

LEONIS H. DIAVASIS
CLERK OF COURTS
STARK COUNTY, OHIO

2020 MAY 21 PM 12:52

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

SYLVESTER AND SYLVESTER, INC.,
Db a Nick Sylvester's North End Italian
Grille
4305 Portage Street N.W.
North Canton, Ohio 44720

Plaintiff,

-vs.-

STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY, D/B/A STATE
AUTO INSURANCE COMPANIES
c/o C T Corporation System
1300 East 9th Street
Cleveland, Ohio 44114

Defendant.

Now comes Plaintiff, Sylvester & Sylvester, Inc., dba Nick Sylvester's North End Italian Grille ("Sylvester"), and for its Complaint against Defendant State Automobile Mutual Insurance Company, doing business as State Auto Insurance Companies ("Defendant" or "State Auto"), hereby states as follows:

INTRODUCTION

1. Sylvester is a family business operated by Stark County resident, Nicholas Sylvester. Since 2001, Sylvester has done business as Nick Sylvester's North End Italian Grille, located in North Canton, Ohio.

2. Like many hospitality-based businesses, Sylvester has been deeply affected by the recent government shutdown and has suffered substantial economic losses.

CASE NO:
2020 CV 00817

JUDGE:

Heath

COMPLAINT:
DECLARATORY JUDGMENT;
BREACH OF CONTRACT;
BAD FAITH

ENTERED BY 7

3. Since 9:00pm on March 15, 2020, Sylvester has been completely shut down, unable to host guests in its restaurant or provide carry-out service.

4. Also, like many hospitality-based businesses, Sylvester has for years faithfully paid thousands of dollars in insurance premiums to Defendant, and believed that it was insured to the fullest extent possible to protect itself, its employees, and its customers in the event of any losses.

5. In recent weeks, Sylvester has learned that Defendant claims that Sylvester does not have any insurance coverage for the staggering losses it has suffered and is continuing to suffer.

THE PARTIES

6. Sylvester is an Ohio corporation, doing business as Nick Sylvester's North End Italian Grille located at 4305 Portage Street NW, North Canton, Stark County, Ohio.

7. State Auto is an Ohio domestic insurance corporation with its principal office located at 518 East Broad Street, Columbus, Ohio 43215.

JURISDICTION AND VENUE

8. This Honorable Court has jurisdiction over the parties and this dispute, including for declaratory relief, pursuant to Ohio Revised Code § 2307.382, *et seq.*, Ohio Revised Code § 2721.02, *et seq.* and Rule 57 of the Ohio Rules of Civil Procedure.

9. An actual controversy between Sylvester and State Auto exists within the meaning of Ohio Revised Code § 2721.02, *et seq.* regarding whether State Auto has a duty to provide Sylvester coverage and indemnity for, among other things, business income loss pursuant to the terms and conditions of the State Auto policy of insurance, due to the COVID-19 pandemic, as more particularly described below.

10. Venue is proper in Stark County, Ohio under Ohio Rules of Civil Procedure 3(C)(3), 3(C)(6), and 3(C)(5) because Defendant conducted activity giving rise to Sylvester's

claims for relief in Stark County, because all or part of Sylvester's claims for relief arose in Stark County, and because all or part of Sylvester's damages were suffered in Stark County.

FACTUAL BACKGROUND

The Policy: Sylvester Relied Upon Defendant to Provide it with the Broadest Possible Insurance Coverage to Protect Itself, its Employees, and its Customers.

11. At all relevant times, State Auto insured Sylvester under a commercial businessowners policy drafted by State Auto, bearing policy number BOP 2917869 ("Policy"). The certified Policy is in the possession of State Auto, and while not attached hereto because it is voluminous, it is incorporated herein by reference.

12. Under the Policy, Sylvester agreed to make premium payments to State Auto in exchange for State Auto's promise to indemnify Sylvester for losses including, but not limited to, business income loss at its commercial property location ("Property").

Sylvester Has Paid for Business Interruption Coverage, Including Coverage for Losses Sustained from Physical Conditions Affecting Property and/or Losses Sustained from the Orders or Actions of Governmental Authorities

13. The Policy is in effect from August 1, 2019 to August 1, 2020 and Sylvester faithfully paid premiums to State Auto, specifically to provide additional coverage for loss of Business Income ("BI"), Extended Business Income ("EBI"), Extra Expense coverage ("EE"), coverage for loss due to actions of a Civil Authority, and a "Business Income – Limited Extension for Food-Borne Illness".

