a result of the governmental actions taken to limit the impact of the pandemic on the health, safety and welfare of San Antonio and Bexar County citizens. The Covered Property at issue under the Policy is Plaintiff’s business operation, not the physical structure

where the business operates. Plaintiff clearly suffered physical loss to Covered Property because Plaintiff was unable to operate and use the establishment for its intended purpose of serving alcohol and limited food to patrons. Such loss continues to be suffered as San Antonio and Bexar County are trying to return to pre-pandemic conditions. Defendants' denial based on misapplied policy language has no factual, contextual or legal application to the Plaintiff's claim based on upon clear Policy language. Alternatively, the terms referenced by Defendants are ambiguous and must be construed in favor of coverage for Plaintiff as required by law. *RSUI Indemnity Company v. The Lynd Company*, 466 S.W.3d 113 (Tex. 2015), *Balandran v. Safeco Insurance Co.*, 972 S.W.2d 738 (Tex.1998), *National Union Fire v. Hudson Energy Company, Inc.*, 811 S.W. 552, (Tex. 1991),

21. Defendants AMCO, NATIONWIDE and NIEMEYER also based their denial on the "virus" endorsement, which excludes losses caused "from any virus, bacterium...that induces or is capable of inducing physical illness or disease." However, Defendants ignore the fact that Plaintiff had no known or suspected exposure to COVID-19 at its Property. No facts exist to support Defendant's pretextual argument that the COVID-19 virus caused Plaintiff's business operations to be "suspended." The Exclusion of Loss Due to Virus or Bacteria has no application to Plaintiff's claim based on upon clear Policy language. Alternatively, the exclusion is ambiguous and must be construed in favor of coverage for Plaintiff as required by law. *RSUI Indemnity Company v. The Lynd Company*, 466 S.W.3d 113 (Tex. 2015), *Balandran v. Safeco Insurance Co.*, 972 S.W.2d 738 (Tex.1998), *National Union Fire v. Hudson Energy Company, Inc.*, 811 S.W. 552, (Tex. 1991),

22. With respect to the additional coverage for Civil Authority, Defendants AMCO, NATIONWIDE and NIEMEYER denied the endorsement's applicability to Plaintiff's claim stating "The Civil Authority Coverage is given when a governmental agency limits access to your business

due to damage by a Covered Cause of Loss. . . . [T]here is no physical damage in your area that prompted governmental action to close your operations. Further, as already discussed, this virus response is not a Covered Cause of Loss per the Exclusionary Form CP0140 0706.” Although AMCO, NATIONWIDE and NIEMEYER acknowledged the Orders issued on March 18, 2020 “shut down” all restaurants and bars. Moreover, AMCO, NATIONWIDE and NIEMEYER’s statement admits the widespread nature of the pandemic and that the threat it presents led to Orders issued by Civil Authority prohibiting the Plaintiff from opening or continuing its business operations. The clear loss of the property was directly caused by Civil Authority closing Plaintiff’s business in exercising the need to protect the community.

23. Similarly, Defendants AMCO, NATIONWIDE and NIEMEYER denied Plaintiff’s claims for coverage under the Restaurant Gold Protection endorsements. While Plaintiff’s sources of food supply were closed and businesses surrounding Plaintiff’s bar-restaurant also closed, Defendants AMCO, NATIONWIDE and NIEMEYER attempted to redefine “Dependent Property” and did not accept the contractual definition of “property operated by others you depend on to:

a. Deliver materials or services to you, or to others for your account (Contributing Locations).

...

D. Attract customers to your business (Leader Locations).”

Plaintiff is insured for losses of income because certain suppliers were closed by Civil Authority and because Plaintiff’s customer base in downtown San Antonio (conventions at the Convention Center, Alamodome and other hotels) was not allowed to attend previously scheduled conventions and sporting events.

