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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

FITNESS INTERNATIONAL, LLC, a
California limited liability company,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY, a New York corporation;
TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a Connecticut
corporation; INTERSTATE FIRE &
CASUALTY COMPANY, an Illinois
corporation; AIG SPECIALTY
INSURANCE COMPANY, an Illinois
corporation; ACE AMERICAN
INSURANCE COMPANY, a Pennsylvania
corporation; WESTPORT INSURANCE
CORPORATION, a Missouri corporation;
ALLIANZ GLOBAL RISKS US
INSURANCE COMPANY, an Illinois
corporation; CERTAIN UNDERWRITERS
AT LLOYD'S LONDON SUBSCRIBING
TO POLICY NUMBER W2C215200101;
TOKIO MARINE AMERICA
INSURANCE COMPANY, a New York
corporation; ENDURANCE AMERICAN
SPECIALTY INSURANCE COMPANY, a
Delaware corporation; HOMELAND
INSURANCE COMPANY OF NEW
YORK, a New York Corporation; and
DOES 1 through 50, inclusive,

Defendants.

No.

FITNESS INTERNATIONAL, LLC'S
COMPLAINT

1. DECLARATORY JUDGMENT
2. BREACH OF CONTRACT

1 Plaintiff Fitness International, LLC (“Plaintiff” or “Fitness”) by and through the
2 undersigned attorneys, for its complaint against Defendants Zurich American Insurance Company
3 (“Zurich”), Travelers Property Casualty Company of America (“Travelers”), Interstate Fire &
4 Casualty Company (“IFC”), AIG Specialty Insurance Company (“AIG”), ACE American
5 Insurance Company (“ACE”), Westport Insurance Corporation (“Westport”), Allianz Global
6 Risks US Insurance Company (“Allianz”), Certain Underwriters At Lloyd’s London Subscribing
7 To Policy Number W2C215200101 (“Beazley”),¹ Tokio Marine America Insurance Company
8 (“Tokio”), Endurance American Specialty Insurance Company (“Endurance”), and Homeland
9 Insurance Company Of New York (“Homeland”) (collectively, the “Defendant Insurers” or
10 “Insurers”), alleges as follows based on personal knowledge and information and belief:

11
12 **I. INTRODUCTION**

13 1. This action arises out of a coverage dispute between the Defendant Insurers and
14 Fitness for Fitness’ direct physical loss of or damage to property and resultant economic losses
15 arising from the SARS-CoV-2 virus (the “Coronavirus”) and the disease it causes, Coronavirus
16 Disease 2019 (“COVID-19”), and the direct physical loss of or damage to property and business
17 interruption they caused under the “all-risk” commercial property insurance policies the Defendant
18 Insurers sold to Fitness (collectively, the “2020/2021 Policy”).

19 2. The “all-risk” 2020/2021 Policy was drafted by Zurich² and covers “[a]ll risks of
20 physical loss of or damage from any cause unless excluded.”

21 3. The phrase “physical loss of or damage” is not defined or limited in the 2020/2021
22 Policy. In plain English, “physical loss of or damage” to property denotes at least the following
23 meanings: (1) physical damage to that property; (2) the structural alteration of that property; (3)
24

25

¹ Made up of Lloyd’s Underwriter Syndicate No. 2623 (82%) and Lloyd’s Underwriter Syndicate No. 623 (18%).

26 ² As set forth herein, many of the relevant policy provisions are contained in the Zurich EDGE™ coverage form that
is incorporated within and adopted by the individual policies issued by all the Defendant Insurers.

1 the interaction of an external physical substance or force with that property, including its
2 attachment to the surface or presence in the air of that property, rendering the property unfit, unsafe
3 or uninhabitable for normal use or otherwise negatively affecting the property's usability; or (4)
4 the loss of use or the loss of functional use, whether in whole or in part, of that property.

5 4. Neither virus, pandemics, communicable disease, COVID-19 nor the Coronavirus
6 are excluded causes of loss under the 2020/2021 Policy.³

7 5. The toll of the Coronavirus and COVID-19 upon lives and businesses in the City
8 of Seattle, King County, the State of Washington, the nation, and beyond, has been calamitous and
9 is among the worst public health and economic crises of the last 100 years. Indeed, to date COVID-
10 19 has killed over 555,231 Americans,⁴ 23,118 Canadians,⁵ and 5,299 Washingtonians,⁶ and is
11 now the third-leading cause of death in this country, surpassed only by heart disease and cancer.⁷
12 At its peak, the daily death toll in the United States from COVID-19 was over 4,400 – a daily body
13 count roughly equivalent to all of the Allied deaths on D-Day (June 6, 1944) or more than seven
14 fully loaded Boeing 747-400s crashing.⁸ A substantial number of Americans are still dying daily,
15 with surges of cases and new and ever more contagious variants of the Coronavirus occurring
16 throughout the U.S.⁹

17 _____
18 ³ The Defendant Insurers assert, and Fitness disagrees, that virus-related losses are excluded under the 2020/2021
19 Policy.

20 ⁴ *Coronavirus Disease 2019 (COVID-19)*, CDC (updated Apr. 7, 2021), <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Apr. 7, 2021).

21 ⁵ *WHO Coronavirus (COVID-19) Dashboard*, WHO (updated Apr. 7, 2021), <https://covid19.who.int/> (last visited Apr. 7, 2021).

22 ⁶ *COVID-19 Data Dashboard*, WASH. ST. DEPT. OF HEALTH (updated Apr. 5, 2021),
<https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited Apr. 7, 2021).

23 ⁷ Gary Stix & Youyou Zhou, *COVID-19 Is Now the Third Leading Cause of Death in the U.S.*, SCI. AM. (Oct. 8,
24 2020), <https://www.scientificamerican.com/article/covid-19-is-now-the-third-leading-cause-of-death-in-the-u-s/>
(last visited Apr. 7, 2021).

25 ⁸ *Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, CDC (updated
26 Apr. 6, 2021), https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendsdeaths (last visited Apr. 7, 2021); Dave
Roos, *How Many Were Killed on D-Day?*, HISTORY (updated Jun. 5, 2019), <https://www.history.com/news/d-day-casualties-deaths-allies> (last visited Apr. 7, 2021).

⁹ *Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, CDC (updated

1 6. The physical loss or damage to property and the economic devastation wrought by
2 the Coronavirus and COVID-19 is unprecedented in the last one hundred years. The Coronavirus
3 and COVID-19 could result in net losses starting at \$3.2 trillion and reaching as much as \$4.8
4 trillion in U.S. real gross domestic product over the course of two years.¹⁰

5 7. The Coronavirus and COVID-19's physical loss of damage to property and its
6 impact on Washington is equally devastating. Since February 2020, there has been a net loss of
7 over 212,000 jobs in Washington – an overall loss of 6.0% of jobs across all industries.¹¹
8 Moreover, in May 2020 state forecasters expected a \$3.8 billion decline in tax revenue for the
9 remainder of the 2019-2020 budget cycle and an additional \$3.27 billion decline in the 2021-23
10 budget cycle.¹² Simply put, the Coronavirus and COVID-19 caused the physical loss of or
11 damaged massive amounts of property in Washington and crushed its economy, its communities
12 and its families. Paying the price are businesses and their employees across Washington, including
13 Fitness.

14 8. Fitness' business is one of those victims of the Coronavirus and COVID-19 and is
15 a shadow of its former pre-COVID-19 self. And, still worse, the Defendant Insurers have further
16 victimized Fitness. Far from stepping up and meeting their obligations, the Defendant Insurers
17 have abandoned Fitness and walked away from their duties to Fitness under the 2020/2021 Policy
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19 Apr. 6, 2021), https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendsdeaths (last visited Apr. 7, 2021);
20 *Coronavirus Second Wave? Why Cases Increase*, JOHNS HOPKINS MED. (updated Nov. 17, 2020),
[https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-](https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus)
[coronavirus](https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus) (last visited Apr. 7, 2021).

21 ¹⁰ Emily Gersema, *Business closures and partial reopenings due to COVID-19 could cost the U.S. trillions*, USC
22 NEWS (Nov. 30, 2020), [https://news.usc.edu/178979/business-closures-covid-19-pandemic-united-states-gdp-](https://news.usc.edu/178979/business-closures-covid-19-pandemic-united-states-gdp-losses/#:~:text=The%20COVID%2D19%20pandemic%20could,years%2C%20a%20USC%20study%20finds)
[losses/#:~:text=The%20COVID%2D19%20pandemic%20could,years%2C%20a%20USC%20study%20finds](https://news.usc.edu/178979/business-closures-covid-19-pandemic-united-states-gdp-losses/#:~:text=The%20COVID%2D19%20pandemic%20could,years%2C%20a%20USC%20study%20finds) (last
23 visited Apr. 7, 2021).

24 ¹¹ Michael Ettlinger and Jordan Hensley, *COVID-19 Economic Crisis: By State*, UNIV. OF N.H. CARSEY SCH. OF
25 PUB. POL'Y (updated Mar. 26, 2021), <https://carsey.unh.edu/COVID-19-Economic-Impact-By-State> (last visited
26 Apr. 7, 2021).

¹² *Unofficial numbers show \$7 billion hit to Washington state revenue through 2023 from coronavirus downturn*,
SEATTLE TIMES (updated May 5, 2020), [https://www.seattletimes.com/seattle-news/politics/unofficial-numbers-](https://www.seattletimes.com/seattle-news/politics/unofficial-numbers-show-7-billion-hit-to-washington-state-revenue-through-2023-from-coronavirus-downturn/)
[show-7-billion-hit-to-washington-state-revenue-through-2023-from-coronavirus-downturn/](https://www.seattletimes.com/seattle-news/politics/unofficial-numbers-show-7-billion-hit-to-washington-state-revenue-through-2023-from-coronavirus-downturn/) (last visited Apr. 7,
2021).

1 – forcing Fitness to turn to this Court for relief.

2 9. At the outset of the emergence of the Coronavirus and COVID-19, Fitness, directly
3 and through its wholly owned subsidiary, Fitness & Sports Clubs, LLC (collectively, “Fitness”)
4 owned and operated over 700 top-flight, large health clubs throughout the United States and
5 Canada¹³ – including 28 in the State of Washington with 17 in King County, Washington alone¹⁴
6 – most of which operated under the famous trade name “LA Fitness.” At that time, Fitness ran a
7 flourishing fitness and personal training business and the largest privately held non-franchised
8 fitness company in the United States. Indeed, by January 1, 2020, Fitness employed 29,234 people,
9 including 1,103 in the State of Washington. And then, the Coronavirus and COVID-19 struck,
10 and they struck hard.

11 10. The fitness industry has been severely impacted by the economic devastation
12 caused by the physical loss of or damage to property from the Coronavirus and COVID-19.¹⁵
13 Indeed, due to the pervasiveness of the Coronavirus, the health clubs, gyms, and fitness centers
14 that the industry relies upon to do business have sustained devastating physical loss of or damage
15 to their property. Specifically, health clubs, gyms and fitness centers have been constantly
16 bombarded with deposits of the Coronavirus. From the Coronavirus in the air and in the ventilation
17 systems, as well as on surfaces such as exercise equipment, counters, and point of sale areas, the
18 Coronavirus has and continues to physically alter and transform these surfaces into virus-spreading
19 fomites, which serve as a transmission vector of yet more spread of the Coronavirus.

20 11. The presence of the Coronavirus in the air and on surfaces has caused physical loss
21 of or damage to property and made the fitness industry’s, including Fitness’, health clubs, gyms
22 and fitness centers uninhabitable, unsafe and unfit for their intended uses – just as if radon gas,
23

24 ¹³ A different, indirect, wholly owned subsidiary operates clubs in Canada.

25 ¹⁴ Currently, Fitness owns and operates 27 health clubs in Washington, including 16 in King County.

26 ¹⁵ *Coronavirus impact: Fitness industry crumbles as gyms shut down, livelihoods hit*, MONEYCONTROL (Mar. 24, 2020), <https://www.moneycontrol.com/news/business/coronavirus-impact-fitness-industry-crumbles-as-gyms-shut-down-livelihoods-hit-5068501.html> (last visited Apr. 7, 2021).

1 asbestos, cat urine, ammonia, fumes, a mold infestation or a salmonella outbreak were in the air or
2 on the surfaces of the premises. Nor could the Coronavirus be removed with routine surface
3 cleaning. And no amount of routine surface cleaning could remove the aerosolized Coronavirus
4 suspended in the air in Fitness' health clubs, making that air and Fitness' health clubs even more
5 dangerous and potentially lethal, further rendering the clubs uninhabitable, unsafe and unfit for
6 their intended uses.

7 12. As a result, Fitness' and the overall fitness industry's health clubs, gyms and fitness
8 centers have had to close or operate at limited capacity, and legions of their customers are
9 unwilling to risk accessing their properties. Simply put, the physical loss of or damage to Fitness'
10 and the fitness industry's health clubs, gyms and fitness centers have negatively impacted sales
11 and shuttered multiple fitness companies.

12 13. Indeed, in the wake of the economic havoc wrought by the Coronavirus and
13 COVID-19, major fitness companies such as Gold's Gym and 24-Hour Fitness were forced into
14 bankruptcy.¹⁶

15 14. Upon information and belief, not one of these bankrupt companies' property
16 insurers stepped up and honored their promise to provide coverage for business interruption arising
17 from the Coronavirus and COVID-19. Rather, upon information and belief, their insurers pocketed
18 their premiums and failed to make good on their coverage obligations – precisely what the
19 Defendant Insurers are now doing to Fitness.

20 15. The Coronavirus and COVID-19 have decimated lives and businesses and have
21 caused widespread physical loss or damage to property in the Seattle area and throughout
22 Washington – an early epicenter. And the Coronavirus and COVID-19 have devastated Fitness'
23 property and business throughout the United States and Canada by causing direct physical loss of
24 or damage to Fitness' property and to that of nearby businesses within one mile of each Fitness
25

26 ¹⁶ Susannah Prill, *COVID-19's Impact on the Fitness Industry*, EISNERAMPER (July 1, 2020),
<https://www.eisneramper.com/covid-19-impact-fitness-industry-0720/> (last visited Apr. 7, 2021).

1 health club that attract customers to Fitness’ health clubs (referred to as “**Attraction Properties**”
2 in the 2020/2021 Policy). These attraction properties include, among other things, metropolitan
3 areas like Seattle, office buildings, stores, shopping centers, restaurants, movie theaters and the
4 like.

5 16. Fitness experienced direct physical loss of or damage to its property in at least four
6 ways: (1) over 1,200 Fitness employees tested positive for COVID-19 and, thus, through the
7 certain or virtually certain presence of the Coronavirus and COVID-19 at each of Fitness’ health
8 clubs and at the nearby Attraction Properties in the air or on surfaces (whether in droplet nuclei,
9 aerosols, droplets or otherwise); (2) through state, local and agency governmental orders that
10 drastically limited Fitness’ use of its property, and at various points shut down or drastically
11 limited the operations of Fitness’ health clubs, causing it to lose the normal use and function of its
12 property (in either total or in part); (3) through the need to modify physical behaviors through the
13 use of social distancing, avoiding confined indoor spaces, and avoiding congregating in the same
14 physical area as others, in order to reduce or minimize the potential for viral transmission; and (4)
15 through the need to mitigate the threat or actual physical presence of the Coronavirus on treadmills,
16 ellipticals, stationary bicycles, weights, door handles, bathrooms faucets, miscellaneous surfaces,
17 in heating and air conditioning systems and in or on any other of the multitude of places that the
18 Coronavirus has been or could be found.

19 17. In response to the Coronavirus and COVID-19, Fitness implemented a safety plan
20 and incurred significant related expenses, covered as Extra Expense under the Policy, to make
21 Fitness’ health clubs as safe as possible, to protect its employees and customers, to resume and
22 continue operating as close to normal as possible (meaning, the way Fitness ran and performed
23 prior to the emergence of the Coronavirus and COVID-19), and to ameliorate, as much as possible,
24 the direct physical loss of or damage to Fitness’ health clubs caused by the Coronavirus and
25 COVID-19. Fitness’ safety plan included both training for its employees and the implementation
26

1 of safety measures as well as the investment of significant funds to procure PPE, hand sanitizer,
2 cleaning products, air filters, physical barriers and signage so that it could continue to mitigate its
3 losses and operate with certain limitations, and to lessen the risk of continued direct physical loss
4 of or damage to its property.

5
6 18. Despite complying with all required precautions, Fitness has not escaped the spread
7 of COVID-19. To date, over 1,200 Fitness employees have reported that they contracted COVID-
8 19.

9 19. The diagnosis of over 1,200 Fitness employees with COVID-19 is direct proof that
10 the Coronavirus and COVID-19 were and are present at Fitness' health clubs.

11 20. The Coronavirus' and COVID-19's grievous impacts to Fitness' business in
12 Washington and across the United States and Canada cannot be overstated. Indeed, as a result, by
13 January 1, 2021, the number of active employees at Fitness' Washington State health clubs had
14 plummeted to 17 (with 1,135 furloughed), down from 1,103 active employees just a year before.
15 Similarly, as of early January 2021, Fitness' employee headcount in the United States and Canada
16 had plummeted to 16,427, down from 30,585 just one year before.

17 21. To cushion the devastating blow from the Coronavirus and COVID-19, Fitness
18 turned to the Defendant Insurers, to whom Fitness had paid significant premiums in exchange for
19 \$500 million in property damage and time element (also known as business interruption) coverage
20 during the 2020/2021 policy year alone. The Defendant Insurers, however, turned their backs on
21 Fitness and shirked their obligations to Fitness under the 2020/2021 Policy at the time of Fitness'
22 greatest need.

23 22. Far from stepping up, the Defendant Insurers have abandoned Fitness and walked
24 away from their obligations, failing to provide coverage to Fitness – part and parcel of their
25 nationwide strategy of not paying claims arising from the Coronavirus and COVID-19 while
26 simultaneously jacking up their premiums and handsomely profiting at the expense of their

1 policyholders like Fitness.

2 23. The Defendant Insurers' disregard for their own insured has forced Fitness to turn
3 to this Court for relief.

4 24. Zurich's abandonment of Fitness during this crisis is particularly egregious in light
5 of Zurich's marketing strategy. Beginning with its introduction in 2008 of the EDGE™ policy
6 form, Zurich marketed the EDGE™ policy as offering uniquely "broader coverage and greater
7 flexibility." Zurich's CEO made this announcement and lauded the clarity of the form.

8
9 25. Indeed, the Zurich EDGE™ policy form provides broad coverage for losses caused
10 by the Coronavirus and COVID-19.

11 26. Yet, on March 22, 2021, the Defendant Insurers issued a letter reserving the right
12 to deny coverage for the Fitness' Claim based on the Contamination Exclusion contained in the
13 Policies – the same spurious basis for the disclaimer than many of these same insurers issued to
14 Fitness for its claim under the 2019/2020 policy they sold to Fitness. Significantly, the Defendant
15 Insurers' March 22, 2021 reservation of rights letter, based in part on the Contamination Exclusion,
16 failed to disclose to Fitness that, through an endorsement widely known as the Virus Deletion
17 Endorsement, Zurich had removed/deleted virus from that exclusion.

