

FILED DATE: 7/14/2020 2:16 PM 2020L007421

RJN/DCL:mlw 20-73

FILED  
7/14/2020 2:16 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
9762205

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

SOURCE ONE RESTAURANT CORPORATION )  
d/b/a KENNY’S IRISH PUB, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WESTERN WORLD INSURANCE CO., INC., )  
and RISK PLACEMENT SERVICES, INC., )  
 )  
Defendants. )

Case No. 2020L007421  
Commercial Calendar

**COMPLAINT AT LAW**

NOW COMES PLAINTIFF, SOURCE ONE RESTAURANT CORPORATION d/b/a KENNY’S IRISH PUB, (hereinafter “PLAINTIFF”), by its attorneys, MOTHERWAY & NAPLETON, LLP, and complains against Defendants, WESTERN WORLD INSURANCE CO., INC. (hereinafter “WESTERN WORLD INSURANCE”), and RISK PLACEMENT SERVICES, INC. (hereinafter “RPS”), as follows:

**INTRODUCTION**

1. This dispute arises out of “all risks” commercial insurance policy that Plaintiff entered into with Defendant, WESTERN WORLD INSURANCE, and which Defendant, RPS, renewed, procured, bound, or placed coverage for.

**THE PARTIES**

2. Plaintiff, SOURCE ONE RESTAURANT CORPORATION d/b/a KENNY’S IRISH PUB, is an Illinois corporation with its principal place of business at 917 West 55<sup>th</sup> Street in Countryside, Cook County, Illinois.

3. Defendant, WESTERN WORLD INSURANCE, is a Wisconsin insurance company authorized to do business in Illinois, engaged in the business of selling commercial insurance to business entities in Cook County, Illinois.

4. Defendant, RPS, 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, with its principal place of business at 101 S. Wynstone Park Drive in North Barrington, Illinois.

5. At all times relevant, Defendant, RPS, acted and/or omitted to act as an actual agent, apparent agent, or implied agent of Defendant, WESTERN WORLD INSURANCE.

#### **PERSONAL JURISDICTION**

6. The Circuit Court of Cook County has authority to exercise personal jurisdiction over Defendants, WESTERN WORLD INSURANCE and RPS, 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, WESTERN WORLD 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, WESTERN WORLD INSURANCE, entered into a contract substantially connected with Illinois, 735 ILCS 5/2-209(c);
- e. Defendant, RPS, is an Illinois corporation subject to an Illinois court's exercise of personal jurisdiction.

## **VENUE**

7. The Circuit Court of Cook County is the proper venue for PLAINTIFF'S claims against Defendants, WESTERN WORLD INSURANCE and RPS, and each of them, based on one or more of the following:

- a. The events, acts, or omissions giving rise to PLAINTIFF'S claims occurred in Cook County, 735 ILCS 5/2-101;
- b. PLAINTIFF is a resident of Cook County and bring this action against Defendant, WESTERN WORLD INSURANCE, an insurance company doing business in Illinois, 735 ILCS 5/2-103(e).

### **THE WESTERN WORLD INSURANCE POLICY**

8. Defendant, WESTERN WORLD INSURANCE, and SOURCE ONE RESTAURANT CORPORATION d/b/a KENNY'S IRISH PUB, on behalf of itself and its associated entities, entered into an all risk commercial property coverage policy, Policy ID IL20190147847 (hereinafter "Policy"). A true and accurate copy of the Policy is attached hereto as Exhibit A.

9. The aforementioned Policy was entered into, agreed upon, executed, negotiated, discussed, procured, placed, bound, and/or renewed at 917 West 55<sup>th</sup> Street in Countryside, Cook County, Illinois.

10. At all times relevant, the Policy has remained a valid and enforceable insurance contract between PLAINTIFF and Defendant, WESTERN WORLD INSURANCE.

11. The Policy is an "all risk" policy that provides broad coverage for losses caused by any cause unless expressly excluded.

### **Building & Personal Property Coverage**

12. In exchange for Plaintiff's substantial premiums under the Policy, Defendant, WESTERN WORLD INSURANCE, agreed to provide insurance coverage "for direct physical loss of or damage to covered property at [Plaintiff's] Premises] caused by or resulting from any covered cause of loss." (Ex. A., p. 12).

13. "Covered Property" refers to the "building or structure described in the declaration [and] personal property owned by [Plaintiff] that is used to maintain or service the building or structure or its premises." (Ex. A, p. 12).

14. Defendant, WESTERN WORLD INSURANCE, agreed to provide insurance coverage for "Business Personal Property and Personal Property of Others". (Ex. A, p. 27).

