

# **Exhibit B**

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

**FILED IN OFFICE**  
CLERK OF STATE COURT  
COBB COUNTY, GEORGIA  
**20-A-1929**

**JUN 18, 2020 09:07 AM**

*Angie T. Davis*  
Angie T. Davis, Clerk of State Court  
Cobb County, Georgia

G&A FAMILY ENTERPRISES, LLC, )  
D/B/A SMOKIN' PIG BBQ, AND )  
GIBSON & ADAMS FAMILY )  
ENTERPRISES, LLC, D/B/A )  
SMOKIN' PIG, Georgia Limited Liability )  
Companies, )

Plaintiffs, )

vs. )

AMERICAN FAMILY INSURANCE )  
COMPANY, A Wisconsin Insurance )  
Company, )

Defendant. )

CIVIL ACTION FILE  
NO.: \_\_\_\_\_

**COMPLAINT**

COME NOW G&A Family Enterprises, LLC, d/b/a "Smokin' Pig BBQ", and Gibson & Adams Family Enterprises, LLC, d/b/a "Smokin' Pig", and set forth the following as their Complaint against the Defendant American Family Insurance Company, a Wisconsin Insurance Company.

**PARTIES AND VENUE**

1.

The Plaintiffs G&A Family Enterprises, LLC, d/b/a Smokin' Pig BBQ ("Tallapoosa Smokin' Pig"), and Gibson & Adams Family Enterprises, LLC, d/b/a Smokin' Pig ("Bowdon Smokin' Pig") (collectively "Plaintiffs"), are Georgia limited liability companies that are one hundred percent (100%) owned by the same individuals.

2.

The Defendant American Family Insurance Company ("Defendant") is a legal entity with its principal place of business located in Madison, Dane County, Wisconsin, and its registered agent, CSC of Cobb County, Inc., is located at 192 Anderson Street SE, Ste 125, Marietta, Cobb County, Georgia 30060. The Defendant is subject Georgia's Long Arm Statute, O.C.G.A. § 9-

10-90, et al, on the basis that the Defendant knowingly reached into the State of Georgia to transact insurance business that was to be performed in the State of Georgia. Thus, the Defendant is subject to the venue and jurisdiction of this Court. The Defendant can be served through its registered agent, CSC of Cobb County, Inc., is located at 192 Anderson Street SE, Ste 125, Marietta, Cobb County, Georgia 30060.

## **FACTS**

### **Origins of COVID-19 and Related Government Actions**

3.

On or about December 31, 2019, China notified the World Health Organization (“WHO”) of pneumonia cases in Wuhan City, China, that were of an unknown cause.

4.

The virus that caused the pneumonia cases in China eventually received the designation of “2019-nCoV”, and later, “COVID-19”, because the virus is part of the family of “coronaviruses”. Those viruses are usually found in animals, but they can also infect humans and be transmitted between humans. Health conditions can range from a mild “common cold” to severe fatal ailments, including pulmonary failure.

5.

COVID-19 spread across the globe from East Asia to the rest of the world, including the United States. In the United States, approximately two million (2,000,000) individuals have been confirmed to be infected, and approximately one hundred nineteen thousand (119,000) individuals have died. Globally, close to seven million (7,000,000) individuals have been confirmed to be infected, with approximately four hundred thousand (400,000) deaths.

6.

In early 2020, the United States Government declared COVID-19 to be a public health emergency. Independently, and in conjunction with other countries, the United States began to take draconian measures to help control the spread of the virus and try to mitigate the negative

health consequences. Measures such as issuing public health guidelines and mandates, closing national borders, restricting non-essential air travel, limiting non-essential activities, and instituting “shelter in place” orders on the State and local levels, were taken by governments.

7.

In Georgia, Governor Brian Kemp issued an Executive Order on March 14, 2020, in which he noted there had been over sixty (60) confirmed cases of COVID-19 as of that date. Based on a consensus of the Commissioner of Public Health, the Georgia Coronavirus Task Force, and other health and emergency preparedness officials, Governor Kemp declared a public health “state of emergency” for Georgia. On March 23, 2020, Governor Kemp issued another Executive Order, which instituted restrictions for organizations and entities, including not allowing more than ten (10) individuals to be gathered at a location and requiring “social distancing” of at least six (6) feet between individuals when feasible. Governor Kemp issued a third Executive Order on April 2, 2020, in which he set forth what types of entities and services are deemed “essential” and general parameters for what were deemed “minimum basic operations”, including limiting certain services to online ordering, home delivery, takeout, and curbside pick-up, such as for restaurants. On April 30, 2020, Governor Kemp issued an Executive Order that extended previous Orders, including those identified herein. Then, Governor Kemp issued an Executive Order on May 28, 2020, in which he declared the “state of emergency” will expire on July 12, 2020, unless it is extended again.