18
19 27. Fitness, a victim of catastrophic losses arising from the Coronavirus and COVID-
20 19, seeks damages for breach of contract against Defendant Insurers for their failure to honor their
21 policy obligations.

22 28. Fitness also seeks a judgment declaring the scope of Defendant Insurers' obligation
23 to pay Fitness' losses under the policies they sold to Fitness.

24 II. PARTIES

25 29. Fitness is a limited liability company formed under the laws of the State of
26 California with its principal place of business in California.

1 30. Fitness International, LLC has four members: (1) LAF, Inc.; (2) The Seidler
2 Company, LLC; (3) Seidler Fitness Holdings II, LP; and (4) SP LAF Buyer LLC.

3 31. LAF, Inc. is incorporated in the State of California with its principal place of
4 business at 3161 Michelson Drive, Suite 600, Irvine, CA 92612. LAF, Inc. is a citizen of
5 California.

6 32. The Seidler Company, LLC is a Delaware limited liability company with its
7 principal place of business in California at 4640 Admiralty Way, Suite 1200, Marina Del Rey, CA
8 90292-6642. The Seidler Company, LLC has three members, all of whom are individuals who are
9 domiciled in the State of California. The Seidler Company, LLC is a citizen of California.

10 33. Seidler Fitness Holdings II, LP is a Delaware limited partnership with a principal
11 place of business in California at 4640 Admiralty Way, Suite 1200, Marina del Rey, CA 90292-
12 6642. Seidler Fitness Holdings II, LP has one (1) general partner, and one hundred one (101)
13 limited partners. The general partner of Seidler Fitness Holdings II, LP is The Seidler Company
14 LLC, a citizen of California.

15 34. The one hundred one (101) limited partners of Seidler Fitness Holdings II, LP
16 consist of ninety-eight (98) individuals and three (3) entities: (i) Cressey Family Partnership; (ii)
17 Seidler North, LP; and (iii) Pain in the Donkey, LLC.

- 18 • The ninety-eight (98) individuals who are limited partners of Seidler Fitness
19 Holdings II, LP are domiciled in, and citizens of, the States of California, Idaho,
20 Massachusetts, New Jersey, and Virginia.
- 21 • Cressey Family Partnership consists of individuals who are domiciled in, and
22 citizens of, the State of Illinois.
- 23 • Seidler North, LP is a Delaware limited partnership. The general partner of
24 Seidler North, LP is The Seidler Company, LLC, whose principal place of
25 business is in California at 4640 Admiralty Way, Suite 1200, Marina del Rey,
26 CA 90292-6642. The limited partners of Seidler North LP are domiciled in,

1 and citizens of, the State of California.

- 2 • Pain in the Donkey LLC is a California limited liability company whose
3 members consist of (i) six (6) individuals who are domiciled in, and citizens of,
4 the State of California, and (ii) The Pain in the Donkey 2018 Irrevocable Trust,
5 which is domiciled in South Dakota.

6 35. For purposes of federal diversity jurisdiction, Seidler Fitness Holdings II, LP is a
7 citizen of California, Idaho, Illinois, Massachusetts, New Jersey, South Dakota and Virginia –
8 citizenships also imputed to and shared by Fitness.

9 36. SP LAF Buyer LLC is a Delaware limited liability company with its principal place
10 of business in New York at 9 West 57th Street, 31st Floor, New York, NY 10019.

11 37. Fitness owns and operates over 700 gyms and fitness centers throughout the United
12 States and in Canada directly and through its wholly owned subsidiary, Fitness & Sports Clubs,
13 LLC, principally under the tradename “LA Fitness” as well as the tradenames “Esporta Fitness”¹⁷
14 and “City Sports Club.” Fitness International, LLC and Fitness & Sports Clubs, LLC are
15 collectively referred to herein as “Fitness.”

16 38. Fitness is informed and believes, and based thereon alleges, that Defendant Zurich
17 is a New York corporation with its principal place of business in the State of Illinois.

18 39. Fitness is informed and believes, and based thereon alleges, that Defendant
19 Travelers is a Connecticut corporation with its principal place of business in the State of
20 Connecticut.

21 40. Fitness is informed and believes, and based thereon alleges, that Defendant IFC is
22 an Illinois corporation with its principal place of business in the State of Illinois.

23 41. Fitness is informed and believes, and based thereon alleges, that Defendant AIG is
24 an Illinois corporation with its principal place of business in the State of Illinois.

25 42. Fitness is informed and believes, and based thereon alleges, that Defendant ACE is
26

¹⁷ See *supra* note 13.

1 a Pennsylvania corporation with its principal place of business in the Commonwealth of
2 Pennsylvania.

3 43. Fitness is informed and believes, and based thereon alleges, that Defendant
4 Westport is a Missouri corporation with its principal place of business in the State of Missouri.

5 44. Fitness is informed and believes, and based thereon alleges, that Defendant Allianz
6 is an Illinois corporation with its principal place of business in the State of Illinois.

7 45. Fitness is informed and believes, and based thereon alleges, that Defendant Beazley
8 is comprised of two syndicates of unknown citizenship.¹⁸

9 46. Fitness is informed and believes, and based thereon alleges, that Defendant Tokio
10 is a New York corporation with its principal place of business in the State of New York.

11 47. Fitness is informed and believes, and based thereon alleges, that Defendant
12 Endurance is a Delaware corporation with its principal place of business in the State of New York.

13 48. Fitness is informed and believes, and based thereon alleges, that Defendant
14 Homeland is a New York corporation with its principal place of business in the State of Minnesota.

15 III. JURISDICTION AND VENUE

16 49. This Court has original jurisdiction pursuant to RCW 2.08.010 because the case
17 originates in Washington and the amount in controversy exceeds the jurisdictional threshold.

18 50. This Court has general jurisdiction over the Defendant Insurers under RCW
19 4.28.080(10) because each of them transacts substantial and continuous business within the state
20 of such character as to give rise to a legal obligation. *See Crose v. Volkswagenwerk*
21 *Aktiengesellschaft*, 88 Wn. 2d 50, 54 (1977). This Court also has jurisdiction over unauthorized
22 non-resident insurers that solicit insurance business in this state or transact insurance business in
23 this state under RCW 48.05.215.

24 51. This Court has specific personal jurisdiction over the Defendant Insurers because
25 each of them insured Fitness' property located in Washington through the policies at issue in this
26

¹⁸ Lloyd's Underwriter Syndicate No. 2623 (82%) and Lloyd's Underwriter Syndicate No. 623 (18%).

1 action, conducts business in Washington, registered (with the exception of IFC, AIG, Beazley,
2 Endurance and Homeland) with the Washington Insurance Commissioner to conduct the business
3 of insurance in Washington, has sufficient minimum contacts with Washington, and otherwise
4 intentionally avails itself of the markets within Washington through its business activities, such
5 that the exercise of jurisdiction by this Court is proper pursuant to RCW 4.28.185. Moreover, the
6 policies at issue all provide coverage for property and time element losses to twenty-seven Fitness
7 health clubs in the State of Washington, including sixteen in King County, Washington alone.
8 Accordingly, Venue is proper in King County, Washington pursuant to RCW 4.12.025.

9 **IV. FACTUAL BACKGROUND**

10 **A. Fitness**

11 52. Founded in 1984, Fitness is the leading owner-operator of health clubs in North
12 America. As of March 2020, Fitness operated more than 700 health clubs in 27 states and the
13 District of Columbia (including 28 in Washington and 17 in King County), had approximately
14 30,000 employees (over 1,000 of them in Washington) and over five million active members
15 (242,830 in Washington).

16 53. As a part of its prudent business practices and in recognition of its responsibilities
17 to its employees and customers, Fitness maintains insurance coverage.

18 54. Fitness specifically maintains “all risk” commercial property coverage with Zurich
19 and the other Defendant Insurers, covering not only more commonly occurring risks like fire, but
20 also entirely unanticipated and novel risks that may arise. As described below in greater detail,
21 the 2020/2021 Policy provides coverage for all “*loss of or damage to,*” Fitness’ property unless
22 specifically excluded (emphasis added).

23 **B. The Coronavirus and COVID-19**

24 55. COVID-19 is a severe infectious disease caused by the Coronavirus. The
25 Coronavirus causes serious systemic illness and death.¹⁹ To date, there have been over 130 million
26

¹⁹ Tianna Hicklin, *Immune cells for common cold may recognize SARS-COV-2*, NAT. INST. OF HEALTH (Aug. 18,

1 confirmed cases of COVID-19 (over 30 million of them in the United States alone) and at least 2.8
2 million deaths worldwide.²⁰ Due to the pervasive spread and presence of Coronavirus and COVID-
3 19 across the planet, both are presumed to be present or imminently present everywhere.²¹

4 56. The existence and/or presence of the Coronavirus and COVID-19 is not simply
5 reflected in reported cases or individuals' positive test results. The Centers for Disease Control
6 and Prevention ("CDC") estimates that the number of people in the United States who have been
7 infected with COVID-19 is likely to be ten times higher than the number of reported cases.²²
8 Additionally, at least 40% of people infected with COVID-19 are asymptomatic.²³ COVID-19
9 also includes a pre-symptomatic incubation period of up to 14 days, during which time infected
10 people can transmit COVID-19 to people, into the air and onto surfaces without having
11 experienced symptoms and without realizing that they are infected.²⁴

12 57. Studies have demonstrated that pre-symptomatic individuals have even greater
13 ability to transmit COVID-19 than other infected people because they carry the greatest "viral
14 load."²⁵ The National Academy of Sciences has concluded that "the majority of transmission is
15

16 2020), <https://www.nih.gov/news-events/nih-research-matters/immune-cells-common-cold-may-recognize-sars-cov-2>
(last visited Apr. 7, 2021).

17 ²⁰ WHO Coronavirus (COVID-19) Dashboard, WHO (updated Apr. 7, 2021), <https://covid19.who.int/> (last visited
18 Apr. 7, 2021).

19 ²¹ See, e.g., Christopher Ingraham, *At the population level, the coronavirus is almost literally everywhere*, WASH.
POST, Apr. 1, 2020, [https://www.washingtonpost.com/business/2020/04/01/population-level-coronavirus-is-almost-
literally-everywhere/](https://www.washingtonpost.com/business/2020/04/01/population-level-coronavirus-is-almost-literally-everywhere/) (last visited Apr. 7, 2021).

20 ²² Lena H. Sun & Joel Achenbach, *CDC Chief says Coronavirus Cases may be 10 Times Higher than Reported*,
WASH. POST (June 25, 2020), [https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-
larger/](https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/) (last visited Apr. 7, 2021).

21 ²³ Ellen Cranley, *40% of People Infected with COVID-19 are Asymptomatic, a New CDC Estimate Says*, BUS.
INSIDER (July 12, 2020), [https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-
asymptomatic-2020-7](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7) (last visited Apr. 7, 2021).

22 ²⁴ *Coronavirus disease 2019 (COVID-19) Situation Report – 73*, WHO (Apr. 2, 2020),
23 <https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y>
(last visited Apr. 7, 2021); Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both*
24 *Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL CARE MED. 3 (Dec.
25 12, 2020), <https://doi.org/10.1164/rccm.202006-2136LE> (last visited Apr. 7, 2021).

26 ²⁵ See, e.g., Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 NATURE MED.
672, 674 (Apr. 15, 2020), <https://www.nature.com/articles/s41591-020-0869-5> (last visited Apr. 7, 2021); Lirong

1 attributable to people who are not exhibiting symptoms, either because they are still in the pre-
2 symptomatic state or the infection is asymptomatic.²⁶

3 58. As early as February 26, 2020, CDC advised that COVID-19 was spreading freely
4 without the ability to trace the origin of new infections, also known as community transmission or
5 community spread.

6 59. COVID-19 is highly contagious, uniquely resilient, and potentially deadly. The
7 degree to which an infectious disease is contagious is measured by R^0 , a term that defines how
8 many other people will become infected by one person with that disease. Studies have concluded
9 that one person with the Coronavirus will infect up to 5.7 others ($R^0 \approx 5.7$), which is much higher
10 than seasonal influenza for example, where on average, one person will infect only 1.3 others (R^0
11 ≈ 1.3).²⁷

12 60. The Coronavirus can remain infectious for “much longer time periods than
13 generally considered possible.”²⁸ In the Journal of Virology, researchers demonstrated that the
14 Coronavirus can survive up to 28 days at room temperature (68°F) on a variety of surfaces
15 including glass, steel, vinyl, plastic, and paper.²⁹ A CDC report from March 27, 2020, stated that
16 the Coronavirus was identified on surfaces of the cabins on the Diamond Princess cruise ship 17
17 days after the cabins were vacated but before they were disinfected.³⁰ Numerous other scientific
18

19 Zou, M.Sc. *et al.*, *SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, NEW ENG. J. OF
MED. (Mar. 19, 2020).

20 ²⁶ Seyed M. Moghadas *et al.*, *The implications of silent transmission for the control of COVID-19 outbreaks*, 117
PNAS 30, 17513-15 (July 28, 2020) <https://www.pnas.org/content/117/30/17513> (last visited Apr. 7, 2021).

21 ²⁷ M. Cevik, C.C.G. Bamford, & A. Ho, *COVID-19 pandemic-a focused review for clinicians*, 26 CLINICAL
22 MICROBIOLOGY INFECTION 7, 842-47 (July 1, 2020),
23 [https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X\(20\)30231-7/fulltext](https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(20)30231-7/fulltext) (last visited Apr. 7,
2021).

24 ²⁸ Shane Riddell *et al.*, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 VIROLOGY
J. 145 (Oct. 7, 2020), <https://doi.org/10.1186/s12985-020-01418-7> (last visited Apr. 7, 2021).

25 ²⁹ *Id.*

26 ³⁰ Moriarty LF *et al.*, *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–
March 2020*, 69 MMWR 12, 347-352 (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>
(last visited Apr. 7, 2021).

1 studies and articles have identified the persistence of the Coronavirus on doorknobs, toilets, faucets
2 and other high-touch points, as well as on commonly overlooked surfaces such as floors.³¹

3 61. The World Health Organization (“WHO”) states that “[t]he disease spreads
4 primarily from person to person through small droplets from the nose or mouth, which are expelled
5 when a person with COVID-19 coughs, sneezes, or speaks People can catch COVID-19 if
6 they breathe in these droplets from a person infected with the virus These droplets can land
7 on objects and surfaces around the person such as tables, doorknobs and handrails. People can
8 become infected by touching these objects or surfaces, then touching their eyes, nose or mouth.”³²

9 62. Washington experienced the earliest known COVID-19 outbreak in the United
10 States. The first known case in the United States was in the Seattle area and was reported in
11 January 2020, and by March 2020 the area had become an epicenter of the Coronavirus and
12 COVID-19³³ — but researchers have concluded that “hidden outbreaks” were spreading through
13 cities even before COVID-19 cases were confirmed through testing.³⁴

14 **C. The Coronavirus and COVID-19 Cause Direct Physical Loss of or Damage to**
15 **Property**

16 63. The omnipresence of the Coronavirus and COVID-19 is enabled by multiple modes
17 of viral transmission, including respiratory droplet, airborne/aerosolized, and fomite transmission
18 (*i.e.*, transmission from surfaces and objects).³⁵ These transmission methods demonstrate that the

19 _____
20 ³¹ Zhen-Dong Guo et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 EMERG. INFECT. DIS. 7, 1583-91 (July 2020), <https://pubmed.ncbi.nlm.nih.gov/32275497/> (last visited Apr. 7, 2021).

21 ³² *Q&A on coronaviruses (COVID-19)*, WHO (updated Apr. 17, 2020),
22 <https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> (last visited Apr. 7, 2021).

23 ³³ See, e.g., Casey McNerthney, *Coronavirus in Washington state: A timeline of the outbreak through March 2020*,
24 KIRO 7 (Apr. 3, 2020), <https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/> (last visited Apr. 7, 2021).

25 ³⁴ Benedict Carey & James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far earlier Than Americans Knew, Estimates Say*, N.Y. TIMES (Apr. 23, 2020) (updated Jul. 6, 2020),
26 <https://www.nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html> (last visited Apr. 7, 2021).

³⁵ E.g., *Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (Jul. 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection->

1 Coronavirus and/or COVID-19 cause direct physical loss of or damage to property.

2 64. Respiratory transmission of COVID-19 occurs through exposure to an infected
3 person's respiratory particles, such as from saliva or mucus.³⁶ Respiratory transmission of the
4 Coronavirus is commonly divided into droplets (larger particles that have a transmission range of
5 about six feet) and airborne (smaller particles that can remain suspended in the air for prolonged
6 periods of time) modes of transmission. Though convenient, this binary division is an
7 oversimplification that underscores transmission risk.³⁷ Humans produce a wide range of particle
8 sizes when coughing, sneezing, talking, singing, or otherwise dispersing droplets, with pathogens
9 predominating in the smallest particles.³⁸ Respiratory particles produced by the average person
10 can travel almost 20 feet by sneezing.³⁹ An M.I.T. researcher has found that virus-laden "clouds"
11 containing clusters of droplets can travel 23 to 27 feet.⁴⁰

12 65. Airborne transmission involves the spread of the infectious agent caused by the
13 dissemination of droplet nuclei (aerosols) from, for example, exhaled breath, that remain infectious
14 when suspended in the air over long distances and time.⁴¹ These tiny particles can remain
15 suspended "for indefinite periods unless removed by air currents or dilution ventilation."⁴² As a

16 _____
17 [prevention-precautions](#) (last visited Apr. 7, 2021).

18 ³⁶ *Id.*

19 ³⁷ Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET
20 RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext) (last visited Apr. 7, 2021).

21 ³⁸ *Id.*

22 ³⁹ *Id.*

23 ⁴⁰ Lydia Bourouiba, PhD, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for*
24 *Reducing Transmission of COVID-19*, JAMA NETWORK (Mar. 26, 2020),
25 <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last visited Apr. 7, 2021).

26 ⁴¹ *Id.*; see also Jose-Luis Jimenez, *COVID-19 Is Transmitted Through Aerosols. We Have Enough Evidence, Now It*
Is Time to Act, TIME (Aug. 25, 2020), <https://time.com/5883081/covid-19-transmitted-aerosols/> (last visited Apr. 7,
2021); Ramon Padilla & Javier Zarracina, *Coronavirus might spread much farther than 6 feet in the air. CDC says*
wear a mask in public., (updated Sept. 21, 2020), [www.usatoday.com/in-
depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/](http://www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/) (last
visited Apr. 7, 2021); Wenzhao Chen, *et al.*, *Short-range airborne route dominates exposure of respiratory infection*
during close contact, 176 BLDG. & ENV'T (June 2020).

