

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ROY'S FURNITURE BUILDING LLC,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

SOCIETY INSURANCE,

Defendant.

Case No.

COMPLAINT

Class Action

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Roy's Furniture ("Plaintiff"), individually and on behalf of all others similarly situated, for its Class Action Complaint against Defendant Society Insurance ("Defendant"), states and alleges as follows:

NATURE OF ACTION

1. Plaintiff Roy's Furniture Building LLC is a family owned furniture store operating in Chicago since 1980. The LLC and covered property consist of the furniture store, located at 2455 N. Sheffield Ave Chicago, IL 60614, and storage located at 4221 W Schubert Ave. Chicago, IL 60639.

2. As a result of, and in connection with the COVID-19 pandemic and related governmental orders, Roy's Furniture ceased normal operations and completely closed the store on or about March 21, 2020. Roy's Furniture was forced to stay closed until Governor J.B. Pritzker's Executive Order 2020-38 Phase Three Reopening issued on May 29, 2020. However, even after opening under restrictions and enhanced safety protocols, revenues are still down significantly as a direct result of COVID-19. To date Plaintiff has suffered substantial losses.

3. Fortunately – or so it thought – Plaintiff had purchased an all-risk commercial property insurance policy from Defendant to protect it in the event of an event such as COVID-19. The Policy provides millions of dollars in coverage for a wide variety of losses, including loss of use of property, business interruption, and property damage.

4. Plaintiff promptly made a claim for coverage under the Policy. But Defendant has refused to honor its promise to provide the protection that Plaintiff purchased. Defendant has not paid any funds to date.

5. Plaintiff is not unique. The insurance industry appears to be taking a uniform approach to the current pandemic: deny coverage even when the policy they drafted and offered to insureds, and the policy paid for by the insureds, does not contain an exclusion for pandemic- or virus-related losses. Based on other lawsuits and other publicly available information, it appears that Defendant is taking a consistent position with other insureds across the country.

6. Defendant's conduct is particularly galling in light of the huge amount of premiums insurers like Defendant receive annually. According to information published by the Insurance Information Institute, the U.S. insurance industry collected net premiums of \$1.22 trillion in 2018. Premiums recorded by property/casualty insurers accounted for 51% of that amount. Between 2014 and 2018, these insurers wrote net premiums each year of between \$497 billion to \$612.6 billion but only incurred losses of between \$277.7 billion and \$360.9 billion.

7. This is a class action for declaratory judgment and breach of contract arising from Defendant's refusal to pay claims related to COVID-19 as required by its property insurance agreements it sold to Plaintiff and other insureds.

PARTIES

8. Plaintiff is an Illinois limited liability corporation, with its principal place of business in Chicago, Illinois. Plaintiff has two locations, a furniture store and a storage facility, both located in Chicago, Cook County, Illinois. Both locations are covered by the Policy.

9. As a result of, and in connection with the COVID-19 pandemic and related governmental restrictions on non-essential business, Plaintiff ceased normal operations and closed its facilities on or about March 21, 2020. The shutdown has resulted in substantial losses to date for Plaintiff.

10. It is more likely than not that by at least early March 2020 persons infected with COVID-19 were present on Plaintiff's properties and thereby caused the virus to be present throughout Plaintiff's insured property and surrounding areas.

11. As a result, Plaintiff's insured property was rendered unsuitable for its intended use and was subject to a variety of limitations, restrictions, and prohibitions, including by orders of applicable government entities ("Stay at Home Orders"), which are matters of public record.

12. Defendant Society Insurance is a Wisconsin corporation with its principal place of business located at 150 Camelot Drive, Fond du Lac, WI.

JURISDICTION AND VENUE

13. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a) because this is a class action in which at least one member of the class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the proposed class contains more than 100 members.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to Plaintiff's causes of action occurred in this judicial district. The Policy at issue covers Plaintiff's facilities located in the State of Illinois.

FACTUAL BACKGROUND

15. The novel coronavirus – named “severe acute respiratory syndrome coronavirus 2” or “SARS-CoV2” – has spread widely and rapidly across the United States. The illness related to SARS-CoV-2 is “novel coronavirus disease 2019,” commonly abbreviated to “COVID-19.” Although the virus and related illness are distinct, for purposes of this Complaint, Plaintiff refers to both interchangeably as “COVID-19.”

