

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

THE BROWN JUG, INC. d/b/a
The Little Brown Jug and
d/b/a The Backroom,

Plaintiff,

vs

THE CINCINNATI INSURANCE COMPANY,

Defendant.

Case No.: 20-cv-13003

Hon.

Magistrate Judge:

Lawrence J. Buckfire (P42841)
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**COMPLAINT FOR DECLARATORY ACTION, DAMAGES, AND
OTHER RELIEF AND DEMAND FOR JURY TRIAL**

Plaintiff The Brown Jug, Inc., (“Plaintiff”), for its Complaint against
Defendant The Cincinnati Insurance Company, (“Defendant”), state and allege as

follows:

Parties, Jurisdiction, and Venue

1. This is a declaratory judgment action brought under, inter alia, Fed. R. Civ. P. 57 and Mich. Comp. Laws §500.2006 seeking damages under a business insurance policy.

2. Plaintiff The Brown Jug Inc., is a corporation organized under the laws of the State of Michigan and conducting business as two restaurants located at 1204 S University Ave and 605 Church St, both in the City of Ann Arbor, in Washtenaw County, Michigan, and which are situated in the Eastern District of Michigan. The sole shareholder of Plaintiff The Brown Jug, Inc. is Perry Porikos, a resident of the City of Ann Arbor in Washtenaw County, Michigan. No other persons or entities hold any interest in Plaintiff. Plaintiff, therefore, is a citizen of Michigan.

3. Plaintiff The Brown Jug, Inc. has registered the assumed names “The Little Brown Jug” and “The Backroom.”

4. Defendant The Cincinnati Insurance Company (hereinafter “Defendant”) is a foreign insurance company organized under the laws of the state of Ohio with its principal place of business in Cincinnati, Ohio and doing business at all times in Washtenaw County Michigan. Defendant is a citizen of Ohio.

5. Plaintiff submitted claims for insured loss to Defendant for an amount

in excess of \$75,000.00, exclusive of consequential damages, interest, fees, costs, or other expenses.

6. Pursuant to 28 U.S.C. §1332, this Court has original jurisdiction over the claims asserted in Counts I – VIII of this civil action in that they involve a controversy between citizens of different States and the amount in controversy exceeds \$75,000.00.

7. Venue is proper and appropriate in this District under 28 U.S.C. §1391 because Defendant conducts business in this District, because the action concerns breaches of contracts formed under and subject to the laws of the State of Michigan, and because the property that are the subject of this civil action are situated in this District.

General Allegations

8. Plaintiff operates two restaurants in the Eastern District of Michigan with locations in the City of Ann Arbor in Washtenaw County, Michigan, those being 1204 S University Ave and 605 Church St.

9. The restaurant serves customers from throughout Michigan, as well as visitors from other states and foreign countries.

10. Defendant Cincinnati Insurance Company (“Cincinnati”) is a foreign corporation that that insures businesses, including restaurants, throughout the United States and including in Michigan.

11. Plaintiff purchased a commercial property insurance policy, Policy No. 05ECP0459010, from Defendant to protect the business in the event of property loss and business interruption for the September 30, 2019 to September 30, 2020 (“the Policy”). Among other coverages, the Policy provides coverages for loss to the structures and business personal property in the amount of \$655,000.00, as well as business income coverage in the amount of the actual loss sustained over a maximum period of 12 months.

12. COVID-19 and the resulting response by state and local governments caused physical loss of Plaintiff’s property and has interrupted Plaintiff’s businesses. Yet, Defendant has refused to honor its promise to provide the protection that Plaintiff purchased.

13. The Policy did not have virus exclusions and exemplifies the broken promise from insurance companies across the country.

14. As a result of COVID-19 and Stay at Home Orders (as defined below), Plaintiff was forced to temporarily close and otherwise greatly reduce operations.

15. This is an action for declaratory judgment and breach of contract damages arising from Defendant’s refusal to pay claims related to COVID-19 as required by its property insurance agreements it sold to Plaintiff.

