

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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CAUSEWAY AUTOMOTIVE, LLC,  
CONTI CAUSEWAY FORD, INC.,  
CAUSEWAY NISSAN, LLC, and  
CAUSEWAY HYUNDAI, LLC,

Plaintiffs,

vs.

ZURICH AMERICAN INSURANCE COMPANY,  
ABC CORPS. 1-5 (fictitious names whose identities  
are currently unknown)

Defendant.

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Civil Action No.

[Removed from SUPERIOR COURT  
OF NEW JERSEY LAW DIVISION –  
OCEAN COUNTY DOCKET NO.  
OCN-L-001237-20]

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Zurich American Insurance Company (“Zurich”) removes this case from the Superior Court of New Jersey, Law Division – Ocean County, where it is now pending, to the United States District Court for the District of New Jersey, and states as follows:

1. On May 26, 2020, Causeway Automotive, LLC, Conti Causeway Ford, Inc., Causeway Nissan, LLC, and Causeway Hyundai, LLC (collectively, the “Plaintiffs”) filed their Complaint against Zurich in the Superior Court Of New Jersey, Law Division – Ocean County, and the matter was assigned case number OCN-L-001237-20.

2. Upon information and belief, this action involves a controversy wholly between citizens of different states and the value of the matter in dispute exceeds \$75,000.00. Therefore, under 28 U.S.C. § 1441, this Court has original diversity jurisdiction.

3. Since this Court has original diversity jurisdiction over this civil action, this matter may be removed to this Court in accordance with the procedures set forth in 28 U.S.C. § 1446. In further support of Removal, Zurich states as follows:

**COMPLETE DIVERSITY**

**A. Upon Information and Belief, None of the Plaintiffs or Their Members are Citizens of New York or Illinois**

4. According to the Complaint, Plaintiffs are “New Jersey Corporations with a principle place of business located at 375 Route 72, Manahawkin, Township of Stafford, County of Ocean, State of New Jersey.” (Ex. 1, Compl. ¶ 1).

5. With respect to Plaintiffs Causeway Automotive, LLC, Causeway Nissan, LLC, and Causeway Hyundai, LLC (the “Limited Liability Plaintiffs”), upon information and belief, none of their members is a citizen of New York or Illinois for purposes of 28 U.S.C. § 1332.

6. In that regard, the Court must accept as true a plaintiff’s allegations regarding its own corporate form in considering whether diversity exists. Steel Valley Auth. v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987) (in considering remand of a removed case, “the district court must assume as true all factual allegations of the complaint”).

7. Indeed, Plaintiffs are in the best position to plead accurate facts relative to their form and potential membership. See Lincoln Ben. Life Co. v. AEI Life, LLC, 800 F.3d 99, 108 (3d Cir. 2015) (“[B]efore alleging that none of an unincorporated association's members are citizens of a particular state, a [party] should consult the sources at its disposal, including court filings and other public records. If, after this inquiry, the [party] has no reason to believe that any of the association's members share its state of citizenship, it may allege complete diversity in good faith. The unincorporated association, which is in the best position to ascertain its own

membership, may then mount a factual challenge by identifying any member who destroys diversity.”).

8. Any factual issue as to the truth of Plaintiffs’ statements in this regard is not subject to resolution at the pleading (Notice of Removal) stage, but must be subject to discovery and a jurisdictional fact-finding and evidentiary hearing. *Id.* at 102 (“*If* the defendant [here, Plaintiff] thereafter mounts a factual challenge, the plaintiff [here, Defendant] *is entitled to* limited discovery for the purpose of establishing that complete diversity exists.”) (emphasis added).

9. Still, Zurich has undertaken a reasonable investigation and upon information and belief, no members of the Limited Liability Plaintiffs are citizens of New York or Illinois.

10. Specifically, Zurich has investigated the information that the Limited Liability Plaintiffs provided to Zurich at the time the Zurich insurance policy at issue was issued to them, and that information shows that the “100%” owner of each of the Limited Liability Plaintiffs is David C. Wintrode.

11. Upon information and belief, the sole member of the Limited Liability Plaintiffs is David C. Wintrode.

12. In addition, Zurich has investigated, using databases available on Westlaw, the residence of David C. Wintrode, and that information shows that David C. Wintrode maintains residences in Stafford Township, New Jersey, and Palm Beach Gardens, Florida.

