

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

)	
)	
PART TWO, LLC,)	
)	
Plaintiff,)	CASE NO. _____
)	
vs.)	REMOVED FROM CIRCUIT
)	COURT OF TUSCALOOSA
OWNERS INSURANCE)	COUNTY, ALABAMA
COMPANY,)	
)	CASE NO. 02-CV-2020-900599.00
Defendant.)	
)	

NOTICE OF REMOVAL

Defendant OWNERS INSURANCE COMPANY ("Owners") hereby removes this action to the jurisdiction of the United States District Court for the Northern District of Alabama, Western Division, on grounds of diversity jurisdiction under 28 U.S.C. §§ 1332, 1441, and 1446. This removal is appropriate on the following grounds:

1. Plaintiff commenced a civil action against Owners in the Circuit Court of Tuscaloosa County, Alabama, (02-CV-2020-900599.00) on or about June 22, 2020. This notice is timely filed within 30 days after Owners was served with the Summons and Complaint on June 25, 2020.

2. True and correct copies of all pleadings in the state court action are attached hereto as **Exhibit A** pursuant to 28 U.S.C. § 1446.

GROUND FOR REMOVAL-DIVERSITY JURISDICTION

3. This case is removable under 28 U.S.C. § 1441 because the United States District Court has original jurisdiction under 28 U.S.C. § 1332(a), which states in part as follows:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

(1) citizens of different States

CITIZENSHIP OF THE PARTIES

4. Plaintiff Part Two, LLC is an Alabama limited liability corporation doing business in the State of Alabama. *See* (Ex. A, Comp. at ¶ 1). A limited liability company's citizenship is determined by the citizenship of its members. *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004). The members of Part Two, LLC are Darren McAusland and Elizabeth McAusland, residents of Tuscaloosa County, Alabama. (Ex. A, Comp. at ¶ 1). Darren McAusland and Elizabeth Ausland are the sole members of Part Two, LLC, according to plaintiff's Complaint as well as Alabama Secretary of State records. (See **Exhibit B**, Part Two, LLC Corporate Records). The current mailing address for the McAuslands is listed as: 3020 Nimitz Place NE, Tuscaloosa, AL 35406. (*Id.*) Thus, Part Two LLC is a citizen of Alabama.

5. Owners is an Ohio corporation with its principal place of business in Lansing, Michigan. (See **Exhibit C**, Owners Insurance Company Corporate Records).¹ Thus, Owners is a citizen of Michigan and Ohio, and the parties are diverse. 28 U.S.C. § 1332(a).

AMOUNT IN CONTROVERSY

6. The complaint does not allege a specific sum of damages. Where the complaint is silent on the amount, a defendant in its Notice of Removal may now assert the amount in controversy. 28 U.S.C. § 1446(c)(2) (effective for all cases commenced after January 6, 2011, under the Federal Courts Jurisdiction and Venue Clarification Act of 2011). To that end, defendant Owners asserts that the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.

7. Under this new standard, when a Plaintiff's complaint is silent as to the amount of damages, a Defendant seeking removal to federal court based on diversity jurisdiction need show only, by preponderance of the evidence, that over \$75,000 is likely at stake in the litigation to satisfy § 1332's amount in controversy requirement -- not that Plaintiff will likely or necessarily recover more than \$75,000. *See S. Fla.*

¹ Plaintiff's Complaint incorrectly states Owners Insurance Company "is a foreign insurance organized under the laws of the State of Michigan...." (Comp., ¶ 2). The attached public records are controlling, as opposed to plaintiff's incorrect allegation. See *Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016)("[I]f the allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls.")

Wellness, Inc. v. Allstate Ins. Co., 745 F.3d 1312, 1315 (11th Cir. 2014). The relevant inquiry is not how much a plaintiff is likely to recover, but whether the total amount at stake in the litigation may exceed the jurisdictional threshold. *Id.*; *see also Hammond v. Stamps.com*, 844 F. 3d 909, 912 (10th Cir. 2016) (Gorsuch, J.) (“At the end of the day, even if it is highly improbable that the plaintiffs will recover the amounts defendants have put into controversy, this does not meet the ‘legally impossible’ standard [and the case should remain in federal court.]”); *Hockenbury v. Hanover Ins. Co.*, No. CIV-15-1003-D, 2016 WL 54213, at *2 (W.D. Okla. Jan. 5, 2016) (removal should be upheld only unless the Plaintiff establishes that it is “legally certain” that less than \$75,000 is at stake).

8. Plaintiff’s complaint seeks damages for breach of contract (Count 1) and bad faith (Count 2) in relation to a claim for business interruption losses sustained due to COVID-19. (See Exhibit A, Compl.) The Complaint does not identify the types of damages sought stating only that it demands judgment “in an amount to be determined by a jury.” (*Id.* at Compl., p. 16). While the Complaint seeks no specific amount or type of damages it does state as to the breach of contract claim, that “the policy affords business interruption coverage in the amount of \$60,000.00.” (See Comp., ¶ 33). The Complaint also separately alleges “institutional bad faith” on the part of Owners.

9. The Complaint specifically alleges that Plaintiff Part Two, LLC held a policy of insurance with Owners with a policy period from October 28, 2019 until October 28, 2020, affording business interruption coverage in the amount of \$60,000.00. (Comp., ¶ 33). Part Two, LLC is identified as a retail store, which “[a]s a result of COVID 19 and mandatory government orders,” was forced to close for several weeks. (Id., ¶ 34). Plaintiff alleges that it made a claim with Owners for business interruption coverage which was denied constituting a breach of contract. (Id., ¶¶ 35-37).

10. In addition to the breach of contract claim, Plaintiff’s bad faith claim must be considered in the amount in controversy calculation. *See Stubbs v. State Farm Fire & Cas. Co.*, No. 2:12-CV-2186-SLB, 2013 WL 980313, *5 (N.D. Ala. March 8, 2013) (finding bad faith claim alleging “misrepresentation of the facts and content of the policy;” and intentional failure to investigate/pay claim” met the amount in controversy requirement, when considered in conjunction with breach of contract claim). If viable, the bad faith claim would allow Plaintiff to seek *additional* compensatory and punitive damages. *See* ALA. CODE § 6-11-20(a) (1975); *Holley Equip. Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir. 1987) (in “determining the jurisdictional amount in controversy in diversity cases, punitive damages must be considered . . . unless it is apparent to a legal certainty that such cannot be recovered.”). Part Two, LLC makes serious allegations that Owners

intentionally misapplied policy provisions and “institutionally” decided to deny COVID claims before investigations were conducted. (Ex. A, Comp., ¶ 40). Experience and common sense dictate that (if successful) the value of Part Two, LLC’s bad faith claim (when coupled with the breach of contract claim) would far exceed the jurisdictional threshold, given the type of allegations being made. *See Stubbs v. State Farm Fire & Cas. Co.*, No. 2:12-CV-2186-SLB, 2013 WL 980313, *5 (N.D. Ala. March 8, 2013) (applying “the court’s judicial experience” and concluding that the amount in controversy is met based on first party bad faith allegations that Defendant “misrepresented the facts and content of the policy;” and intentionally failed to investigate and pay claims); *see also.*, *National Ins. Ass’n v. Sockwell*, 829 So.2d 211 (Ala. 2002)(affirming \$200,000 in compensatory damages; and \$600,000 in punitive damages on bad faith failure to investigate/and delayed payment of UIM benefits case). The amount in controversy is satisfied.