16. The novel coronavirus – named “severe acute respiratory syndrome coronavirus 2” or “SARS-CoV2” – has spread widely and rapidly across the United

States and the world. The illness related to SARS-CoV-2 is “novel coronavirus disease 2019,” commonly abbreviated to “COVID-19.” Although the virus and the related illness are distinct, for purposes of this Complaint, Plaintiff refers to both interchangeably as “COVID-19.”

17. Over 200,000 Americans has died of COVID-19 as of the date of this filing, according to the Centers for Disease Control and Prevention (“CDC”). Some studies suggest that the number of infected persons is a significantly greater number than confirmed cases.

18. The State of Michigan has over 159,000 Covid-19 cases and over 6,900 confirmed deaths caused by the virus.

19. A growing body of evidence suggests that the virus transmits both through droplets, when someone sneezes and coughs, and aerosols, which are produced by normal breathing.

20. Aerosols are particularly concerning because unlike droplets, which stay airborne for only a few seconds, aerosols are water droplets suspended in air and can remain suspended for hours, until gravity ultimately forces them to the nearest surface below.

21. Consequently, aerosols can spread widely through air flow and settle on surfaces hundreds of feet away from any infected individual. Thus, someone not even in the vicinity of an infected person can unknowingly touch an infected

surface, later touch their face, and become infected.

22. According to the CDC, everyone is at risk of getting COVID-19. The virus can spread by respiratory droplets when an infected person coughs, sneezes, or talks. A person can become infected from respiratory droplets or potentially by touching a surface or object that has the virus on it and then by touching the mouth, nose, or eyes.¹ The virus can live on surfaces for several days if not longer.²

23. In addition, some scientific publications have reported finding COVID-19 in the air. The New England Journal of Medicine reported finding that experimentally produced aerosols containing the virus remained infectious in tissue-culture assays, with only a slight reduction in infectivity during a 3-hour period of observations. “Aerosols from infected persons may therefore pose an inhalation threat even at considerable distances and in enclosed spaces....”³

24. A consensus appears to be emerging that COVID-19 can travel through the air via aerosols. For example, aerosol scientist Lidia Morawska of the Queensland University of Technology in Brisbane, Australia told *Nature* that, “In the minds of scientists working on this, there’s absolutely no doubt that the virus

¹<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>, last retrieved on Oct. 18, 2020. See <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>, last retrieved Oct. 18, 2020.

²<https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics>, last retrieved Oct. 18, 2020.

³<https://www.nejm.org/doi/full/10.1056/NEJMc2009324>, last retrieved Oct. 18, 2020.

spreads in the air. This is a no-brainer.”⁴

25. An April 2020 study published in the journal *Emerging Infectious Diseases* found a wide distribution of COVID-19 on surfaces and in the air about *13 feet* from patients in two hospital wards in Wuhan, China, leading the authors to conclude that the virus spreads in aerosols in addition to large respiratory droplets. The investigators found evidence of the virus in swabs of floors, computer mice, trash bins, bed handrails, patients’ face masks, health workers’ personal protective equipment, and air vents.⁵

26. The authors also surmised that the high rate of positivity for floor samples in the hospital strongly suggest that droplets fall to the ground and then are spread via patients’ shoes. For example, every sample tested from the pharmacy floor tested positive for COVID-19 even though no patients were housed there.⁶

27. Another study conducted in Wuhan indicates that staff movement, floor cleaning, and the removal of personal protective equipment could transmit the virus through the re-suspension of virus-contaminated aerosols.⁷

28. Kimberly Prather, an aerosol chemist at the University of California, San Diego told *Science* magazine: “I’m relieved to see aerosolization is accepted.

⁴<https://www.nature.com/articles/d41586-020-00974-w>, last retrieved Oct. 18, 2020.

⁵<https://www.cidrap.umn.edu/news-perspective/2020/04/study-finds-evidence-covid-19-air-hospital-surfaces>, last retrieved Oct. 18, 2020.