13. Upon information and belief, David C. Wintrode is a resident of either Florida or New Jersey, and is **not** a resident of either New York or Illinois.

14. Further, Zurich’s attorneys reached out to Plaintiffs’ counsel to ask if any member of the Limited Liability Plaintiffs are citizens of New York or Illinois, the states in which Zurich

is a citizen.

15. Plaintiffs' counsel has not yet responded.

16. Accordingly, following reasonable investigation and upon information and belief, both at the time that Plaintiffs initiated this action and at the time of removal, the Limited Liability Plaintiffs and/or all of their members were not and are not citizens of New York or Illinois.

17. "Depriving a party of a federal forum simply because it cannot identify all of the members of an unincorporated association is not a rational screening mechanism. The membership of an LLC is often not a matter of public record. Thus, a rule requiring the citizenship of each member of each LLC to be alleged affirmatively before jurisdictional discovery would effectively shield many LLCs from being sued in federal court without their consent. This is surely not what the drafters of the Federal Rules intended." Lincoln Ben., 800 F.3d at 108–09.

18. "A State X [party] may ... survive a facial challenge [to diversity] by alleging that none of the [opposing party's] association's members are citizens of State X." Id. at 107.

19. Allegations "on information and belief" that a party is not a citizen of a particular state "suffice[ ] to establish diversity." Id.

20. Here, after reasonable investigation and upon information and belief, no member of the Limited Liability Plaintiffs is a citizen of New York or Illinois.

**B. Zurich Is a Citizen of New York and Illinois**

21. Zurich, the lone named defendant in the Lawsuit, is neither a New Jersey entity nor does it maintain its principal place of business in New Jersey.

22. Rather, Zurich is a New York Corporation with its principal place of business in Schaumburg, Illinois. Therefore, under 28 U.S.C. § 1332, Zurich is a citizen of New York and Illinois.

**C. The Remaining Defendants' Citizenships are Irrelevant**

23. In addition to Zurich, the Complaint names as additional defendants "ABC CORPS. 1-5 (fictitious names whose identities are currently unknown)."

24. According to the Complaint, "Defendants, ABC Corp. 1-5, are fictitious insurance companies, persons or entities, whose true identities are not presently known, whose acts, omissions or conduct in any way relates to the allegations or legal issues set forth in this action." (Ex. 1, Compl. ¶ 5)

25. That is the Complaint's only mention of these fictitious defendants.

26. "In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1).

27. Similarly, while removal generally requires unanimity among the defendants, "[t]he unanimity rule may be disregarded where ... a non-joining defendant is an unknown or nominal party." Balazik v. Cty. of Dauphin, 44 F.3d 209, 213 n.4 (3d Cir. 1995).

28. Therefore, the identities of the fictitious defendants are, for purposes of removal, irrelevant.

**NON-DISCRETIONARY JURISDICTION**

29. Plaintiffs may claim that the court should abstain from exercising jurisdiction under the Declaratory Judgment Act, 28 U.S.C.A. §2201-02, on the basis that Plaintiffs are simply seeking a declaratory judgment as to coverage.

30. However, Plaintiffs are, in actuality, seeking legal relief.

31. Specifically, the Complaint alleges that:

- a. Plaintiffs “suffered due to the loss of customers, patrons, vendors, suppliers, supplies and other essential physical materials necessary to operate its business,” and that it submitted a claim under the Policy for such losses” (Ex. 1, Compl. ¶ 26);
- b. Zurich denied the claim. (Ex. 1, Compl. ¶ 27); and that
- c. “The business income interruption suffered by Plaintiffs, whether in whole or in part, as a result of Governor Murphy’s Executive Orders No. 103 and 107 is a “covered cause of loss” falling within the purview of the Policy and occurring during its coverage period.” (Ex. 1, Compl. ¶ 38).

32. Plaintiffs seek, as relief, a declaration that:

- a. The business interruption losses they suffered are covered under the Policy’s civil authority coverage; and
- b. The Policy’s Virus and Bacteria Exclusion does not apply.