8.

On or about March 24, 2020, the Carroll County Board of Health issued an Emergency Order that mirrored Governor Kemp’s Executive Orders prohibiting and restricting non-essential activities, including operations of businesses. On or about March 26, 2020, the Haralson County Board of Health issued a nearly identical Emergency Order to that issued by the Carroll County Board of Health.

### **The Plaintiffs' Business Operations**

9.

The Tallapoosa Smokin' Pig engages in the barbeque restaurant business at 856 Ga. Hwy 100 S., Tallapoosa, Georgia 30176, and the Bowdon Smokin' Pig is located at 409 W. College Street, Bowdon, Georgia 30108.

10.

The Plaintiff Bowdon Smokin' Pig was started by Ms. Telisha Gibson, her husband Mr. Donald Gibson, and her parents in the early 2000s at the location of an unaffiliated former restaurant. The Plaintiff Tallapoosa Smokin' Pig was started approximately three (3) years ago. Both Plaintiffs are classic American "mom and pop" success stories. Telisha and Donald each served in Carroll County law enforcement for approximately twenty (20) to thirty (30) years, respectively, until each of them retired to work full-time at the restaurants with Ms. Gibson's parents. The Gibsons' now-adult son also worked at the Bowdon location as he grew up, and he continues to work at the restaurants on his days off when he is not working for the City of Carrollton as a firefighter. The Plaintiffs have been known for years to be generous to the Carroll County, Haralson County, and surrounding communities, including catering, donating food and/or supplies to local sporting and other events, sponsoring local charitable and sporting events and teams, fundraising for people with severe health issues, providing work to local residents in need, hiring local residents as employees, and being popular and unofficial community centers and respites for the local populaces and travelers alike. Therefore, unlike a large corporation that may be able to absorb a substantial financial loss, the Plaintiffs, the epitome of "small businesses", sustained substantial harm, financially and otherwise, when the COVID-19 pandemic struck this country.

11.

For January 1, 2019, through June 15, 2020, the Tallapoosa Smokin' Pig's gross income before any expenses were deducted was \$459,397.58, and for the same period in 2020, its gross

income is \$340,723.52.

12.

For January 1, 2019, through June 15, 2020, the Bowdon Smokin' Pig's gross income before any expenses were deducted was \$271,796.17, and for the same period in 2020, its gross income is \$241,294.80.

13.

The Plaintiffs have been insured with the Defendant, including coverage for business interruption income loss, and the relevant insurance policy coverage period for both Plaintiffs began June 3, 2019.

### **Business Interruption Income Loss Insurance Policy Provisions**

14.

On or about March 26, 2020, the Defendant sent the Plaintiffs a letter concerning the Plaintiffs' requests for compensation under the business interruption income loss provisions of their insurance policies. The Defendant cited two policy provisions, "Ordinance Or Law" and "Virus Or Bacteria", as the reason for denial of any compensation.

15.

In the BUSINESSOWNERS COVERAGE FORM at issue in this case (hereinafter collectively referred to as "Policy"), under "SECTION I – PROPERTY, A. Coverage, 5. Additional Coverages", pg. 3 of 53, "f. Business Income, (1) Business Income", *id.* at pg. 6 of 53, "(2) Extended Business Income", *id.* at pg. 7 of 53, "g. Extra Expense", *id.* at pg. 8 of 53, and "m. Business Income From Dependent Properties", *id.* at pg. 10 of 53, are the relevant categories of income and expenses supporting the requests for compensation.

16.

The Policy states the 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 the described

premises. The loss or damage must be caused by or result from a Covered Cause of Loss.” *Id.* at pg. 6 of 53. The term, “suspension”, is defined as, “The partial slowdown or complete cessation of your business activities” or “a part or all of the described premises is rendered untenable, if coverage for Business Income applies.” *Id.* at pg. 7 of 53.

17.

“Extended Business Income” is covered for the actual loss of Business Income that is incurred from the date that property other than finished stock is repaired, rebuilt, or replaced and “operations” resume. *Id.* at pg. 7 of 53. It terminates the earlier of when operations could have been restored within reason, or sixty (60) consecutive days after the beginning date. *Id.*

18.

