

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

JA-DEL, INC. )  
13441 Holmes )  
Kansas City, MO 64145 )

Plaintiff, )

vs. )

Case No.

JURY TRIAL DEMANDED

ZURICH AMERICAN INSURANCE )  
COMPANY )  
Please serve: )  
c/o Director of Insurance )  
221 Bolivar Street )  
Jefferson City, MO 65101, )

and )

LOVELL SAGEBRUSH INSURANCE )  
GROUP, INC. )  
Please serve: )  
CEN Registered Agent, Inc. )  
800 NE Vanderbilt Lane )  
Lee's Summit, MO 64064, )

and )

R-T SPECIALTY, LLC )  
Please serve: )  
C T Corporation System )  
120 South Central Ave )  
Clayton, MO 63105, )

Defendants. )

**PLAINTIFF'S PETITION FOR DAMAGES**

COMES NOW, Plaintiff, Ja-Del, Inc. (hereinafter "Ja-Del"), by and through its counsel of record, the law offices of Monsees & Mayer, P.C., and for its Petition for Damages against Defendants Zurich American Insurance Company (hereinafter "Defendant Zurich"), Lovell

Sagebrush Insurance Group, Inc. (hereinafter “Defendant Lovell”), and R-T Specialty, LLC (hereinafter Defendant “R-T Specialty”), states as follows:

**PARTIES**

1. Plaintiff Ja-Del is a Missouri Corporation in good standing with the State of Missouri.

2. Defendant Zurich is a foreign insurance company maintaining a principal place of business at 1299 Zurich Way, Schaumburg, IL 60196, but conducts business in the State of Missouri. Defendant Zurich is regulated by the Missouri Department of Insurance and authorized to do business, and in good standing with the State of Missouri. Defendant Zurich may be served by delivering two (2) copies of the summons and petition to the Missouri Department of Insurance at the above address.

3. Defendant Lovell Sagebrush Insurance Group, Inc. is a foreign North Carolina corporation registered to do business in the State of Missouri and headquartered in the State of Missouri. Defendant Lovell’s principal place of business is in the State of Missouri. Defendant Lovell can be reached for service of process at the above referenced address.

4. Defendant R-T Specialty, LLC is a foreign Delaware limited liability company registered to do business in the State of Missouri and can be reached for service of process at the above referenced address.

**JURISDICTION AND VENUE**

5. This Court has jurisdiction over the causes of action asserted herein and over the parties to this action. Plaintiff asserts claims under Missouri law.

6. This Court has jurisdiction over Defendant Zurich because Zurich is registered to do business in the State of Missouri and has consistent and significant commercial interactions within the State of Missouri. Further, Plaintiff was first injured in Jackson County, Missouri.

7. This Court has jurisdiction over Defendant Lovell because it is registered to do business in the State of Missouri, is headquartered in the State of Missouri, and has consistent and significant commercial interactions within the State of Missouri. Further, Plaintiff was first injured in Jackson County, Missouri.

8. This Court has jurisdiction over Defendant R-T Specialty because it is registered to do business in the State of Missouri and has consistent and significant commercial interactions within the State of Missouri. Further, Plaintiff was first injured in Jackson County, Missouri.

9. Venue is proper in this court under RSMo § 508.010, because Plaintiff resides in Jackson County, Missouri and Defendant conducts business in Jackson County, Missouri. Further, Plaintiff was first injured in Jackson County, Missouri.

#### **BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

10. Plaintiff Ja-Del is the owner of an Insurance Policy with the policy number CPO-0195020-04, which a redacted version is attached hereto as **Exhibit A** and fully incorporated herein (hereinafter referred to as the “Policy”). Defendant Zurich sold the Policy to Plaintiff Ja-Del.

11. During the terms of the Policy, Plaintiff has sustained and will sustain covered losses during the COVID-19 outbreak, Jackson County Order, attached hereto as **Exhibit B**; Missouri State Order, attached hereto as **Exhibit C**; Missouri Extended Order, attached hereto as **Exhibit D**; Kansas State Order, attached hereto as **Exhibit E**; Kansas Extended Order, attached

hereto as **Exhibit F**; and Johnson County Order, attached hereto as **Exhibit G**. Plaintiff reported this covered loss to Defendant Zurich pursuant to the terms of the Policy.

12. Plaintiff has been forced to close its doors to customers due to the mandatory shut down order issued by Missouri, Jackson County, Kansas, and Johnson, County. This has resulted in a substantial loss of income and revenue to Plaintiff, and direct physical losses which are covered under the Policy.

13. Plaintiff requested Defendant Zurich to cover the damages suffered by Plaintiff pursuant to the Policy and the claim has been unreasonably and wrongfully denied by defendant Zurich.

14. When Plaintiff made a claim with Defendant for the benefits they paid for pursuant to the Policy, Defendant immediately denied the claim in full, and provided a denial letter to Plaintiff, which is attached hereto as **Exhibit H** and hereinafter referred to as the “Denial Letter”.