Defendants AMCO, NATIONWIDE and NIEMEYER further denied Plaintiff’s claims for coverage under the Restaurant Gold Protection endorsement involving a maximum claim of an

additional \$100,000.00 in coverage for business income lost during a “period of restoration.” As the State of Texas, County of Bexar and City of San Antonio are relaxing their policies for the restaurant and bar industries, there is a “period of restoration” under the policy (CP7175 0416) that covers losses while business is being restored. As with the Policy terms and terms of the other policy endorsements, this endorsement does not require the business “suspension” and resulting “period of restoration” to be caused by physical “damage” to a building. Plaintiff has suffered a “direct physical loss” and “damage to property” as outlined in the Policy. Defendants are attempting to rewrite this endorsement to the Policy claiming only a physical damage or actual change to the property is covered and would permit coverage for business income loss during the “period of restoration.” Plaintiff suffered a “physical loss of the covered property” and “damage to property.” Plaintiff is pursuing the contractually contemplated restoration of its business under the Policy endorsement and coverage is clear. The Covered Property at issue under the Policy and the cited endorsements is Plaintiff’s business operation, not the physical structure where the business operates. Plaintiff paid annually for coverage for periods of “suspension” and any “period of restoration.” Defendants AMCO, NATIONWIDE AND WADE represented, agreed and insured Plaintiff for years for business losses attributable to insured events and for losses sustained during any “period of restoration.” Defendants’ promises, agreements and representations to insure such losses and the denial based on misapplied policy language has no factual, contextual or legal application to the Plaintiff’s claim based on upon clear Policy language. Alternatively, the terms referenced by Defendants are ambiguous and must be construed in favor of coverage for Plaintiff as required by law. *RSUI Indemnity Company v. The Lynd Company*, 466 S.W.3d 113 (Tex. 2015), *Balandran v. Safeco Insurance Co.*, 972 S.W.2d 738 (Tex.1998), *National Union Fire v. Hudson Energy Company, Inc.*, 811 S.W. 552, (Tex. 1991),

24. Defendants AMCO, NATIONWIDE, WADE and NIEMEYER failed to give proper, advance notice and disclosure of the Exclusions and is thus barred from reliance upon them. On information and belief, Defendants AMCO, NATIONWIDE, WADE and NIEMEYER are barred from relying on the Exclusions as a result of regulatory and/or administrative estoppel. Alternatively, any Exclusions as interpreted by Defendants AMCO, NATIONWIDE, WADE and NIEMEYER are unconscionable and/or contrary to public policy and cannot be enforced as written.

25. Defendants AMCO, NATIONWIDE, WADE and NIEMEYER made material misrepresentations about Policy provisions, coverage and the Texas law applicable to Plaintiff's Loss of Income, Civil Authority, additional coverages and Virus Exclusion. Defendants AMCO, NATIONWIDE, WADE and NIEMEYER wrongfully denied Plaintiff's claim for business interruption losses and extended coverage even though the Policy provides coverage for losses such as those suffered by Plaintiff. Furthermore, based upon information and belief, Defendants AMCO and NATIONWIDE engaged its agents and adjustors to misrepresent Policy provisions and coverage. To date, each Defendant continues to deny the payment for Plaintiff's loss of business and deny any right to compensation under the Policy.

VI. **CAUSES OF ACTION**

A. BREACH OF CONTRACT

26. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Defendants and their agents' conduct constitute a breach of the insurance contract between Defendants and Plaintiff. Defendants' failure and/or refusal, as described above, to pay Plaintiff the adequate compensation as it is obligated to do under the terms of the Policy in question, and under the laws of the State of Texas, constitute a breach of the

insurance contract with Plaintiff.

27. Defendants failed to perform their contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Defendants AMCO, NATIONWIDE and NIEMEYER wrongfully denied coverage for loss of Business Income, Civil Authority and other extended coverages and refused to offer the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover Plaintiff's business losses, and all conditions precedent to recovery under the Policy have been carried out and accomplished by Plaintiff. Defendants' conduct constitutes a breach of the insurance contract between Defendants and Plaintiff.

