

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>WHISKEY RIVER ON VINTAGE, INC., d/b/a WHISKEY RIVER ON VINTAGE, WHISKEY ON MAIN, INC., d/b/a WHISKEY RIVER, FOUNDERS ON MAIN, INC., d/b/a FOUNDERS IRISH PUB,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ILLINOIS CASUALTY COMPANY,</p> <p>Defendant.</p>	<p>Case No.</p> <p><b>PETITION AND JURY DEMAND</b></p>
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COME NOW the Plaintiffs, and for their Petition at Law and Jury Demand state as follows:

**PARTIES AND JURISDICTION**

1. This Petition is for a civil action in which Plaintiffs seek to recover damages for breach of contract and bad faith caused by the Defendant's denial of business interruption insurance claims, and further seek declaratory relief regarding the coverage provided under Plaintiffs' insurance policies.
2. Plaintiffs Founders on Main, Inc., Whiskey on Main, Inc. and Whiskey River on Vintage, Inc. are all Iowa corporations qualified to do business and doing business in the state of Iowa.
3. That the three corporations are owned, managed, and operated by Joseph and Nicole Romare
4. That Plaintiff Founders Irish Pub is located at 110 1<sup>st</sup> Street SE, Bondurant, IA 50035.

5. That Plaintiff Whiskey River on Vintage is located at 1350 SW Vintage Parkway, Ankeny, IA 50023.

6. That Plaintiff Whiskey River is located at 132-134 Main Street, Ames, IA 50010.

7. That Plaintiff Whiskey River on Main, Inc. obtained a business owners policy through Krist Insurance Services in West Des Moines, Iowa. The Illinois Casualty Company policy is number BP42546 and provided for business interruption coverage.

8. That Plaintiff Whiskey River on Vintage, Inc. obtained a business owners policy through Krist Insurance Services. The Illinois Casualty Company policy number is BP44174, also providing for business interruption coverage.

9. That Plaintiff Founders on Main, Inc. obtained a business owners policy through Krist Insurance Services. The Illinois Casualty Company policy number is BP37140, also providing for business interruption coverage.

10. That upon information and belief, Illinois Casualty Company is an Illinois insurance company authorized to sell property/casualty insurance in Iowa, to include business owner coverages.

11. That upon information and belief, Illinois Casualty Company has represented on the policies issued that their business address is 225 20<sup>th</sup> Street, Rock Island, IL 61201.

12. That each of the insurance policies issued were purchased and primarily to be enforced and interpreted in Polk County, Iowa. The policies were purchased from Krist Insurance Services in West Des Moines, Iowa.

13. The damages giving rise to this Petition are sufficient to meet the jurisdictional requirements for the amount in controversy.

14. Jurisdiction is conferred upon this court pursuant to Iowa Code §602.6101.

15. Venue is conferred pursuant to Iowa Code §616.18.

**FACTUAL BACKGROUND**

16. Defendant caused to be issued a business interruption and loss of income policy to each of the Plaintiffs. Whiskey River on Main, Inc. policy number BP-42546 was issued on or about October 15, 2019. Whiskey River on Vintage, Inc. policy number BP44174 was issued on February 14, 2020. Founders on Main, Inc. policy number BP37140 was issued on February 15, 2020.

17. The policies in question are a business owners property coverage form providing for coverage that would pay for “direct physical loss or damage to” each of the premises described in the Declarations.

18. Pursuant to each of the policies, covered causes of loss included “risks of direct physical loss” unless otherwise excluded or limited by the policies.

19. The policies further provided that Defendant would “pay for the actual loss of business income sustained due to the necessary suspension of operations during the ‘period of restoration.’ The suspension must be caused by direct physical loss of or damage to the property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.”

20. The policies contain an exclusion providing that Defendant “will not pay for loss and damage caused by or resulting from any virus... that induces, or is capable of inducing, physical distress, illness or disease.”

21. On or about March 17, 2020, Governor Kim Reynolds issued a governmental Proclamation and Order that required the closure of bars and restaurants throughout the state of Iowa.

22. Governor Reynolds' March 17, 2020, Order did cause and continues to cause the necessary suspension of each Plaintiff's operations, which in turn has caused each Plaintiff to sustain significant losses to their business income.

23. As a result of Governor Reynolds' Proclamation, Plaintiffs have been forced to terminate a total of approximately 90 employees between the insured facilities.

24. Plaintiffs, in an effort to mitigate their income losses, opened the Whiskey River on Main Street in Ames facility on May 4, 2020, at 50 percent of its capacity, as allowed by the Governor's modification of the March 17, 2020 Proclamation.