11. Additionally a similar suit (also filed by Plaintiff’s counsel) already is pending in the Northern District of Alabama based on diversity jurisdiction, based on nearly identical allegations of breach of contract and bad faith arising from Owners’ non-payment of a COVID business interruption claim. *See Wagner Shoes, LLC v. Auto-Owners, et al.*, No. 7:20-cv-00465 (N.D. Ala, Western Division). The *Wagner* case asserts nearly identical business interruption claims by a Tuscaloosa retail store with a similar period of loss during the governmental shutdown orders.

See (Id. at Doc. 17). The *Wagner* lawsuit states on its face that “an amount in excess of Seventy-Five Thousand Dollars” is at issue. *Id. at Doc 17, ¶ 6).* The amount in controversy in this case should be viewed no differently.

JURISDICTIONAL REQUIREMENTS

12. This case is a civil action within the meaning of the Acts of Congress relating to the removal of causes.

13. Defendant has not previously removed this action, or sought similar relief.

14. Owners is the sole named Defendant in this case. Therefore, each Defendant has consented to removal in accordance with 28 U.S.C. § 1446(b)(2)(A).

15. Defendant reserves the right to supplement this notice of removal by adding any jurisdictional defenses that may independently support a basis for removal.

16. Defendant hereby notifies the Court that they have provided written notice to all adverse parties of the filing of the Notice of Removal in this case, as provided for by 28 U.S.C. § 1446(d). The Defendants have also filed a copy of this Notice of Removal with the Clerk of the Circuit Court of Tuscaloosa County, Alabama.

17. To the extent that remand is sought, or that diversity jurisdiction is otherwise examined by this Court, Defendants respectfully request an opportunity

to submit additional evidence, to further brief, take appropriate discovery, and to submit oral argument in support of this Notice of Removal.

Respectfully submitted

/s/ Forrest S. Latta

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Attorneys for Owners Insurance Company

OF COUNSEL

BURR & FORMAN LLP

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Mobile, AL 36602

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Fax: 251-344-9696

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served upon below named counsel of record herein via CM/ECF, email, fax or First Class U.S. Mail on this the 23rd day of July, 2020, as follows:

Ted Colquett

ted@colquettlaw.com

COLQUETT LAW, LLC

Post Office Box 59834

2917 Central Avenue, Suite 305

Birmingham, AL 35259-0834

R. Matt Glover
mglover@princelaw.net
PRINCE GLOVER HAYES
1 Cypress Point
701 Rice Mine Road North
Tuscaloosa, AL 35406

/s/ Forrest S. Latta

OF COUNSEL

Exhibit A



County: **63** Case Number: **CV-2020-900599.00** Court Action:
 Style: **PART TWO, LLC V. OWNERS INSURANCE COMPANY**

Real Time

Case

Case Information

County: **63-TUSCALOOSA** Case Number: **CV-2020-900599.00** Judge: **JHE:JOHN HENRY ENGLAND JR**
 Style: **PART TWO, LLC V. OWNERS INSURANCE COMPANY**
 Filed: **06/22/2020** Case Status: **ACTIVE** Case Type: **BAD FAITH/FRAUD/MISR**
 Trial Type: **JURY** Track: Appellate Case: **0**
 No of Plaintiffs: **1** No of Defendants: **1**

Damages

Damage Amt: **0.00** Punitive Damages: **0.00** General Damages: **0.00**
 No Damages: Compensatory Damages: **0.00**
 Pay To: Payment Frequency: Cost Paid By:

Court Action

Court Action Code: Court Action Desc: Court Action Date:
 Num of Trial days: **0** Num of Liens: **0** Judgment For:
 Disposition Date of Appeal: Disposition Judge: Disposition Type:
 Revised Judgement Date: Minstral: Appeal Date:
 Date Trial Began but No Verdict (TBNV1):
 Date Trial Began but No Verdict (TBNV2):

Comments

Comment 1:
 Comment 2:

Appeal Information

Appeal Date: Appeal Case Number: Appeal Court:
 Appeal Status: Orgin Of Appeal:
 Appeal To: Appeal To Desc: LowerCourt Appeal Date:
 Disposition Date Of Appeal: Disposition Type Of Appeal:

Administrative Information

Transfer to Admin Doc Date: Transfer Reason: Transfer Desc:
 Number of Subpoenas: Last Update: **06/22/2020** Updated By: **AJA**

Parties

Party 1 - Plaintiff BUSINESS - PART TWO, LLC

Party Information

Party: **C001-Plaintiff** Name: **PART TWO, LLC** Type: **B-BUSINESS**
 Index: **D OWNERS INSUR** Alt Name: Hardship: **No** JID: **JHE**
 Address 1: **C/O R. MATT GLOVER** Phone: **(205) 345-1234**

Address 2: **POST OFFICE BOX 20149**
City: **TUSCALOOSA** State: **AL** Zip: **35402-0000** Country: **US**
SSN: **XXX-XX-X999** DOB: Sex: Race:

Court Action

Court Action: Court Action Date:
Amount of Judgement: **\$0.00** Court Action For: Exemptions:
Cost Against Party: **\$0.00** Other Cost: **\$0.00** Date Satisfied:
Comment: Arrest Date:
Warrant Action Date: Warrant Action Status: Status Description:

Service Information

Issued: Issued Type: Reissue: Reissue Type:
Return: Return Type: Return: Return Type:
Served: Service Type Service On: Served By:
Answer: Answer Type: Notice of No Service: Notice of No Answer:

Attorneys

Number	Attorney Code	Type of Counsel	Name	Email	Phone
Attorney 1	GLO008		GLOVER RAYMOND MATTHEW	MGLOVER@PRINCELAW.NET	(205) 345-1234
Attorney 2	COL065		COLQUETT PHILLIP TED	TED@COLQUETTLAW.COM	(205) 245-4370

Party 2 - Defendant BUSINESS - OWNERS INSURANCE COMPANY

Party Information

Party: **D001-Defendant** Name: **OWNERS INSURANCE COMPANY** Type: **B-BUSINESS**
Index: **C PART TWO, LL** Alt Name: Hardship: **No** JID: **JHE**
Address 1: **C/O SANDRA MCCOLLOUGH** Phone: **(205) 000-0000**
Address 2: **5915 CARMICHAEL ROAD**
City: **MONTGOMERY** State: **AL** Zip: **36117-0000** Country: **US**
SSN: **XXX-XX-X999** DOB: Sex: Race:

Court Action

Court Action: Court Action Date:
Amount of Judgement: **\$0.00** Court Action For: Exemptions:
Cost Against Party: **\$0.00** Other Cost: **\$0.00** Date Satisfied:
Comment: Arrest Date:
Warrant Action Date: Warrant Action Status: Status Description:

Service Information

Issued: **06/22/2020** Issued Type: **F-CERTIFIED MAIL BY FIL** Reissue: Reissue Type:
Return: Return Type: Return: Return Type:
Served: **06/25/2020** Service Type: **V-PROCESS SERVER** Service On: Served By:
Answer: Answer Type: Notice of No Service: Notice of No Answer:

Attorneys

Number	Attorney Code	Type of Counsel	Name	Email	Phone
Attorney 1	000000		PRO SE		

Financial**Fee Sheet**

Fee Status	Admin Fee	Fee Code	Payor	Payee	Amount Due	Amount Paid	Balance	Amount Hold	Garnish Party
ACTIVE	N	CONV	C001	000	\$19.21	\$19.21	\$0.00	\$0.00	0
ACTIVE	N	CV05	C001	000	\$334.00	\$334.00	\$0.00	\$0.00	0
ACTIVE	N	JDMD	C001	000	\$100.00	\$100.00	\$0.00	\$0.00	0
ACTIVE	N	VADM	C001	000	\$45.00	\$45.00	\$0.00	\$0.00	0
Total:					\$498.21	\$498.21	\$0.00	\$0.00	

Financial History

Transaction Date	Description	Disbursement Accoun	Transaction Batch	Receipt Number	Amount	From Party	To Party	Money Type	Admin Fee	Reason	Attorney	Operator
06/23/2020	CREDIT	CONV	2020088	2452520	\$19.21	C001	000		N			KRM
06/23/2020	RECEIPT	CV05	2020088	2452530	\$334.00	C001	000		N			KRM
06/23/2020	RECEIPT	JDMD	2020088	2452540	\$100.00	C001	000		N			KRM
06/23/2020	RECEIPT	VADM	2020088	2452550	\$45.00	C001	000		N			KRM

Case Action Summary

Date:	Time	Code	Comments	Operator
6/22/2020	5:16 PM	FILE	FILED THIS DATE: 06/22/2020 (AV01)	AJA
6/22/2020	5:16 PM	EORD	E-ORDER FLAG SET TO "Y" (AV01)	AJA
6/22/2020	5:16 PM	ASSJ	ASSIGNED TO JUDGE: HON. JOHN HENRY ENGLAND (AV01)	AJA
6/22/2020	5:16 PM	SCAN	CASE SCANNED STATUS SET TO: N (AV01)	AJA
6/22/2020	5:16 PM	TDMJ	JURY TRIAL REQUESTED (AV01)	AJA
6/22/2020	5:16 PM	STAT	CASE ASSIGNED STATUS OF: ACTIVE (AV01)	AJA
6/22/2020	5:16 PM	ORIG	ORIGIN: INITIAL FILING (AV01)	AJA
6/22/2020	5:16 PM	C001	C001 PARTY ADDED: PART TWO, LLC (AV02)	AJA
6/22/2020	5:16 PM	C001	LISTED AS ATTORNEY FOR C001: GLOVER RAYMOND MATTH	AJA
6/22/2020	5:16 PM	C001	INDIGENT FLAG SET TO: N (AV02)	AJA
6/22/2020	5:16 PM	C001	LISTED AS ATTORNEY FOR C001: COLQUETT PHILLIP TED	AJA
6/22/2020	5:16 PM	C001	C001 E-ORDER FLAG SET TO "Y" (AV02)	AJA
6/22/2020	5:16 PM	D001	D001 PARTY ADDED: OWNERS INSURANCE COMPANY (AV02)	AJA
6/22/2020	5:16 PM	D001	LISTED AS ATTORNEY FOR D001: PRO SE (AV02)	AJA
6/22/2020	5:16 PM	D001	INDIGENT FLAG SET TO: N (AV02)	AJA
6/22/2020	5:16 PM	D001	CERT MAIL-FIL ISSUED: 06/22/2020 TO D001 (AV02)	AJA
6/22/2020	5:17 PM	D001	D001 E-ORDER FLAG SET TO "Y" (AV02)	AJA
6/22/2020	5:18 PM	ECOMP	COMPLAINT E-FILED.	GLO008
6/29/2020	3:38 PM	EMISC	RETURN ON SERVICE - SERVED E-FILED	GLO008
6/30/2020	2:44 PM	D001	SERVICE OF PROCESS SERVE ON 06/25/2020 FOR D001	LER

Images

Date:	Doc#	Title	Description	Pages
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6/22/2020 5:18:18 PM	1	CIVIL COVER SHEET	CIRCUIT COURT - CIVIL CASE	1
6/22/2020 5:18:18 PM	2	COMPLAINT		16
6/22/2020 5:18:48 PM	3	COMPLAINT - TRANSMITTAL	E-NOTICE TRANSMITTALS	2
6/22/2020 5:18:48 PM	4	COMPLAINT - SUMMONS	E-NOTICE TRANSMITTALS	1
6/29/2020 3:38:12 PM	5	RETURN ON SERVICE - SERVED	Return of Service_Owners Ins.	2
6/29/2020 3:38:16 PM	6	MISCELLANEOUS - TRANSMITTAL	E-NOTICE TRANSMITTALS	4



END OF THE REPORT



Case: 63

Date of Filing: 06/22/2020

Judge Code:

State of Alabama
Unified Judicial System
Form ARCiv-93 Rev. 9/18

COVER SHEET
CIRCUIT COURT - CIVIL CASE
(Not For Domestic Relations Cases)

Case: 63
Date of Filing: 06/22/2020
Judge Code:

GENERAL INFORMATION

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA
PART TWO, LLC v. OWNERS INSURANCE COMPANY

First Plaintiff: Business Individual Government Other
First Defendant: Business Individual Government Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonness
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: _____

TORTS: PERSONAL INJURY

- TOPE - Personal Property
- TORE - Real Property

OTHER CIVIL FILINGS

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Services

OTHER CIVIL FILINGS (cont'd)

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/ Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP - Contempt of Court
- CONT - Contract/Ejectment/Writ of Seizure
- TOCN - Conversion
- EQND - Equity Non-Damages Actions/Declaratory Judgment/ Injunction Election Contest/Quiet Title/Sale For Division
- CVUD - Eviction Appeal/Unlawful Detainer
- FORJ - Foreign Judgment
- FORF - Fruits of Crime Forfeiture
- MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB - Protection From Abuse
- EPFA - Elder Protection From Abuse
- FELA - Railroad/Seaman (FELA)
- RPRO - Real Property
- WTEG - Will/Trust/Estate/Guardianship/Conservatorship
- COMP - Workers' Compensation
- CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F **INITIAL FILING** A **APPEAL FROM DISTRICT COURT** O **OTHER**
R **REMANDED** T **TRANSFERRED FROM OTHER CIRCUIT COURT**

HAS JURY TRIAL BEEN DEMANDED? **YES** **NO** **Note:** Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure)

RELIEF REQUESTED: **MONETARY AWARD REQUESTED** **NO MONETARY AWARD REQUESTED**

ATTORNEY CODE:

GLO008

6/22/2020 5:18:20 PM

/s/ R MATT GLOVER MR.

Date

Signature of Attorney/Party filing this form

MEDIATION REQUESTED: **YES** **NO** **UNDECIDED**

Election to Proceed under the Alabama Rules for Expedited Civil Actions: **YES** **NO**

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

PART TWO, LLC,)
)
Plaintiff,)
)
v.)
) **Case No.:** _____
OWNERS INSURANCE COMPANY,)
)
)
Defendant.)

COMPLAINT

**I
PARTIES**

1. Plaintiff, **PART TWO, LLC**, is an Alabama limited liability corporation authorized to and doing business in the state of Alabama at all times material to the Complaint. The members of the Part Two, LLC are Darren McAusland and Elizabeth McAusland. Both Darren McAusland and Elizabeth McAusland are residents of Tuscaloosa County, Alabama. Hereinafter, Plaintiff will be referred to as “Part Two”.