16. Over 7,000 Illinoisans and over 170,000 Americans have died of COVID-19 and there have been over 210,000 confirmed COVID-19 cases in Illinois and over 5.4 million confirmed cases in the United States, as of the date of this filing, according to the Coronavirus Resource Center at Johns Hopkins University. *See also* Centers for Disease Control and Prevention (“CDC”) data.

17. Plaintiff’s insured properties have been rendered unsuitable for their intended uses and have been subject to a variety of limitations, restrictions, and prohibitions, including by government Stay at Home Orders imposed by the State of Illinois and Cook County.

18. Plaintiff also imposed limitations, restrictions, and prohibitions due to the dangerous condition caused by the presence of COVID-19.

COVID-19

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. As a result, at least 42 states and countless local governments issued substantially similar “stay at home” orders, the purpose of which was to mitigate and slow the spread of COVID-19.

23. 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

24. According to studies, the virus can live on surfaces for several days if not longer.² 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

25. The study also found that COVID-19 was detectable for up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel.⁴

26. All of these materials are used by Plaintiff throughout its facilities and operations.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>

² <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>

³ <https://www.nejm.org/doi/full/10.1056/NEJMc2009324>

⁴ <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>

27. The study's results indicate that individuals can become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic or not.

28. 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 spreads in the air. This is a no-brainer."⁵

29. 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.⁶

30. 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.⁷

31. 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.⁸

⁵ <https://www.nature.com/articles/d41586-020-00974-w>

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

⁷ <https://www.cidrap.umn.edu/news-perspective/2020/04/study-finds-evidence-covid-19-air-hospital-surfaces>

⁸ <https://www.biorxiv.org/content/10.1101/2020.03.08.982637v1>

32. Kimberly Prather, an aerosol chemist at the University of California, San Diego told *Science* magazine: “I’m relieved to see aerosolization is accepted. This added airborne pathway helps explain why it is spreading so fast.”⁹

33. 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.

34. 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.

35. 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.¹⁰ 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.¹¹

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

⁹ <https://www.sciencemag.org/news/2020/04/you-may-be-able-spread-coronavirus-just-breathing-new-report-finds#>

¹⁰ <https://academic.oup.com/cid/article/58/5/683/365793>

¹¹ *Id.*

of the transmission method, the evidence suggests that COVID-19 can be transmitted by shoes even once it reaches the ground.

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

The Society Insurance Policy

38. To protect itself against risks like COVID-19, Plaintiff purchased an insurance policy (the “Policy”) from Defendant. The Policy was in effect at the time of the outbreak and remains in effect today. Plaintiff paid all premiums required by the Policy.

39. Plaintiff is the Named Insured under the Policy.

40. Defendant is the effective and liable insurer of the Policy and policies meeting the class definition (the “Policies”).

41. Generally, under property insurance policies like those issued by Defendant to Plaintiff and class members, the insuring agreements provide coverage for all risks of physical loss or damage to property, unless specifically excluded.

42. The Policy is an “all-risk” policy. Defendant agrees to pay for “direct physical loss of or damage to” covered property. Policy, attached hereto as Ex. A at 52. Plaintiff’s Policy provides coverage of at least \$3,149,619 for premises 1 and \$16,224 for premises 2. Ex. A at 3-4.

43. As a result of the presence of COVID-19 on Plaintiff’s insured property, applicable Stay at Home orders forced Plaintiff to shut down or suspend its operations, causing Plaintiff to incur losses of Business Income.

44. The Policy contains a separate provision covering “**Business Income.**” See Ex. A at 56. It provides coverage for “actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’” *Id.* The “‘suspension’ must

be caused by direct physical loss of or damage to property” covered by the Policy. *Id.* “Business Income” means “Net Income...that would have been earned or incurred” and “Continuing necessary operating expenses incurred.” *Id.* at 57. Plaintiff has suffered Business Income losses due to COVID-19 and related governmental orders.

45. The Policy also provides coverage for “**Extra Expense.**” Ex. A at 57. Extra Expenses are “necessary expenses you incur during a ‘period of restoration’ that you would not have incurred if there had been no direct physical loss or damage to covered property...” *Id.* The “period of restoration” for purposes of Extra Expense coverage begins “[i]mmediately after the time of direct physical loss or damage...” *Id.* at 82. Plaintiff has incurred Extra Expenses due to COVID-19 and related governmental orders.