**B. NONCOMPLIANCE WITH TEXAS INSURANCE CODE
UNFAIR SETTLEMENT PRACTICES**

28. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Texas law is clear that insurance companies and anyone engaged in the business of insurance by investigating and adjusting a claim must conduct a reasonable, full and fair claim investigation. Defendants AMCO, NATIONWIDE and NIEMEYER violated Chapter 541 of the Texas Insurance Code, in one or more of the following particulars:

§ 541.061. Misrepresentation of Insurance Policy.

Making an untrue statement of material fact;
Failing to state a material fact necessary to make other statements made not misleading;
Making a misleading statement; and
Failing to disclose a material matter of law.

PROMPT PAYMENT OF CLAIMS

29. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates

the same by reference for all purposes. Defendants AMCO's, NATIONWIDE's and NIEMEYER's conduct constitutes and will continue to constitute multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are made actionable by §542.060 of the TEXAS INSURANCE CODE.

30. Defendants AMCO, NATIONWIDE and NIEMEYER failed to meet their obligations under the Texas Insurance Code to timely begin an investigation of Plaintiff's claims and timely request all information reasonably necessary to investigate Plaintiff's claims within the statutorily mandated time of receiving notice of Plaintiff's claims. The conduct of Defendants AMCO, NATIONWIDE and NIEMEYER constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEXAS INSURANCE CODE, §542.055.

31. Further, Defendants AMCO, NATIONWIDE and NIEMEYER failed to accept or deny Plaintiff's full and entire claims within the statutorily-mandated time of receiving all necessary information. The conduct of Defendants AMCO, NATIONWIDE and NIEMEYER constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEXAS INSURANCE CODE, §542.056.

32. Defendants AMCO, NATIONWIDE and NIEMEYER failed and will fail to timely pay Plaintiff's claim, and for all of the covered losses due to its wrongful denial of the policy benefits. TEXAS INSURANCE CODE, §542.057.

33. Defendants AMCO, NATIONWIDE and NIEMEYER failed and will fail to meet their obligations under the Texas Insurance Code regarding payment of claims without delay due to their wrongful denial. Their conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEXAS INSURANCE CODE, §542.058.

34. Because of Defendants' wrongful acts and omissions, Plaintiff was forced to retain the

professional services of the attorney and law firm who is representing Plaintiff with respect to these causes of action.

C. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

35. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Each Defendants' conduct constitutes a breach of the common law duty of good faith and fair dealing owed to the insureds pursuant to insurance contracts. "Good faith and fair dealing" is defined as the degree and diligence which a man of ordinary care and prudence would exercise in the management of one's own business." This tort arises from Texas law, which recognizes that a special relationship exists as a result of the unequal bargaining power between Plaintiff (the policyholder) and Defendants (the insurers). A special relationship exists and continues to exist between Defendants and Plaintiff as a result of the first-party insurance policy issued by Defendants AMCO, NATIONWIDE and WADE. Inherently unequal bargaining power exists between Plaintiff and Defendants AMCO, NATIONWIDE and WADE.

36. From and after the time Plaintiff's losses were presented to Defendants, their liability to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, Defendants AMCO, NATIONWIDE and NIEMEYER have refused to pay Plaintiff in full and wrongfully denied the claim, despite there being no basis upon which a reasonable insurance company would have relied to deny the full payment. Defendants AMCO, NATIONWIDE and NIEMEYER considered only their own interests and purposefully engaged in a one-sided self-serving interpretation of the claim while concealing from Plaintiffs that it was making no effort to consider Plaintiff's efforts. Defendants AMCO's, NATIONWIDE's and NIEMEYER's conduct constitutes a breach of the common law duty of good faith and fair dealing.