15. The term "Business Personal Property" refers to "[l]abor, materials or services furnished or arranged by [Plaintiff] on personal property of others" located within Plaintiff's insured premises. (Ex. A, p. 12).

### **Business Income & Extra Expense Coverage**

16. In exchange for Plaintiff's substantial premiums under the Policy, Defendant, WESTERN WORLD INSURANCE, agreed to provide Plaintiff "business income coverage," which states that defendant will:

"pay 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 a Business Income Limit Of Insurance is shown in the Declarations. (Ex. A, p. 27).

17. The Policy's terms provide that "Business Income means 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. 27).

18. In exchange for Plaintiff's payment of substantial premiums, Defendant, WESTERN WORLD INSURANCE, agreed to provide Plaintiff's "Extra Expense Coverage" at Plaintiff's premises, meaning that Defendant will cover:

"Necessary 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. 27).

19. The Policy provides that Defendant, WESTERN WORLD INSURANCE, will pay "Extra Expense" 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; and to minimize the suspension of business if you cannot continue operations." (Ex. A, p. 27).

20. The Policy's terms provide that suspension means "the slowdown or cessation of business activities." (Ex. A, p. 35).

#### **Civil Authority Coverage**

21. In exchange for the aforesaid premiums, Defendant, WESTERN WORLD INSURANCE, agreed to provide "Civil Authority" coverage for "damage to property other than property" at PLAINTIFF'S premises, which includes losses caused by action of civil authority that prohibits access to the described premises. (Ex. A, p. 28).

22. The terms of the "Civil Authority" coverage provision state that Defendant, WESTERN WORLD INSURANCE, will "pay for the actual loss of Business Income [PLAINTIFF] sustain[s] and necessary Extra Expense caused by action of civil authority that prohibits access to [PLAINTIFF'S] premises." (Ex. A, p. 28).

23. The terms of the "Civil Authority" coverage provision state that 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.” (Ex. A, p. 28).

24. 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. 28).

### **Coverage Exclusions**

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

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

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

28. The Policy’s terms 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 ORDER**

29. 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>.

30. 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>.

31. 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>.

32. In December 2019, several patients with pneumonia of an unknown origin were linked to the Huanan seafood market in Wuhan, China.<sup>1</sup>

33. In January 2020, the novel coronavirus, Severe Acute Respiratory Syndrome Coronavirus II (hereinafter "COVID-19") was identified.<sup>2</sup>

34. 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.

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

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

37. On March 15, 2020, during the term of the Policy issued by WESTERN WORLD INSURANCE to Plaintiff, Illinois Governor Pritzker issued Executive Order 2020-07, an order closing all restaurants, bars, and movie theaters to the public in an effort to address the ongoing COVID-19 pandemic.

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<sup>1</sup> 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>.

<sup>2</sup> See *id.*

38. Executive Order 2020-07 was issued in direct response to the dangerous physical conditions posed by the COVID-19 virus, and prohibited the public from accessing Plaintiff's restaurant and bar, thereby causing the necessary suspension of their operations and triggering the Civil Authority coverage under the Policies.

39. Executive Order 2020-07 specifically states, "the Illinois Department of Public Health recommends Illinois residents avoid group dining in public settings, such as in bars and restaurants, which usually involves prolonged close social contact contrary to recommended practice for social distancing," and that "frequently used surfaces in public settings, including bars and restaurants, if not cleaned and disinfected frequently and properly, also pose a risk of exposure."

40. 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.

41. 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."

42. On May 29, 2020, the State of Illinois began "Phase 3" of reopening, which requires Illinois' businesses, including Plaintiff, to maintain additional restrictions with regards to customer occupancy, employee occupancy and interactions, capacity limits, employment restrictions, and additional limitations.



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

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

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

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

47. 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.

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

49. The presence of a dangerous substance on physical property or while airborne in a physical property constitutes “physical loss or damage.” *See, e.g., Bd. of Educ. v. Int’l Ins. Co.*, Ill. App. 3d 597 (1<sup>st</sup> Dist. 1999).

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

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

#### **PLAINTIFF’S DAMAGE AND LOSSES**

52. Plaintiff owns, operates, manages, and maintains a restaurant on its Premises.

53. Plaintiff arranges and furnishes labor and services on the property of their customers located within the aforesaid Premises.

54. Plaintiff arranges and furnishes the aforesaid labor and services through employment contracts with staff, waitresses, bartenders, and certain business management personnel.

55. On March 15, 2020, in response to the Illinois Governor's proclamation and Executive Orders, Plaintiff was forced to suspend its operations and terminate, lay-off, furlough, or otherwise suspend the majority of its workforce.