25. Plaintiffs collectively have incurred a net loss of business income of approximately \$80,000 each month they have been closed, and expect to continue to incur significant losses until such time as they are able to completely and fully reopen and re-gain market share of their business prior to the Governor's Proclamation and Order.

26. That each of the Plaintiffs under their business owners policy submitted a claim to Defendant for loss of business income as a result of the Governor of the State of Iowa issuing an Order closing all restaurants and food and beverage businesses throughout the state of Iowa.

27. That Whiskey River on Main, Inc. d/b/a Whiskey River received a letter dated March 25, 2020 from Illinois Casualty Company denying the claim for business income loss based upon the review of the policy. The denial-of-coverage letter is attached hereto and made a part of the allegations of the Petition. See Exhibit A.

28. That Founders on Main, Inc. d/b/a Founders Irish Pub received a letter dated April 17, 2020 from Illinois Casualty Company declining coverage for business income loss

based upon the review of the policy. The denial-of-coverage letter is attached hereto and made a part of the allegations of the Petition. See Exhibit B.

29. That Whiskey River on Vintage, Inc. d/b/a Whiskey River on Vintage received a letter dated April 17, 2020 from Illinois Casualty Company denying the claim for business income loss based upon the review of the policy. The denial-of-coverage letter is attached hereto and made a part of the allegations of the Petition. See Exhibit C.

30. The purported reason for the denial of coverage as set forth in the declination letters were that there is a policy exclusion of loss due to a virus; that the business income loss must be caused by direct physical loss or damage to the premises, and the Civil Authority provisions of the policies were not applicable.

31. No one on behalf of Illinois Casualty Company in any manner investigated any of the insured facilities to determine whether the coronavirus or any other virus was present in any of the insured facilities prior to issuing the declination letter

32. No one on behalf of Illinois Casualty Company spoke to either Nicole or Joe Romare at any time prior to declining coverage, as a part of any investigation.

33. Plaintiffs have no knowledge of any of the insured facilities being infected with the coronavirus or any other virus, nor are they aware of any employee or customer having contracted the coronavirus or any other virus, nor are they aware of any employee or customer having contracted the coronavirus or any other virus at any of the facilities at any time prior to the Governor's Proclamation and Order, or subsequent to the Governor's Proclamation and Order.

**COUNT I**  
**DECLARATORY JUDGMENT AGAINST ILLINOIS CASUALTY COMPANY**  
**PURSUANT TO IOWA RULES OF CIVIL PROCEDURE 1.1101**

34. Plaintiffs re-allege all of the above paragraphs 1 through 33 as if fully set forth herein.

35. Each Plaintiff claims damages that are covered under the business interruption and loss of income policy issued to each Plaintiff by the Defendant.

36. Defendant Illinois Casualty Company has denied coverage under policy number BP44174, policy number BP42546, and policy number BP37140.

37. An actual justiciable controversy exists between the Plaintiffs and Defendant with regard to whether the loss claimed by each Plaintiff is covered under the policy that has been issued to each Plaintiff by Illinois Casualty Company.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in its favor and against the Defendant, including the relief of:

- a. Entering a Declaratory Judgment acknowledging the rights of the Plaintiffs and obligation of the Defendant under each of the policies and declaring that the loss claimed by each Plaintiff is covered by each of the policies, and;
- b. Order payment of loss of income as substantiated by each of the Plaintiffs, and for such other and further relief as the Court deems proper, including costs and attorney fees.

**COUNT II**  
**BREACH OF CONTRACT**

38. That Plaintiffs re-allege paragraphs 1 through 37 as fully set forth herein.

39. The necessary suspension of Plaintiffs' operations was and continues to be due to Governor Reynolds' March 17, 2020 Proclamation Order requiring the closure of all restaurants and bars throughout the state of Iowa.

40. As a result of Governor Reynolds' Proclamation, each Plaintiff has sustained and continues to sustain direct physical loss of their property as required by the policy, including physical loss of access, customers, use, and utilization for their intended purposes.

41. That Plaintiff Whiskey River on Main, Inc. d/b/a Whiskey River in Ames, Iowa is attempting to mitigate their damages by partially opening on May 1, 2020 on a limited 50 percent capacity basis, but has not had any substantial revenue that would reduce the damages being suffered by Plaintiff.

42. The necessary suspension of each Plaintiff's facility under these circumstances is a covered loss under the policy that is otherwise not excluded.

43. As a result of this covered loss, each Plaintiff has sustained and continues to sustain significant financial loss of income that is covered under the policy.