33. Although the Plaintiffs’ pleading avoids specifically saying so, what they unquestionably seek by bringing this action is money damages.

34. Plaintiffs’ attempt to “artfully plead” a declaratory judgment claim should not be permitted to control the Court’s jurisdiction and/or deprive Zurich of its right to remove this matter to federal court. See, e.g., United Jersey Banks v. Parell, 783 F.2d 360, 367 (3d Cir. 1986) (artful pleading cannot deprive a party of a federal forum) (citing 14A Wright & Miller, Federal Prac. and Proc. § 3722 at 270); Eitmann v. New Orleans Public Service, Inc., 730 F.2d 359, 365 (5th Cir. 1984) (a plaintiff cannot defeat removal by fraudulent means or artful pleading).

35. Further, a claim that does not seek a declaration as to future conduct, but seeks relief as to past conduct, does not seek declaratory relief.

Declaratory judgments are meant to define the legal rights and obligations of the parties in the anticipation of some future conduct. Declaratory judgments are not meant simply to proclaim that one party is liable to another.

Andela v. Admin. Office of U.S. Courts, 569 F. App'x 80, 83 (3d Cir. 2014) (citations omitted).

36. Plaintiffs' claim is really for breach of contract and should be treated as such.

**THE COURT SHOULD NOT ABSTAIN EVEN  
IF JURISDICTION IS DISCRETIONARY**

37. If the District Court does decide that jurisdiction here is discretionary, and is disinclined to exercise jurisdiction, Zurich respectfully requests the opportunity to brief the issues raised by the Court if a motion to abstain is made (or on the Court's own motion) as they are not subject to full and fair determination based only on a Notice of Removal.

38. Notwithstanding its request, Zurich notes that "[t]he discretion courts exercise in actions seeking only declaratory relief is 'substantial' but nonetheless 'bounded and reviewable.'" Kelly v. Maxum Specialty Ins. Group, 868 F.3d 274, 282 (3d Cir. 2017) (quoting Reifer v. Westport Ins. Corp., 751 F.3d 129, 146 (3d Cir. 2014)). "[T]he 'wholesale' dismissal of certain types of cases brought under the DJA is improper, as litigants should not be unjustifiably denied the right to obtain an authorized remedy in federal court." Kelly, 868 F.3d at 282.

39. The Third Circuit has made it clear that a court must consider certain factors in deciding whether to abstain from hearing a declaratory judgment action. Id. Specifically, "[c]ourts should first determine whether there is a 'parallel state proceeding.' Although the existence of a parallel state proceeding is but one factor for courts to consider, it is a significant factor that is treated with 'increased emphasis.'" Id. (citations omitted).

40. “[T]he absence of pending parallel state proceedings *militates significantly in favor of exercising jurisdiction*, although it alone does not require such an exercise.” Id. (quoting Reifer) (emphasis added).

41. Here, there is no parallel state court proceeding pending.

42. “[I]f a state parallel proceeding does not exist, then ‘as part of exercising sound and reasoned discretion, district courts declining jurisdiction should be rigorous in ensuring themselves that the lack of pending parallel state proceedings is outweighed by opposing factors.’” Id. (quoting Reifer).

43. In an insurance declaratory judgment case, the Third Circuit in Kelly found that the district court had abused its discretion in remanding the case, because “[t]he lack of pending parallel state proceedings [there] was not outweighed by opposing factors.” Id. at 288.

44. The factors to be considered when deciding whether to remand a case are:

- (1) the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy;
- (2) the convenience of the parties;
- (3) the public interest in settlement of the uncertainty of obligation;
- (4) the availability and relative convenience of other remedies;
- (5) a general policy of restraint when the same issues are pending in a state court;
- (6) avoidance of duplicative litigation;
- (7) prevention of the use of the declaratory action as a method of procedural fencing or as a means to provide another forum in a race for *res judicata*; and
- (8) (in the insurance context), an inherent conflict of interest between an insurer’s duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion.

Id. at 283 (quoting Reifer). These are known as the Reifer factors.



45. The Kelly court's analysis of the Reifer factors shows that jurisdiction should also be retained here.

46. First, a declaratory judgment will resolve the uncertainty that prompted filing of the action. "Declaratory relief by the District Court would unquestionably clarify and settle the dispute regarding [the insurer's] obligations under the insurance policy." Id. at 288.