⁶<https://www.cidrap.umn.edu/news-perspective/2020/04/study-finds-evidence-covid-19-air-hospital-surfaces>, last retrieved Oct. 18, 2020.

⁷<https://www.biorxiv.org/content/10.1101/2020.03.08.982637v1>, last retrieved Oct. 18, 2020.

This added airborne pathway helps explain why it is spreading so fast.”⁸

29. Aerosol particles are held in the air by physical and chemical forces. The suspended particles remain for *hours or more*, depending on factors such as heat and humidity. If virus particles can be suspended in air for more than a few seconds, like, for instance, the measles virus can, then anyone passing through could become infected by a pathogenic aerosol cloud. And the virus can travel long distances and land on surfaces, only to be stirred back up into the air later by cleaning or other disturbances.

30. The SARS virus that caused a 2003 epidemic is a coronavirus and is similar to COVID-19. As a result, the behavior of SARS during the 2003 epidemic provided evidence about any aerosol risk from COVID-19.

31. A 2014 analysis published in the journal *Clinical Infectious Diseases* investigated a seemingly puzzling outbreak in a Hong Kong apartment complex whose residents had not been in close contact with each other.⁹ The study found that “airborne spread was the most likely explanation, and the SARS coronavirus could have spread over a distance of 200 meters,” or about 600 feet.¹⁰

32. The implications of airborne spread of the virus are extremely serious. Airborne spread means that the virus can travel long distances from any infected

⁸<https://www.sciencemag.org/news/2020/04/you-may-be-able-to-spread-coronavirus-just-breathing-new-report-finds>, last retrieved Sept. 10, 2020.

⁹<https://academic.oup.com/cid/article/58/5/683/365793>, last retrieved Oct. 18, 2020.

¹⁰*Id.*

person. It can then infect someone who unknowingly walks through a pathogenic cloud. It can also infect someone by settling on a physical surface, which someone touches and later becomes infected. And regardless of the transmission method, the evidence suggests that COVID-19 can be transmitted by shoes even once it reaches the ground.

33. State and local governments have determined that without the Stay at Home Orders, COVID-19 could spread rampant throughout the community.

34. In an effort to combat the virus and slow the spread of COVID-19, Governor of the State of Michigan, Gretchen Whitmer, issued multiple Executive Orders, including No. 2020-04 that Declared a State of Emergency throughout the State of Michigan. Subsequent Executive Orders were issued restricting entry into restaurants and similar places of public accommodation, including EO 2020-09 and subsequent reiterations or modifications. EO 2020-21 imposed a variety of temporary restrictions on activities not necessary to sustain or protect life which were commonly referred to as the “Stay at Home Order,” “Stay Home, Stay Safe” or “shelter in place” restrictions. These orders, the orders extending their duration, and related actions of the State and local government required residents to stay at home except to perform “essential” activities, like shopping for food, picking up prescription medications, and seeing the doctor for urgent treatment.

35. Governor Whitmer issued EO 2020-9 which closed bars, restaurants,

and other places of public accommodation to on-site consumption of food and beverages effective no later than March 16, 2020 at 3:00 p.m. EO 2020-9 expressly provided willful violation of its provisions was a misdemeanor under Michigan law.

36. Based upon the nature of Plaintiff's restaurants, EO 2020-9 severely restricted access into the businesses and prevented the performance of most business operations from the March 16, 2020 at 3:00 p.m. to the date of the lifting of the restrictions.

37. Following a decision of the Michigan Supreme Court invalidating some of the extensions of the executive orders referred to in this Complaint, the Michigan Department of Health and Human Services issued an Emergency Order under Mich. Comp. Laws. § 333.2253 that mirrored the restrictions imposed by the stay at home orders.¹¹ Notably, the Emergency Order prohibits Plaintiff from exceeding 50% of seating capacity, prohibits Plaintiff from seating customers within 6 feet of each other, and imposes other restrictions on Plaintiff's operations.

38. As of the date of the filing of this Complaint, Plaintiff's businesses have not returned to full capacity at pre-COVID-19 levels and remain under restrictions related to COVID-19.

