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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020L008488

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

10079863

NAPLETON SCHAUMBURG MOTORS, INC.)
d/b/a SCHAUMBURG MAZDA,)
NORTHWESTERN CHRYSLER-PLYMOUTH)
SALES INC. d/b/a NAPLETON'S)
NORTHWESTERN CHRYSLER JEEP DODGE,)
NAPLETON'S SCHAUMBURG-PONTIAC)
GMC, INC. d/b/a NAPLETON'S SCHAUMBURG)
BUICK-GMC, NAPLETON'S)
SCHAUMBURG SUBARU INC., NAPLETON'S)
ELGIN MOTORS HOLDING INC.)
d/b/a NAPLETON'S ELGIN KIA,)
ROTO SALES INC. d/b/a NAPLETON'S)
ARLINGTON HEIGHTS MAZDA &)
NAPLETON'S ARLINGTON HEIGHTS)
SUBARU, NAPLETON'S COUNTRYSIDE)
MOTORS, INC. d/b/a NAPLETON'S)
COUNTRYSIDE MAZDA, and)
NORTHWESTERN MOTORS HOLDING INC.)
d/b/a NAPLETON'S VOLKSWAGEN OF)
MOUNT PROSPECT,)

Case No.

Plaintiffs,)

v.)

AUTO-OWNERS INSURANCE COMPANY, and)
JOSEPH T. SNYDER & ASSOCIATES, LTD.,)

Defendants.)

COMPLAINT AT LAW

NOW COME the plaintiffs, NAPLETON SCHAUMBURG MOTORS, INC. d/b/a
SCHAUMBURG MAZDA, NAPLETON SCHAUMBURG MOTORS, INC. d/b/a
SCHAUMBURG MAZDA, NORTHWESTERN CHRYSLER-PLYMOUTH SALES INC. d/b/a
NAPLETON'S NORTHWESTERN CHRYSLER JEEP DODGE, NAPLETON'S
SCHAUMBURG-PONTIAC GMC, INC. d/b/a NAPLETON'S SCHAUMBURG BUICK-GMC,

NAPLETON'S SCHAUMBURG SUBARU INC., NAPLETON'S ELGIN MOTORS HOLDING INC. d/b/a NAPLETON'S ELGIN KIA, ROTO SALES INC. d/b/a NAPLETON'S ARLINGTON HEIGHTS MAZDA & NAPLETON'S ARLINGTON HEIGHTS SUBARU, NAPLETON'S COUNTRYSIDE MAZDA, INC. d/b/a NAPLETON'S COUNTRYSIDE MAZDA, and NORTHWESTERN MOTOR HOLDINGS INC. d/b/a NAPLETON'S VOLKSWAGEN OF MOUNT PROSPECT (hereinafter "PLAINTIFFS"), by its attorneys, MOTHERWAY & NAPLETON, LLP, and complains against Defendants, AUTO-OWNERS INSURANCE. COMPANY (hereinafter "AUTO-OWNERS INSURANCE"), and JOSEPH T. SNYDER & ASSOCIATES, LTD. (hereinafter "SNYDER"), as follows:

INTRODUCTION

1. This dispute arises out of "all risks" commercial insurance policies that Plaintiffs entered into with Defendant, AUTO-OWNERS INSURANCE, and which Defendant, SNYDER, renewed, procured, bound, or placed coverage for.

THE PARTIES

2. Plaintiffs are Illinois corporations that own, operate, manage, maintain, and oversee automobile dealerships and repair garages at the following locations: 5950 North Western Avenue, Chicago, Cook County, Illinois; 110 West Golf Road, Schaumburg, Cook County, Illinois; 100 West Golf Road, Schaumburg, Cook County, Illinois; 911 West Higgins Road, Schaumburg, Cook County, Illinois; 909 East Chicago Street, Elgin, Cook County, Illinois; 1555 East Rand Road, Arlington Heights, Cook County, Illinois; 333 W. Rand Rd., Mt. Prospect, Cook County, Illinois; and 6060 South La Grange Road, Countryside, Cook County, Illinois.