2. Defendant, **OWNERS INSURANCE COMPANY**, is a foreign insurance organized under the laws of the State of Michigan and with its principal place of business in Lansing, Michigan. Hereinafter, this Defendant will be referred to as “Auto-Owners”.

**II
FACTUAL BACKGROUND**

**A.
SARS 2003 (SARS-CoV)**

3. Severe acute respiratory syndrome (SARS) was a viral respiratory illness caused by a coronavirus, SARS-CoV, first reported in Asia in February 2003. Over the next few months, the illness spread to more than two dozen countries in North America, South America, Europe, and Asia before the outbreak was contained. By July 2003, a total of 8,098 probable SARS cases were reported to the World Health Organization (WHO) from 29 countries, including only 29 specific cases from the United States. No deaths were reported in the United States, and there have been no known cases of SARS reported since 2004.¹

4. Comparing SARS to COVID-19 (SARS-CoV-2), BioSpace, a comprehensive life science industry news and information source, stated, “With SARS, most human-to-human infections occurred in health care settings that lacked robust infection control procedures. When infection control practices were implemented, the outbreak ended. Since then, the only occurrences have occurred through laboratory accidents. **They have not spread throughout the community** (emphasis added to the same).”²

5. In May 2003, during the SARS outbreak, the Department of Epidemiology in the School of Public Health at the University of California Los Angeles (UCLA), made reference to, “The leading theory for the Amoy Gardens outbreak (Amoy Gardens was a housing estate and center of the outbreak) in Hong Kong focused on sewage backups into apartment toilets, where the virus may have become aerosolized,” resulting in **fecal rather than community spread** (emphasis added to same).³ (The CDC has not confirmed any report of COVID-19 spreading

¹

Centers for Disease Control and Prevention (CDC), “Severe Acute Respiratory Syndrome (SARS), 2003.

²

BioSpace (BioSpace.com) is a comprehensive life science industry news and information source, providing “opportunities and tools to connect the innovative organizations and talented professionals who advance health and quality of life across the globe.”

³

from feces to a person: “This risk is low based on data from previous outbreaks of diseases caused by related coronaviruses, such as severe acute respiratory syndrome [SARS].”)

6. With respect to transmission or spreading of SARS, The New England Journal of Medicine stated, “SARS has been transmitted primarily, but not exclusively, in health care and hospital settings, generally five or more days after the onset of disease and from patients who were severely ill. These observations correlate with the finding that the peak viral load is reached around the 10th day of illness. There has been no reported instance of transmission before the onset of symptoms of disease. **Transmission to casual and social contacts is uncommon**, but transmission has occurred occasionally after close contact with a patient with SARS in the workplace, on an airplane, or in a taxi (emphasis added to same).”⁴

B.
CF 2006-OVBEP – ALABAMA
Amendatory Endorsement – Exclusion
of Loss Due to Virus or Bacteria

7. As to insurance claims arising from the SARS outbreak, the conventional wisdom is that insurers lost hundreds of millions of dollars in an onslaught of commercial property claims, including time element claims such as business interruption coverage.⁵ Factually, the

Centers for Disease Control and Prevention (CDC), “Coronavirus 2019 (COVID-19) > Health Departments,” 2019.

⁴

New England Journal of Medicine, “The Severe Acute Respiratory Syndrome,” 2003: 349:2431-41.

⁵

At this point in time, Plaintiff does not have access to internal reviews or analytics gathered and produced by the ISO (Insurance Services Office) that may indicate or tend to indicate loss metrics on a widespread basis. While there may have been a notable impact on event cancellation and travel insurance, no such impact on commercial property or general liability insurance is evidenced from any source available to the general public.

One linkage to potential commercial property coverage was made in a white paper released by brokers Aon 2003. It contended that SARS-like epidemics could theoretically be insured under an “environmental impairment policy” as the viral agent would qualify as “an irritant or **contaminant**” under a typical pollution definition.

opposite seems more likely true. For example, The Wall Street Journal reported, “SARS doesn’t seem to be having an impact on the ‘business interruption’ piece of standard commercial insurance policies.” Claims Journal wrote, “In the insurance industry, possible travel and medical insurance claims generated by SARS are likely to be limited, while business interruption risk caused by the illness is not likely to be covered by most existing policies. Insurance claims generated by SARS, including life insurance claims, are likely to have only a limited financial impact on insurance companies in the region.”⁶

8. Nonetheless, in 2006, the ISO (Insurance Services Office) drafted a new endorsement to address the exclusion of insured loss due to virus or bacteria (as discussed more fully in paragraphs below, the ISO provides policy forms to insurance companies and is universally accepted as the industry’s drafter). As background to the proposed endorsement, ISO stated, “Commercial Property policies currently contain a pollution exclusion that encompasses **contamination** (in fact, uses the term **contaminant** in addition to other terminology). Although the pollution exclusion addresses **contamination** broadly, viral and bacterial **contamination** are specific types that appear to warrant particular attention at this point in time (emphasis added to same).”

9. At the “point in time” referenced by the ISO, the only disease outbreak widely alerted by the WHO was H5N1 Avian influenza. Multiple cases and deaths were reported in other countries, but there were no reported cases in the United States. The WHO observed, “Almost all cases of H5N1 infection in people have been associated with close contact with infected live or dead birds, or H5N1 **contaminated environments**. The virus does not infect

⁶

Claims Journal, “S&P’s Says SARS Could Damage Health of Emerging Asian Companies,” April 2003. The Wall Street Journal, “Insurers Exclude SARS Coverage in Policies for Event Cancellation,” April 2003.

humans easily, and **spread from person to person appears to be unusual** (emphasis added to same).”⁷

10. The ISO is not an insurance company. Its website states, “ISO provides advisory services and information to many insurance companies. On your [the insured’s or customer’s] insurance policies, you may see notices showing ISO as the copyright owner. That’s because ISO develops and publishes policy language that many insurance companies use as the basis for their products. But your policy is a contract between you and your company. ISO is not a party to that contract.”

11. Consequently, although ISO drafts and files forms for approval with the Alabama Department of Insurance (ADOI) as it does with regulators across the country, each insurance company delivering a policy contract in Alabama, or submitting a coverage restriction within the policy, must file the same with ADOI. “All rates and form filings for the commercial lines of property and casualty insurance . . . shall be according to the File and Use System.”⁸

12. ISO amendatory endorsement CF 2006-OVBEF was received by the ADOI on July 6, 2006. Its “disposition” on July 18, 2006, was described as “filed,” with an effective date of January 1, 2007. In agreement with both the filing form and the National Association of Insurance Commissioners (NAIC) “Product Filing Review Handbook,” ISO identified a need for the endorsement but did not develop underwriting rules to guide an insurer in deciding whom to accept as a policyholder and whether other coverage limitations were required.

⁷

The WHO declared a pandemic related to the H1N1 Influenza A, commonly known as “swine flu” in 2009. In early October of that year, the CDC announced that swine flu was widespread across the country. Scientists developed a vaccine to protect humans from H1N1 after the 2009 outbreak. Since then, protection against H1N1 has become part of the regular seasonal flu shot.

⁸

Rates and Forms Filing Requirements for Property and Casualty Insurance, Chapter 482-1-123 (2001), et seq.