39. The government directives required businesses deemed "non-essential" to be closed and in-person work is not permitted. But even businesses

¹¹https://www.michigan.gov/documents/coronavirus/MDHHS_epidemic_order_-_Gatherings_masks_bars_sports_-_FINAL_signed_704740_7.pdf last retrieved October 19, 2020.

classified as “essential” has been severely impacted by the pandemic. For example, “essential” businesses have had to increase the frequency of cleaning, reduce hours, install new protective barriers between employee and customer, provide personal protective equipment to its workforce and prohibit customers from entering their facilities. But even with those precautions, many such business has had great difficulty retaining employees who fear becoming infected at work and has a decrease in services due to customers’ fears of infection by eating in a restaurant.

40. The State of Michigan has issued ongoing guidance on the restrictions that remain in place.¹² Those restrictions include limiting seating on-site to 50% capacity.

41. Plaintiff reduced operations starting on or about March 15, 2020, due to outbreaks of COVID-19 on-site and has been unable to return to full capacity in accordance with the Executive Orders, Stay at Home Orders, and the guidance from the CDC.

42. By the nature of Plaintiff’s businesses, EO 2020-9 and subsequent restrictions restricted access into the businesses and prevented the performance of Plaintiff’s normal operations. Plaintiff’s businesses suffered financial losses due to this, and other, Executive Orders.

¹²https://www.michigan.gov/documents/leo/COVID-19_Workplace_Guidelines_for_Restaurants_and_Bars_691404_7.pdf, retrieved Oct. 18, 2020.

43. Also, with respect Plaintiff's claims under the Civil Authority coverage, the same analysis applies as stated above. The Governor of the State of Michigan issued Executive Orders which prohibit access to the insured property or, at the very least, significantly restricted access to the insured property. These orders also recognized the damage to the health and safety of persons, as well as to property damage, caused by the coronavirus. Beginning with EO 2020-21 and extended numerous times, "shelter in place" orders were issued as a direct result of the physical spread of COVID-19 in Plaintiff's communities, which was causing physical loss or damage to Plaintiff's property or other property nearby.

44. It is likely customers, employees, and/or other visitors to the insured property over the months prior to, during, and after the government shutdown were infected with the coronavirus and thereby caused physical loss and damage to the property. Specifically, one of Plaintiff's restaurants, the Brown Jug, was traced as a possible source of an outbreak of COVID-19 which reportedly infected up to 13 people between October 1 and 6, 2020.

45. The transmission of COVID-19, Executive Orders, and the Stay at Home Orders has adversely affected Plaintiff's businesses. For example, customers and employees could not access the property due to the Executive Orders and the Stay at Home Orders or fear of being infected with or spreading COVID-19 or subjected to penalties under Michigan law.

46. But Plaintiff, like countless other small businesses, prepared for an unexpected event like the COVID-19 pandemic. Specifically, Plaintiff purchased property insurance from Defendant, that did not exclude pandemic coverage. A true and accurate copy of the Policy purchased by Plaintiff is in Defendant's possession.

47. Although the Policy defines "loss" as "physical loss or accidental physical damage," Michigan case law holds that physical damage was not a prerequisite to benefits under a business interruption policy when a civil authority order limited access to the property. Compare Policy at Building and Personal Property Coverage Form FM 101 05 16, Section G. Definitions, Loss, page 38 of 40 with *Southland Bowl, Inc. v Lumberman's Mutual Insurance Co.*, 208 N.W. 2d 569 (Mich. App. 1973).

48. Further, actual exposure to COVID-19, including actual, documented exposure to the droplets and aerosols containing COVID-19, constitutes physical loss or damage.

49. The Policy is an all-risk or open peril policy, meaning the Policy cover all direct loss unless the loss is expressly excluded. Policy at Building and Personal Property Coverage Form FM 101 05 16, Section A. Coverage, 3. Covered Causes of Loss, a. Covered Causes of Loss, page 5 of 40.