14. Relevant portions of the Policy provide that State Auto will:

- a. "pay for the actual loss of Business Income you [Sylvester] sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.

- b. "... ordinary payroll expenses for 60 days following the date of physical loss or damage."
- c. "... necessary Extra Expenses you [Sylvester] incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss of damage to property at the described premises."
- d. "...the actual loss of Business Income you [Sylvester] sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss."
- e. "The suspension of your "operations" at the described premises due to the order of a civil authority; or adverse public communications or media reports, resulting from the actual or alleged...Exposure of the described premises to a contagious or infectious disease."

15. COVID-19's actual or suspected physical presence at or in the vicinity of Sylvester's Property prevents Sylvester from making use of the Property, especially in cases where the business must close in part or in full. Under the terms and condition of the Policy, this kind of loss constitutes a physical damage to the Property in that the property has been rendered unusable. Moreover, the COVID-19 virus is a "physical" thing. For example, restaurants and event venues, such as Sylvester's, forced to close due to COVID-19 in or near the restaurants and event venues have suffered a "physical loss" of its Property, with resulting business interruption loss.

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

17. The Policy is an "all-risk" policy, as it provides that a covered cause of loss under the policy means risks of direct physical loss of or damage to the property unless the loss is specifically excluded or limited in the Policy. Here, no specific exclusion applies to reasonably justify the denial of Sylvester's claims.

Sylvester has Suffered – and Continues to Suffer – Substantial Losses from the Physical Presence or Contamination of COVID19 and/or the Business Suspension Orders of the Government

18. While the Policy was in force, Sylvester sustained, and continues to sustain, a loss(es) due to the issues created by the physical spread and/or contamination of COVID-19 at, in, on, and/or around Sylvester's premises described in the Policy which includes Sylvester's restaurant in Stark county.

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

20. While the Policy was in force, Sylvester sustained, and continues to sustain, a loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing COVID-19 and the Pandemic.

21. Based upon information and belief, State Auto has accepted the policy premiums from Sylvester with no intention of providing any coverage under the Policy's Business Income, Extended Business Income, Extra-Expense, Civil Authority, or Business Income – Limited Extension for Food-Borne Illness Coverage Sections due to a loss and/or shutdown from a pandemic, i.e. the issues surrounding the COVID-19 pandemic.

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

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

24. While the Policy was in force, Sylvester sustained, and continues to sustain, a loss(es) due to the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health addressing the COVID-19 Pandemic.

The COVID-19 Pandemic: The Policy Does Not Contain any Virus or Pandemic Exclusion

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

26. On January 31, 2020, under §319 of the Public Health Service Act (42 U.S.C.247d), The Secretary of Health and Human Services ("HHS") declared a public health emergency in response to COVID-19.

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

28. On March 13, 2020 the President of the United States of America, Donald J. Trump, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak ("Proclamation"), proclaiming the COVID-19 outbreak constituted a national emergency in the United States, beginning March 1, 2020.

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

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

31. COVID-19 is a physical substance.

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

33. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces.

34. COVID-19 can and does live on and/or remains capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touch screens, cardboard packages, food items, silverware, plates, serving trays, glasses, straws, menus, pots, pans, kitchen utensils, faucets, refrigerators, freezers, and other items of property for a period of time.

35. COVID-19 can be transmitted by way of human contact with surfaces and items of physical property on which COVID-19 particles are physically present.

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

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

38. COVID-19 has been transmitted by human to human contact and interaction at premises in Stark county.

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

40. COVID-19 has been transmitted by way of human contact with airborne COVID-19 particles emitted into the air at premises in Stark county.

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

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

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

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

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

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

47. The presence of people infected with or carrying COVID-19 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

48. The presence of people infected with or carrying COVID-19 particles at premises renders the premises, including property located at that premises, unsafe, resulting in direct physical loss to the premises and property.

***Various Civil Authorities Have Issued Orders Which Required
the Suspension of Sylvester's Business Operations***

49. In response to COVID-19 and the Pandemic, the Governor of Ohio has issued multiple executive orders pursuant to the authority vested in him by the Ohio Constitution and the laws of Ohio.

50. In response to COVID-19 and the Pandemic, the Ohio Department of Health, pursuant to its authority under Ohio law, has issued multiple orders, including a Stay At Home Order.