47. Second, none of the parties will be inconvenienced by having this matter adjudicated in the federal forum, inasmuch as the Court is located in the same state as the court in the removed state court case.

48. Therefore, like in Kelly, Plaintiffs will not be inconvenienced by litigating this matter in a federal forum in New Jersey.

49. "Third, the parties do not aver that any public interest is at stake other than the usual interest in the fair adjudication of legal disputes, an interest which the District Court is well-equipped to address." Id.

50. On this point, the Kelly court noted that a generalized concern with having a state court decide issues under state common law is not sufficient to abstain from deciding those issues. Absent "an unsettled question of state law or important policy issue implicated by the coverage claims," "there is little reason for a federal court to be reluctant about deciding this case." Id. at n.13.

51. Here, Plaintiffs seek insurance coverage for lost business income arising out of a governmental "stay at home" order resulting from a virus, under an insurance policy that, among other things, states: "We will not pay for loss or damage caused by or resulting from any virus."

52. While the current COVID-19 pandemic and resulting shutdown orders may be unprecedented, the issues presented in this claim and this lawsuit are not.

53. The lawsuit involves application of clear policy provisions to a set of facts involving a private enterprise, which does not involve any novel issues of law or any public interest. Id. (“Federal and state courts are equally capable of applying settled state law to a difficult set of facts.”) (quoting Reifer); Hobbs v. US Coastal Ins. Co., 2018 WL 2332254, at \*2 (D.N.J. May 23, 2018) (“New Jersey has well-settled principles of insurance contract interpretation” (citing Simonetti v. Selective Ins. Co., 859 A.2d 694 (N.J. Super Ct. App. Div. 2004)); Grode v. Mut. Fire, Marine & Inland Ins. Co., 8 F.3d 953, 959 (3d Cir. 1993) (“Although the state regulates insolvent insurance companies, simple contract actions that happen to involve such companies are not matters of important regulatory concern or actions interfering with important state policies”); Plavin v. Grp. Health Inc., 323 F. Supp. 3d 684, 696 (M.D. Pa. 2018) (“It is essentially a ‘private’ contract dispute over policy coverage and the processing of a claim which is unique to these parties, not conduct which affects the consuming public at large.”) (quoting New York Univ. v. Cont’l Ins. Co., 87 N.Y.2d 308, 321, 639 N.Y.S.2d 283, 662 N.E.2d 763 (1995)).

54. Resolving this dispute will involve the specific terms of the Zurich Policy and the specific facts surrounding Plaintiffs’ alleged shutdown. It will not affect the resolution of disputes involving other insureds with different facts and different insurers with different policy language.

55. As to the fourth factor, “[t]he state and federal courts are equally able to grant effective relief.” Kelly, 868 F.3d at 289.

56. With respect to the fifth and sixth factors, as noted, there is no pending parallel state court case and, therefore, no concern with duplicative litigation.

57. The seventh factor, procedural fencing, also does not weigh in favor of abstention. Specifically, “there has been no concern expressed that removal of the Declaratory Action was driven by an improper motive.” Id.

58. The eighth and final factor is inapplicable here as it relates to declaratory judgment actions relating to liability insurance, where the issue is coverage for a pending tort action against the insured and, typically, whether the insurer has a duty to defend. Id. at 283. This case involves first-party property insurance coverage for the Plaintiffs’ own loss, and there is no related pending state court action and no issue of a “duty to defend.”

59. Like Kelly, “[t]hese factors [do] not outweigh the lack of a parallel state proceeding in this case. As a result, ‘considerations of practicality and wise judicial administration,’ ... counsel against abstention ...” Id. at 289 (citing Wilton v. Seven Falls Co., 515 U.S. 277, 282-84 (1995) (federal courts have a “virtually unflagging obligation” to “exercise the jurisdiction conferred on them by Congress”)).

#### **AMOUNT IN CONTROVERSY**

60. Upon information and belief, and based on the allegations in Plaintiffs’ Complaint, Plaintiffs’ losses exceed \$75,000.00.