50. As set forth below, the Policy also provides coverage for:

- a. losses sustained due to the necessary interruption of business conducted by the Plaintiff and caused by direct

physical loss or damage (“Business Income” coverage)

- b. extra expenses necessarily incurred to minimize interruption of business and to continue operations (“Extra Expense” coverage); and
- c. interruption of business caused by an order from a civil authority (“Civil Authority” coverage).

51. Plaintiff timely submitted a claim to Defendant requesting payment of insurance benefits pursuant to the provisions of the policy and substantially complied with all the requirements of Defendant’s policy of insurance and applicable Michigan law, in making their claim for insurance proceeds, resulting from said loss.

52. On or about June 15, 2020, in response to Plaintiff’s notice of claim, Defendant improperly and unlawfully denied coverage and refused to cover Plaintiff’s COVID-19 losses. Defendant indicated it was refusing to pay any money for the covered benefits. (**Exhibit A** – Denial Letter).

53. The Policy does not exclude or limit coverage for losses from COVID-19 or pandemics.

54. The risk of a virus like COVID-19 was foreseeable to, if not foreseen by, insurance companies like the Defendant. The Insurance Services Office (“ISO”), an organization that provides policy writing services to insurers, has recognized for years that a virus can constitute physical damage to property. Specifically, in 2006, it announced the submission of an “exclusion of loss due to

disease-causing agents such as viruses and bacteria.” A copy of ISO’s July 6, 2006 Circular is attached hereto as **Exhibit B** and contains ISO’s standard form virus or bacteria exclusion.

55. In issuing its Circular, ISO expressly noted that, notwithstanding the inclusion in policies of a broadly worded exclusion for pollutants, “viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.” *Id.*

56. In connection with circulating the virus exclusion, ISO sent the following statement to state insurance regulators:

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. 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. *Id.*

57. Despite the availability of a specific exclusion for viruses, Plaintiff’s Policy contains no relevant exclusion. Nor does Plaintiff’s Policy contain an exclusion for “pandemics,” “communicable disease,” or anything similar.

58. Because damage due to viruses constitutes loss under the Policy and/or

the Stay at Home Orders, Plaintiff has suffered the loss of use of the premises for their intended purposes, Plaintiff's loss is covered under the Policy.

59. The Policy provides coverage for several different types of losses arising from COVID-19 that are relevant here through specific Coverage Extensions.

60. Defendant is obligated to pay for actual loss of "**Business Income**" sustained due to direct physical loss or damage. Policy at Business Income (and Extra Expense) Coverage Form FA 213 05 18, Section A. Coverage, 1. Business Income, page 1 of 9. Such losses are defined as actual losses. *Id.* Plaintiff has suffered lost business income because it has reduced operations of its business due to COVID-19.

61. Defendant also agreed to pay for "**Extra Expense.**" *Id.* at Section A. Coverage 2. Extra Expense, page 1-2 of 9. Plaintiff has suffered Extra Expenses because it has suspended operations due to COVID-19 to prevent physical damages to the premises by the presence or proliferation of the virus and the physical harm it could cause persons present there.

62. Defendant also agreed to provide coverage from an interruption to business caused by an order from a "**Civil Authority.**" *Id.* at Section A. Coverage 5. Additional Coverages, b. Civil Authority, page 2-3 of 9. Specifically, Defendant agreed to pay for "actual loss sustained" when access to the covered property is

prohibited by order of civil authority. *Id.* Access has been restricted to the Plaintiff's property due to the presence and threat of COVID-19 as customers has been prohibited from entering.

63. Plaintiff has taken such steps by, for example, complying with the Stay-at-Home Orders.

64. Losses caused by COVID-19 and the related state and local Stay at Home Orders triggered these provisions of Defendant's Policy. Specifically, Plaintiff's full operations has been largely suspended, and Plaintiff has lost revenue and business opportunities.

65. Plaintiff submitted claims to Defendant for coverage under the Policy, but Defendant has denied Plaintiff's claim. **Exhibit A.**

Count I: Declaratory and Injunctive Relief – Business Income

66. The preceding paragraphs are incorporated by reference as if fully alleged herein.

67. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

68. An actual controversy has arisen and now exists between Plaintiff, on the one hand, and Defendant, on the other hand, concerning the respective rights and duties of the parties under the Policy.