37. On information and belief, Plaintiff would represent that Defendants AMCO's,

NATIONWIDE's and NIEMEYER's denial of coverage is based on internal high level directives to automatically deny all pandemic-related business-interruption claims. Defendants AMCO's, NATIONWIDE's AND NIEMEYER's denial of coverage is unreasonable and reflects a failure to adequately and reasonably investigate and evaluate Plaintiff's claim, even though Defendants AMCO, NATIONWIDE AND NIEMEYER knew, or should have known by the exercise of reasonable diligence that their liability was reasonably clear under the circumstances.

38. For these reasons, Defendants AMCO's, NATIONWIDE's and NIEMEYER's failures, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claim when it knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing. Plaintiff is entitled, at a minimum, to all compensatory damages, including all forms of loss resulting from Defendants AMCO's, NATIONWIDE's AND NIEMEYER's breach of duty, including additional costs, economic hardship, losses due to nonpayment of the amount Cincinnati owes, and other direct and consequential damages, as well as exemplary damages.

D. CAUSES OF ACTION AGAINST DEFENDANT NIEMEYER

NONCOMPLIANCE WITH TEXAS INSURANCE CODE

39. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. At all pertinent times, Defendant NIEMEYER was engaged in the business of insurance as defined by the Texas Insurance Code. The acts and omissions of Defendant NIEMEYER constitute one or more violations of the Texas Insurance Code. More specifically, Defendant NIEMEYER has, among other violations, violated the following provisions of the Code:

- a. Insurance Code § 542.003(b)(5) by compelling Plaintiff to institute a suit to

recover those amounts due under the policy.

b. Insurance Code chapter 541, section 541.060 by, among other things:

misrepresenting one or more material facts and/or policy provisions relating to coverage;

failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims with respect to which their liability has become reasonably clear;

failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claims under one portion of a policy with respect to which liability has become reasonably clear in order to influence Plaintiffs to settle its claims with respect to another portion of the policy;

failing to promptly provide a reasonable explanation of the basis in law or fact for the denial of Plaintiff's claims;

refusing to affirm or deny coverage within a reasonable time;

refusing to conduct a reasonable investigation;

ignoring damage known to be covered by the Policy;

creating evidence to provide the carrier with a basis to deny coverage; and/or

conducting an outcome-oriented investigation in order to provide the carrier with a basis to deny the claim.

40. Defendants AMCO and NATIONWIDE assigned the loss and the claim to Defendant NIEMEYER who was at all pertinent times the agent of Defendants AMCO and NATIONWIDE, through both actual and apparent authority. The acts, representations and omissions of Defendant NIEMEYER are attributed to Defendants AMCO and NATIONWIDE. Defendant NIEMEYER was tasked with the statutory responsibility of conducting a thorough and reasonable investigation of Plaintiff's losses and claim. Despite the fact that the Texas Insurance Code dictates adjusters must conduct a reasonable investigation and adjustment of a claim, Defendant NIEMEYER failed to do so and actually set out to conduct an outcome-oriented investigation

and adjustment, which has and will result in an inequitable settlement of Plaintiff's claim.

41. Defendant NIEMEYER pre-textually looked only for ways to avoid coverage rather than first trying to find coverage. Notably, Defendant NIEMEYER made no request for information or documentation. To date, there has been no indication that Plaintiff's customers, employees or supplier representatives were exposed to the virus, tested positive for the virus or exhibited symptoms of contracting the virus. Again, the Government Orders physically prevented patrons from accessing and Plaintiff's business. With no meaningful, thorough or reasonable investigation of the facts surrounding Plaintiff's specific claim, Defendant NIEMEYER delivered Defendant NATIONWIDE's preordained Denial of Claim on grounds dictated by Defendant NATIONWIDE. On information and belief, Plaintiff would represent that Defendants conspired prior to any claim being filed by Plaintiff and other consumers to deny all claims resulting during the pandemic, regardless of the factual grounds for each consumer's claims.