⁴² Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET

1 result, the risk of disease transmission increases substantially in enclosed environments, compared
2 to outdoor settings.⁴³

3 66. The WHO and the scientific community have studied the spread of the Coronavirus
4 through aerosols in indoor settings via air circulation systems. For example, the CDC published a
5 research letter concluding that a restaurant’s air conditioning system triggered the transmission of
6 the Coronavirus, spreading it to people who sat at separate tables downstream of the restaurant’s
7 airflow.⁴⁴ Moreover, a study detected the Coronavirus inside the HVAC system connected to
8 hospital rooms of patients sick with COVID-19. The study found the Coronavirus in ceiling vent
9 openings, vent exhaust filters and ducts located as much as 56 meters (over 183 feet) from the
10 rooms of the sick COVID-19 patients.⁴⁵

11 67. Additionally, the CDC has stated that “there is evidence that under certain
12 conditions, people with COVID-19 seem to have infected others who were more than 6 feet away”
13 and infected people who entered the space shortly after the person with COVID-19 had left.⁴⁶ A
14 recently published (February 2021) systematic review of airborne transmission of the Coronavirus
15 corroborated the CDC’s concerns and recommended procedures to improve ventilation of indoor
16 air environments to decrease bioaerosol concentration and reduce the Coronavirus’ spread.⁴⁷

18 RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext) (last visited Apr. 7, 2021).

19 ⁴³ Muge Cevik et al. *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Transmission Dynamics Should Inform Policy*, CLINICAL INFECTIOUS DISEASES (Sept. 23, 2020), <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315> (last visited Apr. 7, 2021).

20 ⁴⁴ Jianyun Lu & Zhicong Yang, *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 7 (July 2020), https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article (last visited Apr. 7, 2021); see also Kwon KS et al., *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 J. KOREAN MED. SCI. 46, e415 (Nov. 23, 2020), <https://doi.org/10.3346/jkms.2020.35.e415> (last visited Apr. 7, 2021).

21 ⁴⁵ Karolina Nissen et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, SCI. REP. 10, 19589 (Nov. 11, 2020), <https://doi.org/10.1038/s41598-020-76442-2> (last visited Apr. 7, 2021).

22 ⁴⁶ *Ways COVID-19 Spreads*, CDC (updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 7, 2021).

23 ⁴⁷ Zahra Noorimotlagh et al., *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 ENVTL. RES. 110612, 1-6 (Feb. 2021),

1 68. The CDC has recommended “ventilation interventions” to help reduce exposures
2 to the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such
3 as with high-efficiency particulate air (HEPA) fan/filtration systems).⁴⁸ These and other remedial
4 measures must be implemented, at high cost and extra expense, to reduce the amount of the
5 Coronavirus present in the space to make property safe for its intended use. These extreme
6 measures demonstrate that the Coronavirus and COVID-19 cause direct physical loss of or damage
7 to interior spaces. And even then, those interventions, at most, reduce – but do not eliminate – the
8 aerosolized Coronavirus in an indoor space.

9 69. COVID-19 may also be transmitted to people from physical objects, materials, or
10 surfaces. “Fomites” are physical objects or materials that carry, and are capable of transmitting
11 infectious agents, altering these objects to become vectors of disease.⁴⁹ Fomite transmission has
12 been demonstrated as highly efficient for viruses, both from object-to-hand and from hand-to-
13 mouth.⁵⁰

14 70. The WHO has described fomite transmission as follows:

- 15 a. Respiratory secretions or droplets expelled by infected individuals can
16 contaminate surfaces and objects, creating fomites (contaminated surfaces).
17 **Viable SARS-CoV-2 virus and/or RNA detected by RT-PCR can be found**
18 **on those surfaces for periods ranging from hours to days**, depending on the
19 ambient environment (including temperature and humidity) and the type of
20 surface, in particular at high concentration in health care facilities where

21
22 https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all (last visited Apr. 7, 2021).

23 ⁴⁸ *Ventilation in Buildings*, CDC (updated Mar. 23, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2> (last visited Apr. 7, 2021).

24 ⁴⁹ *E.g.*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/fomite> (last visited Apr. 7, 2021).

25
26 ⁵⁰ Jing Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIONS DISEASES 6 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited Apr. 7, 2021).

1 COVID-19 patients were being treated. Therefore, transmission may also occur
2 indirectly through touching surfaces in the immediate environment or objects
3 contaminated with virus from an infected person⁵¹ (Emphasis added).

4 71. In addition to studies cited by the WHO,⁵² numerous other studies and scientific
5 articles have discussed fomite transmission as a mode of virus transmission, including, but not
6 limited to:

- 7 a. A study of a COVID-19 outbreak published by the CDC identifying
8 elevator buttons and restroom taps as possible causes of the “rapid spread
9 of SARS-CoV-2” in a shopping mall in China.⁵³
- 10 b. A National Institutes of Health study published in the *New England Journal*
11 *of Medicine* finding that the Coronavirus survives up to four hours on
12 copper, up to 24 hours on cardboard, and up to three days on plastic and
13 stainless steel, and suggesting that people may acquire the virus through the
14 air and after touching contaminated objects.⁵⁴ Indeed, Zurich’s own Risk
15 Engineering Department republished the study on Zurich’s website and
16 restated the study’s conclusion when discussing the fomite transmission of
17 the Coronavirus in a workplace.⁵⁵
- 18 c. An American Society for Microbiology article discussing fomite infection

19
20 ⁵¹ *Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (Jul. 9, 2020),
[https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-
prevention-precautions](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions) (last visited Apr. 7, 2021).

21 ⁵² *Id.*

22 ⁵³ Jing Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING
23 INFECTIONS DISEASES 6 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited Apr. 7,
2021).

24 ⁵⁴ *New coronavirus stable for hours on surfaces*, NAT. INSTS. OF HEALTH (Mar. 17, 2020),
<https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited Apr. 7, 2021).

25 ⁵⁵ *RiskTopics, Cleaning and Disinfecting Plans During COVID-19 Outbreak*, ZURICH (April 2020),
26 [https://www.zurich.com/-/media/project/zurich/dotcom/industry-knowledge/covid-19/docs/cleaning-and-
disinfecting-during-covid-19-outbreak-rt.pdf?la=en&rev=e3c9d0882ef14be7b77587a4a95749a2](https://www.zurich.com/-/media/project/zurich/dotcom/industry-knowledge/covid-19/docs/cleaning-and-disinfecting-during-covid-19-outbreak-rt.pdf?la=en&rev=e3c9d0882ef14be7b77587a4a95749a2) (last visited Apr. 7,
2021).

1 as involving both porous and non-porous surfaces, and occurring through a
2 fomite's contact with bodily secretions, hands, aerosolized virus from
3 talking, sneezing, coughing, etc., or other airborne viral particles that settle
4 after a disturbance of a fomite (e.g., shaking a contaminated towel).⁵⁶
5 According to the researchers, "[o]nce a fomite is contaminated, the transfer
6 of infectious virus may readily occur between inanimate and animate
7 objects, or vice versa, and between two separate fomites (if brought
8 together)."⁵⁷ Of course, materials such as towels that come into contact with
9 droplets and hands are handled thousands of times a day at fitness clubs, if
10 not more. Generally, frequently touched surfaces can become highly
11 transmissive fomites.⁵⁸

- 12 d. A CDC research letter reporting that the Coronavirus can remain viable on
13 polystyrene plastic, aluminum, and glass for 96 hours in indoor living
14 spaces.⁵⁹
- 15 e. A *Journal of Hospital Infection* article citing studies revealing that human
16 coronaviruses can persist on inanimate surfaces like metal, glass, or plastic
17 for up to 9 days.⁶⁰

18 72. Importantly, the Coronavirus has been detected on environmental objects and
19
20

21 ⁵⁶ Stephanie A. Bone & Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral*
22 *Disease*, Am. Soc. For Microbiology, 73 APPLIED & ENVTL. MICROBIOLOGY 6 (Mar. 2007),
<https://aem.asm.org/content/73/6/1687> (last visited Apr. 7, 2021).

23 ⁵⁷ *Id.*

24 ⁵⁸ *Id.*

25 ⁵⁹ *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 EMERGING INFECTIOUS DISEASES 9 (Sept 2020),
https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article (last visited Apr. 7, 2021).

26 ⁶⁰ G. Kampf et al., *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, J.
OF HOSP. INFECTION 104, 246-51 (Jan 31, 2020),
<https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3> (last visited Apr.
7, 2021).

1 surfaces from symptomatic, pre-symptomatic and asymptomatic individuals.⁶¹ Fomites transform
2 the surface of property into a potentially deadly Coronavirus transmission device. A study
3 published in the Journal of Epidemiology and Infection demonstrated that after lockdown in the
4 United Kingdom, Coronavirus transmission via fomites may have contributed to as many as 25%
5 of deaths in that region.⁶²

6 73. Accordingly, the presence of the Coronavirus and COVID-19 in and on property,
7 including in indoor air, on surfaces, and on objects, causes direct physical loss of or damage to
8 property by causing physical harm to and altering property and otherwise making it incapable of
9 being used for its intended purpose.

10 74. Among other things, the presence of the Coronavirus transforms everyday surfaces
11 and objects into fomites, causing a tangible change of the property into a transmission vehicle for
12 disease from one host to another. The WHO's description of fomite transmission of COVID-19
13 expressly recognizes this physical alteration of property, describing viral droplets as “**creating**
14 fomites (contaminated surfaces).”⁶³ (Emphasis added). “Creating” involves making or bringing
15 into existence something new⁶⁴ – such as something that is in an altered state from what it was
16 before the Coronavirus was present on, in and around the property.

17 75. The Coronavirus adheres to surfaces and objects, harming and physically changing
18

19 ⁶¹ See *Coronavirus disease 2019 (COVID-19) Situation Report – 73*, WHO (Apr. 2, 2020),
20 <https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y>
21 (last visited Apr. 7, 2021); Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both*
Asymptomatic and Symptomatic Patients with COVID-19, 203 AMER. J. OF RESPIRATORY & CRITICAL CARE MED. 3
(Feb. 1, 2021), <https://doi.org/10.1164/rccm.202006-2136LE> (last visited Apr. 7, 2021).

22 ⁶² A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical*
analysis, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 23, 2020),
23 [https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-](https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3)
24 [including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3](https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3)
(last visited Apr. 7, 2021).

25 ⁶³ *Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (Jul. 9, 2020),
[https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions)
26 [prevention-precautions](https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions) (last visited Apr. 7, 2021).

⁶⁴ See, e.g., Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/create> (last visited Apr. 7,
2021).

1 and physically altering those objects by becoming a part of their surface and making physical
2 contact with them unsafe for their ordinary and customary use. Once the Coronavirus is in, on, or
3 near property, it is easily spread by the air, people and objects, from one area to another, causing
4 additional direct physical loss of or damage to property.

5 76. Additionally, the presence of the dangerous and potentially fatal Coronavirus in
6 and on property, including in indoor air, on surfaces, and on objects, renders the property lost,
7 unsafe and unfit for its normal usage. Respiratory particles (including droplets and airborne
8 aerosols) and fomites are physical substances that alter the physical properties of the interiors of
9 buildings to make them unsafe, untenable and uninhabitable.

10 77. In addition to being found in air samples,⁶⁵ the Coronavirus remains stable in body
11 secretions (respiratory, urine, feces), on surfaces, and in sewage, particularly at lower
12 temperatures.⁶⁶

13 **D. The Coronavirus Cannot be Removed or Eliminated by Routine Cleaning**

14 78. A number of studies have demonstrated that the Coronavirus is “much more
15 resilient to cleaning than other respiratory viruses so tested.”⁶⁷ The measures that must be taken
16 to remove the Coronavirus from property are significant and far beyond ordinary or routine
17 cleaning.

18 79. Efficacy of decontaminating agents for viruses is based on a number of factors,
19 including the initial amount of virus present, contact time with the decontaminating agent, dilution,
20 temperature, and pH, among many others. Detergent surfactants are not recommended as single
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23 ⁶⁵ Zhen-Dong Guo et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in*
24 *Hospital Wards, Wuhan, China, 2020*, 26 EMERGING INFECTIOUS DISEASE 7, 1583-91 (July 2020),
<https://pubmed.ncbi.nlm.nih.gov/32275497/> (last visited Apr. 7, 2021).

25 ⁶⁶ Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential*
26 *surrogates*, 92 J. OF MED. VIROLOGY 11, 2498-510 (June 12, 2020), <https://doi.org/10.1002/jmv.26170> (last visited
Apr. 7, 2021).

⁶⁷ *Id.*

1 agents, but rather in conjunction with complex disinfectant solutions.⁶⁸

2 80. Additionally, it can be challenging to accurately determine the efficacy of
3 decontaminating agents. The toxicity of an agent may inhibit the growth of cells used to determine
4 the presence of virus, making it difficult to determine if lower levels of infectious virus are actually
5 still present on treated surfaces.⁶⁹

6 81. In order to be effective, cleaning and decontamination procedures require strict
7 adherence to protocols not necessarily tested under “real life” or practical conditions, where treated
8 surfaces or objects may not undergo even exposure or adequate contact time.⁷⁰ Studies of
9 coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70%
10 alcohol.⁷¹

11 82. When considering disinfection and decontamination, the safety of products and
12 procedures must be considered as well, due to the risks of harmful chemical accumulation,
13 breakdown of treated materials, flammability, and potential for allergen exposure.⁷²

14 83. With respect to textiles – such as towels used at Fitness’ health clubs– studies have
15 demonstrated that virus can survive on fabrics and be transferred to skin and other surfaces,
16 “suggesting it is biologically plausible that . . . infectious diseases can be transmitted directly
17 through contact with contaminated textiles.”⁷³ Given the inadequacy of conventional cleaning
18 procedures, disinfection and decontamination measures include, but are not limited to, the use of
19 harsh chemicals to perform deep disinfection, the removal and disposal of porous materials like
20

21 ⁶⁸ *Id.*

22 ⁶⁹ *Id.*

23 ⁷⁰ *Id.*

24 ⁷¹ Joon Young Song et al., *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome
Coronavirus Infection*, 47 *INFECTION & CHEMOTHERAPY* 4, 252-5 (Dec. 2015),
<https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252> (last visited Apr. 7, 2021).

25 ⁷² *Id.*

26 ⁷³ Lucy Owen & Katie Laird, *The role of textiles as fomites in the healthcare environment: a review of the infection
control risk*, 8 *PEER J. LIFE & ENV’T* e9790, 1-35 (Aug. 25, 2020), <https://peerj.com/articles/9790/> (last visited Apr.
7, 2021).

1 clothing, cloth and other fabrics, and making changes to air filtration systems, and redesigning
2 interior spaces, all performed at great cost and expense to Fitness and other property owners. These
3 measures, among others, demonstrate that the Coronavirus and COVID-19 cause physical loss of
4 or damage to property.

5 84. Many of the surfaces and materials discussed in the studies and articles cited above
6 are used throughout Fitness' health clubs and as part of its operations, including plastics, glass,
7 metals, and of course fabrics such as towels. Similarly, these surfaces and materials are used in
8 virtually all office buildings, stores, shopping centers, restaurants, movie theaters, and other
9 businesses and amenities throughout Canada, the United States and in Washington, including at
10 the business and tourist locations that attract customers (including current, new and prospective
11 members) to Fitness' health clubs.

12 85. Moreover, the aerosolized Coronavirus particles and virions cannot be eliminated
13 by routine cleaning. Cleaning surfaces in an indoor space will not remove the aerosolized
14 Coronavirus particles from the air that people can inhale and become infected with the Coronavirus
15 and develop COVID-19 – no more than cleaning friable asbestos particles that have landed on a
16 surface from that surface will remove the friable asbestos particles suspended in the air that people
17 can inhale and develop asbestos-related diseases.

18 86. Moreover, given the ubiquity and pervasiveness of the Coronavirus, no amount of
19 cleaning or ventilation intervention will prevent a person infected and contagious with the
20 Coronavirus from entering an indoor space and exhaling millions of additional Coronavirus
21 particles and virions into the air, further: (a) filling the air with the aerosolized Coronavirus that
22 can be inhaled, sometimes with deadly consequences; and (b) depositing Coronavirus particles and
23 virions on the surfaces, physically altering and transforming those surfaces into disease-
24 transmitting fomites.

25 **E. The Certain or Virtually Certain Presence of the Coronavirus at Fitness' Health**
26 **Clubs and its Attraction Properties**

87. No fewer than 1,200 of Fitness' employees have confirmed to Fitness that they have

1 contracted COVID-19. Given the high percentage of asymptomatic cases of COVID-19, it is
2 certain that the actual number of Fitness employees who had contracted COVID-19 was
3 substantially greater than the over 1,200 employees known to have contracted COVID-19.

4 88. The above is direct proof of the actual, certain presence of the Coronavirus at
5 Fitness' health clubs, *i.e.*, in, or and around the properties.

6 89. Additionally, given how highly contagious the Coronavirus is – recently even more
7 so by the new, more contagious UK (known as B.1.1.7), South African (known as B.1.351) and
8 Brazilian (P.1) variants of the Coronavirus that have only emerged during the 2020/2021 Policy
9 Period and are now sweeping across globe – the global pervasive status of COVID-19 and the
10 heavily-trafficked common areas in and around Fitness' health clubs, including its locations within
11 Washington, it is statistically certain, or near-certain, that many other individuals at or in the
12 vicinity of Fitness' health clubs contracted and carried the Coronavirus.

13 90. It is also statistically certain, or near-certain, that the Coronavirus was dispersed
14 continuously into the air and on property in, on and around Fitness' health clubs – rendering the
15 already ineffective routine cleaning even less effective at removing the Coronavirus from surfaces
16 at Fitness' health clubs and completely ineffective at removing aerosolized Coronavirus particles
17 and virions from the air inside those clubs. This was also the case at a myriad of office buildings,
18 stores, shopping centers, restaurants, movie theaters, and other businesses and amenities
19 throughout Canada, the United States and Washington, including at the Attraction Properties.

20 91. The presence of the Coronavirus and COVID-19 in, on, and near property therefore
21 caused and continues to cause direct physical loss of or damage to Fitness' property and that of its
22 Attraction Properties, resulting in business income loss covered under the 2020/2021 Policy.

23 92. This direct physical loss of or damage to Fitness' property required Fitness to close
24 its health clubs, incur extra expense, undertake costly efforts to protect and preserve property from
25 further damage or loss, and after reopening its health clubs, continue to limit operations, all
26 resulting in many hundreds of millions of dollars of loss.

1 93. The CDC keeps track of known infections by county. Every single county where
2 Fitness operates or operated a Fitness club has reported COVID-19 infections.

