



the state of Alabama with permanent mailing addresses in Tuscaloosa, Alabama (Exhibit A, page 6). There are no other members of the LLC. <sup>1</sup>

2. Defendant, **AUTO-OWNERS INSURANCE COMPANY**, is a foreign insurance corporation, the same being incorporated in the state of Michigan on January 1, 1916 (Exhibit B, NAIC [National Association of Insurance Commissioners] page 1). **AUTO-OWNERS** qualified to conduct business in the state of Alabama on October 11, 1955 (Exhibit B, page 1; Exhibit B-1 [Alabama Secretary of State] page 1). **AUTO-OWNERS** is domiciled in the state of Michigan, its “Statutory Home Office Address” is in the city of Lansing, Michigan, and its business and mailing addresses are in the city of Lansing, Michigan. <sup>2</sup>

3. Defendant, **OWNERS INSURANCE COMPANY**, is a foreign insurance corporation, the same being incorporated in the state of Ohio on May 13, 1975 (Exhibit C, NAIC [National Association of Insurance Commissioners] page 1). **OWNERS** qualified to conduct business in the state of Alabama on September 10, 1984 (Exhibit C, page 1; Exhibit C-1 [Alabama Secretary of State] page 1). **OWNERS** is domiciled in the state of

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<sup>1</sup>

There are instances in the complaint and amended complaints (docs. 1, 12, and 15) when Wagner **Shoes**, LLC, is referred to as “Wagner’s **Shoe**.” The correct name of the LLC is Wagner **Shoes**. Any reference to “Wagner’s **Shoe**” derives from the incorrect designation of the named insured on the policy at issue as “Wagner’s **Shoe**.” At all times material to and referenced within the complaint and amended complaints, the correct name of the named insured is **Wagner Shoes, LLC**. This does not affect the citizenship of the LLC as outlined in this paragraph.

<sup>2</sup>

The State of Alabama Department of Insurance (ADOI) is a member of the National Association of Insurance Commissioners (NAIC). NAIC maintains State Based Systems (SBS) for the ADOI. Thus, when a search for a qualified company is initiated on the ADOI website, it routes to the NAIC website for that information.

Ohio, its “Statutory Home Office Address” is in the city of Lima, Ohio, but its business and mailing addresses are in the city of Lansing, Michigan, the latter being identical to the business and mailing addresses of **AUTO-OWNERS**.

## II ALLEGATION OF FEDERAL DIVERSITY JURISDICTION

4. It is undisputed that the members of Plaintiff, **WAGNER SHOES, LLC**, Meredith H. Wagner and Matthew Wagner, are citizens of the state of Alabama with permanent mailing addresses in Tuscaloosa, Alabama. Therefore, as each member of the LLC is a citizen of the state of Alabama, the LLC’s citizenship is also in the state of Alabama.

5. It is undisputed that Defendant, **AUTO-OWNERS**, was incorporated in the state of Michigan, is domiciled in the same, and its “Statutory Home Office Address” is also in the state of Michigan. It is undisputed that Defendant, **OWNERS**, was incorporated in the state of Ohio, is domiciled in the same, and its “Statutory Home Office Address” is also in the state of Ohio.<sup>3</sup>

6. Therefore, the United States District Court of Alabama, Northern District, Western Division, has jurisdiction of this matter pursuant to 28 U.S.C. § 1332, in that there is complete diversity between Plaintiff and Defendants, and Defendants are liable to

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<sup>3</sup>

Plaintiff has added **OWNERS INSURANCE COMPANY** as a Defendant in this case based upon its belief that the company issuing the policy of insurance at issue may, in fact, be **OWNERS**. Both **AUTO-OWNERS** and **OWNERS** are specified on the policy. In the pending motion to dismiss (doc. 13), only **AUTO-OWNERS** is named as a moving party notwithstanding this discrepancy. Clearly, the ADOI differentiates between the two, and Plaintiff will as well until such time as discovery indicates otherwise.

Plaintiff for damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and cost based upon the allegations which follow in this amended complaint. Moreover, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(1) and (c).<sup>4</sup>

### **III** **FACTUAL BACKGROUND**

#### **A.** **COVID-19**

7. Plaintiff incorporates all previous paragraphs by reference.
8. This case arises during the 2020 COVID-19 Pandemic.
9. COVID-19 was first detected in Wuhan City, Hubei Province, China.

