

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Star Buick GMC, Star Buick GMC Cadillac, and Star Pre-owned of Bethlehem d/b/a Star Pre-owned of Hellertown

(b) County of Residence of First Listed Plaintiff Northampton
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Christopher M. Reid and Isaac A. Hof (610) 258-6184
Hof & Reid, LLC
3101 Emrick Boulevard, Suite 205, Bethlehem PA 18020

DEFENDANTS

Sentry Insurance Group, d/b/a Sentry Select Insurance Company

County of Residence of First Listed Defendant Portage, WI
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWX (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER/PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332
Brief description of cause:
Breach of Insurance Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ > 150,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
05/20/2020

SIGNATURE OF ATTORNEY OF RECORD
Christopher M. Reid

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA
CIVIL DIVISION -LAW**

STAR BUICK GMC) No.
260 Country Club Road)
Easton PA 18045)

and)

STAR BUICK GMC CADILLAC,)
480 North West End Boulevard)
Quakertown PA 18951)

and)

STAR PRE-OWNED OF)
BETHLEHEM d/b/a STAR)
PRE-OWNED OF HELLERTOWN,)
1730 Main Street)
Hellertown PA 18055)

Plaintiffs)

v.)

SENTRY INSURANCE GROUP)
d/b/a SENTRY SELECT INSURANCE)
COMPANY,)
1800 North Point Drive)
Stevens Point WI 54481)

Defendant)

COMPLAINT

Plaintiffs, Star Buick GMC, Star Buick Cadillac and Star Pre-Owned of Bethlehem d/b/a Star Pre-Owned of Hellertown, collectively bring this Complaint alleging against Defendant, Sentry Insurance Group d/b/a Sentry Select Insurance

Company, as follows:

PARTIES

1. Plaintiff, Star Buick GMC, is a corporation organized and existing under the Commonwealth of Pennsylvania, with a principal place of business located at 260 Country Club Road, Easton, Pennsylvania; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

2. Plaintiff, Star Buick GMC Cadillac, is a corporation organized and existing under the Commonwealth of Pennsylvania, with a principal place of business located at 480 North West End Boulevard, Quakertown, Pennsylvania; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

3. Plaintiff, Star Pre-Owned of Bethlehem d/b/a Star Pre-Owned of Hellertown, is a corporation organized and existing under the Commonwealth of Pennsylvania, with a principal place of business located at 1730 Main Street, Hellertown, Pennsylvania; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania.

4. Plaintiffs collectively own and operate multiple automobile dealerships throughout the Commonwealth of Pennsylvania.

5. Defendant, Sentry Insurance Group d/b/a Sentry Select Insurance Company, hereinafter referred to as Defendant Sentry, is a corporation organized and existing and existing under the laws of the state of Wisconsin, with its principal place

of business in Stephens Point, Wisconsin, being authorized to and regularly conducting and routinely conducting business in the Commonwealth of Pennsylvania; as such, Defendant is a citizen of the State of Wisconsin.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter pursuant to 28 USC § 1332 because there is complete diversity of citizenship between Plaintiffs and the Defendant. Further, the Plaintiffs have suffered business losses in an amount greater than \$150,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of those business losses.

7. This Court has personal jurisdiction over the Defendant because at all times relevant hereto Defendant Sentry has engaged in substantial business activities in the Commonwealth of Pennsylvania. At all relevant times hereto, Defendant transacted, solicited, and conducted business in Pennsylvania through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Pennsylvania.

8. Venue is proper in this judicial district pursuant to 28 USC §1391(a) because a substantial portion of the wrongful acts upon which the lawsuit is based occurred in this district. Venue is also proper pursuant to 28 USC §1391(c) because Defendant is a corporation that has substantial, systemic and continuous contacts in

the Commonwealth of Pennsylvania, and, as a result, it is subject to personal jurisdiction in this District.

9. The acts and/or omissions complained of in the within Complaint took place in whole or in part within the venue of this Court.

NATURE OF THE CASE

10. This is a civil action seeking declaratory relief arising from Plaintiffs' contract of insurance with Defendant.

11. In light of the Covid-19 Global Pandemic and state and local orders mandating that sales of vehicles by car dealerships are not one of the enumerated "essential businesses", Plaintiffs shut their doors to customers on March 20, 2020.

12. Plaintiffs' insurance Policy provides coverage for all non-excluded business losses, and thus provides coverage in the case heretofore.

13. As a result, Plaintiffs are entitled to declaratory relief that its multiple car dealerships are covered for all business losses that have been incurred in an amount greater than \$150,000.00.

FACTUAL BACKGROUND

14. At all times material hereto there existed, in full force and effect, a business protection policy of insurance, issued by Defendant to Plaintiffs, dates effective March 1, 2020 through March 1, 2021, Policy # 2531567-002, Claim # 57F131842-225, providing *inter alia* property, business, personal property, business

income, extra expense, continuation, civil authority and additional coverages applicable to the losses claimed in this action. A true and correct copy of the business protection policy of insurance is attached hereto and marked as Exhibit “A”.