3 94. The presence of the Coronavirus at the Fitness health clubs, as well as many nearby
4 locations that attract customers, was certain or virtually certain. This can be confirmed with
5 certainty or near-certainty by statistical modeling based on the known incidences of infection
6 despite the lack of commercially available tests for fomite or the aerosolized Coronavirus, and
7 despite the shortage of COVID-19 tests that could have otherwise been administered to every
8 individual who was on-site at the relevant times.⁷⁴

9 95. Early in the course of the Coronavirus and COVID-19, testing was limited, and thus
10 potentially thousands more people were infected than were reported.⁷⁵ Concerning the testing that
11 was available at that time, local positivity rates clearly demonstrated the pervasiveness of the
12 Coronavirus throughout the states and countries where Fitness’ health clubs are located.

13 96. Epidemiologists have explained that “the percent positive is a critical measure
14 because it gives us in indication of how widespread infection is in the area where the testing is
15 occurring[.]”⁷⁶ It is a crucial indicator of whether a business can safely remain open. As a
16 threshold for the percent positive being “too high,” the WHO stated that the percent positive should
17 remain below 5% for at least two weeks before re-opening.⁷⁷

18 97. As shown below, by way of example, the cities and states in which Fitness owns
19 and operates its U.S. health clubs were experiencing exceptionally high positivity rates:
20

21 ⁷⁴ See, e.g., Aroon Chande et al., *Real-time, interactive website for US-county-level COVID-19 event risk*
22 *assessment*, 4 NATURE HUM. BEHAV., 1313-19 (Nov. 9, 2020), <https://doi.org/10.1038/s41562-020-01000-9> (last
visited Apr. 7, 2021).

23 ⁷⁵ See, e.g., Benedict Carey and James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far Earlier Than*
24 *Americans Knew, Estimates Say*, N.Y. TIMES (Apr. 23, 2020), (updated July 6, 2020),
<https://nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html> (last visited Apr. 7, 2021).

25 ⁷⁶ David Dowdy & Gypsyamber D’Souza, *COVID-19 Testing: Understanding the “Percent Positive,”* JOHNS
26 HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (Aug. 20, 2020), [https://www.jhsph.edu/covid-19/articles/covid-19-
testing-understanding-the-percent-positive.html](https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html) (last visited Apr. 7, 2021).

⁷⁷ *Id.*

- 1 • **Washington**: As of March 31, 2020, Washington had a 7-day moving positivity
2 average rate of 9.3%.⁷⁸
- 3 • **New York City**: Citywide, the percentage of tests with positive results
4 increased from 27% the week of March 8 to a 65% during the week of March
5 22.⁷⁹ New York City reached a maximum of 71% on March 28.⁸⁰
- 6 • **New York State**: As of March 31, 2020, New York State reported a daily
7 positivity rate of 50.4%, a 7-day rolling average of 45.1%, and a 14-day rolling
8 average of 39.5%.⁸¹
- 9 • **Philadelphia**: As of April 12, 2020, the positivity rate in Philadelphia was
10 35.7%.⁸²
- 11 • **Connecticut**: As of March 31, 2020, the statewide 7-day rolling test positivity
12 rate was 35% in Connecticut.⁸³
- 13 • **New Jersey**: By March 27, 2020, New Jersey’s state-run and commercial
14 laboratories administered 28,043 Coronavirus tests since the outbreak started,
15 producing 8,296 positive tests – a positivity rate of 33.4%.⁸⁴

16 _____
17 ⁷⁸ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. OF MED. (updated Apr. 7, 2021),
<https://coronavirus.jhu.edu/testing/individual-states/washington> (last visited Apr. 7, 2021).

18 ⁷⁹ Corinne N. Thompson, Phd et al., *COVID-19 Outbreak – New York City, February 29-June 1, 2020*, 69 MMWR
19 46, 1725-1729 (Nov. 20, 2020),
<https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a2.htm#:~:text=Citywide%2C%20the%20percentage%20of%20tests,the%20week%20of%20March%2022> (last visited Apr. 7, 2021).

20 ⁸⁰ George J. Borjas, Phd, *Business Closures, Stay-at-Home Restrictions, and COVID-19 Testing Outcomes in New*
21 *York City*, 17 PREVENTING CHRONIC DISEASE (Sept. 17, 2020), https://www.cdc.gov/pcd/issues/2020/20_0264.htm
(last visited Apr. 7, 2021).

22 ⁸¹ *Percentage Positive Results by Region Dashboard*, NY.GOV (updated Apr. 6, 2021),
<https://forward.ny.gov/percentage-positive-results-region-dashboard> (last visited Apr. 7, 2021).

23 ⁸² *Coronavirus Disease 2019 (COVID-19)*, Cty. of Philadelphia (updated Mar. 19, 2021),
24 <https://www.phila.gov/programs/coronavirus-disease-2019-covid-19/testing-and-data/#/> (last visited Apr. 7, 2021).

25 ⁸³ *COVID-19 in Connecticut: Data Analysis*, DATAHAVEN (Nov. 11, 2020),
<https://www.ctdatahaven.org/reports/covid-19-connecticut-data-analysis> (last visited Apr. 7, 2021).

26 ⁸⁴ Brent Johnson, *N.J. coronavirus cases spike to 8,825 with 108 deaths. Officials announces 1,982 new positive*
tests, marking another big 24-hour surge., NJ.COM (updated Mar. 28, 2020),
<https://www.nj.com/coronavirus/2020/03/nj-coronavirus-cases-spike-to-8825-with-108-deaths-officials-announce->

- 1 • **Georgia**: As of March 31, 2020, Georgia had a 7-day moving positivity average
2 rate of 22.2%.⁸⁵
- 3 • **Chicago**: By the end of March 2020, the positivity rate in Chicago was over
4 20%.⁸⁶
- 5 • **Illinois**: As of March 31, 2020, Illinois had a 7-day moving positivity average
6 rate of 18.8%.⁸⁷
- 7 • **Massachusetts**: As of April 1, 2020, Massachusetts had a daily positivity 7-
8 day moving average of 18.2%.⁸⁸
- 9 • **Maryland**: As of March 31, 2020, Maryland reported a 7-day positivity rate of
10 13.72% and a daily positivity rate of 16.76% - with those numbers both over
11 25% by April 17.⁸⁹
- 12 • **District of Columbia**: As of March 31, 2020, D.C. had a 7-day moving
13 positivity average rate of 14.8%.⁹⁰
- 14 • **Los Angeles**: As of April 18, 2020, the positivity rate in Los Angeles County
15 was 14.4% with the positivity rate in Los Angeles City being 7.3%.⁹¹

16
17 [1982-new-positive-tests-marking-another-big-24-hour-surge.html](#) (last visited Apr. 7, 2021).

18 ⁸⁵ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. OF MED. (updated Apr. 7, 2021),
19 <https://coronavirus.jhu.edu/testing/individual-states/georgia> (last visited Apr. 7, 2021).

20 ⁸⁶ *CHICAGO COVID-19 UPDATE*, CHI. DEPT. OF PUB. HEALTH (July 30, 2020),
https://www.chicago.gov/content/dam/city/sites/covid/reports/2020-07-30/Chicago_COVID-19_Update_V8_7.30.2020.pdf (last visited Apr. 7, 2021).

21 ⁸⁷ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. OF MED. (updated Apr. 7, 2021),
22 <https://coronavirus.jhu.edu/testing/individual-states/illinois> (last visited Apr. 7, 2021).

23 ⁸⁸ *Daily State-By-State-Testing Trends*, Johns Hopkins Univ. of Medicine,
<https://coronavirus.jhu.edu/testing/individual-states/massachusetts> (last visited Apr. 7, 2021).

24 ⁸⁹ *Coronavirus Disease 2019 (COVID-19) Outbreak*, MARYLAND.GOV (updated Apr. 7, 2021),
<https://coronavirus.maryland.gov/> (last visited Apr. 7, 2021).

25 ⁹⁰ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. OF MED. (updated Apr. 7, 2021),
26 <https://coronavirus.jhu.edu/testing/individual-states/district-of-columbia> (last visited Apr. 7, 2021).

⁹¹ *Daily Los Angeles COVID-19 Data Summary*, OFFICE OF THE MAYOR (July 29, 2020), <https://coronavirus.la/sites/default/files/inline->

- 1 • **Nevada**: As of April 1, 2020, Nevada had a daily positivity 7-day moving
2 average of 13.8%.⁹²
- 3 • **Indiana**: As of March 31, 2020, Indiana had a 7-day moving positivity average
4 rate of 12.4%.⁹³
- 5 • **Pennsylvania**: As of March 31, 2020, the positivity rate in Philadelphia was
6 over 12% with 4,843 positive cases and 63 deaths.⁹⁴
- 7 • **Florida**: On March 29, 2020, the 7-day positivity rate for those taking COVID-
8 19 tests in Florida was 10% with the daily rate equally 13%.⁹⁵
- 9 • **San Francisco**: From early March through late April 2020, San Francisco's
10 positive test rate was over 10%.⁹⁶
- 11 • **Wisconsin**: As of March 31, 2020, Wisconsin had a 7-day moving positivity
12 average rate of 9.8%.⁹⁷
- 13 • **Virginia**: As of March 31, 2020, Virginia had a 7-day moving positivity
14 average rate of 9.4%.⁹⁸

15
16
17 [files/Release_Daily%20Data%20Report%20Wednesday%207_29_F%20%281%29.pdf](#) (last visited Apr. 7, 2021).

18 ⁹² *Daily State-By-State Testing Trends*, Johns Hopkins Univ. of Medicine,
<https://coronavirus.jhu.edu/testing/individual-states/nevada> (last visited Apr. 7, 2021).

19 ⁹³ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. OF MED. (updated Apr. 7, 2021),
<https://coronavirus.jhu.edu/testing/individual-states/indiana> (last visited Apr. 7, 2021).

20 ⁹⁴ *See PA Coronavirus (COVID-19) Update Archive March 2020*, PA. DEPT. OF HEALTH (Mar. 31, 2020),
<https://www.health.pa.gov/topics/disease/coronavirus/Pages/March-Archive.aspx> (last visited Apr. 7, 2021).

21 ⁹⁵ *Florida Dept. of Health Updates New COVID-19 Cases, Announces Three New Deaths Related to COVID-19,*
22 *Morning Updated*, FLORIDAHEALTH.GOV (Mar. 30, 2020),
<http://www.floridahealth.gov/newsroom/2020/03/033020-1100-covid19.pr.html> (last visited Apr. 7, 2021).

23 ⁹⁶ Kellie Hwang, *S.F.'s coronavirus positive test rate is the lowest of all big U.S. cities. Can it stay that way?*, SAN
24 FRANCISCO CHRONICLE (Oct. 29, 2020), <https://www.sfchronicle.com/bayarea/article/S-F-s-coronavirus-positive-test-rate-is-the-15683356.php> (last visited Apr. 7, 2021).

25 ⁹⁷ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. OF MED. (updated Apr. 7, 2021),
<https://coronavirus.jhu.edu/testing/individual-states/wisconsin> (last visited Apr. 7, 2021).

26 ⁹⁸ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. OF MED. (updated Apr. 7, 2021),
<https://coronavirus.jhu.edu/testing/individual-states/virginia> (last visited Apr. 7, 2021).

- **Oregon:** For the week of March 7-13, Oregon reported a positivity rate of 7.7%.⁹⁹

98. Canada was also experiencing exceptionally high positivity rates of the Coronavirus demonstrating the certain or virtually certain presence of the Coronavirus at all of Fitness' health clubs at various points in time since the emergence of the Coronavirus and COVID-19. As of April 11, 2020, Canada had a daily positivity rate, given as a rolling 7-day average of 11.20%.¹⁰⁰

99. Washington presents a powerful example of how statistical modeling confirms the presence of the Coronavirus at Fitness' health clubs (in addition to its certain presence as demonstrated by the large number of Fitness employees who reported contracting COVID-19).

100. Washington, and the Seattle area in particular, was an early epicenter for the presence of the Coronavirus and outbreaks of COVID-19. The first confirmed case of COVID-19 in the United States was reported from Snohomish County on or about January 21, 2020,¹⁰¹ and the first known death from COVID-19 in the United States was reported from King County on or about February 29, 2020.¹⁰² By early March 2020, the Coronavirus and COVID-19 had spread rapidly throughout the area, with numerous new infectious and deaths reported daily, as well as the closure of businesses and cancellation of events.¹⁰³

101. With respect to the testing that was available, local positivity rates demonstrated

⁹⁹ Oregon's weekly COVID-19 positivity rate is the highest it's been since March, KGW8 (Aug. 3, 2020), <https://www.kgw.com/article/news/health/coronavirus/oregon-weekly-covid-19-positivity-rate-highest-since-march/283-d6bb8928-9df1-4b9c-9a79-4fec4d6ecdac> (last visited Apr. 7, 2021).

¹⁰⁰ Hannah Ritchie et al., *Canada: Coronavirus Pandemic Country Profile*, OUR WORLD IN DATA (updated Apr. 7, 2021), <https://ourworldindata.org/coronavirus/country/canada> (last visited Apr. 7, 2021).

¹⁰¹ See, e.g., *Case of 2019 novel coronavirus confirmed in Washington State*, WASH. ST. DEPT. OF HEALTH (Jan. 21, 2020), <https://www.doh.wa.gov/Newsroom/Articles/ID/1068/Case-of-2019-novel-coronavirus-confirmed-in-Washington-state-resident-20-006> (last visited Apr. 7, 2021).

¹⁰² See, e.g., *CDC, Washington State Report First COVID-19 Death*, CDC (Feb. 29, 2020), <https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html> (last visited Apr. 7, 2021).

¹⁰³ See, e.g., Casey McNerthney, *Coronavirus in Washington state: A timeline of the outbreak through March 2020*, KIRO 7 (Apr. 3, 2020), <https://www.kiro7.com/news/local/coronavirus-washington-state-timeline-outbreak/IM65JK66N5BYTIAPZ3FUZSKMUE/> (last visited Apr. 7, 2021).

1 the pervasiveness of the Coronavirus in the Seattle area by March 2020 and the certitude based on
2 statistical modeling that Fitness’ Seattle-area fitness clubs (17 of them in King County alone at the
3 outset of the emergence of the Coronavirus and COVID-19) and their nearby attraction properties
4 suffered from the presence of the Coronavirus. In March 2020, the positivity rate in the Seattle
5 area was over 8%.¹⁰⁴

6 102. The other states where Fitness owns and operates health clubs experienced a similar
7 spread of the Coronavirus and COVID-19 and the same physical loss of or damage to property as
8 Fitness experienced in Washington.

9 **F. New and Even More Persistent Variants of the Coronavirus Have Emerged During**
10 **the 2020/2021 Policy Period**

11 103. While the damage and destruction caused by the original variant of the Coronavirus
12 (the Wild Type) is staggering, during the 2020/2021 Policy Period, completely new and distinct
13 variants of the Coronavirus have emerged that are even more persistent than the original Wild
14 Type variant of the Coronavirus.

15 104. These new variants of the Coronavirus have caused completely new and distinct
16 physical loss of or damage to Fitness’ properties and that of its Attraction Properties.

17 105. In December 2020, a new variant, called B.1.1.7 of the Coronavirus, thought to be
18 50% more transmissible and infectious, and up to 30% deadlier than the original Wild Type (and
19 therefore even more apt than the Wild Type to cause physical loss or damage by rendering that
20 property unfit, unsafe and uninhabitable), was identified in the U.K.¹⁰⁵ As of January 2021, the
21 U.K. variant of the Coronavirus had been detected in 33 countries, including the U.S. (and in states
22

23 ¹⁰⁴ See, e.g., April Kaur Randhawa, PhD, et al., *Changes in SARS-CoV-2 Positivity Rate in Outpatients in Seattle*
24 *and Washington State, March 1-April 16, 2020*, JAMA NETWORK (May 8, 2020),
<https://jamanetwork.com/journals/jama/fullarticle/2766035> (last visited Apr. 7, 2021).

25 ¹⁰⁵ Julia Ries, *The Coronavirus is Mutating: What We Know About the New Variants*, HEALTHLINE (Jan. 22, 2021),
26 <https://www.healthline.com/health-news/the-coronavirus-is-mutating-what-we-know-about-the-new-variants> (last
visited Apr. 7, 2021); *About Variants of the Virus that Causes COVID-19*, CDC (updated Apr. 2, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited Apr. 7, 2021).

1 where Fitness owns and operates health clubs).¹⁰⁶ And as of April 6, 2021, the U.K. variant had
2 been detected in all 50 U.S. states and Puerto Rico.¹⁰⁷

3 106. In early October 2020, yet another new variant of the Coronavirus, known as
4 B.1.351 was identified in South Africa, which is purportedly more contagious than the original
5 strain as it has been associated with a higher viral load.¹⁰⁸ As of April 6, 2021, the B.1351 variant
6 had been detected in 36 of the 50 U.S. states, including Washington.¹⁰⁹

7 107. In early January 2021, another variant of the Coronavirus, known as P.1, was
8 detected in travelers from Brazil.¹¹⁰ As of April 6, 2021, the P.1 variant had been detected in 25
9 of the 50 U.S. states, including Washington.¹¹¹

10 108. In January 2021, studies identified a new variant of the Coronavirus in the United
11 States, identified as COH.20G/501Y, that did not come from the U.K. or South African branches
12 of the virus.¹¹² Similar to the U.K. variant, the mutations in the new variant of the Coronavirus
13 likely make this variant more infectious (and therefore even more apt to cause physical loss of or
14 damage to property) than the original Wild Type.¹¹³ Another variant, identified as L452R, that
15

16 ¹⁰⁶ Gabrielle Masson, *UK virus strain in 3 states; South Africa variant deemed 'even more of a problem': 5 things to*
17 *know*, BECKER'S HOSP. REV. (Jan. 4, 2021), [https://www.beckershospitalreview.com/public-health/uk-virus-strain-](https://www.beckershospitalreview.com/public-health/uk-virus-strain-in-3-states-south-africa-variant-deemed-even-more-of-a-problem-5-things-to-know.html)
18 [in-3-states-south-africa-variant-deemed-even-more-of-a-problem-5-things-to-know.html](https://www.beckershospitalreview.com/public-health/uk-virus-strain-in-3-states-south-africa-variant-deemed-even-more-of-a-problem-5-things-to-know.html) (last visited Apr. 7, 2021).

19 ¹⁰⁷ *US COVID-19 Cases Caused by Variants*, CDC (updated Apr. 6, 2021), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html)
20 [ncov/transmission/variant-cases.html](https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html) (last visited Apr. 7, 2021).

21 ¹⁰⁸ Julia Ries, *The Coronavirus is Mutating: What We Know About the New Variants*, HEALTHLINE (Jan. 22, 2021),
22 <https://www.healthline.com/health-news/the-coronavirus-is-mutating-what-we-know-about-the-new-variants> (last
23 visited Apr. 7, 2021); *About Variants of the Virus that Causes COVID-19*, CDC (updated Apr. 2, 2021),
24 <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited Apr. 7, 2021).