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

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

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

54. The Stark County Health Department is a civil authority as contemplated by the Policy.

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

56. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020- 01D that declared a state of emergency in response to the physical presence of COVID-19 and the Pandemic.

57. On March 15, 2020, Ohio restricted food and beverage sales to carry-out and delivery only, with no onsite consumption permitted. Further, Ohio prohibited social gatherings of more than ten people. The stated goal of these orders was to slow the spread of COVID-19 by minimizing in-person interaction "in an environment with a multitude of hard surfaces." The order reiterated that "It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes." Also that:

Previously studied human coronaviruses (including SARS, which is very closely related to COVID-19) can survive on paper, wood, glass, plastic up to 4-5 days. *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251.

58. On March 22, 2020, the Ohio Department of Health issued a Stay At Home Order, effective March 23, 2020, ordering Ohio residents to stay at home. By way of this order the State of Ohio ordered all non-essential businesses in Ohio to cease all activities.

59. Sylvester's business does not qualify as Essential Businesses and Sylvester was required to cease operations at its location.

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

61. The State of Ohio, through the Governor and the Department of Health, have issued, and continue to issue, authoritative orders governing Ohioans and Ohio businesses, including Sylvester, in response to COVID-19 and the Pandemic, the effect of which have required

and continue to require Sylvester to cease operations at, and that have prohibited and continue to prohibit access to, the premises described in the Policy.

The Presence of COVID19 Is Uniformly Recognized to Cause Contamination, Loss and Damage to Property

62. State and local governmental authorities, and public health officials around the Country, acknowledge that the issues surrounding COVID-19 and the Pandemic cause direct physical loss and damage to property. For example:

- a. The state of Colorado issued a Public Health Order indicating that "COVID- 19... physically ***contributes to property loss, contamination, and damage ...***" (Emphasis added);
- b. The City of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in part "because the virus ***physically is causing property loss and damage.***" (Emphasis added);
- c. Broward County, Florida issued an Emergency Order acknowledging that COVID-19 ***"is physically causing property damage."*** (Emphasis added);
- d. The State of Washington issued a stay at home Proclamation stating the "COVID-19 pandemic and its progression... remains a public disaster affecting life, health, ***[and]property .. .***" (Emphasis added);
- e. The State of Indiana issued an Executive Order recognizing that COVID-19 has the "propensity to ***physically*** impact surfaces and personal ***property.***" (Emphasis added);
- f. The City of New Orleans issued an order stating "there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for prolonged period of time, thereby spreading from surface to person and ***causing property loss and damage*** in certain circumstances." (Emphasis added);
- g. The State of Illinois issued an Executive Order describing COVID-19's "propensity to ***physically*** impact surfaces and personal ***property.***" (Emphasis added);

- h. The State of New Mexico issued a Public Health Order acknowledging the "threat" COVID-19 "poses" to "*property.*" (Emphasis added);
- i. North Carolina issued a statewide Executive Order in response to the Pandemic not only "to assure adequate protection for lives," but also to "assure adequate protection of... *property.*" (Emphasis added); and
- j. The City of Los Angeles issued an Order in response to COVID-19 "because, among other reasons, the COVID-19 virus can spread easily from person to person and it is *physically causing property loss or damage* due to its tendency to attach to surfaces for prolonged periods of time." (Emphasis added).

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

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

65. People in Stark county have been diagnosed with COVID-19.

66. As of May 19, 2020, Stark County had reported 610 cases of COVID-19 and 79 resulting deaths.

67. People in Stark county have, and have had, COVID-19 disease but have not been diagnosed.

68. People in Stark county have COVID-19 particles on or about their person and personal property.

69. Properties and premises throughout Stark county contain the presence of COVID-19 particles on surfaces and items of property.

70. Based on the prevalence of the virus in Stark county, Sylvester's has sustained direct physical loss of or damage due to the presence of coronavirus, and has unquestionably

sustained direct physical loss as the result of the Pandemic and/or civil authority orders issued by the Governor of Ohio.

The Rules of Contract Interpretation Provide Coverage for Sylvester but Defendant Has Wrongfully Denied Coverage Even Though the Policy Contains No Exclusions for Virus or Pandemic Losses

71. Sylvester submitted a timely insurance claim to State Auto.

72. Any effort by State Auto to deny the reality that the Pandemic causes physical loss of or damage to property would constitute a false and potentially fraudulent misrepresentation that could endanger policyholders, such as Sylvester, and the public.