42. Similarly, Defendant NIEMEYER only cited the March 18, 2020 government orders in the denial letter as support of the inapplicability of the additional coverage for Civil Authority. Even though Defendant NIEMEYER drafted the denial letter on May 18, 2020, Defendant NIEMEYER failed to consider the later "Stay Home Stay Safe" Orders, which further prohibited people from leaving their homes.

43. Defendant NIEMEYER could have fairly and reasonably adjusted and evaluated the loss, but he failed to do so. Defendant NIEMEYER also misrepresented the policy coverages to Plaintiff. Defendant NIEMEYER misrepresented to Plaintiff that in order to have coverage for Business Income and Civil Authority, Plaintiff's business needed to sustain direct physical damage to the premises. However, Plaintiff's Policy covers physical *loss of* the property, not just physical damage. Rather than advising Defendants AMCO, NATIONWIDE and WADE to pay

Plaintiff's claim, rather than investigating more with respect to the local and state orders or even rather than sending a reservation of rights letter, Defendant NIEMEYER sent Plaintiff a pre-formatted denial letter shortly after the claim was made, despite the fact the Policy provides coverage for Plaintiff's business losses. Because of Defendant NIEMEYER's misrepresentations, inadequate and outcome-oriented investigation, Plaintiff has not received any payment for the claim.

44. The foregoing conduct was and is the producing cause(s) of injury and damage to Plaintiff. Plaintiff has suffered damages including, without limitation, actual damages, economic damages, and consequential damages. Defendant NIEMEYER's conduct caused a failure to effectuate a prompt, reasonable settlement of the claim. Moreover, one or more of the foregoing acts or omissions were committed "knowingly" and entitling Plaintiffs to seek treble damages pursuant to the Insurance Code.

VII.

CAUSES OF ACTION AGAINST ALL DEFENDANTS FOR CIVIL CONSPIRACY

45. Plaintiff re-alleges the foregoing paragraphs alleging the facts in this matter and incorporates the same by reference for all purposes. Defendants conspired to delay and deny or underpay Plaintiff's claim. Defendants NATIONWIDE and AMCO assigned Defendant NIEMEYER to investigate Plaintiff's claim and Defendants set out to intentionally conduct an outcome-oriented investigation in order to avoid paying for all of the damages covered by the Policy. Defendant NIEMEYER works for Defendants NATIONWIDE and AMCO. The pretextual adjustment of the claim and denial letter misrepresenting coverage were the acts by Defendant NIEMEYER in violation of the Insurance Code and a component of the meeting of the minds between Defendants NIEMEYER, NATIONWIDE and AMCO to perpetrate the violations of the Insurance Code. Defendants' conspiracy was a proximate cause of Plaintiff's

damages.

VIII.
KNOWLEDGE

46. Each of the acts described above, together and singularly, was done "knowingly" by Defendants as that term is used in the Texas Insurance Code and was a producing cause of Plaintiff's damages described herein.

IX.
DAMAGES

47. Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and producing causes of the damages sustained by Plaintiff.

48. For breach of contract, Plaintiff is entitled to regain the benefit of the bargain, which is the amount of the claim, together with attorney's fees.

49. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy but for the wrongful denial, court costs, consequential damages not covered by Plaintiff's Policy and attorney's fees. For knowing conduct of the acts described above, Plaintiff asks for three times the actual damages. TEX. INS. CODE §541.152.

50. For noncompliance with the Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of the claim, as well as eighteen (18) percent interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE §542.060.

51. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and exemplary damages.

52. The acts of each Defendant were committed knowingly, willfully, intentionally, with actual awareness, or with actual malice. In order to punish defendants for such unconscionable overreaching and to deter such actions and/or omissions in the future, Plaintiff seeks recovery from all Defendants of exemplary damages as provided by Chapter 41 of the Texas Civil Practice and Remedies Code and Texas Insurance Code, §542.060.

X.