3. Defendant, AUTO-OWNERS INSURANCE, is a Michigan insurance company and authorized to do business in Illinois, and engaged in the business of selling commercial insurance to business entities in Cook County, Illinois.

4. Defendant, SNYDER, is an Illinois corporation and licensed insurance agency, engaged in the business of selling, soliciting, and negotiating commercial insurance contracts with business entities in Cook County, Illinois.

5. At all times relevant, Defendant, SNYDER, acted and/or omitted to act as an actual agent, apparent agent, or implied agent of Defendant, AUTO-OWNERS INSURANCE.

JURISDICTION & VENUE

6. The Circuit Court of Cook County has authority to exercise personal jurisdiction over Defendants, AUTO-OWNERS INSURANCE and SNYDER, and each of them, based on one or more of the following:

- a. This dispute arises out of Defendants systematic and continuous contacts with Illinois while engaged in the business of selling commercial insurance;
 - b. At all relevant times, Defendants transacted business and continue to transact business in Illinois, 735 ILCS 5/2-209(a);
 - c. Defendant, AUTO-OWNERS INSURANCE, contracted to insure property or risk located in the State of Illinois at the time of contracting, 735 ILCS 5/2-209(b);
 - d. Defendant, AUTO-OWNERS INSURANCE, entered into a contract substantially connected with Illinois, 735 ILCS 5/2-209(c);
 - e. Defendant, SNYDER, is an Illinois corporation subject to an Illinois court's exercise of personal jurisdiction.
7. The Circuit Court of Cook County is the proper venue for PLAINTIFFS' claims

against Defendant, AUTO-OWNERS INSURANCE and SNYDER, and each of them, based on one or more of the following:

- a. The events, acts, or omissions giving rise to PLAINTIFFS' claims occurred in Cook County, 735 ILCS 5/2-101;

- b. PLAINTIFFS brings this action against Defendant, AUTO-OWNERS INSURANCE, an insurance company doing business in Illinois, 735 ILCS 5/2-103(e);
- c. The insurance agreements were bound and executed in Cook County, Illinois.

THE AUTO-OWNERS INSURANCE POLICY

8. On or about April 23, 2019, Defendant, AUTO-OWNERS INSURANCE, and PLAINTIFFS, entered into an all risk commercial property coverage policy, Policy No. 004604-07385085-19 (hereinafter “Policy”). A true and accurate copy of the Policy is attached hereto as Exhibit A.

9. At all relevant times, the Policy has remained a valid and enforceable insurance contract in full force and effect. (Ex. A, p. 1).

Business Personal Property Coverage

10. In exchange for Plaintiffs’ payment of substantial premiums under the Policy, Defendant, AUTO-OWNERS INSURANCE, agreed to provide insurance coverage in the event that “direct physical loss of or damage to” Plaintiffs’ “Business Personal Property” occurred.

11. “Covered Property” refers to “the building or structure described in the declarations.” (Ex. A, p. 100).

12. “Business Personal Property” refers to “furniture and fixtures.” (Ex. A, p. 100).

13. “Business Personal Property” refers to “[l]abor, materials or services furnished or arranged by [Plaintiffs] on personal property of others” located within Plaintiffs’ insured premises. (Ex. A, p. 100).

14. “Business Personal Property” refers to Plaintiffs’ “use interest as tenant in improvements and betterments” located within Plaintiffs’ insured premises. (Ex. A, p. 100).

Business Income Coverage

15. In exchange for Plaintiffs' payment of substantial premiums under the Policy, Defendant, AUTO-OWNERS INSURANCE, agreed to provide Plaintiffs "Business Income Coverage" 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 ACTUAL LOSS SUSTAINED is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. (Ex. A, p. 132).

16. "Covered Causes of Loss" are defined as "direct physical loss" unless excluded or limited. (Ex. A, p. 114).