73. However, on March 26, 2020, State Auto wrongfully denied Sylvester's claims for Business Income, Extended Business Income, Extra Expense, Civil Authority, Business Income – Limited Extension for Food-Borne Illness, and food spoilage.

74. Prior to the COVID-19 Pandemic, companies throughout the insurance industry specifically used exclusionary language that specifically and expressly excluded loss or damage as a result of a pandemic and Severe Acute Respiratory Syndrome ("SARS"). Defendant knew or should have known of the existence and availability of specific exclusionary riders for pandemics if the intention was to exclude losses resulting from pandemics.

75. For example, In *Meyer Natural Foods, LLC v. Liberty Mutual Fire Insurance Company*, 218 F.Supp.3d 1034, 196 Fed.R.Serv.3d 206, Liberty Mutual Fire Insurance Company denied coverage based on the following exclusion:

"We will not pay for loss or damage caused by or resulting from any of the following, regardless of any other cause or event, including a peril insured against, that contribute to the loss at the same time or in any other sequence:

10. The actual or suspected presence or threat of any virus, organism or like substance that is capable of inducing disease, illness, physical distress or death, whether infectious or otherwise, including but not limited to any epidemic, ***pandemic***, influenza, plague, ***SARS***, or Avian Flu. (emphasis added.)

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

77. In this case, under the coverage forms at issue, State Auto based its denial on its claim that there is no direct physical loss of or damage to the premises and on exclusions that are not applicable to a pandemic.

78. Had State Auto intended to exclude claims for the COVID-19 Pandemic made under the subject Policy, it would have, and could have, included the express exclusionary language that had been utilized in the insurance industry in the past to deny such claims, which specifically included the term "pandemic" and "SARS," but State Auto failed to include such an exclusion in Sylvester's Policy.

79. State Auto knowingly, purposely, and intentionally used inapplicable exclusions to deny claims by Sylvester for Business Income, Extended Business Income Extra Expense, Civil Authority, and Business Income – Limited Extension for Food-Borne Illness related to the COVID-19 pandemic.

80. State Auto had at its disposal contractual language that specifically excluded pandemics and SARS but did not include those policy exclusions in the subject Policy, yet wrongfully denied claims for those very reasons.

81. State Auto has actual knowledge of the different meanings between pandemic, SARS, virus, bacteria, and contamination, by way of its use of some of those terms and the use of those terms by other companies in the insurance industry in previous cases and policies utilizing those different terms, and wrongfully and intentionally used the term "pollution", among others, to exclude Sylvester's claims when, in fact, Sylvester's claims are related to a pandemic - which is not expressly excluded in the Policy.

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

83. Alternatively, the terms and conditions of coverage and exclusionary language relied upon by State Auto to deny Sylvester's coverage under the Policy related to the Pandemic are ambiguous and, therefore, must be strictly construed against State Auto and in favor of Sylvester.

COUNT ONE

DECLARATORY JUDGMENT

84. Sylvester restates each preceding paragraph as if fully rewritten herein.

85. There is a genuine dispute and actual controversy, over which this Honorable Court has jurisdiction, between Sylvester and State Auto concerning their respective rights, duties and obligations for which Sylvester requests a declaration of rights and obligations under the Policy. Speedy relief is necessary in order to preserve the rights of the parties which may otherwise be impaired or lost. The declaratory judgment sought will settle the controversy between the parties.

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

87. Sylvester is entitled to a declaration including, but not limited to, that:

- a. Sylvester sustained direct physical loss or damage as a result of the Pandemic;
- b. Physical loss under the Policy does not require tangible physical damage;
- c. COVID-19 is a covered cause of loss under the Policy;