25 ¹⁰⁹ *US COVID-19 Cases Caused by Variants*, CDC (updated Apr. 6, 2021), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html)
26 [ncov/transmission/variant-cases.html](https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html) (last visited Apr. 7, 2021).

¹¹⁰ *About Variants of the Virus that Causes COVID-19*, CDC (updated Apr. 2, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited Apr. 7, 2021).

¹¹¹ *US COVID-19 Cases Caused by Variants*, CDC (updated Apr. 6, 2021), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html)
[ncov/transmission/variant-cases.html](https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html) (last visited Apr. 7, 2021).

¹¹² *Researchers Discover New Variant of COVID-19 Virus in Columbus, Ohio*, OHIO STATE UNIV. (Jan. 13, 2021),
<https://wexnermedical.osu.edu/mediaroom/pressreleaselisting/new-sars-cov2-variant> (last visited Apr. 7, 2021).

¹¹³ *Id.*

1 originated in Denmark has “ripped” through Northern California and has been confirmed in more
2 than a dozen other states, including Washington.¹¹⁴

3 **G. Government Orders and the Closure of Fitness’ Health Clubs**

4 109. On March 16, 2020, the CDC and the national Coronavirus Task Force issued to
5 the American public guidance titled “30 Days to Slow the Spread” of COVID-19. The guidance
6 called for restrictive social distancing measures, such as working from home, avoiding gatherings
7 of more than 10 people, and staying away from bars and restaurants.¹¹⁵

8 110. State and local governments across the nation and in Canada recognized the
9 unprecedented and catastrophic situation of the mushrooming outbreaks of COVID-19 and the
10 Coronavirus’s catastrophic impact through the direct physical loss of or damage to property and
11 lives. As consequence, many states had issued “State of Emergency” Declarations in early March
12 2020. Within a short time, every single state and Canadian province in which Fitness operated a
13 health club issued orders suspending or severely limiting business operations deemed to be “non-
14 essential businesses” where people could potentially contract COVID-19 from others or from the
15 property itself. This included gyms/fitness centers such as Fitness’ health clubs.

16 111. Between March 15, 2020 and April 16, 2020, state, provincial or local authorities
17 in every U.S. state and Canadian province in which Fitness operated a health club – Alberta,
18 Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana,
19 Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York,
20 North Carolina, Ohio, Ontario, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee,
21 Texas, Virginia, Washington and the District of Columbia – issued orders that required Fitness to
22 close all of its health clubs in that state.

23
24 ¹¹⁴ Fenit Nirappil, *Another coronavirus variant linked to growing share of cases, several large outbreaks, in California*, WASH. POST (Jan. 18, 2021), <https://www.washingtonpost.com/health/2021/01/18/california-coronavirus-variant/> (last visited Apr. 7, 2021).

25
26 ¹¹⁵ *The President’s Coronavirus Guidelines for America, 30 Days to Slow the Spread*, The White House & CDC (Mar. 16, 2020), https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last visited Apr. 7, 2021).

1 112. These government orders, through their forced closure of all of Fitness’ health
2 clubs, prohibited access to Fitness’ health clubs – all of which are insured “Locations” under the
3 2020/2021 Policy.

4 113. Many of these and other government orders arising from the Coronavirus and
5 COVID-19 expressly recognized that the Coronavirus damages property – not just people. The
6 orders issued in Washington are prime examples:

- 7 • On March 16, 2020, Governor Inslee issued an order closing fitness centers (and
8 certain other business), which required Fitness to close all of its then-28 health
9 clubs in Washington.¹¹⁶ Among other things, the March 16, 2020 order
10 expressly stated, among its justifications, that the Coronavirus and COVID-19
11 was a “public disaster affecting . . . property;” that state government agencies
12 were working with local health officials “in alleviating the impacts to . . .
13 property;” and that among its objectives was to “help preserve and maintain . .
14 . property[.]”¹¹⁷
- 15 • On March 23, 2020, Governor Inslee issued a “Stay Home – Stay Healthy”
16 order requiring every Washingtonian to stay home unless they needed to pursue
17 an essential activity, banning all gatherings for social, spiritual, and recreational
18 purposes, and closing all businesses except essential businesses.¹¹⁸ Among
19 other things, the March 23, 2020 order expressly stated, among its justifications,
20 that the COVID-19 pandemic was a “public disaster affecting . . . property;”
21 that state government agencies were working with local health officials “in

22
23 ¹¹⁶ *Proclamation By the Governor Amending Proclamation 20-05*, Office of the Governor, Proclamation No. 20-13
(Mar. 16, 2020), [https://www.governor.wa.gov/sites/default/files/proclamations/20-
24 13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf) (last visited Apr. 7, 2021).

25 ¹¹⁷ *Id.*

26 ¹¹⁸ *Proclamation By the Governor Amending Proclamation 20-05*, Office of the Governor, Proclamation No. 20-25
(Mar. 23, 2020), [https://www.governor.wa.gov/sites/default/files/proclamations/20-
25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf](https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf) (last visited Apr. 7,
2021).

1 alleviating the impacts to . . . property;” and that among its objectives was to
2 “help preserve and maintain . . . property[.]”¹¹⁹

3 114. As a result of the COVID-19 pandemic and the direct physical loss of or damage to
4 Fitness’ property and/or attraction properties caused by the Coronavirus and the government
5 guidance and orders, Fitness was forced to close all of its over 700 health clubs on or about March
6 16, 2020.

7 **H. Fitness’ Health Clubs Reopen but Operate Under Severe Restrictions and With**
8 **Safety Measures That Forced Fitness to Incur Extra Expenses to Continue**
9 **Operating and Prevent Further Direct Physical Loss of or Damage to Fitness’**
10 **Property**

11 115. Beginning on May 18, 2020, Fitness started reopening its health clubs. By July 1,
12 2020, 574 of its health clubs had re-opened. On August 10, 2020, Fitness’ clubs in King,
13 Snohomish, Pierce and Clark Counties in Washington had reopened. By October 16, 2020, all
14 then-existing Fitness health clubs had reopened.

15 116. The reopening of Fitness’ health club did not abate Fitness’ losses arising from the
16 direct physical loss or of damage to its property or its Attraction Properties. To the contrary, in
17 order to prevent further direct physical loss of or damage to its health clubs and to stay open and
18 continue operating its clubs, Fitness has incurred significant extra expenses or imposed outright
19 bans and/or restrictions on certain of its services. These expenses/bans/restrictions include, but
20 are not limited to:

- 21 • operating its clubs at reduced hours of operation;
- 22 • operating its clubs at a fraction of their normal occupancy – for example, prior
23 to their November 16, 2020 re-closure, Fitness had to operate its Washington
24 clubs at no more than 25% of capacity;
- 25 • not offering, or restricting the capacity of, some of its services, such as group
26 fitness classes and swimming pools;

¹¹⁹ *Id.*

- 1 • providing PPE to its employees such as facemasks, goggles, face shields and
- 2 gloves;
- 3 • installing barriers (such as in reception areas) to hamper transmission of the
- 4 Coronavirus and foster social distancing;
- 5 • making hand sanitizer, disinfecting wipes, soap and water readily available to
- 6 customers;
- 7 • purchasing and placing readily visible signage to encourage safe practices
- 8 among employees and customers;
- 9 • regularly and frequently cleaning any high-touch and frequently touched
- 10 surfaces according to heightened CDC and state department of health
- 11 guidelines;
- 12 • providing equipment cleaning products throughout the health clubs for use on
- 13 equipment, including dead weights;
- 14 • dramatically increasing cleaning frequency for its fitness clubs and their
- 15 bathrooms; and
- 16 • upgrading HVAC ventilation filters.

17 117. The presence of the Coronavirus on Fitness' property caused it to suffer direct
18 physical loss of and or damage to its health clubs as previously alleged herein. The reduced hours,
19 reduced capacity and significant restrictions and/or bans on its health clubs providing certain
20 services, some imposed by government orders, have deprived Fitness of the full use of its property,
21 causing further direct physical loss of or damage to Fitness' property. Moreover, they have
22 alienated some of Fitness' current and prospective members, causing Fitness to sustain yet more
23 losses.

24 118. Moreover, over 300 of Fitness' health clubs had to re-close due to the direct
25 physical loss of or damage to Fitness' property, attraction properties and other nearby properties
26 caused by the Coronavirus. All were eventually reopened. Many subsequently had to re-close –

1 some multiple times.

2 119. For example, all of Fitness' now 27 health clubs in Washington and its now 7 health
3 clubs in Oregon were forced to re-close on November 16, 2020 and November 17, 2020,
4 respectively, pursuant to government orders, and remained closed for several months, finally
5 reopening on January 11, 2021.

6 120. Similarly, all of Fitness' 31 Canada clubs had to re-close and are currently closed
7 (all re-opened and re-closed at least two times and some three times).

8 121. Fitness has suffered and continues to suffer catastrophic losses from the closures of
9 health clubs and related losses from the presence of the Coronavirus and COVID-19.

10 122. Fitness timely notified the Defendant Insurers of these losses and has met all
11 conditions and requirements for coverage under the 2020/2021 Policy. As set forth herein, the
12 Defendant Insurers have wrongly refused to provide coverage to Fitness.

13 **I. The 2020/2021 Zurich Edge™ “All Risk” Commercial Property Policy**

14 123. In exchange for a very substantial premium (\$6,732,806.62), Zurich and the
15 Defendant Insurers sold Fitness the 2020/2021 Policy, policy number PPR5832933-08, effective
16 from August 4, 2020 to August 4, 2021 (the “2020/2021 Policy”).¹²⁰

17 124. Fitness fully paid the premium for the 2020/2021 Policy.

18 125. Zurich and/or its affiliates drafted the 2020/2021 Policy, which includes the Zurich
19 EDGE™ coverage form.

20 126. When introduced in 2008, the Zurich EDGE™ coverage form was marketed as
21 offering uniquely “broader coverage and greater flexibility” and would “enhance . . . our ability to
22 serve customers in this important line of business and offers significant advantages for global
23 property programs” Zurich’s CEO made this announcement in a press release, dated April

24 _____
25 ¹²⁰ As explained above, the term “2020/2021 Policy” refers to both this policy issued by Zurich individually and
26 collectively to the Policies issued for the 2020/2021 Policy Period to Fitness by the other Defendant Insurers who, in
their Policies, adopt and incorporate the terms of conditions of the 2020/2021 Policy, which serves as the master
policy form for the 2020/2021 Policy Period. The Defendant Insurers’ Policies for the 2020/2021 Policy Period
contain certain provisions that they contend alter the scope of the coverage provided by the 2020/2021 Policy.

1 22, 2008, and lauded the clarity of the form, boasting that “The Zurich Edge policy is clearly
2 written with all limits, sub-limits and other critical coverage issues incorporated within the policy
3 declarations.”¹²¹

4 127. Zurich did not limit its touting the EDGE™ coverage form to its press releases.
5 Rather, Zurich made the same claims to insurance regulators. For example, in an Explanatory
6 Memorandum Zurich filed with the California Department of Insurance and the Oregon Insurance
7 Division on January 11, 2008 and February 5, 2008, respectively, Zurich claimed that the EDGE™
8 coverage form offers “our Insured’s [sic] a very broad and flexible policy.”

9 128. The 2020/2021 Policy sold to Fitness insures against “[a]ll risks of direct physical
10 loss or damage from any cause unless excluded,” and provides coverage for property damage
11 losses, business interruption losses (“Time Element” per the policy language), and other losses.

12 129. The 2020/2021 Policy Limit is \$500,000,000 per **Occurrence**. The 2020/2021
13 Policy Deductible is “\$250,000 combined Property Damage (PD) and Time Element (TE) per
14 **Occurrence**” and contains other deductibles applicable in specified circumstances.

15 130. The 2020/2021 Policy does not exclude Virus or communicable disease as causes
16 of loss. Thus, under the 2020/2021 Policy, the entire \$500,000,000 Policy Limit is potentially
17 available for Fitness’ losses.¹²²

18 131. The 2020/2021 Policy’s full terms and conditions are set forth therein, but as
19 relevant here, the 2020/2021 Policy provides as follows:

20 *a. Time Element and Time Element Coverages*

21 132. The 2020/2021 Policy covers Time Element loss resulting from “the necessary
22 **Suspension** of the Insured’s business activities at an Insured Location. The **Suspension** must be
23

24 _____
25 ¹²¹ Zurich introduces *The Zurich Edge™* for highly protected risks and global property markets, Media Release
26 Zurich (Apr. 22, 2008),
https://zsl.zurichna.com/zus/zna_config.nsf/pages/9123da88864cd81485257433006ed710!OpenDocument&Click=
(last visited Apr. 7, 2021).

¹²² See *supra* note 3.

1 due to direct physical loss of or damage to Property (of the type insurable under this Policy other
2 than **Finished Stock**) caused by a **Covered Cause of Loss** at the **Location....”**

3 133. The 2020/2021 Policy defines **Covered Cause of Loss** as “All risks of direct
4 physical loss of or damage from any cause unless excluded.”

5 134. As set forth above, the Coronavirus and COVID-19 caused direct physical loss of
6 or damage to property at Fitness’ Insured Locations – which include, but are not limited to, Fitness’
7 health clubs.

8 135. The Coronavirus and COVID-19 also rendered such property unfit and unsafe for
9 its normal usages, depriving Fitness of its property.

10 136. Neither the Coronavirus nor COVID-19 are excluded under the 2020/2021
11 Policy.¹²³

12 137. Among the 2020/2021 Policy’s Time Element Coverages is GROSS EARNINGS,
13 covering “the actual loss sustained by the Insured during the Period of Liability.” GROSS
14 EARNINGS is subject to the 2020/2021 Policy’s full Limit of Liability of \$500,000,000.”

15 138. Also among the 2020/2021 Policy’s Time Element Coverages is GROSS PROFIT,
16 which “applies to Insured Locations outside of the USA, its territories and possessions and the
17 Commonwealth of Puerto Rico.” GROSS PROFIT is subject to the 2020/2021 Policy’s full Limit
18 of Liability of \$500,000,000.

19 139. The 2020/2021 Policy defines **Gross Profit** as “The sum produced by adding to the
20 **Net Profit or Loss**, the amount of the insured **Standing Charges**.”

21 140. The 2020/2021 Policy defines **Net Profit or Loss** as “The net trading profit or loss
22 (exclusive of all capital receipts and accretions and all outlay properly chargeable to capital)
23 resulting from the Insured’s business activities after deductions have been made for all charges and
24 other charges including depreciation but before the deduction of any taxation chargeable on
25 profits.”

26 _____
¹²³ See *supra* note 3.

1 141. The 2020/2021 Policy defines **Standing Charges** as “All costs and expenses used
2 in determining **Net Profit or Loss** except the following: **Raw Stock** from which production is
3 derived; Supplies **consisting** of materials consumed directly in conversion of **Raw Stock** into
4 **Finished Stock** or in supplying the service(s) sold by the Insured; **Merchandise** sold, including
5 related packaging materials; Service(s) purchased from outsiders (not employees of the Insured)
6 for resale, which do not continue under contract; [and] Sales Discounts.”

7 142. Fitness derives all of its revenue from its health clubs both in the U.S. and in
8 Canada. When these clubs are closed Fitness earns no revenue. Many of these health clubs were
9 closed during the 2020/2021 Policy Period due to separate and distinct occurrences from those that
10 occurred during the prior policy period.

11 143. To the extent any of the health clubs were reopened during the 2020/2021 Policy
12 Period, this was often at reduced capacity, reduced hours and reduced levels of service. As such,
13 Fitness has sustained and is sustaining a substantial Time Element loss of its Gross Earnings and
14 **Gross Profit** as insured under the 2020/2021 Policy.

15 144. The 2020/2021 Policy includes an EXTENDED PERIOD OF LIABILITY,
16 providing in relevant part: “Upon the termination of the coverage for Gross Earnings loss under
17 4.02.01.01. this Policy will continue to pay the actual Gross Earnings loss sustained by the Insured”
18 for up to 180 days.

19 145. The 2020/2021 Policy provides LEASEHOLD INTEREST coverage, covering “the
20 actual Leasehold Interest loss incurred by the Insured (as lessee) resulting from direct physical loss
21 of or damage caused by a **Covered Cause of Loss** to a building (or structure) which is leased and
22 not owned by the Insured, as follows:

- 23 1. If the building (or structure) becomes wholly untenable or unusable and
24 the lease agreement requires continuation of the rent, the Company will pay
25 the Insured the present value of the actual rent payable for the unexpired
26 term of the lease, not including any options;

1 2. If the building (or structure) becomes partially untenable or unusable and
2 the lease agreement requires continuation of the rent, the Company will pay
3 the Insured for the present value of the proportionate amount of the actual
4 rent payable for the unexpired term of the lease, not including any
5 options[.]”

6 146. The 2020/2021 Policy provides EXTRA EXPENSE coverage, covering “the
7 reasonable and necessary Extra Expenses incurred by the Insured, during the Period of Liability,
8 to resume and continue as nearly as practicable the Insured’s normal business activities that
9 otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a
10 **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location.**”

11 147. As set forth herein, Fitness incurred Extra Expenses to resume and continue as
12 nearly as practicable its normal business activities that would otherwise be suspended due to direct
13 physical loss of or damage caused by the Coronavirus and COVID-19, costs associated with
14 altering its property to protect it from physical loss of or damage, as well as the safety of its
15 occupants, such as erecting barriers, altering air circulation, reconfiguring indoor spaces,
16 disinfecting surfaces and materials, and providing PPE to employees.

17 ***b. Special Coverages***

18 148. The 2020/2021 Policy includes numerous Special Coverages that apply to Fitness’
19 losses from the Coronavirus and COVID-19. These include the following, among others:

20 149. The 2020/2021 Policy provides CIVIL OR MILITARY AUTHORITY coverage
21 for “the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting
22 from the necessary **Suspension** of the Insured’s business activities at an Insured Location if the
23 **Suspension** is caused by order of civil or military authority that prohibits access to the **Location.**
24 That order must result from a civil authority’s response to direct physical loss of or damage caused
25 by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or
26 insured under this Policy and located within the distance of the Insured's Location as stated in the

1 Declarations.”

2 150. The Coronavirus and COVID-19 caused direct physical loss of or damage to
3 property throughout the cities, states, and provinces where Fitness’ health clubs are located, and
4 caused the deprivation of use of such property, including property within 5 miles of the Fitness
5 health clubs, giving rise to the actions of civil authority in those cities, states, and provinces, as set
6 forth herein. These orders prohibited access to the Fitness health clubs.