61. According to Plaintiffs, they “have been unable to operate their dealerships in the normal course of business due to access to their buildings, showrooms and premises being prohibited to the public resulting in the loss of customers, patrons, vendors, suppliers, supplies and other essential physical materials necessary to operate such business” since March 21, 2020. (Ex. 1, Compl. ¶¶ 11-12).

62. Plaintiffs further contend that they have suffered “direct physical loss and damage arising from the Governor's prohibition of public access to their buildings, showrooms and premises by customers, patrons, vendors, suppliers, supplies and other essential physical

materials fundamental to operating its business in order to generate revenue.” (Ex. 1, Compl. ¶ 21).

63. It is inconceivable that Plaintiffs’ claimed loss will be less than \$75,000.00.

**TIMELINESS OF REMOVAL**

64. Zurich was served with Plaintiffs’ Complaint on June 9, 2020.

65. This Notice of Removal is therefore timely filed within thirty (30) days of Zurich’s receipt of a copy of the lawsuit filed by Plaintiffs. 28 U.S.C. § 1446(b).

**STATE COURT RECORDS**

66. In addition to the Complaint, which is attached hereto as Exhibit 1, copies of (i) the state court docket and (ii) Proof of Service are attached hereto at Exhibits 2 and 3.

67. Upon information and belief, the documents that are attached hereto at Exhibits 1 and 2 constitute all of the pleadings, process, and orders that were filed in connection with the state court action.

**STATEMENT OF REMOVAL JURISDICTION**

68. For the foregoing reasons, where Plaintiffs and Zurich are citizens of different states, and because the amount in controversy exceeds \$75,000.00, the United States District Court for the District of New Jersey has original, non-discretionary jurisdiction over this matter. See 28 U.S.C. § 1332

69. Section 1332 confers original jurisdiction over all civil matters where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the claim is between citizens of different states.

70. Zurich submits that this matter may be removed to the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. § 1441, which permits removal of any civil action to the district courts that have original jurisdiction.

WHEREFORE, Defendant, Zurich American Insurance Company, removes this civil action to the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. § 1441.

Dated: July 7, 2020

Respectfully submitted,

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By: /s/ William Wilson

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on July 7, 2020, the within **NOTICE OF REMOVAL** was filed electronically and will be served upon all counsel via electronic mail:

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CAUSEWAY AUTOMOTIVE, LLC,  
CONTI CAUSEWAY FORD, INC.,  
CAUSEWAY NISSAN, LLC, and  
CAUSEWAY HYUNDAI, LLC,

Plaintiffs,

vs.

ZURICH AMERICAN INSURANCE  
COMPANY, ABC CORPS. 1-5  
(fictitious names whose identities are  
currently unknown),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – OCEAN COUNTY  
DOCKET NO. OCN-L-

Civil Action

**COMPLAINT FOR DECLARATORY  
RELIEF AND JURY DEMAND**

Plaintiffs, CAUSEWAY AUTOMOTIVE, LLC, CONTI CAUSEWAY FORD, INC,  
CAUSEWAY NISSAN, LLC, and CAUSEWAY HYUNDAI, LLC, by way of Complaint  
against the Defendants, ZURICH AMERICAN INSURANCE COMPANY and ABC  
Corps. 1-5 (fictitious names), say:

**THE PARTIES**

1. Plaintiffs, CAUSEWAY AUTOMOTIVE, LLC, CONTI CAUSEWAY FORD, INC,  
CAUSEWAY NISSAN, LLC, and CAUSEWAY HYUNDAI, LLC, are New Jersey  
Corporations with a principal place of business located at 375 Route 72,  
Manahawkin, Township of Stafford, County of Ocean, State of New Jersey.



2. Plaintiffs are automobile dealers licensed in the State of New Jersey that operate a family of automobile dealerships, known as Causeway Ford, Causeway Lincoln, Causeway Honda, Causeway Nissan and Causeway Hyundai (collectively, also known as “The Causeway Family of Dealerships”), located at 375 - 457 Route 72 in Manahawkin, New Jersey, which sell new, pre-owned and demo vehicles to the general public.

3. Defendant, ZURICH AMERICAN INSURANCE COMPANY (hereinafter, referred to as “ZURICH”) is an insurance company with a principal place of business located at 1299 Zurich Way, Schaumburg, Illinois, that is duly qualified and licensed to issue insurance policies in the State of New Jersey.