56. From March 15, 2020 to the present, the unintentional acts of Plaintiff's employees and/or customers caused the COVID-19 pandemic to become present at Plaintiff's insured premises.

57. On and before March 15, 2020, and thereafter, the COVID-19 contagion has remained physically present on the surfaces at Plaintiff's premises.

58. On and before the aforesaid date, and thereafter, the COVID-19 pandemic was a major natural disaster and public health emergency that occurred at Plaintiff's insured premises.

59. On and before the aforesaid date, and thereafter, the COVID-19 contagion became physically present in the air ventilated into Plaintiff's Premises as a result of one or more of the following:

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

60. On and before the aforesaid date, and thereafter, the COVID-19 contagion became physically present on the surfaces within Plaintiff's Premises as a result of one or more of the following:

- a. The unintentional acts of Plaintiff's employees; and/or

- b. The unintentional acts of Plaintiff's customers; and/or
- c. The COVID-19 pandemic.

61. On and before the aforesaid date, and thereafter, the COVID-19 pandemic at Plaintiff's restaurant, caused and/or resulted in direct physical damage to one or more of the following:

- a. The air quality in Plaintiff's restaurant;
- b. The surfaces in Plaintiff's restaurant;
- c. Plaintiff's laborers and/or employees;
- d. Labor and services that Plaintiff arranged on the property of customers within Plaintiff's insured business premises.
- e. Plaintiff's interests in using the improvements Plaintiff acquired for the aforesaid premises.

62. The aforesaid direct physical damage caused Plaintiff to restrict, slowdown, and/or cease ordinary business activities at the aforesaid Premises.

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

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

65. Plaintiff performed all conditions precedent on its part to receive payment under the Policy for the aforesaid damage and losses.

66. The aforesaid incurred damage and losses are capable of reasonable calculation, continue to occur and accrue.

67. The covered losses incurred by PLAINTIFF and owed under the Policy exceed fifty-thousand dollars (\$50,000.00) at present, are continuing, and are expected to exceed two hundred and fifty thousand dollars (\$250,000.00).

**COUNT I: DECLARATORY JUDGMENT – WESTERN WORLD INSURANCE**

68. PLAINTIFF repeats and re-alleges the foregoing as if fully set forth herein.

69. An actual case or controversy exists regarding PLAINTIFF'S rights and Defendant, WESTERN WORLD INSURANCE'S, obligation to pay the full amount of PLAINTIFF'S business interruption, virus, and civil authority closure order losses.

70. PLAINTIFF has performed all conditions precedent on its part to receive payment under the Policy from Defendant, WESTERN WORLD INSURANCE.

71. PLAINTIFF has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

72. The Closure Orders and associated pandemic have caused a total interruption and suspension of PLAINTIFF'S business operations.

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

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

75. WESTERN WORLD Insurance has refused to reimburse PLAINTIFF for claimed losses incurred from the pandemic, the aforesaid necessary interruption of Plaintiff's business from the COVID-19 pandemic, and the aforesaid Executive Orders.

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

- a. Plaintiff's losses incurred in connection with the pandemic, Executive Orders, and the necessary interruption of its businesses are insured losses under the Policy;
- b. Defendant, WESTERN WORLD Insurance has waived any right it may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for PLAINTIFF'S losses by issuing a blanket coverage denial without conducting a claim investigation as required under Illinois law; and
- c. WESTERN WORLD Insurance is obligated to pay PLAINTIFF for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the pandemic and Closure Orders during the indemnity period and the necessary interruption of its business stemming from the the same.

#### **COUNT II: BREACH OF CONTRACT – WESTERN WORLD INSURANCE**

76. PLAINTIFF repeats and re-alleges the foregoing as if fully set forth herein.

77. PLAINTIFF has performed all conditions precedent on its part to receive payment under the Policy from Defendant, WESTERN WORLD INSURANCE.

78. Defendant, WESTERN WORLD INSURANCE, materially breached the Policy in one or more of the following ways:

- a. Refused to pay for physical damage that Plaintiff's "Business Personal Property" incurred as defined under the terms of the Policy;
- b. Refused to pay the loss of income that Plaintiff sustained at the insured premises due to direct physical damage and/or loss;
- c. Refused to pay for the continuing payroll expenses that Plaintiff sustained at the insured premises due to direct physical damage and/or loss;
- d. Refused to pay for extended loss of business income that Plaintiff sustained at the insured premises throughout the period when Plaintiff's 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 Plaintiff 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 income that Plaintiff sustained when an action of civil authority prohibited access to the insured premises;
- g. Refused to pay for the actual loss of income that Plaintiff sustained when an Executive Order of the Illinois Governor regulated land use at the insured premises;
- h. Refused to pay for the income loss caused by the suspension and/or cancellation of contracts with members of Plaintiff's labor force;
- i. Refusing to pay for covered losses by citing exclusions that were not included in the Policy's language.