Although the first infections were linked to a live animal market, the same continues to spread unabated from person to person contact. The agent that causes COVID-19 spreads easily and sustainably in the community (community spread).<sup>5</sup> One may also contract COVID-19 by touching a surface or object that has the infectious agent on it and then touching their own mouth, nose, or possibly their eyes.

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<sup>4</sup>

In the following sections, including statements of factual background and causes of action, Plaintiff utilizes “incorporation by reference” so as to avoid repetitive wording. In doing so, Plaintiff is incorporating its statement of subject matter jurisdiction as to each individual cause of action: that is, this Court has jurisdiction over every asserted claim pursuant to 28 U.S.C. § 1332.

<sup>5</sup>

This term was first used in 1945. The Merriam-Webster Dictionary defines the same 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.”

10. A study published in the October 2018 International Journal of Environmental Research and Public Health (sourced from the National Center for Biotechnology Information [NCBI]), states, “High-touch surfaces are recognized as a possible reservoir of infectious agents and their contamination can pose a risk also for the spread of multi-resistant organisms, hence they are recommended to be cleaned and disinfected on a more frequent schedule than minimal touch surfaces.” It is undisputed that COVID-19 can and will reside on everyday surfaces including those characterized as high-touch (tables, doorknobs, light switches, countertops, handles, desks, telephones, keyboards, toilets, faucets, sinks – anywhere on any surface on which a fingerprint may be left).

11. “Cleaning is the necessary first step of any sterilization or disinfection process (for high-touch surfaces). Cleaning is a form of decontamination that renders the environmental surface safe to handle or use” by removing organic matter and agents that interfere with microbial inactivation. To then disinfect, the Centers for Disease Control and Prevention (CDC) recommends the use of a disinfectant registered with the Environmental Protection Agency (EPA). The National Pesticide Information Center (NPIC) is linked to and referenced by the EPA in respect to using disinfectants to control COVID-19. The

NPIC published and updated the following table on March 5, 2020 (Sourced from the EPA, CDC, and NPIC.)<sup>6</sup>

**Using products effectively:**

- **To kill the virus, the surface must stay wet for the entire time on the label. Look for “contact time” or “dwell time”.**
- Surface wipes can dry out during use. They must remain wet to be effective.
- Each product has only been shown to work where the label says it can be used. Look for “**use sites**” on the label.
- Disinfectants may not work on all surfaces. Follow the label carefully. Examples of surface types are listed in Table 1 below.
- “Cleaning” wipes do not kill viruses. They do not make claims to disinfect and are not registered by the U.S. EPA.

<b>Porous</b>		<b>Semi-porous</b>		<b>Non-porous</b>
Carpeting	Upholstered furniture	Wood	Hardwood floor	Some tiles
Clothing and fabrics	Leather	Drywall	Linoleum	Some sealed countertops
Bedding and pillows	Wall insulation	Tile grout	Concrete	Glass
Mattresses	Ceiling tile			Metal

12. The survivability of the COVID-19 infectious agent on surfaces of different permeability depends on the surface in question and the environmental conditions (all of which will determine how long the property is affected). Trade organizations in the professional cleaning and supply industry are establishing protocols for the COVID-19 agent including the Global Risk Advisory Council (GBAC, a division of ISSA) which recommends the use of personal protective equipment (PPE), tools, and equipment in the cleaning and disinfection process.

13. 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

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<sup>6</sup> Remediation for COVID-19 is a two-step process. “Cleaning” does not necessarily kill the COVID-19 agent. The process lowers the number of individual agents but does not permanently removed them. “Disinfecting,” on the other hand, kills the COVID-19 agent and by doing so lowers its numbers and risk of spreading.

air, known as aerosols — is occurring, and precautions, such as increasing ventilation indoors, are recommended to reduce the risk of infection. According to the New England Journal of Medicine, COVID-19 aerosols can survive in the air for several hours without remediation (“remediation” being the action of reversing or stopping environmental damage).

14. It is undisputed that 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, indicates that aerosol and fomite (materials that are likely to carry infection such as clothes and furniture, for example) transmissions of COVID-19 are credible, since the agent remains viable and infectious in aerosols for hours and on surfaces for days.