69. Plaintiff contend that Defendant has breached the Policy in the

following respects:

- a. Plaintiff suffered loss covered by the Business Income coverage in the Policy.
- b. Defendant is obligated to pay Plaintiff for that loss.
- c. Defendant has failed to pay Plaintiff for that loss.

70. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policy and request the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

71. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Business Income coverage in the Policy; and (2) ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

Count II: Breach of Contract – Business Income

72. The preceding paragraphs are incorporated by reference as if fully alleged herein.

73. Plaintiff purchased the Policy from Defendant.

74. The Policy is a valid and enforceable contract between Defendant and Plaintiff.

75. Plaintiff substantially performed their obligations under the terms of

the Policy including giving Defendant timely notice of the claim. Alternatively, Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability beyond the terms or conditions set forth in Defendant's letter of June 15, 2020.

76. Plaintiff has sustained a loss under the Business Income coverage in the Policy arising from the COVID-19 virus and associated Stay at Home orders.

77. Defendant has not agreed to pay the claim for Business Income or requested a proof of loss and has denied coverage.

78. Defendant has unlawfully denied claims for Business Income related to COVID-19 in breach of the Policy.

79. As a direct and proximate result of Defendant's breaches, Plaintiff sustained damages in an amount to be determined at trial or through appraisal.

80. Plaintiff has also suffered and continues to suffer additional consequential damages that were within the reasonable contemplation of the parties when they entered into the contract of insurance or that were the natural consequence of Defendant's breach of the contract of insurance.

Count III: Declaratory and Injunctive Relief – Civil Authority

81. The preceding paragraphs are incorporated by reference as if fully alleged herein.

82. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows

this Court to declare the rights and other legal relations of the parties to this dispute.

83. An actual controversy has arisen and now exists between Plaintiff, on the one hand, and Defendant, on the other hand, concerning the respective rights and duties of the parties under the Policy.

84. Plaintiff contend that Defendant has breached the Policy in the following respects:

- a. Plaintiff suffered loss covered by the Civil Authority coverage in the Policy.
- b. Defendant is obligated to pay Plaintiff for that loss.
- c. Defendant has failed to pay Plaintiff for that loss.

85. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policy and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the policy so that future controversies may be avoided.

86. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Civil Authority coverage in the Policy; and (2) ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

Count IV: Breach of Contract – Civil Authority

87. The preceding paragraphs are incorporated by reference as if fully

alleged herein.

88. Plaintiff purchased the Policy from Defendant.

89. The Policy is a valid and enforceable contract between the Defendant and Plaintiff. Plaintiff substantially performed their obligations under the terms of the Policy including giving Defendant timely notice of the claim. Alternatively, Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability beyond the terms or conditions set forth in Defendant's letter of June 15, 2020.

90. Plaintiff sustained a loss under the Civil Authority coverage in the Policy arising from the COVID-19 virus and associated Stay-at-Home Orders.

91. Defendant has not agreed to pay the claim for Civil Authority or requested a proof of loss. Instead, Defendant has requested information not necessary to determine coverage.

92. Defendant has denied claim for recovery under the Civil Authority coverage in the Policy related to COVID-19 and the Stay at Home Orders in breach of the Policy.

93. As a direct and proximate result of Defendant's breaches, Plaintiff sustained damages in an amount to be determined at trial or through appraisal.

94. Plaintiff has also suffered and continue to suffer additional consequential damages that were within the reasonable contemplation of the parties

when they entered into the contract of insurance or that were the natural consequence of Defendant's breach of the contract of insurance.

Count V: Declaratory and Injunctive Relief – Extra Expense

95. The preceding paragraphs are incorporated by reference as if fully alleged herein.

96. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

97. An actual controversy has arisen and now exists between Plaintiff on the one hand, and Defendant, on the other hand, concerning the respective rights and duties of the parties under the Policy.