79. As a direct and proximate result of Defendant's, WESTERN WORLD INSURANCE, material breaches of the Policy, Plaintiff has sustained substantial damages that exceed fifty thousand dollars (\$50,000.00) at present, and which continue to accrue.

WHEREFORE, PLAINTIFF demand judgment against Defendant, WESTERN WORLD 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, and any further relief that this Court deems appropriate.

**COUNT III**  
**VEXATIOUS MISCONDUCT (215 ILCS 5/155) – WESTERN WORLD INSURANCE**

80. PLAINTIFF repeats and re-alleges the foregoing as if fully set forth herein.

81. PLAINTIFF submitted an insurance claim to Defendant, WESTERN WORLD INSURANCE, for virus coverage and business interruption losses under the Policy.

82. Upon receipt of Plaintiff's claimed losses, Defendant, WESTERN WORLD INSURANCE, immediately denied the claims.

83. Defendant, WESTERN WORLD INSURANCE'S, denial is vexatious and unreasonable under Section 155 of the Illinois Insurance Code as a result of one or more of the following:

- a. Defendant provided no explanation or reason for its refusal to pay Plaintiff's claimed losses;
- b. Defendant conducted no investigation into Plaintiff's claimed losses prior to issuing a coverage denial;
- c. Defendant used a form or "boilerplate" letter to deny Plaintiff's claims that failed to address the specific, customizable Policy that Plaintiff purchased;
- d. Defendant's form or "boilerplate" letter failed to address Plaintiff's specific insurance claims and losses;
- e. Defendant took no action to confirm whether the COVID-19 contagion was physically present at Plaintiff's premises prior to denying Plaintiff's claims;
- f. Defendant refused to pay Plaintiff's 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 Plaintiff's 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 Plaintiff purchased;
- k. Defendant's denial letter failed to address the particular circumstances under which Plaintiff's 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 to avoid thorough claims handling and benefit from limited exposure as a result.

- m. Defendant imposed unreasonable restrictions on Plaintiff 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.*

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

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

**COUNT IV: NEGLIGENT MISREPRESENTATION – RPS**

85. Plaintiff repeats and re-alleges the paragraphs one through sixty-seven as if fully set forth herein.

86. At all relevant times, Defendant, RPS, was compensated to act or aid in soliciting, negotiating, or procuring the Policy on behalf of Defendant, WESTERN WORLD INSURANCE.

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

88. Defendant, WESTERN WORLD INSURANCE, provided Defendant, RPS, with its insurance underwriting procedures, rules and procedures, and conditions for acceptance or rejection of risk.



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

90. On or about November 19, 2019, Defendant, RPS, did then and there one or more of the following acts or omissions:

- a. Failed to adhere to Defendant, WESTERN WORLD 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.

91. As a direct and proximate result of Defendant, RPS'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, Plaintiff demands judgment against Defendant, RPS, 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 – RPS**

92. Plaintiff repeats and re-alleges paragraphs one through sixty-seven as if fully set forth herein.

93. At all times relevant, Defendant, RPS, 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).

94. On or about November 19, 2019, Defendant, RPS, 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.

95. As a direct and proximate result of Defendant, RPS's, aforesaid acts and/or omissions, Plaintiff's insurance claim for damage and losses under the Policy has not been paid.

96. But for Defendant, RPS's, aforesaid acts and/or omissions the physical damage and losses at Plaintiff's insured premises would have been abated and reimbursed.

WHEREFORE, Plaintiff demands judgment against Defendant, RPS and WESTERN WORLD 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 plaintiff avers that the money damages herein sought exceed FIFTY THOUSAND (\$50,000.00) DOLLARS.

Date: July 14, 2020

Respectfully Submitted,

/s/ Robert J. Napleton  
Attorney for the Plaintiff

Robert J. Napleton  
Dominic C. LoVerde  
Motherway & Napleton, LLP  
140 South Dearborn Street, Suite 1500  
Chicago, IL 60603  
Attorneys for the Plaintiff  
[bnapleton@mnlawoffice.com](mailto:bnapleton@mnlawoffice.com)  
[dloverde@mnlawoffice.com](mailto:dloverde@mnlawoffice.com)