17. The Policy's terms define "Business Income" as "the net income (net profit or loss before income taxes) that would have been earned or incurred; and continuing normal operating expenses incurred, including payroll." (Ex. A, p. 114).

18. The Policy's terms provide that under the Policy, defendant, AUTO-OWNERS INSURANCE, "will pay for the actual loss of business income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." (Ex. A, p. 114).

19. The Policy's terms provide that 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 declaration." (Ex. A, p. 114).

20. The Policy's terms provide the "loss or damage must be caused by or result from a covered cause of loss." (Ex. A, p. 114).

21. The Policy's terms defined "suspension" as "the slowdown or cessation of business activities; or that a part or all of the described premises is rendered untenable, if coverage for Business Income applies." (Ex. A, p. 122).

22. "[O]perations" are defined as "business activities occurring at the described premises; and the tenantability of the described premises, if coverage for Business Income including "Rental Value" applies." (Ex. A, p. 121).

23. "[P]eriod of restoration" is defined as a period that begins "immediately following the time of direct physical loss or damage...or immediately following the time of direct physical loss or damage for extra expense coverage caused by or resulting from any covered cause of loss..." and ends on the earlier of "the date when the "property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or the date when business is resumed at a new permanent location." (Ex. A, p. 121-122).

Extended Business Income Coverage

24. In exchange for Plaintiffs' payment of substantial premiums under the Policy, Defendant, AUTO-OWNERS INSURANCE, agreed to provide Plaintiffs "Extended Business Income" coverage to "pay for the actual loss of business income [PLAINTIFFS] incur during the period that the property is actually repaired, and ends on "the date [PLAINTIFFS] could restore [] "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred" or 30 consecutive days later." (Ex. A, p. 116).

Extra Expense Coverage

25. In exchange for Plaintiffs' payment of substantial premiums under the Policy, Defendant, AUTO-OWNERS INSURANCE, agreed to provide Plaintiffs "Extra Expense Coverage" for:

"[N]ecessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss." (Ex. A, p. 114).

26. An "Extra Expense" means an expense "other than the expense to repair or replace property" that is paid in order to:

"Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location." (Ex. A, pp. 114-115).

Civil Authority Coverage

27. In exchange for Plaintiffs' payment of substantial premiums under the Policy, Defendant, AUTO-OWNERS INSURANCE, agreed to provide Plaintiff "Civil Authority Coverage" for:

[T]he 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[:] (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 damaged property. (Ex. A, p. 115).

28. The terms of the "Civil Authority" coverage provision state that coverage for "Business Income will begin immediately following the time of the first action of civil authority

that prohibits access to the described premises...and will apply for a period of up to four consecutive weeks from the date on which such coverage began.” (Ex. A, p. 115).

29. The terms of the “Civil Authority” coverage for Extra Expense will begin immediately after the time of the first action of civil authority, and “will end: four consecutive weeks after the date of that action; or when [] civil authority coverage for Business Income ends; whichever is later.” (Ex. A, p. 115).

Ordinance Or Law Coverage

30. In exchange for Plaintiffs’ payment of substantial premiums under the Policy, Defendant, AUTO-OWNERS INSURANCE, agreed to pay “Ordinance Or Law Coverage” for losses incurred from an ordinance or law that “establishes zoning or land use requirements at the described premises; and is in force at the time of loss.” (Ex. A, p. 138).

Coverage Exclusions

31. There exists a presumption under Illinois law that parties contract with knowledge of the statutes and laws in existence at the time of contracting.

32. There exists a presumption in Illinois that an insurer would have stated any exclusion clearly and specifically.

33. There exists a presumption under Illinois law that in an insurance coverage dispute an insured intended to obtain coverage.

34. The terms of the Policy do not exclude coverage for:

- a. Pandemics;
- b. Public health emergencies;
- c. Major natural disasters;
- d. “Widespread damage” that an occurrence of disease causes;

- e. An occurrence of disease that “affects a substantial area.”