- d. The losses incurred by Sylvester's as a result of the executive orders issued by the Governor of Ohio are covered losses under the Policy;
- e. The prohibition (and/or significant limitation) of access to Sylvester's properties as Ordered by the Civil Authority Orders, constitutes a prohibition to the insureds' Properties;
- f. The Civil Authority Orders trigger coverage because the Policy does not include an exclusion for a pandemic;
- g. The Policy provides coverage to Sylvester for any current and future civil authority closures of commercial buildings due to physical loss of or damage to property from COVID-19 under the Civil Authority coverage parameters and the Policy provides business income coverage in the event COVID-19 has caused a loss or damage at the insureds' Property or immediate area of the insureds' Property;
- h. The Civil Authority Orders constitute a prohibition of access to the insureds' Property by a Civil Authority as defined in the Policy;
- i. State Auto has not and cannot prove the application of any exclusion or limitation;
- j. Sylvester is entitled to coverage for its Business Income loss and Extra Expense resulting from coronavirus;
- k. Sylvester is entitled to coverage for loss due to the actions of Ohio's civil authorities;
- l. Sylvester has coverage for any substantially similar civil authority order in the future that limits or restricts the public's access to Sylvester's business establishment and
- m. Any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

COUNT TWO

BREACH OF CONTRACT

- 88. Sylvester restates each preceding paragraph as if fully rewritten herein.
- 89. Sylvester and State Auto entered into a valid and enforceable insurance contract.
- 90. Sylvester gave valuable consideration in the form of premium payments in exchange for the promise of insurance coverage in the event of, among other things, loss of

business income.

91. State Auto had an affirmative duty to comply with terms and conditions of the Policy and find coverage wherever possible under the Policy and indemnify Sylvester for its losses sustained and recoverable under the terms and conditions of the Policy.

92. Sylvester's made a claim for loss of Business Income, Extra-Expense, Civil Authority, Business Income – Limited Extension for Food-Borne Illness, and food spoilage arising from the Pandemic, interruption by civil authority and prohibited ingress and loss of Sylvester's business due to loss of and damage to Property.

93. State Auto breached the insurance contract by denying coverage for Sylvester's loss, which was due to a covered and foreseeable peril not subject to any exclusion.

94. Sylvester complied with all of its obligations under the insurance contract.

95. Sylvester has been injured and suffered financial harm as a result of State Auto's breach of the insurance contract.

96. In addition, in breaching the contract, State Auto has violated its implied duty to act in good faith and fair dealing with Sylvester.

97. As a direct and proximate result of State Auto's breach of contract, Sylvester's has incurred substantial and ongoing monetary damages in excess of \$25,000.00.

COUNT THREE

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING (BAD FAITH)

98. Sylvester's restates each preceding paragraph as if fully rewritten herein.

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

100. State Auto's conduct has breached the implied covenant of good faith and fair dealing implicit to the policy of insurance.

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

102. Sylvester is an insured of State Auto in the State of Ohio.

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

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

105. State Auto failed to provide Sylvester any reasonable or justifiable basis for denying Sylvester's claims.

106. State Auto misrepresented the Policy terms and conditions to Sylvester including, and without limitation, attempting to use an inapplicable exclusion, i.e. the pollutant exclusion in a knowingly and malicious attempt to avoid paying Sylvester all benefits it is entitled to under the Policy.

107. State Auto, knowing that Sylvester was inexperienced in insurance matters and unable to act to protect its interests, that such benefits were justly due, and that such benefits were necessary to pay Sylvester's necessities of its use of the Premises, nevertheless have deprived Sylvester of such benefits.

108. State Auto's refusal to properly investigate, adjust, handle, process, and/or pay benefits due Sylvester compelled Sylvester to, among other things, engage counsel and to initiate litigation to recover such benefits.

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

110. As a direct and proximate result of State Auto's conduct, Sylvester has sustained substantial compensable losses, including benefits withheld, and economic losses, such as attorney's fees, out of pocket expenses, loss of business income, personal property loss, out-of-pocket costs and expenses, diminution in value of the insurance policy, all to Sylvester's detriment and damage in an amount to be proven at trial in excess of \$25,000.00.

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

WHEREFORE, Plaintiff, Sylvester and Sylvester, Inc., demands judgment as follows:

- A. For Count One, a declaratory judgment as set forth in Paragraph 87 of this Complaint;
- B. For Count Two, judgment against State Auto for compensatory damages in excess of \$25,000.00;
- C. For Count Three, judgment against State Auto for compensatory damages in excess of \$25,000.00, punitive damages in an amount to be determined at trial, and attorney fees;
- D. For judgment against Defendant for attorneys' fees in an amount to be determined by the Court, prejudgment and post judgment interest in accordance with the statutory rate; costs of the within action; and
- E. Any further relief that this Court deems just and equitable.

DATED: May 21, 2020

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD



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INSTRUCTIONS FOR SERVICE

To the Clerk:

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



Gary A. Corroto

Counsel for Plaintiff