15. The Sentry Policy is an “all risks policy” which provides coverage for losses to the insured premises unless specifically excluded.

16. The Sentry Policy does not exclude the losses caused by any pandemic, let alone, the Covid-19 Global Pandemic.

17. The Sentry Policy provides coverage for the losses incurred by the Plaintiffs as a result of the Covid-19 Global Pandemic, and the actions of the government in response thereto.

18. Based upon information and belief, Defendant Sentry has accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown.

19. The Sentry policy’s exclusion of Loss Due to Virus or Bacteria does not apply to the business losses incurred by Plaintiffs here.

Covid-19 PANDEMIC

20. The scientific community and those personally affected by Covid-19, recognize the Covid-19 Pandemic as a cause of real physical loss and damage. It is clear that any contamination of the insured property would be a direct physical loss, requiring remediation to clean the surfaces of Plaintiffs’ properties.

21. The Center for Disease Control and the World Health Organization have, for years, warned of the possibility of an airborne contaminant which could cause a world wide pandemic.

22. Covid-19 has been declared a pandemic by the World Health Organization.

23. Covid-19 remains stable and transmittable in aerosols and various surfaces for prolonged periods of time, up to two to three days on some surfaces.

24. The Covid-19 pandemic has been exacerbated by the fact that it infects and stays on surfaces of objects and materials for prolonged periods.

25. The Covid-19 pandemic is a public health crisis that has profoundly affected all aspects of society, including the ability of the public to congregate and gather.

26. The Center for Disease Control has issued guidance that gatherings of more than ten people should not occur; such gatherings increase the danger of contracting Covid-19.

27. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency as a result of the Covid-19 Pandemic.

28. On March 19, 2020, Governor Tom Wolf issued an Order requiring all non-life sustaining businesses to cease operation and to close all physical locations.

29. On March 23, 2020, Governor Tom Wolf issued a Stay at Home Order

for citizens of various counties in Pennsylvania.

30. On March 23, 2020, the Pennsylvania Department of Health issued a similar Order noting that the “operation of non life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of Covid-19”.

31. On April 1, 2020, Governor Tom Wolf enforced the March 23, 2020 Stay At Home Order to the entire Commonwealth of Pennsylvania.

32. On April 20, 2020, Governor Tom Wolf extended the March 23, 2020 Stay At Home Order to May 8, 2020 for the entire Commonwealth of Pennsylvania.

33. On May 8, 2020, Governor Tom Wolf extended the Stay at Home Order for Lehigh and Northampton Counties to June 4, 2020.

34. Covid-19, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of Plaintiffs, and other similarly situated persons and organizations where the operation of the business requires interaction, gatherings and contact in areas where there exists a heightened risk of exposure to Covid-19.

IMPACT OF THE COVID-19 PANDEMIC

35. As a result of the impact of the Covid-19 Pandemic and the above-referenced Orders of Governor Tom Wolf, Plaintiffs have been ordered to close the entire sales portion of their businesses, representing an overwhelming majority and

significant source of revenue for those businesses, thereby incurring substantial losses.

36. The business of Plaintiffs, like many other businesses, operate in a closed environment where many persons, including employees and customers, cycle in and out, thereby causing a risk of contamination to the insured premises.

37. As a result of the Covid-19 Pandemic, the business of Plaintiffs, like many others, are susceptible to person-to-person, person-to-property, and property-to-person transmittal and contamination.

38. The Covid-19 Pandemic has directly and adversely affected the business operations of Plaintiffs by causing damage and the risk of further harm to their properties and occupants of their properties.

39. As a direct and proximate result of the government's emergency response to the Covid-19 Pandemic, Plaintiffs have suffered business income loss, loss due to Civil Authority, and other related losses which are covered by policies of insurance issued by Defendant, Sentry.

40. A declaratory judgment determining that the coverage provided under the subject Policy will prevent Plaintiffs from being left without vital coverage required to ensure the survival of their business due to the shutdown caused by the Civil Authority response is necessary.

41. As a result of these Orders, Plaintiffs have incurred, and continue to incur, among other things, substantial loss of business income and additional

expenses covered under the Policy.

COUNT I
DECLARATORY RELIEF

42. Plaintiffs incorporate paragraphs 1 through 41 by reference as though the same were set forth more fully and at length herein.

43. The Declaratory Judgment Act, 28 USC §2201(a) provides that in:

“a case of actual controversy within it’s jurisdiction...any Court of the United States...may declare the rights and other legal relations of any interested party seeking a declaration, whether or not further relief is or could be sought.” 28 USC §2201(a); *See also*, Principal Life Insurance Company v. Minder, No. CIV A 08-5899, 2009 Westlaw 1917096 (Ed. Pa. July 1, 2009); Miller v. Liberty Mutual Group, 97 F. Sup. 2d 672 (W.D. Pa. 2000).