4. Defendant, ZURICH, owns subsidiaries, directly and indirectly, that issue, among other things, commercial business property insurance.

5. Defendants, ABC Corp. 1-5, are fictitious insurance companies, persons or entities, whose true identities are not presently known, whose acts, omissions or conduct in any way relates to the allegations or legal issues set forth in this action.

### **The CoVID-19 Pandemic**

6. On January 30, 2020, the World Health Organization (WHO) declared the SARS-COV-2 outbreak constituted a public health emergency of international concern.

7. On February 11, 2020, the World Health Organization announced that the official name for the disease that caused the aforementioned outbreak and that led to a global pandemic was “CoVID-19.”

8. Without any available vaccine to protect against CoVID-19 or known cure, governmental authorities throughout the world attempted an effective means of

controlling the CoVID-19 pandemic by relying on measures designed to reduce human to human contact and also limit human exposure to contaminated objects or surfaces.

9. Thus, in order to minimize the spread of COVID-19 outbreak and the effects of the resulting pandemic, containment efforts to prevent or otherwise limit as many individuals as possible from the CoVID-19 disease led to civil authorities issuing orders closing non-essential business establishments, including automobile dealerships (except to provide maintenance and repair services only), restaurants, bars, hotels, theaters, personal care salons, gyms, and schools, mandating social distancing among the population and ordering substantial travel restrictions.

10. To that end, as a result of the CoVID-19 pandemic, New Jersey Governor Phil Murphy declared a state of emergency and a public health emergency on March 9, 2020, and issued Executive Order No. 103 (2020) on the said date, in order “to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19,” the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State.”

11. Furthermore, on March 21, 2020, Governor Murphy issued Executive Order No. 107 (2020), which required the brick-and-mortar premises of all non-essential retail businesses, which included automobile dealerships operated by Plaintiffs, to close to the public as long as the aforesaid Order remained in effect.

12. Since that issuance of Governor Murphy's Executive Orders Nos. 103 and 107, Plaintiffs have been unable to operate their dealerships in the normal course of business due to access to their buildings, showrooms and premises being prohibited to the public resulting in the loss of customers, patrons, vendors, suppliers, supplies and other essential physical materials necessary to operate such business.

### **COUNT I**

#### **(DECLARATORY JUDGMENT FOR COVERAGE)**

13. Plaintiffs hereby repeat, reallege and incorporate all of the allegations in the foregoing paragraphs as if set forth herein at length.

14. Defendant, ZURICH, provided to Plaintiffs insurance documents, titled "Business Owners Coverage Form," under Policy No. ADM 8625381 00, for the policy period of March 1, 2020 to March 1, 2021 (hereinafter, "the Policy"). A copy of the Policy is attached hereto as "Exhibit A" and is incorporated herein by this reference.

15. Pursuant to the express and reasonably-understood terms of the Policy, Defendant, ZURICH, has and owes a contractual duty and obligation to provide coverage to Plaintiffs for loss of business income and other related expenses in the event of an involuntary interruption of Plaintiffs' business.

16. Specifically, the Policy provides the following:

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

[See Policy, attached as "Exhibit A": Section I – Property, Paragraph A. Coverage].

17. The phrase “direct physical loss,” as used in the Policy, is not defined anywhere within the policy language.

18. The term “damage,” as used in the Policy, is not defined anywhere within the policy language.

19. The property covered under the Policy includes Plaintiffs’ dealership buildings, showrooms and buildings located at 375 – 457 Route 7, Manahawkin, New Jersey . (See Policy, attached as “Exhibit A”: Section I-A.1 “Covered Property”).

20. A “covered cause of loss” is defined under the policy as follows:

Direct physical loss unless the loss is excluded or limited under Section I - Property.

[See Policy, attached as “Exhibit A”: Section I-A.3 “Covered Cause of Losses.”]

21. Plaintiffs suffered direct physical loss and damage arising from the Governor’s prohibition of public access to their buildings, showrooms and premises by customers, patrons, vendors, suppliers, supplies and other essential physical materials fundamental to operating its business in order to generate revenue as a result of Governor Murphys’ Executive Orders Nos. 103 and 107.

