

COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

STEADFAST INSURANCE COMPANY	)	CASE NO.: _____
1299 Zurich Way	)	
Schaumburg, IL 60196	)	
	)	JUDGE: _____
Plaintiff	)	
	)	
v.	)	
	)	
SIGNET JEWELERS LIMITED	)	
375 Ghent Road	)	<b><u>COMPLAINT FOR DECLARATORY</u></b>
Akron, OH 44333	)	<b><u>JUDGMENT</u></b>
	)	
and	)	
	)	
STERLING JEWELERS INC.	)	
375 Ghent Road	)	
Akron, OH 44333	)	
	)	
Defendants	)	

Plaintiff Steadfast Insurance Company (“Steadfast”) for its Complaint for Declaratory Judgment against Defendants Signet Jewelers Limited (“Signet”) and Sterling Jewelers Inc. (“Sterling”) alleges and states as follows:

1. Steadfast seeks a declaratory judgment with respect to its rights and obligations to Signet and Sterling (collectively, “Defendants”) under two insurance policies Steadfast issued to Defendants, with respect to claims for coverage asserted by Defendants for alleged losses arising out of the spread of the COVID-19 virus and resulting stay-at-home or shutdown orders of various government officials and agencies, affecting multiple retail store locations of the Defendants throughout the United States and overseas.

**PARTIES**

2. Steadfast is an insurance company and a Delaware corporation with its principal place of business in Schaumburg, Illinois.

3. Signet is a Bermuda limited company with its principal place of business in Akron, Ohio.

4. Sterling is a Delaware corporation with its principal place of business in Akron, Ohio.

### **JURISDICTION**

5. This Court has original subject-matter jurisdiction over this matter pursuant to Ohio Rev. Code § 2721, as Steadfast seeks a declaration of rights, status and other legal relations under a contract or other writing, whether or not there has been any breach.

6. This Court has general personal jurisdiction over the Defendants because each maintains its principal place of business in Ohio.

7. This Court has specific personal jurisdiction over the Defendants because their activities related to the matter in controversy took place in Ohio.

### **VENUE**

8. Venue is properly laid in this Court because Summit County is where each of the Defendants resides and the county in which each of the Defendants maintains its principal place of business.

### **NATURE OF THE CASE**

9. Steadfast issued to Signet as First Named Insured an Integrated Insurance Policy with policy number IPR 3460384-06 for the policy period November 15, 2019, to November 2022, which provided, among other coverages and subject to all of its terms, conditions, exclusions and definitions, coverage for “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property,” with a limit of liability of \$15,000,000.00 per occurrence, subject to applicable deductibles, sublimits and time limits. A true copy of Steadfast Policy No. IPR 3460384-06 is attached hereto as Exhibit 1.

10. Steadfast issued to Signet as First Named Insured an Edge Global Policy with policy number XPP 6556066-10 for the policy period November 15, 2019, to November 2020, which provided, subject to all of its terms, conditions, exclusions and definitions, coverage for “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property,” excess of \$15,000,000.00 per occurrence, up to \$182,500,000.00 per occurrence for Property Damage and Time Element loss combined, and subject to applicable deductibles, sublimits and time limits. A true copy of Steadfast Policy No. XPP 6556066-10 is attached hereto as Exhibit 2.

11. Steadfast Policy No. IPR 3460384-06 and Policy No. XPP 6556066-10 are referred to herein as the “Policies.”

12. Defendants operate over 3,000 jewelry stores worldwide under trade names including Kay, Zales and Jared.

13. Due to the 2020 outbreak of the virus causing COVID-19 (the “COVID-19 Virus”), Defendants have closed thousands of their stores, including all stores in North America, the United Kingdom and Ireland.

14. Defendants have made a claim to Steadfast contending that their business losses arising out of closure of their stores due to the spread of the COVID-19 virus give rise to coverage under certain provisions of the Policies.