ALTERNATIVE RELIEF

53. In addition, as to any exclusion, condition, or defense pled by Defendants, Plaintiff would show:

a. The clear and unambiguous language of the policy provides coverage for business interruption and other losses to the Properties caused by losses made the basis of Plaintiff's claim;

b. In the alternative, any other construction of the language of the policy is void as against public policy;

c. Any other construction and its use by Defendants violate the Texas Insurance Code, §541 et. seq. and is void as against public policy;

d. Any other construction is otherwise void as against public policy, illegal, and violates state law and administrative rules and regulations.

e. In the alternative, should the Court find any ambiguity in the policy, the rules of construction of such policies mandate the construction and interpretation urged by Plaintiff as an insured party under the Policy;

f. In the alternative, Defendants are judicially, administratively, and equitably estopped from denying Plaintiff's construction of the policy coverage at issue;

g. In the alternative, to the extent that the wording of such policy does not reflect the true intent of all parties thereto, Plaintiff pleads the doctrine of mutual mistake requiring reformation.

XI.
ATTORNEYS FEES

54. For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorneys whose names are subscribed to this pleading. Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas in accordance with Texas Civil Practice and Remedies Code, §§37.004, 37.005, 37.009, 38.001 and Texas Insurance Code, §542.060.

XI.
REQUEST FOR DISCLOSURES

55. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff request that Defendants each provide the information required in a Request for Disclosure.

XII.
FIRST REQUEST FOR PRODUCTION TO DEFENDANT AMCO

1. Produce the non-privileged portion of AMCO's complete claim file for, relating to or arising from Plaintiff's losses for which AMCO opened a claim under the Policy.
2. Produce all emails and other forms of communication between AMCO, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing Plaintiff's Policy, business, claims and/or Property which are the subject of this suit.
3. Underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications

related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendants AMCO, NATIONWIDE, WADE and NIEMEYER regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

4. Any and all documents and/or communications from AMCO or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

5. As to each policy provision that AMCO contends in the denial letter of May 18, 2020, limits or bars coverage for Plaintiff for the subject claim, any and all Documents reflecting drafting history of each provision, including changes in policy language and any and all materials, Documents, notations, files, reports, correspondence and/or other Communications Related to actual or proposed changes in policy language

6. Any and all Documents reflecting the drafting history, intent and/or regulatory submission and approval or disapproval of regarding the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 014007 06), including changes in policy language and any and all materials, documents, notations, files, reports, correspondence and/ or other Communications Related to actual or proposed changes in policy language.

7. Any and all Documents and Communications from or relating to or concerning ISO and the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 01 40 07 06 and/or CP 01 75 07 06). This request includes Documents and/or Communications relating to the drafting, creation, revision, or analysis of any ISO Insurance Policy forms, terms, or provisions involving the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 01 40 07 06 and/or CP 01 75 07 06) and/or any other similar provision, definition, exclusion or endorsement.

XIII.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT NIEMEYER

1. Produce NIEMEYER's complete claim or adjusting file for Plaintiff's claim.
2. Produce all emails and other forms of communication between NATIONWIDE, AMCO, their agents, adjusters, employees, or representatives with Defendant NIEMEYER and/or NIEMEYER's agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing the claim which is the subject of this suit. This request includes Documents and/or Communications relating to the handling of business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

3. Any and all documents and/or communications from NATIONWIDE or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID.

XIV.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT NATIONWIDE

1. Produce the non-privileged portion of NATIONWIDE's complete claim file for, relating to or arising from Plaintiff's losses for which NATIONWIDE opened a claim under the Policy.

2. Produce all emails and other forms of communication between NATIONWIDE, its agents, adjusters, employees, or representatives and the agent and adjuster, and/or their agents, adjusters, representatives or employees relating to, mentioning, concerning or evidencing Plaintiff's Policy, business, claims and/or Properties which are the subject of this suit.

3. Underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendants AMCO, NATIONWIDE, WADE and NIEMEYER regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

4. Any and all documents and/or communications from NATIONWIDE or any parent, subsidiary or affiliated entities to any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

5. As to each policy provision that NATIONWIDE contends in the denial letter of May 18, 2020, limits or bars coverage for Plaintiff for the subject claim, any and all Documents reflecting drafting history of each provision, including changes in policy language and any and all materials, Documents, notations, files, reports, correspondence and/or other Communications Related to actual or proposed changes in policy language. This request for production specifically includes correspondence with the Texas Department of Insurance.

6. Any and all Documents reflecting the drafting history, intent and/or regulatory submission and approval or disapproval of regarding the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 014007 06), including changes in policy language and any and all materials, documents, notations, files, reports, correspondence and/ or other Communications Related to actual or proposed changes in policy language.

7. Any and all Documents and Communications from or relating to or concerning ISO and the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 01 40 07 06 and/or CP 01 75 07 06). This request includes Documents and/or Communications relating to the drafting, creation, revision, or analysis of any ISO Insurance Policy forms, terms, or provisions involving the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 01 40 07 06 and/or CP 01 75 07 06) and/or any other similar provision, definition, exclusion or endorsement.

XV.

FIRST REQUEST FOR PRODUCTION TO DEFENDANT WADE

1. Produce the non-privileged portion of WADE's complete file for, relating to or arising from the sale and issuance of Plaintiff's original Policy and all subsequent renewals of the Policy.

2. Produce all emails and other forms of communication between WADE and NATIONWIDE, AMCO and/or NIEMEYER and their respective agents, employees, or representatives Plaintiff's Policy, business, claims and/or Property which are the subject of this suit.

3. Underwriting documents and communications, including but not limited to, any and all materials, documents, notations, files, reports, correspondence and/or other communications related to Plaintiff's application/s for coverage, binders, proposals, and the issuance of the policy, including renewals thereof. This request also includes materials, determination and/or method for determining the forms and endorsements to be used in creating the policy. This request also includes information regarding the basis for rating and premium classifications used for Plaintiff. Finally, this request includes any internal communications or guidelines regarding the handling and/or coverage positions of Defendants AMCO, NATIONWIDE, WADE and NIEMEYER regarding business interruption and other claims related to the 2019 Novel Coronavirus and/or COVID-19.

4. Any and all documents and/or communications from NATIONWIDE or any parent, subsidiary or affiliated entities to WADE and any third-party, including but not limited to insurance agents and brokers, marketing and/or public relations firms, at any time after December 15, 2018, and relating in any way to coverage or exclusions or denials of coverage for civil authority or for business interruption or business income loss and/ or commercial property coverage mentioning or referencing the 2019 Novel Coronavirus, the pandemic, and/or COVID-19.

5. As to each policy provision that WADE contends limits or bars coverage for Plaintiff for the subject claim, any and all Documents containing information provided to Plaintiff and similarly insurable businesses describing the coverage, endorsements and definitions concerning coverage that was offered to Plaintiff.

6. Any and all Documents in WADE's possession reflecting the drafting history, intent and/or regulatory submission and approval or disapproval of regarding the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 014007 06), including changes in policy language and any and all materials, documents, notations, files, reports, correspondence and/ or other Communications Related to actual or proposed changes in policy language.

7. Any and all Documents and Communications in WADE's possession relating to or concerning ISO and the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 01 40 07 06 and/or CP 01 75 07 06). This request includes Documents and/or Communications relating to the drafting, creation, revision, or analysis of any ISO Insurance Policy forms, terms, or provisions involving the EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA (CP 01 40 07 06 and/or CP 01 75 07 06) and/or any other similar provision, definition, exclusion or endorsement.

XIV.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein; that, on final hearing, Plaintiff have judgment against Defendants for an amount, deemed to be just and fair by the jury, which will be a sum within the jurisdictional limits of this Court, but more than \$1,000,000. Plaintiff further pleads for costs of suit; for interest on the judgment; for pre-judgment interest; and, for such other and further relief, in law or in equity, either general or special, including the non-monetary relief of declaratory judgment against each defendant to which Plaintiff may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF, POB, LP,
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