46. The Policy provides coverage from an interruption to business caused by an order from a “**Civil Authority.**” Exhibit A at 58. Specifically, the Policy covers “the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to” the insured property when (1) “[a]ccess to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage” and the covered property is within that area and (2) the “action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of” physical loss of or damage to property. *Id.* at 58-59. Access to Plaintiff’s properties has been prohibited in part or in total due to the presence and threat of COVID-19 and related governmental orders.

Plaintiff’s Claim to Society Insurance

47. Plaintiff submitted a timely claim to Defendant for coverage under the Policy.

48. In response to Plaintiff's claim, on April 30, 2020, Defendant, denied Plaintiff's claim. Defendant issued a subsequent denial on June 5, 2020, despite having received information that a COVID-19 positive customer had been in Plaintiff's store.

49. Defendant is in breach of its obligations by refusing to provide coverage.

CLASS ACTION ALLEGATIONS

50. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiff brings this action on behalf of itself and all others similarly situated, and seeks to represent the following nationwide classes:

- a. **Nationwide Declaratory Judgment Class.** All entities covered by one of Defendant's Policies in effect during the COVID-19 pandemic.
- b. **Nationwide Breach Class.** All entities covered by one of Defendant's Policies in effect during the COVID-19 pandemic.
- c. **Illinois Subclass.** All entities that purchased one of Defendant's Policies in Illinois and are covered by one of the Defendant's Policies in effect during the COVID-19 pandemic.

51. Plaintiff's Classes satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action under Rule 23, as set forth more fully herein.

52. **Numerosity.** COVID-19 has impacted thousands of businesses across the country and Defendant is a nationwide insurer with, on information and belief, thousands or more policies issued with the relevant provisions. Consequently, the Classes each number in at least the thousands, and thus the numerosity standard is satisfied. Moreover, because the members of the Classes are geographically dispersed across the country, and members of the Illinois Subclass are geographically dispersed across the state, if not elsewhere, joinder of all Class members in a single

action is impracticable. Class members and Illinois Subclass members may be informed of the pendency of this class action through direct mail or other means based on Defendant's records of its policyholders.

53. **Commonality.** There are questions of fact and law common to the Classes that predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendant's actions include, without limitation, the following:

- a. Do the Policies cover losses resulting from the COVID-19 pandemic?
- b. Do the Policies cover losses resulting from state and local Stay At Home Orders requiring the suspension or reduction in business?
- c. Has Defendant wrongfully denied claims for business losses resulting from COVID-19 and/or the Stay at Home Orders?
- d. Do any of the following provisions in the Policies cover losses due to COVID-19: (i) business income; (ii) extra expense; (iii) civil authority?
- e. Has Defendant breached its Policies by refusing to cover COVID-19 related losses?
- f. Are Class members entitled to reasonable attorneys' fees and expenses?

54. **Predominance.** The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein. Specifically, thousands of businesses are impacted by Defendant's denial of coverage for COVID-19 losses and their claims arise from a common factual predicate, which is the nationwide shutdown and suspension of activities due to the virus.

55. **Typicality.** Plaintiff's claims are typical of those of the Classes as Plaintiff was subject to the same or similar policy provisions and the losses for all members relate to COVID-19 and the related closure orders and the claims arise from the same legal theories.

56. **Superiority.** A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendant has acted or refused to act on grounds generally applicable to the Class and Illinois Subclass. The presentation of separate actions by individual Class members and Illinois Subclass members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of Class members to protect their interests.

57. **Adequacy.** Plaintiff is an adequate representative of the Class and Illinois Subclass because it is a member of the Class and its interests do not conflict with the interests of those it seeks to represent. The interests of the Class members will be fairly and adequately protected by Plaintiff and its counsel, who have extensive experience prosecuting complex class litigation.

58. **Declaratory Relief and certification under Rule 23(b)(2) of the Federal Rules of Civil Procedure.** On information and belief, Defendant has refused, or intends to refuse, coverage due to COVID-19 business interruption and other covered losses for all, or most, policyholders with covered Policies and final injunctive and/or declaratory relief mandating that Defendant cover the losses of Class members is appropriate respecting the class as a whole.