“Extra Expense” will be paid during the restoration period if it would not have been incurred but for the direct physical loss or damage to property. *Id.* at pg. 8 of 53. This includes expenses an insured incurs to repair, replace, or restore property, and to avoid or minimize the effect of a suspension of business operations. *Id.*

19.

“Business Income From Dependent Properties” includes coverage for actual loss of Business Income the insured sustains because of physical loss or damage at the premises of dependent properties. *Id.* at pg. 10 of 53. A “[d]ependent property” includes those properties owned by others upon which the insured relies for the delivery of materials or services to the insured, or to others on behalf of the insured, or to accept the insured’s products or services, manufacture the insured’s products for delivery to the insured’s clientele, or attract customers to the insured’s business. *Id.* at pg. 11 of 53.

20.

Actions taken pursuant to “Civil Authority”, *id.* at pg. 9 of 53, will provide coverage for loss of Business Income and Extra Expense when “[a]ccess to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage”, and “[t]he action

of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage”.

21.

The relevant Policy provisions in “SECTION I – PROPERTY, B. Exclusions”, are as follows.

22.

“1. a. Ordinance Or Law” concerns enforcement of or compliance with ordinances or laws that regulate construction, use or repair of properties, or the tearing down of properties. *Id.* at pg. 17-18 of 53. The exclusion applies regardless of whether the ordinance or law is enforced in the absence of damage to the property or the claimed loss results from compliance with the ordinance or law. *Id.* at 18 of 53.

23.

“1. j. Virus Or Bacteria” is defined as “[a]ny virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” *Id.* at 20 of 53. However, the exclusion does not apply to loss or damage caused by “fungi”, wet rot or dry rot, which is itself an exclusion in the Policy. *Id.*

#### **Virus Or Bacterium Insurance Policy Exclusion**

24.

The origin of the “Virus Or Bacterium” insurance policy exclusion (Endorsement CP 01 40 07 06 – “Exclusion of Loss Due To Virus Or Bacteria”) can be traced to an Insurance Services Office, Inc. (“ISO”), circular, dated July 6, 2006, applicable to commercial properties. Examples of viruses and bacterium cited in the circular include listeria, rotavirus, SARS, influenza, legionella and anthrax. *Id.* at pg. 1. The ISO discussed the reasoning for adding such an exclusion to the then-existing “pollution” exclusion.

25.

The ISO stated in part,



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.

*Id.* at pg. 2.

26.

The ISO also expressed concern that sometimes policy exclusions are narrowly construed by courts, thus necessitating the addition of the aforementioned exclusion. *Id.*

27.

On March 17, 2020, John F. King, the Georgia Insurance and Safety Fire Commissioner, issued Bulletin 20-EX-3, which concerns business interruption insurance and COVID-19. In the Bulletin, Commissioner King discussed two of the policy provisions relevant to this case – one involving viruses and disease, and the other concerning actions taken by civil authorities. He noted that in February 2020, the Georgia Department of Insurance was informed about the ISO developing two new policy endorsements relating to business interruption insurance and COVID-19. *Id.* at pg. 2. “These forms provide coverage for actual loss of business income and extra expenses caused by a government order closing the insured’s premises or quarantining all or part of the premises and from government suspension of some modes of public transportation.” However, because the ISO did not file them with the Department, they were not included as part of the ISO’s portfolio as of when the Bulletin was issued. *Id.* Further, Commissioner King stated the Department has engaged in an expedited review of the proposed endorsements to help facilitate the removal of barriers to coverage for Georgia businesses “during this unprecedented Public Health Crisis.” *Id.*

28.

Based on Bulletin 20-EX-3, it is clear that Georgia considers it sound public policy to ensure there is maximum insurance coverage available for businesses that have sustained losses

to their physical property and financial wellbeing during this unprecedented time in human history.

29.

Comparable natural and/or man-made disasters/states of emergency in recent history in the United States have led to litigation arising from actions of civil governmental authorities and environmental disasters, such as litigation arising from hurricane damage and the “Deepwater Horizon” British Petroleum oil drilling platform explosion in the Gulf of Mexico in 2010. *See, e.g., CommStop, Inc. v. Travelers Indemn. Co. of Connecticut*, 11-1257, fn. 15 (W.D. La., May 18, 2012) (collecting cases where access to business premises was prohibited by orders from civil authorities); *Assurance Co. of Am. v. BBB Serv. Co.*, 265 Ga. App. 35 (2003) (civil authority in Brevard County, Florida, issued evacuation order prior to landfall of Hurricane Floyd in 1999); *In re Oil Spill by the Oil Rig “Deepwater Horizon”*, 910 F. Supp. 2d 891 (E.D. La. 2012), *aff’d*, *In re Deepwater Horizon*, 739 F.3d 790 (5<sup>th</sup> Cir. 2014) (involving class action litigation over claims for damages caused by contamination of the Gulf of Mexico and its coastline by oil and other toxic substances, including business loss claims).