15. On May 2, 2020, Steadfast responded to Defendant’s claim, requesting additional information, calling Defendant’s attention to various provisions of Policy IPR 3460384-06 that may preclude coverage and reserving its right to deny coverage if, based on its coverage investigation, it determined that no coverage is afforded. A copy of Steadfast’s May 2, 2020, letter is attached as Exhibit 3.

16. On May 14, 2020, without providing Steadfast any of the information requested by Steadfast, Defendants filed a suit in the Civil District Court for the Parish of Orleans, Louisiana, alleging that Steadfast had breached its contracts, seeking a declaratory judgment of coverage and alleging bad faith denial of coverage.

17. Defendants have provided to Steadfast the information Steadfast has requested to assess coverage under the Policies, and, accordingly, Steadfast's coverage investigation is not complete.

18. Based on the information Defendants have provided to date, coverage under the Policies is or may not be afforded for one or more of the following reasons:

- a. There has been no direct physical loss of damage caused by a Covered Cause of Loss to Covered Property at an Insured Location under the terms, conditions and exclusions stated in the Policies.
- b. Under Section 3.03.02.05 of the Policies, the Policies exclude "Loss or damage resulting from the Insured's suspension of business activities, except to the extent provided by this Policy," and the suspension of business activities asserted by Defendants are not covered or are excluded by the terms, conditions and exclusions of the Policies.
- c. The suspension of business activities asserted by Defendants are not covered or are excluded under the Policies among other reasons because:
  - i. Under "Exclusions" (Section 3.03) of the Policies, Section 3.03.01 provides in part:

This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.

3.03.01.01 **Contamination**, and any cost due to **Contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.

\* \* \*

3.03.01.03 Loss or damage arising from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, improvement, modification, demolition, occupancy, operation or other use, or removal including debris removal of any property.

“Contamination(Contaminated)” is defined as “Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew.”

ii. Under “Exclusions,” Section 3.03.02 provides in part:

This Policy excludes:

3.03.02.01 Loss or damage arising from delay, loss of market, or loss of use.

iii. Under “Definitions,” Section 7.11, “Covered Cause of Loss” is defined as “All risks of direct physical loss of or damage from any cause unless excluded.” Accordingly, “Covered Cause of Loss”

does not include Contamination, defined as any condition of property due to the actual presence of any virus, or any cost due to such condition of property including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.

- iv. The presence of COVID-19 virus on or in property does not cause direct physical loss to or damage of property. To the extent Defendants contend that any direct physical loss of or damage to property was due to the actual presence of COVID-19 virus, such loss or damage is excluded.
- v. Under the Policies, pursuant to Section IV – Time Element, Section 4.01.01, any loss did not result from the necessary Suspension of the Insured’s business activities at an Insured Location and/or the Suspension was not due to direct physical loss of or damage to Property (of the type insurable under the Policy) caused by a Covered Cause of Loss at the Location.
- vi. Under the Policies, pursuant to Section 5.02.03, “Civil or Military Authority,” coverage is afforded only for “the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary Suspension of the Insured’s business activities at an Insured Location if the Suspension is caused by order of civil or military authority that prohibits access to the Location. That order must result from a civil authority’s response to direct

physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within [5 miles] of the Insured's Location. . . ." Any order of civil authority at issue here did not prohibit access to any Insured Location and was not made in response to direct physical loss of or damage caused by a Covered Cause of Loss, whether to property within 5 miles of the Insured's Location or elsewhere, but was made in response to a public health crisis and to slow or stop the spread of disease. To the extent that Defendants contend that any order of civil authority resulted from the direct physical loss of or damage to property due to the actual presence of COVID-19 virus, such direct physical loss of or damage is excluded under the Policies by the Contamination exclusion, Section 3.03.01, and the definition of "Contamination," which includes any condition of property due to the actual presence of "virus."