THE PANDEMIC AND ILLINOIS GOVERNOR’S EXECUTIVE ORDERS

35. At all relevant times, the Centers for Disease Control and Prevention (“CDC”) designated occurrences of disease on a scale of five, ranging from “Sporadic” to “Pandemic.” <https://www.cdc.gov/csels/dsepd/ss1978/lesson1/section11.html>.

36. At all relevant times, the CDC’s “Principles of Epidemiology in Public Health” defined the term “pandemic” to mean “an epidemic that has spread over several countries or continents, usually affecting a large number of people.” <https://www.cdc.gov/csels/dsepd/ss1978/lesson1/section11.html>.

37. The Merriam-Webster Dictionary defines the term “pandemic” to mean an “outbreak of a disease that occurs over a wide geographic area and affects an exceptionally high proportion of the population.” <https://www.merriam-webster.com/dictionary/pandemic>.

38. In December 2019, several patients with pneumonia of an unknown origin were linked to the Huanan seafood market in Wuhan, China¹.

39. In January 2020, the novel coronavirus, Severe Acute Respiratory Syndrome Coronavirus II (hereinafter “COVID-19”) was identified.²

40. On March 9, 2020 Illinois Governor J.B. Pritzker declared each county in the State of Illinois “as a disaster area” due to the COVID-19 contagion’s presence and transmission.

41. On March 11, 2020, the World Health Organization (“WHO”) designated the global spread of the COVID-19 contagion as a pandemic.

¹ Francesco Di Gennaro et al., *Coronavirus Diseases (COVID-19) Current Status and Future Perspectives a Narrative Review*, MDPI: INT’L J. ENVTL. RESEARCH & PUB. HEALTH, (Apr. 1, 2020), <https://www.mdpi.com/1660-4601/17/8/2690>.

² *See id.*

42. At all times relevant, the COVID-19 pandemic was a major natural disaster and a public health emergency.

43. On March 16, 2020, Illinois Governor J.B. Pritzker stated in Executive Order 2020-07 that the number of “suspected COVID-19 cases in Illinois is increasing exponentially,” and ordered all “non-essential businesses” to close until March 30, 2020; the Order was later extended until May 30, 2020.

44. On April 1, 2020, Illinois Governor J.B. Pritzker stated in Executive Order that “the circumstances surrounding COVID-19 have resulted in the occurrence and threat of *widespread and severe damage*, injury, and loss of life *and property* under Section 4 of the Illinois Emergency Management Agency Act.”

45. On May 29, 2020, the State of Illinois began “Phase 3” of reopening, which requires Illinois’ businesses, including Plaintiffs, to maintain additional restrictions with regards to customer occupancy, employee occupancy and interactions, capacity limits, employment restrictions, and additional limitations.

46. At all relevant times, there has existed no known vaccine, remedy, or clinically tested treatment regimen for COVID-19.

47. COVID-19 is capable of transmission through direct or indirect contact with submicroscopic molecules in respiratory droplets when an infected host exhales.

48. Once the aforesaid droplets evaporate, the aforesaid molecules remain suspended as aerosols in the air for several hours, and can transmit COVID-19.

49. COVID-19 can be transmitted and transported through ventilation and “HVAC” systems while the aforesaid molecules are in an airborne state.

50. COVID-19 molecules physically infect surfaces, remain on infected surfaces for considerable periods of time, and can remain on infected surfaces for up to four weeks in low temperatures.

51. Once exposed to the COVID-19 contagion, property is unsafe and dangerous for occupants and users.

52. The presence of a dangerous substance on physical property or while airborne in physical property constitutes "physical loss or damage." *See, e.g., Bd. of Educ. v. Int'l Ins. Co.*, Ill. App. 3d 597 (1st Dist. 1999).