**B.**

**DIRECT PHYSICAL LOSS *VIS-À-VIS* COVID-19**

*Although the policy in this case DOES NOT include the so-called 2006 virus exclusion, the Defendant has denied that COVID-19 is a cause of direct physical loss or property damage and therefore not a covered cause of loss under the Plaintiff's policy. It is essential to examine the background and content of the CF 2006-OVBEF virus exclusion to show that the insurance industry has ALWAYS considered a virus to be property damage.*

15. Confronted with a rising number of civil lawsuits across the country with respect to claims for business interruption and civil authority coverages, insurance companies are consistently asserting that COVID-19 does not constitute direct physical

loss or property damage under policy terms and, therefore, coverage for any loss alleged to have been caused by COVID-19 and/or business closure orders is not triggered. Historical review of the development of the so-called 2006 **virus exclusion**, however, indicates otherwise: since that point in time, the industry has considered a theoretical or conceptual virus to be a **contaminant** capable of causing physical loss and damage to property.<sup>7</sup>

16. The *Insurance Services Office* (commonly known and referred to as ISO) drafted an endorsement in 2006 to address the exclusion of insured loss due to virus or bacteria. 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).”<sup>8</sup>

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An insurance company’s denial that a thing or substance, bacterial or viral, constitutes a covered cause of loss without even acknowledging the possibility of coverage, and/or failing to investigate the cause of loss, is a compelling indication that the company is in, by that fact, bad faith breach of the insurance contract.

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The ISO provides policy forms to insurance companies and is universally accepted as the industry’s policy drafter. It is not, however, an insurance company. ISO develops and publishes policy language that many insurance companies use as the basis for their products. Consequently, although ISO drafts and files forms for approval with state regulators across the country, each insurance company delivering a policy contract in a state, or submitting a coverage restriction within the policy, must still file the same with a regulator or adhere to a specific approval process.



17. 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 humans easily, and spread from person to person appears to be unusual (emphasis added to same).”<sup>9</sup>

18. In accord with the National Association of Insurance Commissioners (NAIC) “Product Filing Review Handbook,” ISO identified a need for the endorsement. Its “Introduction” to the amendment states:

“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

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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.

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).”<sup>10</sup>

ISO’s “Current Concerns” to the amendment state:

“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

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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.

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).”<sup>11</sup>

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It is equally important to examine SARS 2003 (SARS-CoV) prior to development of the exclusion in respect to “property damage” and contamination.

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.

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.”

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.”

19. ISO's amendment concedes that viral **contamination** is property damage, and it 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.<sup>12</sup>

20. At the time the virus exclusion was drafted in 2006, it made illustrative reference to the following: rotavirus, SARS, influenza (citing avian flu in particular), legionella, and anthrax. Of these references, all are spread through physical **contamination**. In consequence, ISO itself demonstrates that CF 2006-OVBEF is directed to the exclusion of physical property damage caused by **contamination** of the same.<sup>13</sup>

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(The CDC has not confirmed any report of COVID-19 spreading 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].")

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."

<sup>12</sup>

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.

<sup>13</sup>

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

21. 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.

22. Therefore, any assertion that COVID-19 is not and cannot be a causative agent of property damage is patently wrong. 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.

23. 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 in order to slow the community and aerosol spreads of COVID-19. From the

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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.)

macro perspective of limitations and lockdowns imposed by nations and states to the micro perspective of cities and communities, nothing in society or commerce has been left untouched.<sup>14</sup>

**C.**  
**INSURANCE POLICY**

24. It is undisputed that at all times material to this Complaint, **WAGNER SHOE** possessed a Businessowners Policy (BP) contract of insurance (Policy Number 49-585-800-01) and a Commercial Umbrella Insurance Policy contract of insurance with **AUTO-OWNERS**.

25. Coverage A, “Businessowners Special Property Coverage Form (BP 00 02 01 87),” states Auto-Owners “will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.” Coverage A further states that “Covered Causes of Loss” includes “RISKS OF DIRECT PHYSICAL LOSS” unless excluded. Same includes “Business Income” and “Extra Expense” coverage.