22. Furthermore, the Policy provides additional coverage for what is labeled as “Civil Authority” coverage.

23. Specifically, the Policy states as follows:

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described

premises are within that area but are not more than one mile from the damaged property; and

- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after 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.

Civil Authority Coverage for necessary Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
  - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance of Section I - Property.

[See Policy, attached as "Exhibit A": Section I-A.5.i "Civil Authority."]

24. Therefore, Pursuant to the terms of the Policy, a "covered cause of loss" only requires "damage" to other property, rather than "physical damage," in order to trigger the Civil Authority coverage under the Policy.

25. As such, the "direct physical loss" of customers, patrons, vendors, suppliers, supplies and other essential physical materials necessary to operate its business suffered by Plaintiffs (i.e., the "covered cause of loss" under the Policy) was caused, whether in whole or in part, by the damage caused to Plaintiffs' property as well as the property of neighboring and adjacent commercial buildings, offices and retail establishments because they have

been unable to use their property for its intended purpose as a result of the issuance of Governor Murphy's Executive Orders No. 103 and/or 107.

26. On or about May 8, 2020, as a result of the business income interruption losses Plaintiffs suffered due to the loss of customers, patrons, vendors, suppliers, supplies and other essential physical materials necessary to operate its business suffered by Plaintiffs, arising out Governor Murphy's Executive Order No. 107, which prohibited the public from accessing the insured premises to conduct business, Plaintiffs submitted a claim under the Policy for such losses, which was assigned Claim No. 5630051232 by Defendant (hereinafter, "the subject claim").
27. However, via correspondence dated May 18, 2020, Defendant, ZURICH, denied the subject claim citing, inter alia, to an "Exclusion of Loss Due to Virus or Bacteria" Endorsement contained in the Policy.
28. The aforesaid exclusion states that Defendant will not pay for loss or damage caused directly or indirectly by any of the following:
- Any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- [See Policy, attached as "Exhibit A": Section I-B.1.j "Virus or Bacteria."]
29. Under New Jersey case law, insurance policy exclusions are narrowly construed and the insurer has the burden of establishing the exclusion.
30. Under New Jersey case law, if there is another fair interpretation of a policy exclusion's meaning, the court must construe the insurance policy in favor of coverage and against the insurer, adopting the interpretation supporting coverage.

31. A fair interpretation of the aforementioned virus exclusion and the Plaintiffs' reasonable expectation of coverage when purchasing the Policy, is that losses, including business income interruption, as a result of a virus or bacteria "that induces or is capable of inducing physical stress, illness or disease" would be excluded from coverage if a virus or bacteria infected, contaminated or was present at or on the insured premises.

32. At all relevant times, there has been no infection, contamination or otherwise a known presence of any virus or bacteria on the Plaintiffs' covered property, or other neighboring or adjacent property, that was a cause, whether in whole or in part, of Plaintiffs' business income interruption losses sought to be covered under the Policy.

33. Therefore, the Virus or Bacteria Exclusion set forth in the Policy and relied upon Defendant in denying the subject claim is inapplicable to Plaintiffs' interruption and loss of business income suffered under these circumstances.

34. Plaintiffs did not in any way participate in the drafting or negotiating of the language, terms or phrases contained in the Policy.

35. Any purported exclusion of business income interruption coverage under the Policy suffered by Plaintiffs as a result of Governor Murphy's Executive Orders No. 103 and 107 is contrary to the public policy of the State of New Jersey, thereby rendering such policy exclusion void *ab initio*.

36. Specifically, the New Jersey Legislature proposes that every policy of insurance insuring against loss or damage to property, which includes the loss of use and

occupancy and business interruption in force in the State of New Jersey, shall be construed to include among the covered perils under that policy, coverage for business interruption due to global virus transmission or pandemic, as provided in the Public Health Emergency and State of Emergency declared by the Governor in Executive Order No. 103 concerning the CoVID-19 pandemic.

37. Furthermore, Plaintiffs had and continue to have a reasonable expectation of coverage inasmuch as the Policy does not refer to any exclusion for a public health emergency, crisis or pandemic limiting the typical broad general business interruption coverage afforded under the Civil Authority coverage provisions of the Policy when an insured sustained losses and damages as result of access being prohibited by a governmental authority to the insured premises, other than when such damages or loss is as a result of a virus or bacteria contamination being physically present on the insured or adjacent premises.