53. The COVID-19 pandemic has resulted in widespread damage in Illinois.

54. The COVID-19 pandemic has affected a substantial area in Illinois.

PLAINTIFFS' DAMAGE AND LOSSES

55. Plaintiffs operate automobile showrooms and automobile repair shops on its insured business premises located at throughout Cook County, Illinois.

56. Plaintiffs arrange and furnish labor and services on the property of its customers located within the aforesaid showroom and aforesaid repair shop.

57. Plaintiffs arrange and furnish the aforesaid labor and services through employment contracts with automobile mechanics, automobile salespersons, and certain business management personnel.

58. On or before March 23, 2020, an executive officer of Plaintiffs' experienced symptoms of COVID-19.

59. On or about May 8, 2020, the aforesaid executive tested positive for COVID-19.

60. From March 23, 2020 to the present, the aforesaid executive remained employed at Plaintiffs' insured business premises.

61. From March 23, 2020 to the present, the aforesaid executive's responsibilities required his physical presence in communal areas at Plaintiffs' insured business premises.

62. On and before March 9, 2020, and thereafter, the COVID-19 contagion has remained physically present on the surfaces at Plaintiffs' insured premises.

63. On and before March 9, 2020, and thereafter, the unintentional acts of Plaintiffs' employees and/or customers caused the COVID-19 pandemic to become present at Plaintiffs' insured premises.

64. On and before the aforesaid date, and thereafter, the COVID-19 pandemic was a major natural disaster and public health emergency occurring at Plaintiffs' insured premises.

65. On and before the aforesaid date, and thereafter, the COVID-19 contagion became physically present in the air ventilated into Plaintiffs' business premises as a result of one or more of the following:

- a. The unintentional acts of Plaintiffs' employees; and/or
- b. The unintentional acts of Plaintiffs' customers; and/or
- c. The COVID-19 pandemic.

66. On and before the aforesaid date, and thereafter, the COVID-19 contagion became physically present on the surfaces within Plaintiffs' business premises as a result of one or more of the following:

- a. The unintentional acts of Plaintiffs' employees; and/or
- b. The unintentional acts of Plaintiffs' customers; and/or
- c. The COVID-19 pandemic.

67. On and before the aforesaid date, and thereafter, the COVID-19 pandemic at Plaintiffs' insured premises, caused and/or resulted in direct physical damage to the following:

- a. The air quality in Plaintiffs' automobile showroom;
- b. The air quality in Plaintiffs' automobile repair shop;
- c. The surfaces in Plaintiffs' automobile showroom;
- d. The surfaces in Plaintiffs' automobile repair shop;
- e. Plaintiffs' laborers and/or employees;
- f. Labor and services that Plaintiffs arranged on the property of customers within Plaintiffs' business premises;
- g. Plaintiffs' interest in using the improvements that Plaintiffs acquired for the aforesaid automobile showroom and automobile repair shop as a lessee.

68. The aforesaid direct physical damage caused Plaintiff to restrict, slowdown, and/or cease ordinary business activities at its insured premises.

69. The aforesaid direct physical damage and restriction, slowdown, and/or cessation of ordinary business activities, Illinois Governor J.B. Pritzker's Executive Order and extensions, and the COVID-19 pandemic have resulted in one or more of the following:

- a. A substantial loss of Plaintiffs' business income;
- b. A substantial amount Plaintiffs' labor force being furloughed;
- c. A substantial amount of Plaintiffs' contracts with members of Plaintiffs' labor force being suspended and/or cancelled;
- d. An increase in expenses to continue business operations at the insured premises.

70. Plaintiffs have performed all conditions precedent on its part to receive payment under the Policy for the aforesaid damage and losses.

71. Plaintiffs have incurred the aforesaid damage and losses in an amount that exceeds fifty thousand dollars (\$50,000.00) at present.

72. The aforesaid damage and losses are capable of reasonable calculation, continue to occur and accrue, and are expected to exceed ten million dollars (\$10,000,000.00.)