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Closure orders in this case included: (a) March 19: Social distancing, school closings, and food service restricted by order of the State Health Officer, Dr. Scott Harris; (b) March 20: Amendment of the March 19 statewide order by to clarify and enforce social distancing measures for employers; (c) March 25: Executive order of Mayor Walt Maddox, city of Tuscaloosa, ordering a public safety curfew between 10 pm and 5 am, seven days a week; (d) March 26: Executive order of Mayor Maddox, extending the curfew to 24 hours per day. All “non-essential businesses and services” were, without exception, ordered to close; and (e) March 27: Amendment of the statewide orders of March 19 and 20 by the state health officer closing all non-essential businesses.

26. It is undisputed that Wagner's Shoes for Kids is "covered property" at the premises described in the policy and that "covered property" includes the buildings and structures as well as "permanently installed fixtures" and "personal property used to maintain or service the building." It is undisputed that Coverage A further states that "business personal property" located in or on the premises including property owned by the insured and used in its business is "covered property."

27. It is undisputed the contract of insurance is an "All-Risk" 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. Rather, the burden of proof as to causation shifts to the insurer, even though the policy may not say so.

28. Once the insured, in this case **WAGNER SHOE**, fulfills these minimal requirements, the insurer, in this case **AUTO-OWNERS**, if it chooses to deny coverage, must then prove that the claim is excluded from coverage. (Sourced from "Insurance Contract Analysis," Wiening and Malecki, American Institute for Chartered Property Casualty Underwriters [CPCU], 1992. See, also, "Legal Concepts of Insurance," Lustig (2010): In the case of all risk insurance, the burden of proof is generally held to be favorable to the insured to establish some casualty. The burden then shifts to the insurer to prove that the loss fell within some excepted cause.)

29. It is undisputed that **WAGNER SHOE** communicated with its Tuscaloosa insurance broker (Fitts Agency, Inc.) on March 27, 2020, and extended a claim for **contractual property damage, business interruption, and ongoing property damage** caused by the COVID-19 agent. Plaintiff was informed there was no coverage for the same, but that it could pursue the matter. It is undisputed that **AUTO-OWNERS** sent a proof of loss form to **WAGNER** dated March 27, 2020, that was received on April 6, 2020. It is undisputed that on April 6, 2020, **AUTO-OWNERS** denied **WAGNER'S** claim before it ever allowed him to complete and return the proof of loss. It is undisputed that **AUTO-OWNERS** never undertook to investigate and adjust the insurance claim before it denied the same.

**COUNT I**  
**DECLARATORY JUDGMENT**

30. Plaintiff incorporates all previous paragraphs by reference.

31. There is a justiciable controversy which exists between the parties to the Complaint in that Defendant, **AUTO-OWNERS**, denies that there is any coverage for the factual matters alleged herein. Plaintiff, **WAGNER SHOE**, maintains there is coverage for the same.

32. An actual case or controversy exists regarding the rights and obligations under the policy of insurance at issue to reimburse Plaintiff for the full amount of losses directly caused by the COVID-19 agent and the business interruption caused by the closure



orders. Thus, **WAGNER SHOE** requests that a declaratory judgment be entered as follows:

A. By incorporating the Complaint's factual allegations by reference and as if fully set out in this paragraph, a declaration that **WAGNER SHOE** has proven the existence of an insurance policy between the same and Defendant and has proven a loss to **covered property**.

B. By incorporating the Complaint's factual allegations by reference and as if fully set out in this paragraph, a declaration that all losses incurred by **WAGNER SHOE** related to the COVID-19 agent and business interruption are insured losses under Plaintiff's policy of insurance.

C. By incorporating the Complaint's factual allegations by reference and as if fully set out in this paragraph, a declaration that **AUTO-OWNERS** is obligated to pay Plaintiff for the full amount of losses incurred and to be incurred in connection with its covered business losses and expenses related to the COVID-19 agent.

**COUNT II**  
**BREACH OF CONTRACT**

33. Plaintiff incorporates all previous paragraphs by reference.
34. Defendant issued the insurance contract at issue to Plaintiff.
35. Plaintiff complied with its contractual obligations.
36. Defendant refused and failed to comply with its contractual obligations by denying and refusing coverage for Plaintiff's loss and failed to adjust the claim in

accordance with common industry practices, thus constituting a breach of the insurance contract.