38. Therefore, the business income interruption suffered by Plaintiffs, whether in whole or in part, as a result of Governor Murphy's Executive Orders No. 103 and 107 is a "covered cause of loss" falling within the purview of the Policy and occurring during its coverage period.

39. A controversy exists between the parties concerning their respective rights under the Policy and this action is brought pursuant to the Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq., which authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.



40. By reason of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and duties that exist between the parties under the Policy.

**WHEREFORE**, Plaintiffs respectfully requests that the Court enter judgment as follows:

1. Declaring that the business income interruption loss suffered by Plaintiffs as a result of, whether in whole or in part, Governor Murphy's Executive Orders No. 103 and 107 is covered under the Civil Authority coverage provided for in the Policy;
2. Declaring that the Virus or Bacteria Exclusion contained in the Policy as being against the public policy of State of New Jersey and not otherwise applicable to any of the business income interruption loss suffered by Plaintiffs as a result of the CoVID-19 pandemic;
3. Awarding Plaintiffs all costs and reasonable attorney's fees incurred in bringing the subject action, in accordance with R. 4:42-9(a)(6);
4. Awarding such other equitable relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiffs hereby demand trial by jury as to all issues.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Gary Ahladianakis, Esq. is hereby designated as trial counsel on behalf of Plaintiffs.

**CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)**

Pursuant to R. 4:5-1, the undersigned hereby certifies that the above action is not the subject of any other pending lawsuit or arbitration proceeding. There are no other persons interested in the above action who have not been made a party to said action.

**CERTIFICATION PURSUANT TO RULE 4:5-1(b)(3)**

Pursuant to R. 1:38-7(c), I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

**CARLUCCIO, LEONE, DIMON,  
DOYLE & SACKS LLC**  
*Attorneys for Plaintiffs*

By:   
\_\_\_\_\_ **GARY AHLADIANAKIS, ESQ.**

Dated: May 26, 2020

# Civil Case Information Statement

**Case Details: OCEAN | Civil Part Docket# L-001237-20**

**Case Caption:** CAUSEWAY AUTOMOTIVE, LLC VS ZURICH AMERICAN INS

**Case Initiation Date:** 05/26/2020

**Attorney Name:** GARY AHLADIANAKIS

**Firm Name:** CARLUCCIO LEONE DIMON DOYLE & SACKS, LLC

**Address:** 9 ROBBINS ST  
TOMS RIVER NJ 08753

**Phone:** 7327971600

**Name of Party:** PLAINTIFF : CAUSEWAY AUTOMOTIVE, LLC

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** YES

**Are sexual abuse claims alleged by:** CAUSEWAY AUTOMOTIVE, LLC? NO

**Are sexual abuse claims alleged by:** CONTI CAUSEWAY FORD, INC.? NO

**Are sexual abuse claims alleged by:** CAUSEWAY NISSAN, LLC? NO

**Are sexual abuse claims alleged by:** CAUSEWAY HYUNDAI, LLC? NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** YES

**If yes, is that relationship:** Business

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category:** Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

05/26/2020  
Dated

/s/ GARY AHLADIANAKIS  
Signed

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
Causeway Automotive, LLC, Conti Causeway Ford, Inc., Causeway Nissan, LLC and Causeway Hyundai, LLC

**DEFENDANTS**  
Zurich American Insurance Company, ABC Corps. 1-5 (fictitious names whose identities are currently unknown)

(b) County of Residence of First Listed Plaintiff Ocean  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Carluccio, Leone, Dimon, Doyle & Sacks, L.L.C., 9 Robbins Street, Toms River, New Jersey 08753 732-797-1600

Attorneys (If Known)  
Mound Cotton Wollan & Greengrass LLP, 30A Vreeland Road, Suite 210, Florham Park, New Jersey 07932 973-494-0600

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                                       |                                       |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
|   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY - Product Liability</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Inbeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §1332, 1441 and 1446  
 Brief description of cause:  
Insurance coverage dispute

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE  
07/07/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_