AUTO-OWNERS INSURANCE’S DENIAL OF PLAINTIFFS’ INSURANCE CLAIMS

73. Plaintiffs submitted an insurance claim to Defendant, AUTO-OWNERS INSURANCE, seeking payment for the aforesaid damage and losses.

74. In a letter dated June 2, 2020, Defendant, AUTO-OWNERS INSURANCE, informed Plaintiffs that Defendant would not pay for the aforesaid damage and losses.

75. Prior to June 2, 2020, Defendant, AUTO-OWNERS INSURANCE, did not request a signed, sworn proof of loss from Plaintiff.

76. Prior to June 2, 2020, Defendant, AUTO-OWNERS INSURANCE, did not request to take samples of Plaintiffs’ damaged property for testing, inspection, or analysis.

77. Prior to June 2, 2020, Defendant, AUTO-OWNERS INSURANCE, did not request an inventory of the damaged property from Plaintiff.

78. Prior to June 2, 2020, Defendant did not request any information to investigate Plaintiffs’ insurance claims.

COUNT I
DECLARATORY JUDGMENT – AUTO-OWNERS INSURANCE

79. Plaintiffs repeat and re-allege the foregoing as if fully set forth herein.

80. An actual controversy exists regarding Plaintiffs’ right to receive payment under the Policy for covered damage and losses from Defendant, AUTO-OWNERS INSURANCE.

81. PLAINTIFFS have performed all conditions precedent on its part to receive payment under the Policy from Defendant, AUTO-OWNERS INSURANCE.

82. PLAINTIFFS have complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

83. Defendant, AUTO-OWNERS INSURANCE, has refused to reimburse Plaintiffs for damages and losses that each has incurred under the Policy’s terms.

84. The Closure Orders and associated pandemic have caused a near total interruption to PLAINTIFFS' business operations.

85. PLAINTIFFS have incurred expenses that would not have been incurred if there had been no direct physical loss or damage to PLAINTIFFS' insured premises from the COVID-19 virus.

86. The necessary suspension of business operations at PLAINTIFFS' premises has caused business income losses, and forced PLAINTIFFS to incur necessary expenses.

87. Defendant, AUTO-OWNERS INSURANCE has refused to reimburse PLAINTIFFS for claimed losses incurred from the pandemic, aforesaid necessary interruption of PLAINTIFFS' business from the COVID-19 pandemic, and aforesaid Closure Orders.

WHEREFORE, Plaintiffs seek declaratory relief in the form of an order that provides as follows:

- a. Plaintiffs' losses incurred in connection with the pandemic, Executive Orders, and the necessary interruption of its business are insured losses under the Policy;
- b. Defendant, AUTO-OWNERS INSURANCE has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiffs' losses by issuing a blanket coverage denial without conducting a claim investigation as required under Illinois law; and
- c. AUTO-OWNERS INSURANCE is obligated to pay Plaintiffs for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the virus Orders during the indemnity period and the necessary interruption of their business from the COVID-19 pandemic.

COUNT II
BREACH OF CONTRACT – AUTO-OWNERS INSURANCE

88. Plaintiffs repeat and re-allege the foregoing as if fully set forth herein.

89. Defendant, AUTO-OWNERS INSURANCE, has materially breached the Policy in one or more of the following ways:

- a. Refused to pay for physical damage that Plaintiffs' "Business Personal Property" incurred as defined under the terms of the Policy;
- b. Refused to pay the actual loss of business income that Plaintiffs sustained at the insured premises due to direct physical damage and/or loss;
- c. Refused to pay for the continuing payroll expenses that Plaintiffs sustained at the insured premises due to direct physical damage and/or loss;
- d. Refused to pay for extended loss of business income that Plaintiffs sustained at the insured premises throughout the period when Plaintiffs' business activities had not been restored to a level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred;
- e. Refused to pay for extra expenses that Plaintiffs incurred in order to continue business activities at the insured premises as a result of direct physical damage at the insured premises;
- f. Refused to pay for the actual loss of business income that Plaintiffs sustained when an action of civil authority prohibited access to the insured premises;
- g. Refused to pay for the actual loss of business income that Plaintiffs sustained when an Executive Order of the Illinois Governor regulated land use at the insured premises;
- h. Refused to pay the expenses that Plaintiffs incurred in an effort to decontaminate the insured premises after continued exposure to a hazardous substance.
- i. Refused to pay for the increased business income loss caused by the suspension and/or cancellation of contracts with members of Plaintiffs' labor force;