37. As a direct and proximate result of said breach, Plaintiff has been damaged.

**WHEREFORE THESE PREMISES CONSIDERED**, Plaintiff seeks judgment against Defendant in an amount to be determined by a jury.

**COUNT III**  
**BAD FAITH**

38. Plaintiff incorporates all previous paragraphs by reference.

39. Defendant denied Plaintiff's claim for insurance coverage.

40. The denial of Plaintiff's insurance claim was made in bad faith by Defendant in that (a) it refused to pay Plaintiff's claim; (b) it had no reasonably debatable, legitimate, or arguable reason for doing so; (c) it had actual knowledge of the absence of a reasonably debatable, legitimate, or arguable reason for its refusal during the decisional process; and (d) it intentionally failed and refused to even investigate the claim; and (e) knew that it would deny the claim before the proof of loss.

41. As a direct and proximate result of Defendant's bad faith, Plaintiff has been damaged.

**WHEREFORE THESE PREMISES CONSIDERED**, Plaintiff seeks judgment against Defendant in an amount to be determined by a jury.

**COUNT IV**  
**INSTITUTIONAL BAD FAITH**

42. Plaintiff incorporates all previous paragraphs by reference.

43. Defendant denied Plaintiff's claim for insurance coverage.

44. Based upon its conduct in this case, Defendant adopted a general business practice to deny insurance claims arising from the COVID-19 pandemic and is employing strategies to deprive policyholders, including but not limited to the Plaintiff, the benefits of their insurance contracts.

45. Based upon its conduct in this case, Defendant has intentionally disregarded its own programs or procedures for handling claims, and its handling of the Plaintiff's insurance claim is in conformity with a deliberate business practice to deny claims arising from the COVID-19 pandemic.

46. Based upon its conduct in this case, Defendant has committed a series of wrongful separate and discrete acts, orally and in writing, illustrating its new business practice to deny claims arising from the COVID-19 pandemic without regard for accepted industry standards for claim investigation.

47. Based upon its conduct in this case, Defendant has directed its claim adjusters both in Alabama and nationwide, to deny claims arising from the COVID-19 pandemic without regard for accepted industry standards for claim investigations and in a manner inconsistent with ethical responsibilities to their insureds.

48. Based upon its conduct in this case, Defendant has acted in bad faith on an institutional level thereby creating a causal connection between its conduct and Plaintiff's damages and the damages of hundreds of insureds in a position same or similar to the Plaintiff in this case.

**WHEREFORE THESE PREMISES CONSIDERED,** Plaintiff seeks judgment against Defendant in an amount to be determined by a jury.

**COUNT V**  
**NEGLIGENCE/WANTONNESS**

49. Plaintiff incorporates all previous paragraphs by reference.

50. Defendant denied Plaintiff's claim for insurance coverage.

51. Defendant had a duty to properly and reasonably investigate and adjust Plaintiff's insurance claim.

52. Defendant negligently failed to investigate or adjust Plaintiff's insurance claim.

53. Defendant intentionally failed to investigate or adjust Plaintiff's insurance claim.

54. As a direct and proximate result of Defendant's negligence and wantonness, Plaintiff has been damaged.

**WHEREFORE THESE PREMISES CONSIDERED,** Plaintiff seeks judgment against Defendant in an amount to be determined by a jury.

**PLAINTIFF DEMANDS TRIAL BY JURY ON COUNTS II THROUGH V**

Respectfully submitted,

/s/ R. Matt Glover (asb-7828-a43g)

**R. MATT GLOVER**

Attorney for Plaintiff

PRINCE GLOVER HAYES

1 Cypress Point

701 Rice Mine Road North

Tuscaloosa, Alabama 35406

Phone: (205) 345-1234

Email: [mglover@princelaw.net](mailto:mglover@princelaw.net)

/s/ P. Ted Colquett (asb-4624-t58p)

**P. TED COLQUETT**

Attorney for Plaintiff

COLQUETT LAW LLC

Post Office Box 59834

Birmingham, Alabama 35259-0834

Phone: (205) 245-4370

Email: [ted@colquettlaw.com](mailto:ted@colquettlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 7<sup>th</sup> day of July, 2020, a copy of the foregoing was served on all counsel of record in this cause by CM-ECF electronic filing.

/s/ P. Ted Colquett

**OF COUNSEL**