13. ISO penned the following “Introduction” to the amendment:

“The current pollution exclusion in property policies encompasses **contamination** (in fact, uses the term **contaminant** in addition to other terminology) [emphasis added to same]. Although the pollution exclusion addresses **contamination** broadly, viral and bacterial **contamination** are specific types that appear to warrant particular attention at this point in time.

“An example of bacterial **contamination** of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part to inherent qualities in the property itself. Some other examples of **viral and bacterial contaminants** are rotavirus, SARS, influenza (such as avian flu), legionella and anthrax. The universe of disease-causing organisms is always in evolution (emphasis added to same).

“Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial **contamination** occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of **decontamination** (for example, interior building surfaces), and business interruption (time element) losses (emphasis added to same).”⁹

14. The following “Current Concerns” were expressed by the ISO:

⁹

Common definitions: “contamination” is the action or state of making or being made impure by polluting or poisoning; “contaminant” is something that contaminates a substance such as water or food; “viral or bacterial contamination” is “biological contamination” which, in turn, is bacterial, fungal, or viral; and a “substance” is a particular kind of matter with uniform properties.

“Although building and personal property could arguably become **contaminated** (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. In addition, pollution exclusions are at times narrowly applied by certain courts. In recent years, ISO has filed exclusions to address specific exposures relating to **contaminating or harmful substances**. Examples are the mold exclusion in property and liability policies and the liability exclusion addressing silica dust. Such exclusions enable elaboration of the specific exposure and thereby can reduce the likelihood of claim disputes and litigation (emphasis added to same).

“While property policies have not been a source of recovery for losses involving **contamination** by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent (emphasis added to same).”¹⁰

C. COVID-19 (SARS-CoV-2)

10

In its filing review handbook, NAIC describes the analysis phase of drafting an insurance product thusly: “This phase involves identification of risk faced by individuals, families and businesses. Once risks have been identified, appropriate treatment of the risk is needed. Treatment of risk may be accomplished in a number of ways, such as through risk financing transfers (e.g., insurance) and non-insurance risk financing transfers (e.g., hold harmless agreements). However, this text will focus on the development of insurance products to meet the nation’s financial risk transfer needs. The product development staff must assess whether its prototype is an appropriate risk transfer device and figure out whether the product being contemplated is marketable. Analysis may also involve modeling.” ISO did not draft such an analysis in the CF 2006-OVBEF submission.

15. COVID-19 was first detected in Wuhan City, Hubei Province, China. Although the first infections were linked to a live animal market, it continued spreading from person to person contact. The agent that causes COVID-19 spreads easily and sustainably in the community (**community spread**), a term was first used in 1945. Merriam-Webster Dictionary defines the term as “the spread of a contagious disease to individuals in a particular geographic location who have no known contact with other infected individuals or who have not recently traveled to an area where the disease has any documented cases.”

16. While researchers have been trying to determine whether the COVID-19 agent can travel through the air, it is undisputed that evidence pointing to airborne transmission — in which the disease spreads in the much smaller particles from exhaled air, known as aerosols — is occurring, and precautions (**social distancing**) have been recommended to reduce the risk of infection.¹¹

17. Social distancing, also known as **physical distancing**, is a set of non-pharmaceutical interventions or measures taken to prevent the spread of a contagious disease by maintaining a physical distance between individuals and among people and reducing the number of times people come into close contact with each other. In this respect, social distancing typically involves keeping a certain distance from others and avoiding gathering together in large groups. To practice social or physical distancing, the CDC recommends an individual “Stay at

¹¹

See, generally, *coronavirus.gov* and the Centers for Disease Control and Prevention (CDC). Research supported by the Intramural Research Program of the National Institute of Allergy and Infectious Diseases, National Institutes of Health, published in the New England Journal of Medicine on March 17, 2020, affirmatively indicates that aerosol and fomite (materials that are likely to carry infection such as clothes and furniture, for example) transmission of COVID-19 is credible, since the virus can remain viable and infectious in aerosols for hours and on surfaces up to days. (Sourced from the New England Journal of Medicine on date indicated.)

least 6 feet (about 2 arms' length) from other people,” “Do not gather in groups,” and “Stay out of crowded places and avoid mass gatherings.”¹²

18. By reducing the probability that a given uninfected person will come into physical contact with an infected person, the disease transmission can be suppressed, resulting in fewer deaths. The measures are used in combination with good respiratory hygiene and hand washing by a population. To slow down the spread of infectious diseases and avoid overburdening healthcare systems, social distancing measures include the closing of schools, workplaces, and the cancellation of large gatherings. It is undisputed that governments across the globe imposed strict limitations and lockdowns on businesses and all forms of societal functions and interactions deemed non-essential.¹³

II DISCUSSION OF FACTUAL BACKGROUND

A. Insurance Industry Response to COVID-19

19. The insurance industry has broadly and uniformly taken one of two positions in response to property damage, civil authority, and time element (business interruption) claims under commercial property policies: (a) the comprehensive denial of claims based upon the predetermined conclusion that COVID-19 is not and cannot be the cause, concurrent or otherwise, of any category of property damage; and (b) even if the conclusion is that that

¹²

Answering the question, “Why practice social distancing,” the CDC stated, “COVID-19 spreads mainly among people who are in close contact (within about 6 feet) for a prolonged period. Spread happens when an infected person coughs, sneezes, or talks, and droplets from their mouth or nose are launched into the air and land in the mouths or noses of people nearby. The droplets can also be inhaled into the lungs.”

¹³

Social-distancing measures actually date back to at least the fifth century BC. The Bible contains one of the earliest known references to the practice in the Book of Leviticus 13:46: “And the leper in whom the plague is . . . he shall dwell alone; [outside] the camp shall his habitation be.”

COVID-19 does and can cause property damage, the resulting loss is excluded from coverage by virtue of the ISO exclusion either written into policy language by an individual company or adopted in its entirety.

20. It is not a manipulation of the plain wording of the ISO's amendment to concede, and even agree, that viral **contamination** is property damage and that CF 2006-OVBEF considered no other alternative and used no other descriptive language. The amendment does use the word "arguably" in an attempt to qualify what appears otherwise to be a definitive conclusion with respect to the issue. But common and widely accepted rules of construction mandate that ambiguity in any insurance policy be resolved in favor of the insured. The same rule applies equally to the word "arguably" which by its own definition describes something that can be asserted or shown to be a certain way. In other words, ambiguity. In the case of a tie – even an arguable tie – between insured and insurer on a coverage decision, the tie goes to the insured.

21. At the time CF 2006-OVBEF was drafted in 2006, it made illustrative reference to the following: rotavirus, SARS, influenza (citing avian flu in particular), legionella, and anthrax (see paragraph 14 herein). Of these references, all are spread through physical **contamination**.¹⁴ In consequence, ISO itself demonstrates that CF 2006-OVBEF is directed to the exclusion of physical property damage caused by **contamination** of the same.

14

Rotaviruses, the most common cause of diarrheal disease, are transmitted by the fecal-oral route, via contact with contaminated hands, surfaces, and objects. SARS, as we have noted, is transmittable by contact with contaminated feces (see paragraphs six and seven herein). Avian influenza is spread by and through contaminated environments (see paragraph 10 herein). Anthrax is caused by spore-forming bacterium mainly affecting animals. And legionella is a naturally occurring bacterium found in freshwater environments that can become a health concern when it grows and spreads in building water systems. (Remediation of a legionella outbreak usually results in a building closure, causing substantial business interruption. A 2009 outbreak at Miami's EPIC Hotel, for instance, reportedly caused daily income losses of about \$200,000.00.)