90. As a direct and proximate result of one or more of the aforesaid material breaches, Plaintiffs have sustained expectation damages that are capable of reasonable calculation, exceed fifty thousand dollars (\$50,000.00) at present, and are expected to exceed ten million dollars (\$10,000,000.00).

WHEREFORE, Plaintiffs demand judgment against Defendant, AUTO-OWNERS INSURANCE, for a sum in excess of the jurisdictional limit of the Circuit Court of Cook County in an amount to be established at trial.

COUNT III
VEXATIOUS MISCONDUCT (215 ILCS 5/155) – AUTO-OWNERS INSURANCE

91. Plaintiffs repeat and re-allege paragraphs one through seventy-eight as if fully set forth herein.

92. Upon receipt of Plaintiffs' claims, Defendant, AUTO-OWNERS INSURANCE, immediately denied Plaintiffs' claimed damage and losses.

93. Defendant, AUTO-OWNERS INSURANCE'S, denial is vexatious and unreasonable under Section 155 of the Illinois Insurance Code as a result of the following:

- a. Defendant provided no explanation or reason for its refusal to pay Plaintiffs' claimed losses;
- b. Defendant conducted no investigation into Plaintiffs' claimed losses prior to issuing a coverage denial;
- c. Defendant used a form or "boilerplate" letter to deny Plaintiffs' claims that failed to address the specific, customizable Policy that Plaintiff purchased;
- d. Defendant's form or "boilerplate" letter failed to address Plaintiffs' specific insurance claims and losses;
- e. Defendant took no action to confirm whether the COVID-19 contagion was physically present at Plaintiffs' premises prior to denying Plaintiffs' claims;
- f. Defendant refused to pay Plaintiffs' claimed losses without conducting a reasonable investigation based on all available information in violation of 215 ILCS 5/154.6(h);
- g. Defendant refused to pay Plaintiffs' claimed losses without providing a reasonable and accurate explanation of the basis of its denials in violation of 215 ILCS 5/154.6(h);
- h. Defendant compelled a policyholder to institute suit to recover an amount due under the Policy in violation of 215 ILCS 5/154.6(e);
- i. Defendant has failed to raise a bona fide dispute as to the whether the claims were covered by the Policy or otherwise explain its decision-making;
- j. Defendant's denial failed to include any relevant discussion of the Policy that Plaintiffs purchased.

- k. Defendant's denial letter failed to address the particular circumstances under which Plaintiffs' claimed damage and losses occurred.
- l. Defendant's denial that the physical presence of the COVID-19 pandemic constitutes "physical loss" and "physical damage" is avoid through claims handling and benefit from limited exposure as a result.
- m. Defendant imposed unreasonable restrictions on Plaintiffs relative to compliance with subjective standards and the assertion of legal or equitable rights in violation of the Motor Vehicle Franchise Act, 815 ILCS 710/1.1 *et seq.*

94. As a direct and proximate result of one or more of the aforesaid acts or omissions, Plaintiffs have incurred attorneys' fees and other costs to recover the amounts due under the Policy.

WHEREFORE, Plaintiffs demand judgment against Defendant, AUTO-OWNERS INSURANCE, in an amount equal to 60% of that which the trier of fact finds Plaintiffs entitled to recover, or sixty thousand dollars (\$60,000.00), whichever is greater, and the attorneys' fees and costs that Plaintiffs incur to prosecute this action. Plaintiffs pray that this Court further award Plaintiffs prejudgment interest, calculated according to law, in an amount equal to the loss in time-value of the funds that Defendant, AUTO-OWNERS INSURANCE'S, wrongful refusal to pay the full amount of claimed losses under the Policy has caused.