7 151. The 2020/2021 Policy provides CONTINGENT TIME ELEMENT coverage for
8 “the actual Time Element loss as provided by the Policy, sustained by the Insured during the Period
9 of Liability directly resulting from the necessary **Suspension** of the Insured’s business activities
10 at an Insured Location if the **Suspension** results from direct physical loss of or damage caused by
11 a **Covered Cause of Loss** to Property (of the type insurable under this Policy) at **Direct**
12 **Dependent Time Element Locations, Indirect Dependent Time Element Locations, and**
13 **Attraction Properties** located worldwide”¹²⁴

14 152. The 2020/2021 Policy defines **Direct Dependent Time Element Locations** as
15 including: “Any **Location** of a direct: customer, supplier, contract manufacturer or contract
16 service provider to the Insured;” and “Any **Location** of any company under a royalty, licensing
17 fee or commission agreement with the Insured.”

18 153. The 2020/2021 Policy defines **Attraction Properties** as: “A property within the
19 distance described in the declarations of an Insured Location that attracts customers to the
20 Insured’s business” that is “[l]ocated within 1 mile(s) of the Insured Location.”

21 154. In plain English, the 2020/2021 Policy provides coverage for Fitness’ losses if
22 certain types of nearby properties or the properties of Fitness’ direct customers or suppliers suffer
23 direct physical loss of or damage unless expressly excluded under the 2020/2021 Policy. The
24 2020/2021 Policy covers all risks of loss and does not contain any relevant exclusions for Fitness’
25 losses.

26 _____
¹²⁴ With certain geographic exclusions.

1 155. Among other things, as set forth herein, the Coronavirus and COVID-19 caused
2 direct physical loss of or damage at Locations of direct and indirect suppliers and service providers
3 to the Fitness health clubs and at properties that attract customers to the Fitness health clubs,
4 including the many business amenities and tourist attractions within a short distance of the Fitness
5 health clubs.

6 156. Additionally, as set forth herein, the Coronavirus and COVID-19 rendered such
7 properties unfit and unsafe for their normal usages, resulting in the deprivation of use of such
8 properties.

9 157. The 2020/2021 Policy provides DECONTAMINATION COSTS coverage, which
10 provides in relevant part: “If Covered Property is **Contaminated** from direct physical loss of or
11 damage caused by a **Covered Cause of Loss** to Covered Property and there is in force at the time
12 of the loss any law or ordinance regulating **Contamination** due to the actual not suspected
13 presence of **Contaminant(s)**, then this Policy covers, as a direct result of enforcement of such law
14 or ordinance, the increased cost of decontamination and/or removal of such **Contaminated**
15 Covered Property in a manner to satisfy such law or ordinance.”

16 158. The 2020/2021 Policy provides INGRESS/EGRESS coverage for “the actual Time
17 Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary
18 Suspension of the Insured’s business activities at an Insured Location if ingress or egress to that
19 Insured Location by the Insured’s suppliers, customers or employees is prevented by physical
20 obstruction due to direct physical loss of or damage caused by a **Covered Cause of Loss** to
21 property not owned, occupied, leased or rented by the Insured or insured under this Policy and
22 located within the distance of the Insured Location as stated in the Declarations.”

23 159. The Coronavirus and COVID-19 caused direct physical loss of or damage to
24 property throughout the cities, states and provinces where Fitness’ health clubs are located, and
25 caused the deprivation of use of such property, including property within 5 miles of the Fitness
26 health clubs. The areas within a 5-mile radius of the Fitness health clubs, like the rest of the cities

1 where the Fitness health clubs are located, were non-viable destinations in general, thus preventing
2 access to the Fitness health clubs.

3 160. The 2020/2021 Policy provides PROTECTION AND PRESERVATION OF
4 PROPERTY coverage, for “[t]he reasonable and necessary costs incurred for actions to
5 temporarily protect or preserve Covered Property; provided such actions are necessary due to
6 actual or imminent physical loss or damage due to a **Covered Cause of Loss** to such Covered
7 Property” and “[t]he Gross Earnings loss or Gross Profit loss sustained by the Insured for a period
8 of time not to exceed the hours listed in the Declarations prior to and after the Insured first taking
9 reasonable action for the temporary protection and preservation of Covered Property.”

10 161. Fitness undertook costly measures necessary to protect the Fitness health clubs
11 from further loss of or damage and to mitigate its damages. This included, among other things,
12 altering its property to protect it from physical loss or damage, and taking measures to protect the
13 safety of its employees and customers, including erecting barriers, altering air circulation,
14 reconfiguring indoor spaces, disinfecting surfaces and materials, and providing PPE to employees.
15 Additionally, during times of low or no occupancy at or traffic to the Fitness health clubs, to
16 mitigate its losses and to protect its property, Fitness incurred costs associated with security, fire
17 monitoring, elevator maintenance, pest control, utilities and maintenance.

18 162. No exclusions apply to Fitness’ claim.¹²⁵

19
20 *c. The 2020/2021 Policy’s Contamination Exclusion Does Not Bar Coverage Because*
21 *the Virus Deletion Endorsement Deleted Virus from the Ambit of the Exclusion*

22 163. The 2020/2021 Policy **contains** an exclusion at Section 3.03.01.01 (the
23 “Contamination Exclusion”), which excludes “**Contamination**, and any cost due to
24 **Contamination** including the inability to use or occupy property or any cost of making property
25 safe or suitable for use or occupancy, except as provided by the Radioactive Contamination
26

¹²⁵ See *supra* note 3.

1 Coverage of this Policy.”

2 164. The Contamination Exclusion is deleted in the 2020/2021 Policy by endorsement
3 (the “Virus Deletion Endorsement”) and replaced with the following exclusionary provision:
4 “**Contamination** or asbestos, and any cost due to **Contamination** or asbestos including the
5 inability to use or occupy property or any cost of making property safe or suitable for use or
6 occupancy.” See Policy Endorsement, form EDGE-219-C (01/18).

7 165. Zurich drafted the Virus Deletion Endorsement.

8 166. Fitness did not draft the Virus Deletion Endorsement.

9 167. Fitness had no role in drafting the Virus Deletion Endorsement.

10 168. The Virus Deletion Endorsement is a pre-printed form in the Zurich EDGE™ form.

11 169. The 2020/2021 Policy contains the Virus Deletion Endorsement.

12 170. Fitness did not negotiate the terms of the Virus Deletion Endorsement with Zurich.

13 171. Fitness did not negotiate the terms of the Virus Deletion Endorsement with any of
14 the Defendant Insurers.

15 172. The Defendant Insurers sold the Virus Deletion Endorsement to Fitness as part of
16 the 2020/2021 Policy.

17 173. The Virus Deletion Endorsement is added to the Policy by endorsement, and by its
18 express terms it applies to all risks located throughout the U.S. and is not limited to property
19 located in Louisiana or to a specific geographic area.¹²⁶

20 174. The Policy further provides that “[t]he titles of the various paragraphs and
21 endorsements are solely for reference and shall not in any way affect the provisions to which they
22 relate.” Thus, when the Virus Deletion Endorsement indicates that text is “deleted” from the
23 Policy and “replaced” with alternative language, such change is made to the Policy itself.

24 _____
25 ¹²⁶ The Zurich EDGE™ Form also includes other endorsements bearing the names of specific states in their titles,
26 however, unlike the Virus Deletion Endorsement, certain of those endorsements – particularly the state-titled
endorsements for New York and Connecticut – contain express language that states that the endorsement only
applies to risks located in that state. The Virus Deletion Endorsement, however, has no such language and no such
geographical limitation.

1 175. The Virus Deletion Endorsement also deletes and replaces the definitions for
2 **Contamination (Contaminated)** and **Contaminant(s)**, as follows:

- 3 b. In the 2020/2021 Policy, Zurich defined **Contamination (Contaminated)** as:
4 “Any condition of property due to the actual presence of any foreign substance,
5 impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic
6 organism, bacteria, virus, disease causing or illness causing agent, **Fungus**,
7 mold or mildew.”
- 8 c. In the 2020/2021 Policy, Zurich also defined **Contaminant(s)** as: “Any solid,
9 liquid, gaseous, thermal or other irritant, pollutant or contaminant, including
10 but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste
11 (including materials to be recycled, reconditioned or reclaimed), asbestos,
12 ammonia, other hazardous substances, **Fungus** or **Spores.**”
- 13 d. The Virus Deletion Endorsement in the 2020/2021 Policy replaces the
14 definition of **Contamination(Contaminated)** with: “Any condition of property
15 due to the actual presence of any **Contaminant(s).**”
- 16 e. The Virus Deletion Endorsement the 2020/2021 Policy replaces the definition
17 of **Contaminant(s)** with: “Any solid, liquid, gaseous, thermal or other irritant,
18 including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals,
19 waste (including materials to be recycled, reconditioned or reclaimed), other
20 hazardous substances, **Fungus** or **Spores.**”

21 176. The Virus Deletion Endorsement removes Virus from the sweep of the
22 Contamination Exclusion.

23 177. The Virus Deletion Endorsement deletes Virus from the Contamination Exclusion.

24 178. Under the 2020/2021 Policy, coverage is dictated by the policy language, and not
25 by headings and titles found in the Policy. The 2020/2021 Policy, at Section 6.21 explicitly states:
26 “The titles of the various paragraphs and endorsements are solely for reference and shall not in

1 any way affect the provisions to which they relate.”

2 179. Zurich drafted Section 6.21 of the 2020/2021 Policy.

3 180. Fitness did not draft Section 6.21 of the 2020/2021 Policy.

4 181. Fitness had no role in drafting Section 6.21 of the 2020/2021 Policy.

5 182. Section 6.21 of the 2020/2021 Policy is contained in the pre-printed Zurich
6 EDGE™ form.

7 183. The 2020/2021 Policy contains Section 6.21.

8 184. Fitness did not negotiate the terms of Section 6.21 of the 2020/2021 Policy with
9 Zurich.

10 185. Fitness did not negotiate the terms of Section 6.21 of the 2020/2021 Policy with
11 any of the Defendant Insurers.

12 186. The Defendant Insurers sold Section 6.21 of the 2020/2021 Policy to Fitness as part
13 of the 2020/2021 Policy.

14 187. The only time the word “Louisiana” appears in the Virus Deletion Endorsement is
15 in the endorsement’s title.

16 188. None of the provisions in the Virus Deletion Endorsement reference Louisiana.

17 189. None of the provisions in the Virus Deletion Endorsement state that the
18 endorsement, or any portions thereof, applies only to property risks or locations in Louisiana.

19 190. Additionally, the Virus Deletion Endorsement states that it modifies the 2020/2021
20 Policy in its entirety, providing in bolded, all capitalized lettering, “**THIS ENDORSEMENT**
21 **CHANGES THE POLICY. PLEASE READ IT CAREFULLY**” (emphasis in original).

22 191. Other endorsements to the 2020/2021 Policy, however, expressly and
23 unambiguously contain limitations that cabin those endorsements to just the specific state in their
24 title.

25 192. For example, the 2020/2021 Policy contains a New York state-titled endorsement,
26 entitled “Amendatory Endorsement – New York,” which provides “**THIS ENDORSEMENT**

1 **CHANGES THE POLICY AND APPLIES TO THOSE RISKS IN NEW YORK**” (emphasis
2 in original).

3 193. Similarly, the 2020/2021 Policy contain a Connecticut state-titled endorsement,
4 entitled “Amendatory Endorsement – Connecticut,” which provides “**THIS ENDORSEMENT**
5 **CHANGES THE POLICY AND APPLIES TO THOSE RISKS IN CONNECTICUT**”
6 (emphasis in original).

7 194. Pursuant to Section 6.21 of the 2020/2021 Policy, the word “Louisiana” shall not
8 affect the content of the Virus Deletion Endorsement.

9 195. Pursuant to Section 6.21 of the 2020/2021 Policy, the word “Louisiana” cannot be
10 used to interpret the Virus Deletion Endorsement.

11 196. Upon information and belief, Zurich has issued policies containing the Virus
12 Deletion Endorsement to policyholders who have no Insured Locations, as that term is defined in
13 Section 2.01 of the Zurich EDGE™ form, located in the state of Louisiana.

14 197. Upon information and belief, Zurich included the Virus Deletion Endorsement in
15 all policies containing the Zurich EDGE™ form that it issued in August 2020 to policyholders
16 who have no Insured Locations, as that term is defined in Section 2.01 of the Zurich EDGE™
17 form, located in the state of Louisiana.

18 198. Upon information and belief, Zurich has issued policies containing the Virus
19 Deletion Endorsement to policyholders who have no **Locations**, as that term is defined in the
20 Zurich EDGE™ form, located in the state of Louisiana.

21 199. Upon information and belief, Zurich included the Virus Deletion Endorsement in
22 all policies containing the Zurich EDGE™ form that it issued August 2020 to policyholders who
23 had no **Locations**, as that term is defined in the Zurich EDGE™ form, located in the state of
24 Louisiana.

25 200. Upon information and belief, Zurich has issued policies containing the Virus
26 Deletion Endorsement to policyholders who have provided Zurich with a Schedule of Locations,

1 pursuant to Section 2.01.01 in the Zurich EDGE™ form, that contain no locations that are located
2 in the state of Louisiana.

3 201. Upon information and belief, Zurich included the Virus Deletion Endorsement in
4 all policies containing the Zurich EDGE™ form that it issued in August 2020 to policyholders
5 who have provided Zurich with a Schedule of Locations, pursuant to Section 2.01.01 in the Zurich
6 EDGE™ form, that contain no locations that are located in the state of Louisiana.

7 202. Upon information and belief, Zurich included the Virus Deletion Endorsement in
8 all policies containing the Zurich EDGE™ form that it issued in August 2020.

9 203. Upon information and belief, Zurich included the Virus Deletion Endorsement in
10 all policies containing the Zurich EDGE™ form that it issued in August 2020 to insureds with a
11 California address listed in the policy.

12 204. The Virus Deletion Endorsement is the only endorsement in the Zurich EDGE™
13 form that addresses or mentions “Virus.”

14 205. Upon information and belief, when it sold the 2020/2021 Policy to Fitness, Zurich
15 knew that the Virus Deletion Endorsement applied policy wide and contained no geographical
16 limitation.

17 206. Upon information and belief, when it sold the 2020/2021 Policy to Fitness, Zurich
18 knew that the Virus Deletion Endorsement was not limited to only locations or risks in Louisiana.

19 207. Upon information and belief, when Zurich was faced with escalating claims and
20 lawsuits against it under the Zurich EDGE™ form, it knew that, by virtue of the Virus Deletion
21 Endorsement, the Zurich EDGE™ form did not exclude coverage for Virus.

22 208. Upon information and belief, when Zurich was faced with escalating claims and
23 lawsuits against it under the Zurich EDGE™ form, it knew that, by virtue of the Virus Deletion
24 Endorsement, the Zurich EDGE™ form did not exclude coverage for losses arising from the
25 Coronavirus or COVID-19. As a result, Zurich tried but failed to re-insert Virus back into the
26 Contamination Exclusion. In response and after it sold the 2020/2021 Policy, Zurich pivoted,

1 seeking and obtaining regulatory approval to add a geographic limitation into the Virus Deletion
2 Endorsement that expressly limited it to only locations in Louisiana.

3 209. Zurich's own regulatory filings confirm that it knew it was selling an insurance
4 product that did not exclude loss from Virus.

5 210. Zurich recently has been seeking regulatory approval for a new EDGE™ II Policy
6 form, which would re-insert Virus back into the Virus Deletion Endorsement and therefore re-
7 insert Virus into the Contamination Exclusion. At least one state regulator disapproved of the
8 form in 2020.¹²⁷

9 211. Specifically, in December of 2019, just after the emergence of the first COVID-19
10 cases in China, Zurich filed a regulatory request to modify its policy language. Buried in the edits,
11 and without reference to the significance of the change, Zurich's filing sought to add an exclusion
12 for Virus, which it sought to become effective in July 2020.

13 212. Having failed to win approval for the EDGE™ II policy form that bore the Virus
14 exclusion and reeling from the wave of COVID-19 claims and lawsuits it faced, Zurich raced back
15 to the regulators. This time, Zurich sought and obtained approval for a change to its EDGE™
16 form policy's Virus Deletion Endorsement to add a geographic limitation to the endorsement to
17 limit its application to only locations in Louisiana – a limitation that did not exist in the 2020/2021
18 Policy issued to Fitness.

19 213. The Virus Deletion Endorsement was the only one of the Edge™ policy form's
20 many endorsements that, since the emergence of the Coronavirus and COVID-19, Zurich ever
21 sought or obtained regulatory approval to amend.

22 214. In its explanatory memo, where it disclosed to the regulators what amendments to
23 the Virus Deletion Endorsement it was seeking to make, Zurich explained that it was making one
24

25 ¹²⁷ See Ex. A hereto (New York EDGE II Filing) at 2, 6 (submitted to New York on April 3, 2020; disapproved on
26 September 22, 2020). This document was retrieved from the System for Electronic Rate and Form Filing (SERFF)
created by the National Association of Insurance Commissioners (NAIC) for submitting and accessing filings.
SERFF is the official system used by most states in the U.S.

1 change – to a minor aspect of premium refunds – and (outside of attaching a redline of the proposed
2 amendments to the Virus Deletion Endorsement) failed to explain or mention that it was also
3 adding a geographical limitation to the endorsement.

4 215. Zurich’s addition of a geographic limitation to the Virus Deletion Endorsement,
5 after it and the Defendant Insurers issued the 2020/2021 Policy, demonstrates that the Virus
6 Deletion Endorsement present in the 2020/2021 Policy applies policy wide regardless of location.

7 216. Zurich’s addition of a geographic limitation to the Virus Deletion Endorsement,
8 after it and the Defendant Insurers issued the 2020/2021 Policy, demonstrates that Virus is not
9 excluded from coverage by the 2020/2021 Policy’s Contamination Exclusion.

10 217. Specifically, in the Fall of 2020, well after it began receiving claims for losses
11 sustained as a result of the Coronavirus and COVID-19 and the physical loss of or damage to
12 property that they cause, and the accompanying government closure orders (collectively, “COVID
13 Losses”) and being sued across the United States, Zurich sought and received approval for a
14 revised Louisiana endorsement to the Zurich EDGE™ form.¹²⁸ In its regulatory filing, Zurich
15 described the proposed amendment as follows:

16 Pursuant to La. Stat. § 22:885(B), Zurich North America and all affiliated companies
17 are updating Louisiana Amendatory Endorsements. **The change removes language**
18 **concerning premium refunds** attributable to mortgagees when there is a policy
19 cancellation. **The only changes are those in the above referenced code.**

20 Ex. B at 3, 13 (emphasis added).

21 218. However, in addition to removing the language concerning premium refunds and
22 without flagging the addition for the regulator, Zurich also added: “**THIS ENDORSEMENT**
23 **ONLY APPLIES TO LOCATIONS IN LOUISIANA.**” *Id.* at 14. This geographically limiting
24

25 ¹²⁸ See Ex. B hereto (Louisiana EDGE Endorsement Filing, the “Modified Louisiana Endorsement”) at 2, 6 (submitted
26 to Louisiana on August 31, 2020; approved on September 8, 2020). This document was also retrieved from SERFF.
See also Ex. C hereto (Modified Louisiana Endorsement as filed as an exhibit to the complaint in *Watson Woods
Healthcare, Inc., et al. v. Zurich Am. Ins. Co.*, No. 1:21-cv-01150 (N.D. Ill.)).