22. CF 2006-OVBEF is clearly the result and culmination of the insurance industry's intention to rid itself of any coverage liability for **contamination** causing damage to property. Hence, insurers, including the defendant insurer in this Complaint, recognized that if real property is **contaminated**, or a threat of **contamination** exists, and the same is quarantined or otherwise rendered inaccessible either voluntarily or by government order, coverage liability would exist in a wide range of commercial property policies for losses including business interruption, the cost of remediation, and other benefits owed to the insured.

23. Therefore, any assertion that COVID-19 is not and cannot be a causative agent of property damage is patently wrong (not to mention disingenuous and duplicitous). Any policy form addressing a bacterial or viral exclusion, including but not limited to the CF 2006-OVBEF amendment, by its own wording **must concede** that a viral agent can cause property damage demonstrated by the repetitive usage of and reference to the word **contamination**. The ISO, in its introduction to CF 2006-OVBEF and expression of current concerns, fully accepted that a virus can cause **contamination** of building and personal property.

24. This, however, has not stopped the insurance industry, when faced with a commercial property policy that does not include language concerning a viral exclusion (including but not limited to CF 2006-OVBEF), from collectively and loudly denying the very thing that it conceded in 2006: that bacterial or viral **contamination is property damage**, because as contaminants they render a physical object unusable until remediation or replacement.¹⁵

¹⁵

The dizzying height of the industry's hypocrisy can be measured in its interpretations of policy forms. For example, Owners Insurance has denied in other cases that COVID-19 is a causative agent of property damage; in this case, it accepts that it is within the definition of covered loss, but coverage is rejected by application of the virus exclusion.

B. Illusory Coverage

25. When the language or structure of an insurance policy gives a policyholder the impression of coverage but instead by effect negates any meaningful coverage, coverage is said to be “illusory.” Generally, the equitable theory holds that policies should be construed so that coverage is not a delusion to the insured; this serves to avoid an unreasonable result when a policy exclusion or limitation may otherwise unfairly deny coverage.¹⁶

26. The industry’s usage of CF 2006-OVBEP in the denial of COVID-19 time element (business interruption) coverage caused by **social distancing** and **civil authority orders** fails because of the distinctly different nature of the SARS-CoV-2 claims. By virtue of its language and its drafting history, CF 2006-OVBEP applies only to **contamination** and not the specific risk or cause of loss in COVID-19 claims: **the mandate and orders of social**

¹⁶

An important case from the Alabama Supreme Court turned on the court’s use of the illusory coverage doctrine. In *Owners Ins. Co. v. Jim Carr Homebuilder, LLC*, No. 1120764, 2014 Ala. LEXIS 44 (Ala. Mar. 28, 2014), the court faced the much discussed question of whether faulty workmanship is covered by a commercial general liability policy and, using principles of illusory coverage, joined a growing number of jurisdictions that recognize coverage for defective construction claims.

Many courts have said that a CGL policy does not cover damage resulting from faulty workmanship because the faulty workmanship does not constitute an “occurrence” that triggers coverage. But the court in *Jim Carr* said that if damage to something other than the work itself is required to constitute an “occurrence,” then when the insured is constructing an entirely new building or completely renovating a building, coverage would be illusory as “there would be no portion of the project that, if damaged as a result of . . . faulty workmanship of the insured, would be covered under the policy.” Accordingly, the court said the term “occurrence” itself did not exclude coverage for damage from faulty workmanship.

In addition, even if constituting an “occurrence,” damages stemming from faulty workmanship have often been excluded by the “Your Work” exclusion. In this case, the “Your Work” exclusion barred coverage for “‘Property damage’ to ‘your work’ arising out of it or any part of it and included in the ‘products-completed operations hazard.’” In the interest of equity, the court found coverage to be illusory because the builder paid for coverage for “products-completed operations” and the “Your Work” exclusion improperly barred coverage “under every conceivable set of circumstances.”

The decision not only illustrates the trend in favor of coverage for damages resulting from faulty workmanship but also **demonstrates how courts may use the illusory coverage doctrine to construe coverage and promote a public policy interest.**

distancing. Common sense demands and requires this interpretation to disavow application of the exclusion.

27. No order of **social distancing** in the United States is believed to be arising as the result of **direct contamination** caused by COVID-19 other than in a closed environment. In fact, social distancing orders have been in place for locations that had **no contamination** (for example, Geneva County, Alabama, had no reported case of COVID-19 until April 8, 2020, while in mandated lockdown and enforced social distancing; on a national scale, USA TODAY reported that, as of May 15 of this year a total of 231 of 3,143 counties in the United States had no reported cases). The exclusionary language of CF 2006-OVBEP – “resulting from” or “relating to” – does not negate the result, because the it must be read in conjunction with **contamination**: “resulting” from contamination, or “relating to contamination,” which was clearly the ISO’s intent.

28. The result for insureds is untenable and unjust in cases where the insurer relies on the virus exclusion to deny coverage for COVID-19 business interruption and property damage claims. On the one hand, if the virus exclusion does not apply because it relates to and results from contamination only, there ostensibly would be no covered loss for an insured whose business is interrupted by the mandate and orders of **social distancing** as the insurer argues there is no physical damage to property – for example, an insured in Geneva County might face this situation. On the other, an insured loss may be covered because of its physical damage by **contamination** (again which CF 2006-OVBEP must concede) but by applying the exclusion, there is still no coverage. Thus, the policyholder who paid for business interruption and civil authority coverage is left with nothing – the coverage is illusory.

B.

“All-Risks” Insurance

29. The contract of insurance at issue is referred to as an “All-Risks” policy. When a property insurance policy, including that between Plaintiff and Defendant, is written on an all-risk basis (with or without the word “all”), the insured only has the burden to show (a) the existence of the policy and (b) a loss to covered property. The insured is not required to establish the cause of loss. The burden of proof as to causation shifts to the insurer, even though the policy may not say so.

30. An insurer cannot simply rely on one or more exclusions as the basis for denying an “all-risks” property loss. The insurer must show that the loss was **proximately caused by the excluded peril**:

“This places an especially heavy burden on the insurer because the contract of adhesion doctrine suggests that exclusions in the policy usually will be given the interpretation most favorable to the insured. To sustain the burden of proof, it is not enough for the insurer merely to offer one reasonable interpretation under which the loss is excluded.”¹⁷

31. The virus exclusion is subject to more than one reasonable interpretation in respect to COVID-19 business interruption losses. If the basis of the exclusion was **contamination** as indicated by the ISO’s accompanying notes and concerns, it does not apply to business interruption caused by civil authority order or mandate.

COUNT I- BREACH OF CONTRACT

32. Plaintiff Part Two incorporates all prior paragraphs.

¹⁷

Insurance Contract Analysis, “External Factors Affecting Insurance Policy Analysis,” “Burden of Proof,” Eric A. Wiening and Donald S. Malecki, (1992)

33. Plaintiff Part Two has a policy of insurance with Defendant Auto-Owners. The policy number is 174617-38460775-19. The policy period is October 28, 2019 to October 28, 2020. The policy affords business interruption coverage in the amount of \$60,000.

