

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

CHARLES P. STANLEY CIGAR COMPANY, LLC)	
)	
Plaintiff,)	
)	Cause No.:
vs.)	
)	Division:
AUTO OWNERS INSURANCE COMPANY)	
)	
<u>SERVE:</u>)	
INDEPENDENT BROKERS AGENCY, LLC)	
950 FRANCIS PLACE, SUITE 316)	
ST. LOUIS, MO 63105)	
)	
Defendant.)	

PETITION – BREACH OF CONTRACT AND VEXATIOUS REFUSAL TO PAY

COMES NOW Plaintiff, by and through counsel, and for its Petition hereby state as follows:

1. Plaintiff is now and at all time relevant a domestic limited liability company existing under and in accordance with the laws of the State of Missouri with its principal place of business located in the City of St. Louis.
2. Defendant is a foreign insurance company authorized to conduct a business and actively conducting business in the City of St. Louis and State of Missouri.
3. Plaintiff herein obtained a policy of insurance from Defendant bearing policy number 184605-75737610-20 with effective dates of 5/21/2019 to 5/21/2020 and 5/21/2020 to 5/21/2021.

Count I – Breach of Contract

4. Plaintiff restates and incorporates by reference hereto each and every allegation contained in paragraphs 1 through 3.
5. Pursuant to the applicable insurance policy, Insurer is required to pay for the actual loss of business income sustained by the Insured due to the necessary “suspension” of the insureds “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss

of or damage to property at premises which are described in the Declarations and for which actual loss sustained is shown in the Declarations.

6. The Premises described in the Declarations is 1000 Washington Avenue, Suite C, St. Louis, Missouri 63101 and are the premises for which the loss occurred.

7. Plaintiff suffered direct physical loss as a result of the COVID-19 pandemic and initially being unable to operate its business for numerous weeks during the months of March and April 2020 and being limited in its business operations for several weeks thereafter during calendar year 2020.

8. Specifically, for the months of December 2019, January 2020 and February 2020, Plaintiff averaged net revenue collections of \$68,832.76 per month.

9. For the months of April 2020, May 2020 and June 2020, Plaintiff averaged net monthly collections of \$9,062.21 per month.

10. Accordingly, the average net monthly loss of income incurred by Plaintiff as a result of its direct physical loss of use of the insured premises is \$59,770.55 per month for the months of April, May and June 2020, for a total loss of \$179,311.65.

11. Despite repeated demand for payment having been made, Defendant continues to fail and refuse to honor its insurance contract by paying Plaintiff its insured business income actual losses sustained, directly and proximately resulting in damages to Plaintiff.

WHEREFORE, Plaintiff respectfully prays this Court grant Judgment in its favor and against Defendant, on Count I of this Petition, for damages in the amount of \$179,311.65, for Plaintiff's costs associated herein, reasonable attorney fees, and any other or further relief this Court deems just and proper under the circumstances.

Count II – Vexatious Refusal to Pay

12. Plaintiff restates and incorporates by reference hereto each and every allegation contained in paragraphs 1 through 11.

13. Plaintiff paid significant premiums to insure itself against business income loss, for which Defendant provided a Policy of Insurance, which included coverage for the same.

14. Despite paying all of the required premiums for said coverage, Plaintiff has sustained a significant business income loss for which Defendant is failing and refusing to provide coverage for.

15. Defendant is failing and refusing to pay such loss without reasonable cause or excuse and accordingly, pursuant to RSMo. 375.420 Plaintiff is entitled to, in addition to the amount thereof and interest, damages not to exceed twenty percent of the first \$1,500.00 of the loss and ten percent of the amount of the loss in excess of \$1,500, and a reasonable attorneys fee.

WHEREFORE, Plaintiff respectfully prays this Court grant Judgment in its favor and against Defendant in the principle amount of \$179,311.65, interest thereon at the statutory rate of nine percent (9%) per year from the date of filing until paid in full, for additional damages as allowed per RSMo 375.420, for Plaintiff's costs associated herein, reasonable attorney fees, and any other or further relief this Court deems just and proper under the circumstances.

ROSENBLUM GOLDENHERSH,

/s/ David G. Bender

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