- vii. Under the Policies, any loss insured under any Time Element Coverages applicable during a Period of Liability was not sustained during a Period of Liability because under Section 4.03 the Period of Liability starts from the time of physical loss or damage of the type insured against under the Policies, and here there has been no physical loss or damage of the type insured against.

- viii. Under the Policies, as stated on the Policy Limits of Liability Schedule (Section 2.03), no coverage is provided under the coverage provision for “Decontamination Costs,” Section 5.02.07.
- ix. Under the Policies, as stated on the Policy Limits of Liability Schedule (Section 2.03), no coverage is provided under the coverage provision for “Land and Water Contaminant Cleanup, Removal and Disposal,” Section 5.02.16.

19. The Policies contain endorsements that amend certain terms and conditions pursuant to laws and regulations applicable in 31 States, specifically Alaska, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

20. Defendants have contended that the Amendatory Endorsement – Louisiana amends the Policies with respect to terms and conditions applicable to all states, not just with respect to Louisiana.

21. The Amendatory Endorsement – Louisiana provides, among other things:

1. Section III – PROPERTY DAMAGE, C EXCLUSIONS, paragraph 3.03.01.01 is deleted in its entirety and replaced by the following:

3.03.01.01. Contamination or asbestos, and any cost due to Contamination or asbestos including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.

\* \* \*



11. The following is deleted from Section VII – DEFINITIONS

Contamination(Contaminated) – any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew.

and is replaced by the following:

Contamination(Contaminated) – Any condition of property due to the actual presence of any Contaminant(s).

12. The following is deleted from Section VII – DEFINITIONS

Contaminant(s) – Any solid, liquid, gaseous, thermal or other irritant, pollutant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), asbestos, ammonia, other hazardous substances, Fungus or Spores.

and is replaced by the following:

Contaminant(s) – Any solid, liquid, gaseous, thermal or other irritant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), other hazardous substances, Fungus or Spores.

22. The Amendatory Endorsement – Louisiana applies only to locations in Louisiana and cannot be read to amend the Policies’ terms, conditions and exclusions as applied to locations in other states or countries, because the Policies contain 30 other state-specific amendatory endorsements that do not contain the changes made in the Amendatory Endorsement – Louisiana.

23. The Amendatory Endorsement – Louisiana, regardless of whether it applies only in Louisiana or not, does not restore coverage otherwise available to Defendants with respect to losses arising out of the suspension of their business activities due to the spread of the COVID-19 virus, because there has been no direct physical loss to or damage to Covered Property.

24. The Amendatory Endorsement – Louisiana, regardless of whether it applies only in Louisiana or not, excludes any condition of property due to the actual presence of any hazardous substances, including living material or material capable of reproduction such as fungus and spores.

### **COUNT I – DECLARATORY RELIEF**

25. An actual case of controversy exists between Steadfast and Defendants regarding whether the Policies afford coverage with respect to Defendants' claims for losses due to their closures of stores arising out of the spread of the COVID-19 virus and associated stay-at-home or shutdown orders.

26. Steadfast is entitled to a declaration declaring the parties' rights and obligations under the Policies with respect to Defendants' claims for coverage.

### **REQUEST FOR RELIEF**

27. Steadfast requests judgment in its favor declaring the parties' rights and obligations under the Policies with respect to Defendants' claims for coverage based on the facts, the language of the Policies and applicable law.

28. Steadfast requests judgment in its favor declaring that it has not denied coverage to Defendants in bad faith or is otherwise in breach of the duty of good faith and fair dealing under any applicable law.

29. Steadfast requests all other relief that is just and proper.

*/s/ Robert E. Chudakoff*

---

Robert E. Chudakoff (0038594)  
ULMER & BERNE LLP  
Skylight Office Tower  
1660 W. 2<sup>nd</sup> Street – Suite 1100  
Cleveland, Ohio 44113-1448  
Tel: (216) 583-7000  
Fax: (216) 583-7001

Attorney for Plaintiff  
Steadfast Insurance Company