33. Plaintiff Part Two is a retail store located at 1653 McFarland Blvd. N. Tuscaloosa, Alabama 35406.

34. As a result of COVID-19 and mandatory government orders, Plaintiff Part Two had to close for several weeks.

35. Plaintiff Part Two made a claim for business interruption coverage with Defendant Auto-Owners.

36. Defendant Auto-Owners denied the claim by letter on April 3, 2020.

37. The denial served as a breach of the contract.

38. As a direct and proximate result of this breach, Plaintiff Part Two has been damaged.

WHEREFORE THESE PREMISES CONSIDERED, Plaintiff Part Two demands a judgment against Defendant Auto-Owners in an amount to be determined by a jury.

COUNT II- BAD FAITH

39. Plaintiff Part Two incorporates all prior paragraphs.

40. Defendant Auto-Owners denied Plaintiff Part Two's claim in bad faith by creating its own debatable reason to deny the claim, by intentionally misapplying the policy provisions, by failing to conduct a proper investigation, by failing to submit the claim decision to a cognitive review and by institutionally deciding to deny this type of claim before the claim was even submitted.

41. As a direct and proximate result of this bad faith, Plaintiff Part Two has been damaged.

WHEREFORE THESE PREMISES CONSIDERED, Plaintiff Part Two demands judgment against Defendant Auto-Owners in an amount to be determined by a jury.

PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully submitted,

/s/ R. Matt Glover

R. Matt Glover (GLO-008)

Prince Glover Hayes

1 Cypress Point

701 Rice Mine Road North

Tuscaloosa, Alabama 35406

Phone: (205) 345-1234

Fax: (205) 752-6313

Email: mglover@princelaw.net

/s/ Ted Colquett

Ted Colquett (COL-065)

COLQUETT LAW, LLC

Post Office Box 59834

2917 Central Avenue, Suite 305

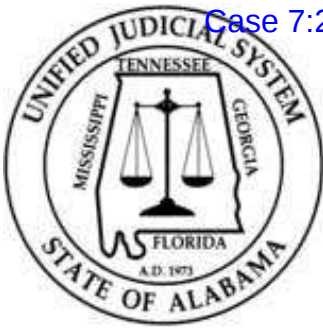
Birmingham, Alabama 35259-0834

Phone: (205) 245-4370

Email: ted@colquettlaw.com

**DEFENDANT TO BE SERVED VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Auto-Owners Insurance Company
c/o Sandra McCollough
5915 Carmichael Road
Montgomery, Alabama 36117



AlaFile E-Notice

63-CV-2020-900599.00

To: R MATT GLOVER MR.
mglover@princelaw.net

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

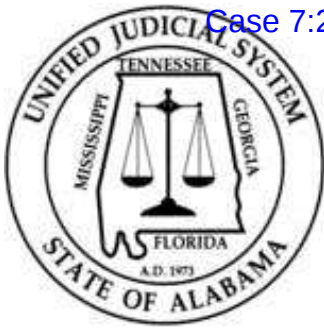
PART TWO, LLC V. OWNERS INSURANCE COMPANY
63-CV-2020-900599.00

The following complaint was FILED on 6/22/2020 5:18:18 PM

Notice Date: 6/22/2020 5:18:18 PM

MAGARIA HAMNER BOBO
CIRCUIT COURT CLERK
TUSCALOOSA COUNTY, ALABAMA
714 GREENSBORO AVENUE
TUSCALOOSA, AL, 35401

205-349-3870
magaria.bobo@alacourt.gov



AlaFile E-Notice

63-CV-2020-900599.00

To: OWNERS INSURANCE COMPANY
C/O SANDRA MCCOLLOUGH
5915 CARMICHAEL ROAD
MONTGOMERY, AL, 36117

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

PART TWO, LLC V. OWNERS INSURANCE COMPANY
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State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	SUMMONS - CIVIL -	Court Case Number 63-CV-2020-900599.00
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**IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA
PART TWO, LLC V. OWNERS INSURANCE COMPANY**

NOTICE TO: OWNERS INSURANCE COMPANY, C/O SANDRA MCCOLLOUGH 5915 CARMICHAEL ROAD, MONTGOMERY, AL 36117

(Name and Address of Defendant)

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S),
 R MATT GLOVER MR.

[Name(s) of Attorney(s)]

WHOSE ADDRESS(ES) IS/ARE: POST OFFICE BOX 20149, TUSCALOOSA, AL 35402

[Address(es) of Plaintiff(s) or Attorney(s)]

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

**TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL
PROCEDURE TO SERVE PROCESS:**

You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

Service by certified mail of this Summons is initiated upon the written request of PART TWO, LLC
 pursuant to the Alabama Rules of the Civil Procedure. *[Name(s)]*

06/22/2020

(Date)

/s/ MAGARIA HAMNER BOBO

(Signature of Clerk)

By: _____

(Name)

Certified Mail is hereby requested.

/s/ R MATT GLOVER MR.

(Plaintiff's/Attorney's Signature)

RETURN ON SERVICE

Return receipt of certified mail received in this office on _____
(Date)

I certify that I personally delivered a copy of this Summons and Complaint or other document to _____

_____ in _____ County,
(Name of Person Served) *(Name of County)*

Alabama on _____
(Date)

(Address of Server)

(Type of Process Server)

(Server's Signature)

(Server's Printed Name)

(Phone Number of Server)



State of Alabama
Unified Judicial System
Form C-34 Rev. 4/2017

SUMMONS
- CIVIL -

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA
PART TWO, LLC V. OWNERS INSURANCE COMPANY

NOTICE TO: OWNERS INSURANCE COMPANY, C/O SANDRA MCCOLLOUGH 5915 CARMICHAEL ROAD, MONTGOMERY, AL 36117

(Name and Address of Defendant)

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S), R MATT GLOVER MR.

[Name(s) of Attorney(s)]

WHOSE ADDRESS(ES) IS/ARE: POST OFFICE BOX 20149, TUSCALOOSA, AL 35402

[Address(es) of Plaintiff(s) or Attorney(s)]

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:

You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

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pursuant to the Alabama Rules of the Civil Procedure. *[Name(s)]*

06/22/2020

(Date)

/s/ MAGARIA HAMNER BOBO

(Signature of Clerk)

By: _____

(Name)

Certified Mail is hereby requested.

/s/ R MATT GLOVER MR.

(Plaintiff's/Attorney's Signature)

RETURN ON SERVICE

Return receipt of certified mail received in this office on _____

(Date)

I certify that I personally delivered a copy of this Summons and Complaint or other document to _____

in _____

County,

(Name of Person Served)

(Name of County)

Alabama on _____

(Date)

(Address of Server)

(Type of Process Server)

(Server's Signature)

(Server's Printed Name)

(Phone Number of Server)

63-CV-2020-900599.00

PART TWO, LLC V. OWNERS INSURANCE COMPANY

C001 - PART TWO, LLC

(Plaintiff)

v.