98. Plaintiff contend that Defendant has breached the Policy in the following respects:

- a. Plaintiff has suffered losses covered by the Extra Expense coverage in the Policy.
- b. Defendant is obligated to pay Plaintiff for that loss.
- c. Defendant has failed to pay Plaintiff for that loss.

99. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policy and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the policy so that future controversies may be avoided.

100. Pursuant to a declaration of the parties' respective rights and duties

under the Policy, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Extra Expense coverage in the Policy; and (2) ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

Count VI: Breach of Contract – Extra Expense

101. The preceding paragraphs are incorporated by reference as if fully alleged herein.

102. Plaintiff purchased the Policy from Defendant.

103. The Policy is a valid and enforceable contract between Defendant and Plaintiff.

104. Plaintiff substantially performed their obligations under the terms of the Policy including giving Defendant timely notice of the claim. Alternatively, Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability beyond the terms or conditions set forth in Defendant's letter of June 15, 2020.

105. Plaintiff sustained a loss under the Extra Expense coverage in the Policy arising from the COVID-19 virus and associated Stay-at-Home Orders.

106. Defendant has not agreed to pay the claim for Extra Expense or requested a proof of loss.

107. Defendant has denied Plaintiff's claim for recovery under the Extra

Expense coverage in the Policy related to COVID-19 in breach of the Policy.

108. As a direct and proximate result of Defendant's breaches, Plaintiff sustained damages in an amount to be determined at trial or through appraisal.

109. Plaintiff has also suffered and continue to suffer additional consequential damages that were within the reasonable contemplation of the parties when they entered into the contract of insurance or that were the natural consequence of Defendant's breach of the contract of insurance.

Count VII – Appraisal

110. The preceding paragraphs are incorporated by reference as if fully alleged herein.

111. The Policy and Mich. Comp. Laws §500.2833(1)(m) provide the amount of a loss may be determined in appraisal at either party's request.

112. To date, the parties has not agreed to the amount of the insured loss.

113. Plaintiff has suffered damages, in the amount of unpaid insurance proceeds, as a proximate result of Defendant's failure to pay Plaintiff's claim in the amounts Plaintiff are entitled to.

114. Plaintiff demand appraisal of the loss sustained at the property.

Count VIII - Violation of the Michigan Uniform Trade Practices Act

115. The preceding paragraphs are incorporated by reference as if fully alleged herein.

116. At all relevant times, Defendant was and is subject to the Michigan Uniform Trade Practices Act, Mich. Comp. Laws §500.2001 *et seq.*

117. At all relevant times, Plaintiff were and are entitled to benefits under the Policy.

118. Defendant failed to pay Plaintiff's claim on a timely basis, in violation of the Michigan Uniform Trade Practices Act, Mich. Comp. Laws §500.2006.

119. Plaintiff claim penalty interest, as provided for in the Michigan Uniform Trade Practices Act, Mich. Comp. Laws §500.2006.

Prayer for Relief

Wherefore, Plaintiff respectfully requests this Court grant relief against Defendant as follows:

- a. For a judgment against Defendant for the causes of action alleged against it;
- b. For compensatory damages in an amount to be proven at trial or through appraisal;
- c. For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy;
- d. For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Policy;
- e. For pre-judgment and post-judgment interest at the maximum rate permitted by law, including penalty interest under Michigan's Uniform Trade Practices Act, Mich. Comp. Laws §500.2006;

- f. For Plaintiff's attorney's fees;
- g. For Plaintiff's costs incurred; and
- h. For such other relief in law or equity as the Court deems just and proper.

Demand for Jury Trial

Plaintiff hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

Respectfully submitted,

Buckfire & Buckfire, P.C.

Jim Kelly Law, PC

/s/ Lawrence J. Buckfire

Lawrence J. Buckfire (P42841)
Attorney for Plaintiff

/s/ James J. Kelly

James J. Kelly (P72111)
Attorney for Plaintiff

Date: November 9, 2020

Date: November 9, 2020