COUNT IV
NEGLIGENT MISREPRESENTATION – SNYDER

95. Plaintiffs repeat and re-allege paragraphs one through seventy-eight as if fully set forth herein.

96. At all relevant times, Defendant, SNYDER, was compensated to act or aid in soliciting, negotiating, or procuring the Policy on behalf of Defendant, AUTO-OWNERS INSURANCE.

97. At all relevant times, Defendant, SNYDER, was engaged in the business of supplying information for the guidance of others in their business transactions.

98. Defendant, AUTO-OWNERS INSURANCE, provided Defendant, SNYDER, with its insurance underwriting procedures, rules and procedures, and conditions for acceptance or rejection of risk.

99. Plaintiff exercised ordinary care when it acted in reliance on the conduct and representations of Defendant, SNYDER, when it supplied Plaintiff information as to insurance coverage under the Policy.

100. On or about April 23, 2019 to the present, Defendant, SNYDER, did then and there one or more of the following acts or omissions:

- a. Failed to adhere to Defendant, AUTO-OWNERS INSURANCE'S, standards, rules, procedures, and/or conditions for the acceptance or rejection of risk;
- b. Failed to accurately represent to Plaintiff the insurance coverage that was negotiated, procured, placed, and or renewed;
- c. Failed to disclose the nature of the coverage that was placed;
- d. Negligently represented that major natural disasters were covered events under the Policy;
- e. Negligently represented that public health emergencies were covered events under the Policy;
- f. Was otherwise negligent.

101. As a direct and proximate result of Defendant, SNYDER'S, aforesaid acts, omissions, misrepresentations, and/or failure to supply reasonably accurate information, Plaintiff sustained economic damages that exceed fifty thousand dollars (\$50,000.00.)

WHEREFORE, Plaintiffs demand judgment against Defendant, SNYDER, for a sum in excess of the jurisdictional limit of the Circuit Court of Cook County in an amount to be established at trial.

COUNT V
NEGLIGENCE – SNYDER

102. Plaintiffs repeat and reallege the foregoing as if fully set forth herein.

103. At all times relevant, Defendant, SNYDER, had a duty to exercise ordinary care and skill in renewing, procuring, binding, or placing the insurance coverage that Plaintiff requested. 735 ILCS 5/2-2201(a).

104. On or about April 23, 2019, Defendant, SNYDER, committed one or more of the following acts or omissions:

- a. Failed to procure, bind, or place the insurance coverage that Plaintiff requested;
- b. Failed to accurately represent to Plaintiff the nature of the insurance coverage that was placed;
- c. Failed to advise Plaintiff of the nature of the coverage that was placed;
- d. Failed to give Plaintiff notice that Plaintiff should seek the requested coverage from a different and/or additional insurer;
- e. Was otherwise negligent.

105. As a direct and proximate result of Defendant, SNYDER'S, aforesaid acts and/or omissions, Plaintiffs' insurance claim for damage and losses under the Policy has not been paid.

106. But for Defendant, SNYDER'S, aforesaid acts and/or omissions the physical damage and losses at Plaintiffs' insured premises would have been abated and reimbursed.

WHEREFORE, Plaintiffs demand judgment against Defendants, SNYDER and AUTO-OWNERS INSURANCE, and each of them, for a sum in excess of the jurisdictional limit of the Circuit Court of Cook County in an amount to be established at trial.

Pursuant to Illinois Supreme Court Rule 222(b), the undersigned counsel for the plaintiffs avers that the money damages herein sought exceed FIFTY THOUSAND (\$50,000.00) DOLLARS.

Date: August 12, 2020

Respectfully Submitted,

/s/ Robert J. Napleton
Attorney for the PLAINTIFFS

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