44. Each Plaintiff provided timely notice to the Defendant and has otherwise complied with all conditions precedent to the coverage under the policy.

45. That Defendant has wrongfully denied coverage of each Plaintiff's claim.

46. Defendant's denial erroneously relies on the virus exclusion contained in each Plaintiff's policy, which does not operate to exclude coverage under these circumstances.

47. That the virus exclusion relied upon by the Defendant specifically contemplates the virus to be capable of "inducing physical distress, illness or disease."

48. Likewise, the Defendant's denial erroneously concludes that the Plaintiffs did not sustain a "direct physical loss of or damage."

49. The term “loss of” is not defined in the policies, and by its inclusion necessarily entails a different definition than the term “damage”. Otherwise the policies would not distinguish the two terms.

50. The closure of each of Plaintiffs’ restaurants is a direct physical loss, including physical loss of access, customers, use, and utilization for their intended purposes and is not due to the presence of Coronavirus/Covid-19 in any of Plaintiffs’ facilities.

51. Defendant failed to investigate in any manner the claim of the Plaintiffs and has not determined that there was any coronavirus or any other type of virus in any of the facilities of the Plaintiffs, nor was there any employee or customer infected with the coronavirus, or any other virus, at any of the Plaintiffs’ facilities.

52. Defendant has failed to properly apply the policies and compensate the Plaintiffs for the losses provided for under the policy and as a result, have breached their obligations under the provisions of the policies.

53. As a direct and proximate result of the Defendant’s breach of its contractual obligations under the policy issued, the Plaintiffs have been collectively damaged in an amount in excess of \$80,000 per month and will continue to incur significant losses until completely opened, exclusive of interest, costs and attorney fees.

54. That Plaintiff Whiskey River on Vintage, Inc. d/b/a Whiskey River on Vintage has a separate ancillary venue called “The District Venue” which books and holds large meetings and functions such as wedding parties. The District Venue has 56 weddings scheduled for the remainder of 2020 and will have a net loss of approximately \$150,000 in March, April and May, with losses to continue until such time as they are completely and fully operational.



WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment in favor of the Plaintiffs and against the Defendant, including the following relief:

- a. An award to the Plaintiffs and against the Defendant for the loss of income substantiated by each of the Plaintiffs, and;
- b. Such other and further relief as the Court deems proper, including costs and reasonable attorney fees for having to pursue this matter.

**COUNT III**  
**CONDUCT OF BAD FAITH**

55. The Plaintiffs re-allege paragraphs 1 through 54 as if fully set forth herein.

56. Defendant has a contractual obligation to fully and completely investigate a claim of an insured for policies which they have written and for which they have received commissions.

57. That each Plaintiff promptly paid all premiums required to effectuate the policies of each Plaintiff for business loss of income under each policy.

58. Defendant denied coverage for each Plaintiff's claim based on a virus exclusion contained in the policy.

59. Defendant failed to make any investigation of each claim and did not inquire if any facility that was insured had any evidence of infestation of the coronavirus or any other virus at any time, or if any employee or customer had become infected with the coronavirus or other virus at any time.

60. That there was a complete failure to in any manner in good faith to investigate each Plaintiff's claim and the claims were summarily denied.

61. That the Defendant has acted in bad faith in denying each Plaintiff's claim.

62. That as a direct and proximate result of Defendant's bad faith in failing to investigate Plaintiffs' claim, each Plaintiff has been damaged and the collective amount was in excess of \$80,000 in March and April, 2020, and that they will continue to lose significant income until completely opened, exclusive of costs and attorney fees.

63. That additionally Whiskey River on Vintage will incur a loss of approximately \$150,000 in March, April, and May of 2020 for the loss of revenue to The District Venue for meetings and weddings that have been canceled.

WHEREFORE, each Plaintiff respectfully requests that the Court enter judgment in favor of the Plaintiffs collectively and against the Defendant, including the following relief:

- a. An award to the Plaintiffs against the Defendant for the loss of income substantiated by each Plaintiff, plus pre-judgment interest, and;
- b. An additional award to The District Venue to compensate for ongoing losses to be determined, and;
- c. The award of punitive damages as a result of the Defendant acting in bad faith, and for such other relief as the Court deems proper, including costs and reasonable attorney fees.

**JURY DEMAND**

The Plaintiffs hereby make a demand for trial by jury on all issues so triable.

Respectfully submitted,

CARNEY & APPLEBY, P.L.C.

*/s/ James W. Carney*

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JAMES W. CARNEY (AT0001327)

*/s/ Nicholas J. Mauro*

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