1 language is absent in the Virus Deletion Endorsement contained in the 2020/2021 Policy and in
2 other Zurich EDGE™ form policies for which Zurich has denied coverage for COVID-19 Losses
3 across the country and around the globe. It is also the only amendment to the Zurich Edge Policy
4 that Zurich has sought and received since the emergence of the Coronavirus, COVID-19 and the
5 ensuing massive COVID-19 Losses.

6 219. Zurich’s addition of the geographical limitation to the Virus Deletion Endorsement
7 in the Modified Louisiana Endorsement demonstrates that the 2020/2021 Policy’s Virus Deletion
8 Endorsement has no such geographical limitation.

9 220. Zurich’s addition of the geographical limitation to the Virus Deletion Endorsement
10 in the Modified Louisiana Endorsement is an acknowledgment by Zurich that absent its newly
11 added geographical limitation, the Virus Deletion Endorsement in the 2020/2021 Policy (which
12 lacks that geographical limitation) applies to all risks regardless of location – and not merely to
13 those located in Louisiana.

14 221. Even in the absence of the Virus Deletion Endorsement, the 2020/2021 Policy’s
15 Contamination Exclusion applies expressly to “costs” and makes no mention of “loss.”
16 Accordingly, the 2020/2021 Policy’s Contamination Exclusion does not bar coverage for any of
17 Fitness’ losses arising from the Coronavirus or COVID-19.

18 222. Upon information and belief, prior to the sale and issuance of the 2020/2021 Policy,
19 the Defendant Insurers were aware of exclusions being used in the insurance industry that
20 purported to expressly exclude loss from “pandemic” or “pandemics” (“Pandemic Exclusions”).

21 223. Upon information and belief, the Defendant Insurers were aware of the risk of an
22 infectious viral pandemic such as Middle East respiratory syndrome (“MERS”), Severe acute
23 respiratory syndrome (“SARS”) and Avian influenza prior to selling and issuing the 2020/2021
24 Policy.

25 ***d. The International Insurance Program***

26 224. The 2020/2021 Policy is part of Fitness’ **International Insurance Program.**

1 225. The 2020/2021 Policy defines International Insurance Program as: “A program
2 arrangement that is a compilation of different policies, which all have one common goal: to cover
3 the Insured as agreed to in this Policy.”

4 226. The 2020/2021 Policy provides DIFFERENCE IN CONDITIONS/DIFFERENCE
5 IN LIMITS coverage as part of the **International Insurance Program**, subject to a per
6 **Occurrence** Limit of Liability of \$100,000,000 in the 2020/2021 Policy.”

7 227. The DIFFERENCE IN CONDITIONS/DIFFERENCE IN LIMITS coverage in the
8 2020/2021 Policy provides: “The insurance under this policy applies on a Difference in Conditions
9 basis and a Difference in Limits basis when a **Specific Local Policy** is in force....”

10 228. The 2020/2021 Policy applies on a Difference in Conditions basis as follows:

11 a. “Difference in Conditions - provided there is a loss or damage where: There
12 is a **Specific Local Policy**(ies) intended to respond to such loss or damage
13 in that country; and due to the difference in its terms, including but not
14 limited to a coinsurance or average clause, does not provide coverage for
15 such loss or damage.

16 In that event, under this provision, we will pay for such loss or damage where
17 coverage is provided under the terms and conditions of this policy and when
18 the **Covered Cause of Loss** or definitions or conditions set forth under this
19 policy and its endorsements are broader in meaning or scope than those of
20 the local insurance policy(ies).”

21 229. The 2020/2021 Policy applies on a Difference in Limits basis as follows:

22 a. “Difference In Limits - provided there is a loss or damage where:
23 There is a **Specific Local Policy**(ies) intended to respond to such loss or
24 damage in that country; and such **Specific Local Policy**(ies) cover, in whole
25 or part, the same loss or damage as this policy covers.

26 In that event, under this provision, we will pay the difference between the

1 applicable **Specific Local Policy**(ies) limits and the applicable limits in this
2 policy, provided:

3 Coverage is provided under the terms and conditions of this policy; and

4 The limits under all **Specific Local Policy**(ies) have been exhausted and the
5 deductible(s) under all such policies have been applied.”

6 230. The 2020/2021 Policy defines **Specific Local Policy** as “A policy of insurance
7 issued in a country locally by any company authorized to provide insurance in that country.”

8
9 **J. The Other Policies**

10 231. Zurich has a 25% quota share of the \$500 million in limits provided by the
11 2020/2021 Policy. The ten other Defendant Insurers provide the remainder of the 2020/2021
12 Policy’s limits through policies that each issued which follow and adopt the 2020/2021 Policy.

13 232. The Travelers Policy, No. KTJ-CBB-2R41306-5-20, provides a 17.5% share of the
14 primary \$500 million in limits provided by the 2020/2021 Policy.

15 233. The IFC Policy, No. RTX20003220, provides a 10% share of the primary \$500
16 million in limits provided by the 2020/2021 Policy.

17 234. The AIG Policy, No. 044869216, provides a 10% share of the primary \$500 million
18 in limits provided by the 2020/2021 Policy.

19 235. The ACE Policy, No. GPA D42313841 009, provides an 8.5% share of the primary
20 \$500 million in limits provided by the 2020/2021 Policy.

21 236. The Westport Policy, No. NAP 2002720 02, provides a 7.5% share of the primary
22 \$500 million in limits provided by the 2020/2021 Policy.

23 237. The Allianz Policy, No. USP00080220, provides a 5% share of the primary \$500
24 million in limits provided by the 2020/2021 Policy.

25 238. The Beazley Policy, No. W2C215200101, provides a 10% share of the primary
26 \$100 million in limits provided by the 2020/2021 Policy.

239. The Tokio Policy, No. LCP6481144-02, provides a 4% share of the primary \$100

1 million in limits provided by the 2020/2021 Policy.

2 240. The Endurance Policy, No. ESP30001899200, provides a 2.5% share of the primary
3 \$100 million in limits provided by the 2020/2021 Policy.

4 241. The Homeland Policy, No. 795013237, provides a 16.5% share of the \$100 million
5 excess \$100 million layer of the limits provided by the 2020/2021 Policy.

6 242. The Chubb Bermuda Policy, No. FITNESS2008P, provides a 16.5% share of the
7 \$300 million excess \$200 million layer of the limits provided by the 2020/2021 Policy.

8 **K. Fitness' Losses**

9 243. Fitness' business derives substantially all its revenue from the fitness activities
10 occurring at its over 700 health clubs. If those health clubs are closed, Fitness earns no revenue.

11 244. From March 16, 2020 until May 18, 2020, all of Fitness' health clubs were closed.
12 Since that date, some of its health clubs have been open and others closed. Moreover, to the extent
13 Fitness' health clubs are open they are not operating at full capacity and are forced to limit their
14 hours opened and types of services provided. As such, Fitness has sustained and is sustaining a
15 substantial Time Element loss of its "gross earnings" as insured under the 2020/2021 Policy.

16 245. Gross earnings loss as covered under the 2020/2021 Policy is also occurring as is
17 Contingent Time Element Loss given the closure of Fitness' **Attraction Properties** and **Direct**
18 **Dependent Time Element Locations**, and as Civil Authority loss as a result of the government
19 orders described above.

20 246. Fitness is also incurring significant Extra Expense as insured under the 2020/2021
21 Policy in order to resume and continue as nearly as practicable Fitness' normal business activities
22 that otherwise would be necessarily suspended due to the direct physical loss of or damage to its
23 property (the health clubs) and those of its **Attraction Properties** and **Direct Dependent Time**
24 **Element Locations**.

25 247. Fitness also expects that when the calculation of its full losses is fully known,
26 additional coverages under the 2020/2021 Policy may be applicable. The foregoing is not a

1 comprehensive discussion of all potentially applicable 2020/2021 Policy coverages, terms, and
2 conditions, which are fully set forth in the 2020/2021 Policy.

3 **L. The Defendant Insurers Fail to Pay Claims**

4 248. On or about January 11, 2021 Fitness provided the Defendant Insurers notice of
5 Fitness' claims falling within the scope of the 2020/2021 Policies (the "2020/2021 Claim").

6 249. By separate letters to the Defendant Insurers on January 11, 2021, Fitness notified
7 the Defendant Insurers of, among other things, "direct physical loss of or damage to property
8 resulting in the necessary **Suspension** (as that term is defined in the Policy) of business activities
9 at all Insured Locations" as a result of "SARS-CoV2 ("Coronavirus") and the infectious disease
10 caused by the Coronavirus, COVID-19." Fitness further advised that:

11 Such loss of or damage to property occurred at and around Insured Locations as well as at
12 and around properties that attract customers to Insured Locations; gave rise to restrictive
13 governmental orders that also required closure of Insured Locations and/or forced them to
14 operate at reduced capacity; gave rise to governmental orders that also required the
15 closure of, or placed other operational limitations on, properties that attract customers to
16 Insured Locations; and rendered Insured Locations, attraction properties, and other
17 locations unsafe, unfit for their normal uses, and/or uninhabitable. Such direct physical
18 loss of or damage to property has also required the protection and preservation of
19 property from further physical loss or damage and forced Fitness to incur Extra Expense.

20 This notice also specifically pertains to loss covered under the Policy's DIFFERENCE IN
21 CONDITIONS/DIFFERENCE IN LIMITS provisions, section 5.02.34.

22 250. Over three weeks later, on February 2, 2021, McLarens, acting on behalf of the
23 Defendant Insurers, acknowledged notice of the 2020/2021 Claim by email, and attached a letter
24 indicating that McLarens had been retained by the Insurers to "gather and confirm factual
25 information sufficient to permit insurers to evaluate whether coverage is afforded under their
26 policies and to ascertain the amounts that are claimed and can be supported."

1 251. McLarens' February 2, 2021 correspondence did not identify any plan or proposed
2 actions to gather information.

3 252. Neither McLarens nor any of Defendant Insurers followed up on the February 2,
4 2021 correspondence or sought any information from Fitness with respect to the 2020/2021 Claim
5 until March 22, 2021.

6 253. On March 18, 2021, Fitness wrote the Office of the Insurance Commissioner to
7 provide notice of Fitness' intent to assert claims under Washington's Insurance Fair Conduct Act
8 ("IFCA") (the "IFCA Notice") against the Defendant Insurers with respect to the 2020/2021
9 Claim, among others.

10 254. Fitness' IFCA Notice alleged that the Defendant Insurers failed to respond to the
11 2020/2021 Claim "in any way[.]" Fitness' letter also noted that despite McLarens' February 2,
12 2021 letter, which indicated that the Defendant Insurers had engaged McLarens to "gather and
13 confirm factual information" regarding the 2020/2021 Claim, neither McLarens nor the Defendant
14 Insurers had "followed up in any manner whatsoever" and thus the Defendant Insurers "failed to
15 investigate, or even begin to investigate, the 2020/2021 Claim."

16 255. After months of ignoring Fitness' 2020/2021 Claim, the Defendant Insurers finally
17 acted after the IFCA Notice brought their sloth to the attention of Washington's Insurance
18 Commissioner. Specifically, four days after the IFCA Notice, on March 22, 2021, nearly two and
19 a half months after Fitness provided notice of the 2020/2021 Claim, McLarens finally sent a
20 reservation of rights letter and requests for information ("RFIs") concerning the 2020/2021 Claim
21 on behalf of all Defendant Insurers, except Beazley, and a separate letter and set of RFIs on behalf
22 of Beazley.

23 256. McLaren's March 22, 2021 letters averred that "[g]iven that little is known about
24 this claim at this point, Insurers note that their investigation of the claim is ongoing, and no
25 coverage determinations can be made at this time."

26 257. Despite indicating that no coverage determinations could be made, McLarens'

1 March 22, 2021 letters repeatedly stressed the “trigger language” of the Policies requiring “direct
2 physical loss of or damage to” insured property, and reserved the Defendant Insurers’ right to deny
3 coverage “to the extent” the claimed losses “were not caused by direct physical loss or damage
4 covered by the Policies.” McLarens made this argument with respect to both Fitness’ business
5 interruption losses (“without direct physical loss or damage to insured property from a Covered
6 Cause of Loss, there is no Time Element coverage under the Policies”) and with respect to Fitness’
7 losses arising from the loss of use/access to Fitness’ properties as a result of COVID-19 and the
8 resulting governmental orders (“there can be no Civil Authority or Ingress/Egress coverage unless
9 the civil authority order is issued and/our access is prevented as a direct result of ‘direct physical
10 loss of or damage’ to property[.]”)

11 258. McLarens’ March 22, 2021 letters also reserved the right to deny coverage for the
12 2020/2021 Claim based on the Contamination Exclusion contained in the Policies, without
13 mentioning that this exclusion is deleted by the Virus Deletion Endorsement.

14 259. As noted above, (1) Zurich, HDI, Travelers, ACE, Allianz, Interstate, Westport and
15 Tokio are also insurers under the 2019/2020 Policy (the “2019/2020 Insurers”); (2) Fitness
16 provided notice of claims under the 2019/2020 Policy to the 2019/2020 Insurers on or about May
17 5, 2020; and (3) on August 28, 2020, the 2019/2020 Insurers denied coverage for the 2019/2020
18 Claim alleging, among other things, that COVID-19 does not cause “direct physical loss of or
19 damage” to property, and citing the 2019/2020 Policy’s Contamination Exclusion.

20 260. There can be no doubt that the 2019/2020 Insurers intend to deny coverage for the
21 2020/2021 Claim, but have not yet done so solely for strategic reasons – namely so that they can
22 pretend to “investigate” the 2020/2021 Claim and attempt to avoid liability for their bad faith
23 conduct while steering the claim toward its preordained conclusion – the denial of the claim.

24 261. On information and belief, the Defendant Insurers that are not insurers under the
25 2019/2020 Policies (AIG, Beazley, Chubb Bermuda, Endurance and Homeland), have denied
26 coverage to all or substantially all of their policyholders seeking recovery of COVID-19 related

1 losses under property damage insurance policies.

2 262. Moreover, on information and belief, each of these Defendant Insurers has been
3 sued by multiple insureds seeking coverage for COVID-19 related losses, denied coverage in
4 connection with such claims and/or filed motions to dismiss, and taken the position that their
5 policies do not provide coverage because they allege that neither the presence of COVID-19 on a
6 policyholder's premises nor their policyholder's loss of total or partial use of their property as a
7 result of government shutdown/closure/restriction orders constitute physical loss of or damage to
8 property.

9 **FIRST CAUSE OF ACTION**

10 **(Declaratory Judgment)**

11 263. Fitness incorporates the above Paragraphs by reference.

12 264. This is a cause of action for declaratory judgment pursuant to the Uniform
13 Declaratory Judgments Act, RCW 7.24.010 *et seq.*

14 265. An actual and justiciable controversy exists between Fitness and the Defendant
15 Insurers concerning their respective rights and obligations under the 2020/2021 Policy.

16 266. As such, this Court has the authority to issue a declaratory judgment concerning the
17 respective rights and obligations of Fitness and the Defendant Insurers under the 2020/2021 Policy.

18 267. Fitness seeks a declaratory judgment declaring that the losses Fitness has suffered
19 are covered by the 2020/2021 Policy.

20 268. Fitness seeks a declaratory judgment declaring that the Defendant Insurers are
21 responsible for fully and timely paying Fitness' losses.

22
23 **SECOND CAUSE OF ACTION**

24 **(Breach of Contract)**

25 269. Fitness incorporates the above Paragraphs by reference.

26 270. Fitness paid substantial premiums for the 2020/2021 Policy and the promises of

1 coverage contained therein, and otherwise performed all of its obligations owed under those
2 policies or was excused from performance.

3 271. The Defendant Insurers have failed to pay Fitness' 2020/2021 Claims and have
4 refused to pay or otherwise honor their promises. In failing to provide coverage for Fitness'
5 insurance claim as alleged above, the Defendant Insurers breached the contract (that is, the
6 2020/2021 Policy). As a result, Fitness has suffered and continues to suffer damage in an amount
7 to be proven at trial, but currently estimated to exceed \$500 million.

8 **V. PRAYER FOR RELIEF**

9 Wherefore, Fitness prays for judgment as follows:

10 A. On the First Cause of Action, a declaratory judgment that the losses Fitness has
11 suffered are covered by the 2020/2021 Policy; and that the Defendant Insurers are
12 responsible for fully and timely paying Fitness' losses;

13 B. On the Second Cause of Action, for an award of damages in favor of Fitness in an
14 amount to be proven at trial, plus pre- and post-judgment interest at the maximum legal
15 rate, attorneys' fees, costs and disbursements for this action; and

16 C. For such other equitable and further relief as this Court may deem just and proper.
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26

1 DATED this 8th day of April, 2021.

TANENBAUM KEALE, LLP

2
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Exhibit A

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Table of Contents

User Usage Agreement Attachments

Usage Agreement [Usage Agreement.pdf](#)

Supporting Document Attachments

(ex. Supporting Document Name Attachment Name)

Explanatory Memorandum	Edge II Explanatory Memorandum.pdf
Side-By-Side Comparisons	Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf
Side-By-Side Comparisons	Redline Compare EDGE 303 Policy Changes.pdf
Side-By-Side Comparisons	Redline Compare EDGE 310 Additional Insured.pdf
Side-By-Side Comparisons	Redline Compare Edge II D 100 Domestic Declarations.pdf
Side-By-Side Comparisons	Redline Compare Edge II D 101 Global Declarations.pdf
Side-By-Side Comparisons	Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf
Side-By-Side Comparisons	Redline Compare EDGE-103-Global Healthcare Covg Form.pdf
Side-By-Side Comparisons	Redline Compare EDGE-101-Global Covg Form.pdf
Side-By-Side Comparisons	Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf
Side-By-Side Comparisons	Redline Compare Edge II D 103 Global Healthcare Declarations.pdf
Side-By-Side Comparisons	Redline Compare EDGE-100-Domestic Covg Form.pdf
Side-By-Side Comparisons	REDLINE EDGE II-233-C NY.pdf

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Filing at a Glance

Companies: American Guarantee and Liability Insurance Company
Zurich American Insurance Company
Product Name: The Zurich Edge II Program
State: New York
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Date Submitted: 04/03/2020
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Effective Date 02/01/2021
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Requested (Renewal):
Author(s): Paula Bartell
Reviewer(s): Octavia Joseph (primary)
Disposition Date: 09/22/2020
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State Status Changed: 09/22/2020

Deemer Date:

Created By: Paula Bartell

Submitted By: Paula Bartell

Corresponding Filing Tracking Number:

Filing Description:

We are submitting for your review and approval refreshed versions of our The Zurich Edge Program forms. This Program provides all risk property coverage and is meant for Large Property accounts where our insureds employ risk managers and/or professional insurance people to assist with the business of insurance. These refreshed forms will apply to existing customers currently insured under the Edge Program and to new accounts with large property characteristics most suitable for coverage under the Edge II product. Any of our existing Zurich customers that are currently insured under a Zurich product other than the Edge, will remain insured under that other Zurich product and will not be transferred to the refreshed Edge II product, unless the overall account characteristics and customer ascent indicate that moving the account to the Edge II is in the customer's and Zurich's best interests.