44. An actual controversy has arisen between Plaintiffs and the Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiffs contend, and, upon information and belief, Defendant disputes and denies that:

- (a) The Orders constitute a prohibition of access to Plaintiffs’ insured properties;
- (b) The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;

- (c) The Policy's exclusion of loss due to virus or bacteria does not apply to the business losses incurred by Plaintiffs here;
- (d) The Orders trigger coverage;
- (e) The Policy provides coverage to Plaintiffs for any current and future Civil Authority closure of its businesses due to physical loss or damage directly or indirectly from the Covid-19 Orders under the Civil Authority Coverage parameters;
- (f) The Policy provides business income coverage in the event that the Covid-19 Pandemic has directly or indirectly caused a loss or damage at the insured premises or immediate area of the insured properties; and
- (g) Resolution of the duties, responsibilities and obligations of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

45. Plaintiffs are entitled to coverage under the Sentry Policy for the losses caused by the Covid-19 Pandemic and above-referenced Orders.

46. Defendant Sentry has denied and/or refused to acknowledge coverage for the losses of Plaintiffs caused by the Covid-19 Pandemic and above-referenced Orders.

47. Plaintiffs therefore seek a Declaratory Judgment to determine whether the Covid-19 Pandemic and above-referenced Orders constitute a prohibition of

access to Plaintiffs' insured properties as Civil Authority is defined in the Policy.

48. Plaintiffs further seek a Declaratory Judgment to affirm that the Covid-19 Pandemic and above-referenced Orders trigger coverage.

49. Plaintiffs further seek Declaratory Judgment to affirm that the Policy provides coverage to Plaintiffs for any current and future Civil Authority closures of its businesses due to physical loss or damage from the Covid-19 Pandemic and the Policy provides business income coverage in the event that the Covid-19 Pandemic has caused a loss or damage at the insureds' properties.

50. Plaintiffs do not seek any determination of whether Covid-19 is physically in or at the Insured Property, nor any other remedy other than declaratory relief.

51. The denial and refusal to acknowledge coverage to Plaintiffs under the Sentry Policy is in direct violation of the specific terms and provisions of the Sentry Policy.

52. Plaintiffs are entitled to a declaration that they are entitled to coverage for losses caused by the Covid-19 Pandemic and the above-referenced Orders.

53. The controversy proposes an issue for Judicial determination under the Declaratory Judgment Act.

54. The controversy involves substantial rights of the parties to the action.

55. The controversy poses an issue for Judicial determination which is not

within the scope of authority of any arbitrator or arbitration panel pursuant to the Policy of insurance in question.

56. A judgment of this Court in this action will also be useful for the purpose of clarifying and settling the legal relations at issue between the parties.

57. A judgment of this Court will determine, terminate and afford relief from the uncertainty and controversy giving rise to the action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

- i. For Declaration that the Covid-19 Pandemic and Orders issued by Governor Tom Wolf constitute a prohibition of access to Plaintiffs' insured properties;
- ii. For Declaration that the prohibition of access caused by the Covid-19 Pandemic and Orders issued by Governor Tom Wolf has specifically prohibited access as defined in the Policy;
- iii. For a Declaration that the Covid-19 Pandemic and Orders issued by Governor Tom Wolf will trigger coverage under the Policy;
- iv. For a Declaration that the Policy provides coverage to Plaintiffs for any current, future or continued Civil Authority closures of its businesses due to physical loss or damages directly or indirectly from the Covid-19 Pandemic under the Civil Authority Coverage parameters;

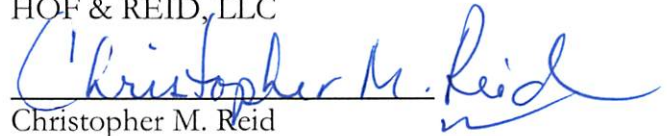
- v. For a Declaration that the Policy provides business income coverage in the event that the Covid-19 Pandemic has directly or indirectly caused a loss or damage at the Plaintiff's insured properties or the immediate area of the Plaintiffs' insured properties; and
- vi. For such other relief as this Court may deem proper.

DEMAND FOR JURY TRIAL

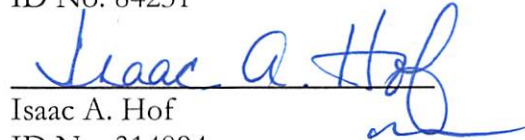
- 61. Plaintiffs hereby demand a trial by jury on all claims and issues.

Respectfully Submitted,

HOF & REID, LLC


Christopher M. Reid

ID No. 84231


Isaac A. Hof

ID No. 314094

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Date: May 20, 2020