30.

When Governor Kemp issued the aforementioned Executive Orders, and the Carroll County and Haralson County Boards of Health issued their Emergency Orders, those actions severely curtailed in whole or in part the ability of the Plaintiffs to carry on any type of business.

31.

The Orders had negative effects on the Plaintiffs’ business operations, including, but not limited to:

- 1) The inability to operate at all for specific periods of time;
- 2) Initially, not allowing any, or allowing very few, customers to purchase goods and services;
- 3) The involuntary destruction and disposal of perishable goods (e.g., food items), because

the goods could not be used soon enough to not be wasted;

- 4) The inability to rely on third-party suppliers to provide adequate and sufficient goods for the operation of their businesses;
- 5) Interference with contractual relations between the Plaintiffs and third-party suppliers and other individuals and entities; and
- 6) The inability to operate the businesses to the extent necessary to not perpetually run substantial financial deficits from loss of income.

32.

Through compliance with the Executive Orders and Emergency Orders, the Plaintiff Tallapoosa Smokin' Pig has sustained an estimated loss of income in the amount of almost \$119,000.00 to date. Further damages may be incurred if circumstances continue.

33.

Through compliance with the Executive Orders and Emergency Orders, the Plaintiff Bowdon Smokin' Pig has sustained an estimated loss of income in the amount of almost \$30,500.00 to date. Further damages may be incurred if circumstances continue.

**COUNT ONE: BREACH OF CONTRACT**

34.

The Plaintiffs reassert the claims contained in paragraphs 1 through 33 as if fully set forth herein.

35.

The Plaintiffs separately offered, and the Defendant accepted the offers, to enter into separate contracts for the Defendant to render certain services on behalf of the Plaintiffs, namely insurance coverage for business interruption income loss, among other types of coverage.

36.

As consideration for coverage under the Policy, the Plaintiffs separately agreed to pay the Defendant regular premiums.

37.

The Defendant breached the contracts when:

- 1) The Defendant failed to pay the full amounts of the Plaintiffs' business interruption income losses for both restaurants when the Plaintiffs timely submitted claims for such;
- 2) The Defendant failed to correctly apply the aforementioned Policy provisions to find coverage for this unprecedented public health crisis;
- 3) The Defendant unreasonably denied coverage based on Policy provisions that were intended to apply to scenarios of significantly smaller scope;
- 4) The Defendant denied coverage based on an unreasonable interpretation of Policy provisions that, if allowed to stand, would override the general rule in favor of coverage for losses that would ordinarily be covered;
- 5) The Defendant denied coverage based on Policy provisions that provide illusory coverage; and
- 6) The Plaintiffs have not been adequately compensated by the Defendant for the business interruption income losses.

38.

The Plaintiff Tallapoosa Smokin' Pig sustained damages in the amount of at least \$119,000.00 for the loss of business income, and the Plaintiff Bowdon Smokin' Pig sustained damages in the amount of at least \$30,500.00 for the loss of business income, because of the Orders that were issued by Governor Kemp and the Carroll and Haralson County Boards of Health.

WHEREFORE, the Plaintiff prays as follows:

- (a) That judgment be separately entered in favor of the Plaintiffs and against the Defendant for the count set forth above;
- (b) That compensatory damages in an amount equal to the total value of the business income that was lost be awarded to the Plaintiffs Tallapoosa Smokin' Pig and

Bowdon Smokin' Pig, respectively, for the breach of contract of the Defendant;

- (c) That damages in the amount of at least \$119,000.00 be awarded to the Plaintiff Tallapoosa Smokin' Pig;
- (d) That damages in the amount of at least \$30,500.00 be awarded to the Plaintiff Bowdon Smokin' Pig;
- (e) All attorney fees and filing costs; and
- (f) That the Court afford the Plaintiffs all other and further relief at law or in equity as it may deem necessary or appropriate in the interest of justice.

Respectfully submitted,

THE PILGRIM LAW GROUP, LLC.

/s/ J. Mac C. Pilgrim

J. Mac C. Pilgrim

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