15. The Denial Letter lists the coverage language from the Business Income Coverage Form section of the Policy, in part. The Denial Letter, however, then lists a “Microorganism Exclusion” from an entirely different section of the policy, implying that it applies to the Business Income Coverage Form, when, in fact, it does not.

16. Defendant purposefully listed a microorganism exclusion from a provision of the policy that was not applicable to the loss, as a reason for the denial, when the relevant provision specifically provided coverage for microorganism loss.

**Count I - Breach of Contract**  
**(Against Defendant Zurich)**

17. Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 16 as though fully set forth herein.

18. Plaintiff Ja-Del, Inc. is the insured on the Policy, which was validly entered into between Plaintiff and Defendant.

19. The Policy provides coverage to Plaintiff for business income loss due to business interruption, and Plaintiff has suffered a covered loss pursuant to the Policy language.

20. Plaintiff has met and fulfilled all terms and conditions precedent to recovery under the Policy by paying all premiums to date and providing proper notice to Defendant.

21. Defendant Zurich has failed and/or refused to pay Plaintiff the benefits it is entitled to under the Policy.

22. Defendant Zurich's failure and/or refusal, as described above, to pay Plaintiff adequate compensation as it is obligated to do under the terms of the Policy constitutes a material breach of the Policy.

23. Plaintiff Ja-Del has suffered damages in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) as a result of Defendant's breach.

WHEREFORE Plaintiff prays for judgment against Defendant Zurich for damages due and owed under the Policy in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) to be determined by a jury at trial, for interest on the amount due under the Policy, for its costs and expenses incurred herein including reasonable attorney's fees and for such further relief as this Court deems just and proper.

**Count II - Vexatious Refusal to Pay**  
**(Against Defendant Zurich)**

24. Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 23 as though fully set forth herein.

25. On March 24, 2020 Plaintiff asked that Defendant Zurich cover the cost for business interruption to Plaintiff and the Property pursuant to the Policy and the claim has been unreasonably and wrongfully denied by Defendant Zurich.

26. Plaintiff's offer remained open for thirty (30) days and Defendant has continued to refuse to accept the claim and pay Plaintiff covered benefits.

27. Defendant Zurich has failed or refused for a period of thirty days to make payment under, or in accordance with, the terms and provisions of the Policy.

28. Defendant Zurich's refusal is vexatious and without reasonable cause and Plaintiff has sustained damages as a result of said refusal.

29. Pursuant to RSMo § 375.420 and RSMo § 375.296, Defendant Zurich's refusal to pay the business interruption benefits due and owed to Plaintiff is without reasonable cause or excuse.

30. As a direct and proximate result of Defendant Zurich's vexatious conduct, Plaintiff has not had the benefit of receiving its business interruption benefits that it is legally entitled to recover and is thus entitled to statutory damages.

WHEREFORE Plaintiff prays for judgment against Defendant Zurich for damages due and owed under the Policy in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) to be determined by a jury at trial, for interest on the amount due under the Policy, for statutory vexatious damages of 20% of the first \$1,500.00 and 10% in excess of \$1,500.00, for reasonable attorneys' fees, for its costs and expenses incurred herein and for such further relief as this Court deems just and proper.

**Count III – Negligence**  
**(Against Defendants Lovell and R-T Specialty)**

31. Plaintiff incorporates Paragraphs 1 through 10 of this Petition as though fully set forth herein.

32. Defendants Lovell and R-T Specialty are insurance brokerage firms with offices in or around Kansas City Missouri.

33. Plaintiff contacted Defendants Lovell and R-T Specialty to purchase an insurance policy that would fully cover an interruption to Plaintiff's business.

34. Defendants Lovell and R-T Specialty sold Plaintiff the Policy with Zurich and communicated and represented to Plaintiff that the Policy properly covered Plaintiff's business losses.

35. Defendants Lovell and R-T Specialty had a duty to Plaintiff to communicate accurate information as to what the Policy covered.

36. Defendants Lovell and R-T Specialty breached that duty by communicating inaccurate information as to what the Policy covered and/or not procuring a policy that fully covered Plaintiff's business income losses.

37. Defendants Lovell and R-T Specialty made representations to Plaintiff that the Policy covered business income losses, yet, Zurich has denied Plaintiff's claim as evidenced by the denial letter attached hereto as **Exhibit H**.

38. In making certain representations to Plaintiff regarding the coverage under the Policy, Defendants Lovell and R-T Specialty failed to exercise reasonable care and diligence.

39. Due to the breach of Defendants Lovell and R-T Specialty, Plaintiff has suffered a loss in an amount exceeding \$25,000.00.

WHEREFORE, pursuant to Count III, Plaintiff prays this Court enter Judgment in favor of Plaintiff and against Defendants Lovell and R-T Specialty, in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) to be determined by a jury at trial.

**DEMAND FOR JURY TRIAL**

40. Plaintiff requests a trial by jury on all issues so triable.

Respectfully Submitted,

MONSEES & MAYER  
A Professional Corporation

BY /s/ DAVID M. MAYER

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**ATTORNEYS FOR PLAINTIFF**