59. **Issue Class and Modification of Class Definitions and Creation of Subclasses.** In the alternative, Plaintiff reserves the right to seek certification of one or more common issues pursuant to Rule 23(c)(4). In addition, Plaintiff reserves the right to modify the definitions of the class and/or create subclasses either by amendment to the complaint or by motion for class certification, including but not limited to subclasses for policyholders under specific Policy provisions.

COUNT I: DECLARATORY RELIEF
(On behalf of Nationwide Declaratory Judgment Class and Illinois Subclass)

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

61. 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.

62. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other hand, concerning the respective rights and duties of the parties under the Policies. Plaintiff requested coverage for COVID-19 related losses. Over the course of various communications, Defendant has denied coverage. Upon information and belief, Defendant has refused, or will refuse, to provide coverage for other, similar claims for coverage for losses related to under the Policies.

63. Plaintiff contends that Defendant has breached the Policies in the following respects:

- a. Plaintiff and the class have suffered losses due to COVID-19 covered by the Policies.
- b. Defendant is obligated to pay Plaintiff and the class for those losses.
- c. Defendant has failed to pay Plaintiff and the class for those losses.

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

COUNT II: BREACH OF CONTRACT AND/OR ANTICIPATORY BREACH
(On behalf of Nationwide Breach Class and Illinois Subclass)

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

66. Plaintiff and the class purchased property coverage policies from Defendant.

67. The Policies are valid and enforceable contracts between the Defendant and Plaintiff and class members.

68. Plaintiff and the class substantially performed their obligations under the terms of the Policies including giving Defendant 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.

69. Plaintiff and the class have sustained a loss covered by the Policies arising from the COVID-19 virus and associated state and local Stay at Home orders.

70. Defendant is in breach of its obligations by refusing to provide coverage under the Policies.

71. Defendant has not agreed to pay Plaintiff for losses related to COVID-19. Upon information and belief, Defendant has refused or will refuse other, similar claims for coverage for losses related to COVID-19 under the Policies.

72. Any conditions precedent to a claim for breach of contract under the Policies have occurred, been satisfied, or, in any event, should be excused or otherwise discarded on the basis of futility or other applicable law.

73. As a direct and proximate result of Defendant's breaches, Plaintiff and the class have sustained damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- a. That the Court enter an order certifying the class, appointing Plaintiff as representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the class;

- b. For a judgment against Defendant for the causes of action alleged against it;
- c. For compensatory damages in an amount to be proven at trial;
- d. For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy;
- e. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- 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 demands a trial by jury on all issues so triable.

Date: August 21, 2020

Respectfully submitted,

STUEVE SIEGEL HANSON LLP

s/ Bradley T. Wilders

Patrick J. Stueve, *pro hac vice pending*

Bradley T. Wilders, IL #6294085

Curtis Shank, *pro hac vice pending*

Abby McClellan, *pro hac vice pending*

460 Nichols Road, Suite 200

Kansas City, Missouri 64112

Telephone: 816-714-7100

Facsimile: 816-714-7101

Email: stueve@stuevesiegel.com

Email: wilders@stuevesiegel.com

Email: shank@stuevesiegel.com

Email: mcclellan@stuevesiegel.com

LANGDON & EMISON LLC

J. Kent Emison, *pro hac vice pending*

Brett Emison, IL #63077408

911 Main Street

PO Box 220

Lexington, Missouri 64067
Phone: (660) 259-6175
Fax: (660) 259-4571
kent@lelaw.com
brett@lelaw.com

MILLER SCHIRGER LLC

John J. Schirger, *pro hac vice pending*
Matthew W. Lytle, *pro hac vice pending*
Joseph M. Feierabend, *pro hac vice pending*
4520 Main Street, Suite 1570
Kansas City, MO 64111
Telephone: (816) 561-6500
Facsimile: (816) 561-6501
jschirger@millerschirger.com
mlytle@millerschirger.com
jfeierabend@millerschirger.com

SHAFFER LOMBARDO SHURIN, P.C.

Richard F. Lombardo, *pro hac vice pending*
Dawn M. Parsons, *pro hac vice pending*
Michael F. Barzee, *pro hac vice pending*
Rachael D. Longhofer, *pro hac vice pending*
2001 Wyandotte Street
Kansas City, MO 64108
816-931-0500
816-931-5775 (Fax)
rlombardo@sls-law.com
dparsons@sls-law.com
mbarzee@sls-law.com
rlonghofer@sls-law.com
Attorneys for Plaintiff and the Proposed Class