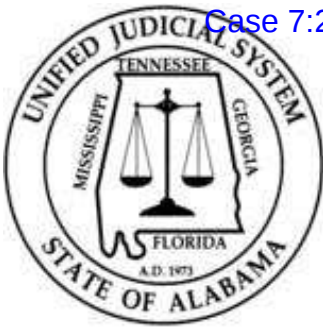
D001 - OWNERS INSURANCE COMPANY

(Defendant)



SERVICE RETURN COPY

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> 12 <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>																	
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Auto-Owners Insurance Company c/o Sandra McCollough 5915 Carmichael Road Montgomery, Alabama 36117</p> </div>	<p>B. Received by (Printed Name) C-19</p>	<p>C. Date of Delivery 6-25-2020</p>																
 9590 9402 4061 8079 3494 47	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
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<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																	
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																	
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																	
<input type="checkbox"/> Mail																		
<input type="checkbox"/> Mail Restricted Delivery																		
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>																



AlaFile E-Notice

63-CV-2020-900599.00

To: R MATT GLOVER MR.
mglover@princelaw.net

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

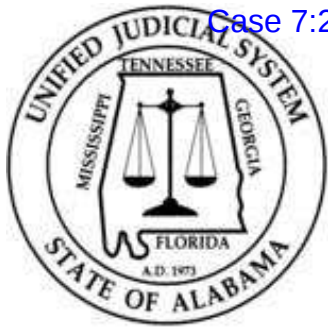
PART TWO, LLC V. OWNERS INSURANCE COMPANY
63-CV-2020-900599.00

The following RETURN ON SERVICE - SERVED was FILED on 6/29/2020 3:38:12 PM

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MAGARIA HAMNER BOBO
CIRCUIT COURT CLERK
TUSCALOOSA COUNTY, ALABAMA
714 GREENSBORO AVENUE
TUSCALOOSA, AL, 35401

205-349-3870
magaria.bobo@alacourt.gov



AlaFile E-Notice

63-CV-2020-900599.00

To: OWNERS INSURANCE COMPANY (PRO SE)
C/O SANDRA MCCOLLOUGH
5915 CARMICHAEL ROAD
MONTGOMERY, AL, 36117-0000

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

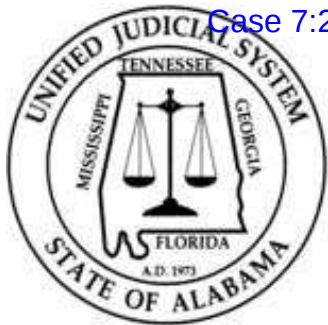
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AlaFile E-Notice

63-CV-2020-900599.00

To: COLQUETT PHILLIP TED
ted@colquettlaw.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

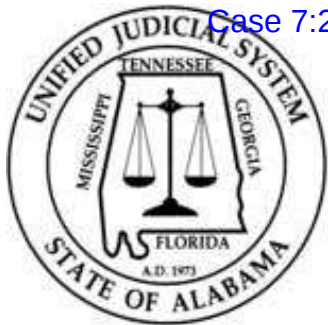
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mglover@princelaw.net

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Exhibit B



Alabama Secretary of State



Part Two, LLC	
Entity ID Number	474 - 913
Entity Type	Domestic Limited Liability Company
Principal Address	TUSCALLOSA, AL
Principal Mailing Address	Not Provided
Status	Exists
Place of Formation	Tuscaloosa County
Formation Date	2-8-2006
Registered Agent Name	MCAUSLAND, ELIZABETH TRICK
Registered Office Street Address	1653 N MCFARLAND BLVD UNIT G4-G TUSCALOOSA, AL 35406
Registered Office Mailing Address	Not Provided
Nature of Business	SELL LADIES' APPAREL/SHOES/ACCESSORIES
Members	
Member Name	MCAUSLAND, DARREN
Member Street Address	Not Provided
Member Mailing Address	Not Provided
Member Name	MCAUSLAND, ELIZABETH TRICK
Member Street Address	Not Provided
Member Mailing Address	Not Provided
Annual Reports	
Annual Report information is filed and maintained by the Alabama Department of Revenue. If you have questions about any of these filings, please contact Revenue's Business Privilege Tax Division at 334-242-1170 or www.revenue.alabama.gov . The Secretary of State's Office cannot answer questions about or make changes to these reports.	
Report Year	2014 2015 2016 2017 2018 2019
Transactions	
Transaction Date	2-15-2006
Registered Agent Changed From	TRICK, ELIZABETH 1653 N MCFARLAND BLVD UNIT G4-G TUSCALOOSA, AL 35406
Transaction Date	2-15-2006
Member/Shr Activity	*Added MCAUSLAND, ELIZABETH TRICK

Part Two, LLC	
Transaction Date	2-15-2006
Member/Shr Activity	*Removed TRICK, ELIZABETH
Transaction Date	2-15-2006
Miscellaneous Filing Entry	AMENDED AND RESTATED ARTICLES
Scanned Documents	
Document Date / Type / Pages	2-8-2006 Certificate of Formation 4 pgs.
Document Date / Type / Pages	2-15-2006 Miscellaneous Entry 4 pgs.



Alabama Secretary of State



Part Two, LLC	
Entity ID Number	474 - 913
Telephone Number	205-349-2077
Date Processed by Revenue	12-17-2019
Reporting Address	PART TWO LLC STE G4G 1653 MCFARLAND BLVD N TUSCALOOSA, AL 35406-2273
Agent as Reported	
President	ELIZABETH TRICK MCAUSLAND 3020 NIMITZ PLACE NE TUSCALOOSA, AL 35406
Secretary	DARREN MCAUSLAND 3020 NIMITZ PLACE NE TUSCALOOSA, AL 35406
General Business	RETAIL 1653 MCFARLAND BLVD N TUSCALOOSA, AL 35406-2273

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Exhibit C



Alabama Secretary of State



Owners Insurance Company	
Entity ID Number	863 - 361
Entity Type	Foreign Insurance Corporation
Principal Address	920 N CABLE ROAD LIMA, OH 45805
Principal Mailing Address	Not Provided
Status	Exists
Place of Formation	Ohio
Formation Date	0-0-0
Qualify Date	9-10-1984
Registered Agent Name	Click here to perform a Department of Insurance Agent Search
Registered Office Street Address	Not Provided
Registered Office Mailing Address	Not Provided
Nature of Business	FOR CORPORATE DETAILS CONTACT THE INSURANCE DEPT. (334) 269-3550
Capital Authorized	
Capital Paid In	
Annual Reports	
Annual Report information is filed and maintained by the Alabama Department of Revenue. If you have questions about any of these filings, please contact Revenue's Business Privilege Tax Division at 334-242-1170 or www.revenue.alabama.gov . The Secretary of State's Office cannot answer questions about or make changes to these reports.	
Report Year	1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019

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Alabama Secretary of State



Owners Insurance Company	
Entity ID Number	863 - 361
Telephone Number	517-323-1523
Date Processed by Revenue	10-31-2019
Reporting Address	OWNERS INSURANCE COMPANY PO BOX 30660 LANSING, MI 48909-8160
Agent as Reported	LOVELADY, MIKE 5915 CARMICHAEL RD MONTGOMERY, AL 36117-2518
President	THELEN DANIEL J 6101 ANACAPRI BLVD. LANSING, MI 48917-3968
Secretary	WOODBURY WILLIAM F 6101 ANACAPRI BLVD. LANSING, MI 48917-3968
General Business	INSURANCE 6101 ANACAPRI BLVD LANSING, MI 48917-3968

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