The Zurich Edge Program consists of four different coverage forms with corresponding declarations pages.

Company and Contact

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American Guarantee and Liability Insurance Company

CoCode: 26247

State of Domicile: New York

1299 Zurich Way

Group Code: 212

Company Type:

Schaumburg, IL 60196

Group Name:

State ID Number:

(847) 605-6000 ext. [Phone]

FEIN Number: 36-6071400

Zurich American Insurance Company

CoCode: 16535

State of Domicile: New York

1299 Zurich Way

Group Code: 212

Company Type:

Schaumburg, IL 60196

Group Name:

State ID Number:

(847) 605-6000 ext. [Phone]

FEIN Number: 36-4233459

Filing Fees

Fee Required? No

Retaliatory? No

Fee Explanation:

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

State Specific

Speed-To-Market Field: enter code "98" for Speed-To-Market filings. Enter "0" for N/A.: 0

Terrorism Exclusion Field: enter code "46-01" for filings which includes forms, rates or rules for the Terrorism Exclusion. Enter "0" for N/A.: 0

Mold (Fungi, Bacteria, Virus) Exclusion Field: enter code "46-02" for filings which includes forms, rates or rules for the Mold Exclusion. Enter "0" for N/A.: 0

On the Rate/Rule Schedule Tab, the "Add Rate Data" button must be changed to "yes" for all rating rules and rate filings in order for the appropriate fields to be completed. Please enter "Yes" for filings with the rate data fields completed and "No" for all other filings.: yes

State: New York**First Filing Company:** American Guarantee and Liability Insurance Company, ...**TOI/Sub-TOI:** 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)**Product Name:** The Zurich Edge II Program**Project Name/Number:** /43318

Correspondence Summary

Dispositions

Status	Created By	Created On	Date Submitted
Disapproved	Octavia Joseph	09/22/2020	09/22/2020

Objection Letters and Response Letters

Objection Letters

Status	Created By	Created On	Date Submitted
Pending	Octavia Joseph	09/03/2020	09/03/2020
Pending	Octavia Joseph	08/21/2020	08/21/2020
Pending	Octavia Joseph	08/11/2020	08/11/2020
Pending	Octavia Joseph	05/28/2020	05/28/2020

Response Letters

Responded By	Created On	Date Submitted
Paula Bartell	09/08/2020	09/18/2020
Paula Bartell	08/27/2020	08/27/2020
Paula Bartell	08/18/2020	08/18/2020
Paula Bartell	06/08/2020	06/08/2020

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State:

New York

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

The Zurich Edge II Program

Project Name/Number:

/43318

Disposition

Disposition Date: 09/22/2020

Effective Date (New):

Effective Date (Renewal):

Status: Disapproved

Comment: Dear Paula Bartell:

The filing is being disapproved for the following reason:

This filing is not in compliance with New York State Law and is therefore considered to be against public policy. Despite our numerous attempts to advise of the non-compliance with the Law, changes have not been made to address such coverage. As previously advised, Section 1113(a)(7) allows insurers reimbursement of expenses to respond to a violent act or threatened act and Section 3450 further explains that all such expenses are only allowed as part of a homeowners' policy or a motor vehicle policy - while an insured is engaged in the lawful use or operation of a vehicle. The captioned is a commercial filing and therefore does not meet the requirements as prescribed by the Sections of the Law.

It should be noted that we will review the matter of the competitors which appear to provide coverage as prescribe by Sections 1113(a)(7)(D) on a commercial basis.

In view of the foregoing, this filing is hereby disapproved and may not be used in New York State. If the company would like this Department to review the subject matter of this filing again, a new submission must be made in accordance with the provisions of Circular Letter No. 11 (1998) and supplements (and SERFF filing submission guidelines), addressing the issue(s) discussed above.

While the filing may also ultimately be determined to be deficient in other areas, in view of the gross failure to comply with statutory requirements, we have suspended our review of this filing, and this Disposition may not reflect all possible objections or concerns that this Department may have in connection with the captioned filing.

Very truly yours,

Linda A. Lacewell

Superintendent of Financial Services

By:

Octavia Joseph, CPCU, AINS

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Associate Insurance Examiner
 Property Bureau
 (212) 709-1541 (tel.)
 (212) 709-1570 (fax)
 Octavia.Joseph@dfs.ny.gov

Company Name:	Overall % Indicated Change:	Overall % Rate Impact:	Written Premium Change for this Program:	Number of Policy Holders Affected for this Program:	Written Premium for this Program:	Maximum % Change (where req'd):	Minimum % Change (where req'd):
American Guarantee and Liability Insurance Company	0.000%	0.000%	\$0	0	\$0	0.000%	0.000%
Zurich American Insurance Company	0.000%	0.000%	\$0	0	\$0	0.000%	0.000%

Overall Rate Information for Multiple Company Filings

Overall Percentage Rate Indicated For This Filing 0.000%

Overall Percentage Rate Impact For This Filing 0.000%

Effect of Rate Filing-Written Premium Change For This Program \$0

Effect of Rate Filing - Number of Policyholders Affected 0

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Explanatory Memorandum		Yes
Supporting Document	Highly Protected Risks		Yes
Supporting Document	Minimum Premium/Return Premium and Minimum Earned Premium Rules		Yes
Supporting Document (revised)	Side-By-Side Comparisons		Yes
Supporting Document	Side-By-Side Comparisons		Yes
Supporting Document	Side-By-Side Comparisons		Yes
Supporting Document	Side-By-Side Comparisons		Yes
Supporting Document	Property Review Standards Checklist		Yes
Supporting Document (revised)	Rates and/or Rating Plans		Yes
Supporting Document	Rates and/or Rating Plans		Yes
Supporting Document	Forced Fire Insurance Filing Compliance Questionnaire		Yes
Supporting Document	Consent-to-rate requirements		Yes

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Support for Objection 2		Yes
Form (revised)	The Zurich EDGE II Global Healthcare Policy		Yes
Form	The Zurich EDGE II Global Healthcare Policy		Yes
Form (revised)	The Zurich EDGE II Healthcare Policy		Yes
Form	The Zurich EDGE II Healthcare Policy		Yes
Form (revised)	The Zurich EDGE II Global Policy		Yes
Form	The Zurich EDGE II Global Policy		Yes
Form (revised)	The Zurich EDGE II Policy		Yes
Form	The Zurich EDGE II Policy		Yes
Form (revised)	Policy Changes		Yes
Form	Policy Changes		Yes
Form	Additional Insured		Yes
Form	Modification for Contractually Required DeductibleAmounts (CRDA)		Yes
Form	THE ZURICH EDGE II DECLARATIONS		Yes
Form	THE ZURICH EDGE II DECLARATIONS		Yes
Form	THE ZURICH EDGE II DECLARATIONS		Yes
Form	THE ZURICH EDGE II DECLARATIONS		Yes
Form	THE ZURICH EDGE II COVERAGE FORM		Yes
Form	THE ZURICH EDGE II COVERAGE FORM		Yes
Form	THE ZURICH EDGE II COVERAGE FOM		Yes
Form	THE ZURCIH EDGE II COVERAGE FORM		Yes
Form (revised)	Amendatory Endorsement - New York		Yes
Form	Amendatory Endorsement - New York		Yes
Form	Amendatory Endorsement - New York		Yes
Form	The Zurich EDGE II Multistate Revision Important Notice To Policyholders		Yes
Form	The Zurich Edge II Multistate Revision Important Notice To Policyholders		Yes
Form	The Zurich Edge II Multistate Revision Important Notice To Policyholders		Yes
Form	The Zurich Edge II Multistate Revision Important Notice To Policyholders		Yes

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Schedule	Schedule Item	Schedule Item Status	Public Access
Rate (revised)	Zurich North America Zurich Property Rating Plan - NY		Yes
Rate	Zurich North America Zurich Property Rating Plan - NY		Yes

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Objection Letter

Objection Letter Status	Pending
Objection Letter Date	09/03/2020
Submitted Date	09/03/2020
Respond By Date	09/10/2020

Dear Paula Bartell,

Introduction:

We have the following comments:

Objection 1

- Side-By-Side Comparisons (Supporting Document)
- The Zurich EDGE II Global Healthcare Policy, EDGE II-405-B , (07/20) (Form)
- The Zurich EDGE II Healthcare Policy, EDGE II-404-C, (07/20) (Form)
- The Zurich EDGE II Global Policy, EDGE II-401-C, (07/20) (Form)
- The Zurich EDGE II Policy, EDGE II-400-C, (07/20) (Form)

Comments: (a) Crisis Event - Notwithstanding the Company's response to Department's concerns, the trigger for Property coverage is as a result of loss by a covered peril. It does not appear that a violent event would effectuate coverage under a Property policy.

Objection 2

- Rates and/or Rating Plans (Supporting Document)

Comments: (a) ZPR Group Rate Derivation - It appears that captioned is in a format other than PDF. Please be advised that due to changes made by the NAIC to the SERFF PDF Pipeline, the Department requires all documents to be in PDF format. Please refer to the general instructions.

(b) We note your advice stating that this filing includes a new rating plan and is different from that which was previously filed, as such please provide a hypothetical example of the calculation of a final premium.

Conclusion:

We await your prompt reply. In the meantime, the captioned filing captioned filing is not approved for use in New York State. A substantive reply must be submitted within 7 days. If such response is not received, this file will be considered withdrawn and closed accordingly. Thereafter, to request further review of the subject matter of this filing, a new filing will be required, in accordance with the provisions of Department Circular Letter No. 5 (2009) and SERFF filing submission guidelines, addressing the issue(s) discussed above and/or included in any previous Objection Letter(s) and/or Note(s) To Filer

Please provide notification by e-mail at octavia.joseph@dfs.ny.gov when you have responded to an objection letter or sent a Note to Reviewer via SERFF. This will help expedite review of this filing. This e-mail address should not be used for any correspondence other than for notification that the company has sent correspondence through SERFF.

Sincerely,
Octavia Joseph

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Objection Letter

Objection Letter Status	Pending
Objection Letter Date	08/21/2020
Submitted Date	08/21/2020
Respond By Date	08/28/2020

Dear Paula Bartell,

Introduction:

We have the following comments:

Objection 1

- Amendatory Endorsement - New York, EDGE II-233-C NY, (07/20) (Form)

Comments: (a) As previously advised in OL dated May 28 and August 11, the appraisal condition is not in compliance with New York State Laws. Please refer to Section 3408(c) of the New York Insurance Law.

Objection 2

- THE ZURICH EDGE II COVERAGE FORM, EDGE II-100-C, (07/20) (Form)

- THE ZURICH EDGE II COVERAGE FORM, EDGE II-103-B, (07/20) (Form)

- THE ZURICH EDGE II COVERAGE FORM, EDGE II-101-C, (07/20) (Form)

- THE ZURICH EDGE II COVERAGE FORM, EDGE II-102-C, (07/20) (Form)

Comments: (a) Crisis Event Expense (Item c) - We note your advice that the captioned are filed under Line 32 of Section 1113(a) of the New York Insurance Law. Therefore, please advise which kind of insurance is Crisis Event Expenses substantially similar to.

(b) As previously advised, please note that Section 1113(a)(7)(D) applies to homeowners and personal auto as it relates to violent events. Please refer to Section 3450 for guidance.

(c) Money During Normal Business Hours - Please advise whether the companies are licensed to write Line 7 of the Section 1113(a).

Conclusion:

We await your prompt reply. In the meantime, the captioned filing is not approved for use in New York State. A substantive reply must be submitted within 7 days. If such response is not received, this file will be considered withdrawn and closed accordingly. Thereafter, to request further review of the subject matter of this filing, a new filing will be required, in accordance with the provisions of Department Circular Letter No. 5 (2009) and SERFF filing submission guidelines, addressing the issue(s) discussed above and/or included in any previous Objection Letter(s) and/or Note(s) To Filer.

Please provide notification by e-mail at octavia.joseph@dfs.ny.gov when you have responded to an objection letter or sent a Note to Reviewer via SERFF. This will help expedite review of this filing. This e-mail address should not be used for any correspondence other than for notification that the company has sent correspondence through SERFF.

Sincerely,

Octavia Joseph

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Objection Letter

Objection Letter Status	Pending
Objection Letter Date	08/11/2020
Submitted Date	08/11/2020
Respond By Date	08/18/2020

Dear Paula Bartell,

Introduction:

We have the following comments:

Objection 1

- Side-By-Side Comparisons (Supporting Document)
- Amendatory Endorsement - New York, EDGE II-233-C NY, (07/20) (Form)

Comments: (a) Please note that the Appraisal condition still does not comply with Section 3408 of the New York Insurance Law. Please revise.

(b) Please note that the captioned should highlight all changes being proposed with this submission.

Objection 2

- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-100 C, (07/20) (Form)
- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-101 C, (07/20) (Form)
- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-102 C, (07/20) (Form)
- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-103 B, (07/20) (Form)

Comments: (a) Please confirm that either one of the companies listed in this filing will populate in the <list applicable company> variable space.

Objection 3

- The Zurich EDGE II Global Healthcare Policy, EDGE II-405-B, (07/20) (Form)
- The Zurich EDGE II Healthcare Policy, EDGE II-404-C, (07/20) (Form)
- THE ZURICH EDGE II COVERAGE FORM, EDGE II-100-C, (07/20) (Form)

Comments: (a) Money During Normal Business Hours and Money In Locked Safe or Vault appear to be coverages which would fall under line 7 of Section 1113 of the New York Insurance Law, as such, please explain why the Company(ies) believe that such coverage can be offered under a Commercial Property submission.

(b)(i) We note your response that Crisis Event would fall under Line (32) "Substantially similar kind of insurance"; therefore, please advise which Line is being referred to.

(ii) Please note that pursuant to Section 1113(a)(7)(D) and 3450 of the New York Insurance Law, expenses to respond to a violent act are permitted as part of a homeowners or personal auto policy. Please confirm compliance.

(c) Notwithstanding your response advising that the changes made to the policy forms can be found in the policyholders disclosure notices, please note that such response has not address Department's concerns. As previously requested, what is the overall impact of the changes being submitted on existing coverage; given that a majority of the policy enhancements afforded would have to be elected by the insured and the corresponding premium paid in some instances.

Conclusion:

We await your prompt reply. In the meantime, the captioned filing is not approved for use in New York State. A substantive reply must be submitted within 7 days. If such response is not received, this file will be considered withdrawn and closed

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

accordingly. Thereafter, to request further review of the subject matter of this filing, a new filing will be required, in accordance with the provisions of Department Circular Letter No. 5 (2009) and SERFF filing submission guidelines, addressing the issue(s) discussed above and/or included in any previous Objection Letter(s) and/or Note(s) To Filer.

Please provide notification by e-mail at octavia.joseph@dfs.ny.gov when you have responded to an objection letter or sent a Note to Reviewer via SERFF. This will help expedite review of this filing. This e-mail address should not be used for any correspondence other than for notification that the company has sent correspondence through SERFF.

Sincerely,
Octavia Joseph

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Objection Letter

Objection Letter Status	Pending
Objection Letter Date	05/28/2020
Submitted Date	05/28/2020
Respond By Date	06/11/2020

Dear Paula Bartell,

Introduction:

We have the following comments:

Objection 1

- The Zurich EDGE II Global Healthcare Policy, EDGE II-405-B , (07/20) (Form)
- The Zurich EDGE II Healthcare Policy, EDGE II-404-C, (07/20) (Form)
- The Zurich EDGE II Global Policy, EDGE II-401-C, (07/20) (Form)
- The Zurich EDGE II Policy, EDGE II-400-C, (07/20) (Form)
- Policy Changes, EDGE II-303-B, (07/20) (Form)

Comments: (a) Notwithstanding the filing number provided under the Form Schedule, please note that we were unable to locate the SERFF filing number under which the captioned were previously accepted by this Department.

Objection 2

- Explanatory Memorandum (Supporting Document)

Comments: (a) The explanatory memorandum states that the flexibility of the Declarations allows Zurich the ability to offer a policy with built in coverages that are typically added by endorsement and that this allows Zurich to have a form that offers all coverages in one place rather than in multiple forms. Please advise whether such endorsements providing these coverages were filed with this Department; in doing so, please indicate whether there is any change in the proposed language as opposed to that which was filed in the endorsements.

(b) The Company has not made reference to the changes being proposed in the Amendatory Endorsement.

(c) We note the following: "These refreshed forms will apply to existing customers currently insured under the Edge Program"; as such, what is the overall impact on existing insureds with the changes being proposed?

Objection 3

- THE ZURCIH EDGE II COVERAGE FORM, EDGE II-102-C, (07/20) (Form)

Comments: (a) Please note that the appraisal condition must comply with the language as prescribed by Section 3408(c) of the New York Insurance Law.

(b) Crisis Event and Crisis Event Expenses: Please advise under which line of business per Section 1113(a) of the New York Insurance Law that allows for such coverage.

Objection 4

- Rates and/or Rating Plans (Supporting Document)

Comments: a) Notwithstanding the proposed rating plan, please note information as required by Exhibit RP-1 has to be provided; in doing so, please refer to the Rate Filing Sequence Checklist Detailed Instructions for guidance.

b) The Company has not provided information in support of the various proposed loss cost. Please note that all rates and factors have to be supported. Please refer to the aforementioned exhibit.

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

(c) Please explain how the proposed rating plan differ from the current rating of the existing Edge II program.

Objection 5

- Side-By-Side Comparisons (Supporting Document)

Comments: (a) We note the changes being proposed with the submission of the captioned side-by-side comparisons; however, it is unclear whether language was previously approved or not. Please provide a key for the various colors used (for example: the language in blue).

Conclusion:

We await your prompt reply. In the meantime, the captioned filing captioned filing is not approved for use in New York State. A substantive reply must be submitted within 15 days. If such response is not received, this file will be considered withdrawn and closed accordingly. Thereafter, to request further review of the subject matter of this filing, a new filing will be required, in accordance with the provisions of Department Circular Letter No. 5 (2009) and SERFF filing submission guidelines, addressing the issue(s) discussed above and/or included in any previous Objection Letter(s) and/or Note(s) To Filer.

Please provide notification by e-mail at octavia.joseph@dfs.ny.gov when you have responded to an objection letter or sent a Note to Reviewer via SERFF. This will help expedite review of this filing. This e-mail address should not be used for any correspondence other than for notification that the company has sent correspondence through SERFF.

Sincerely,

Octavia Joseph

State: New York
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

First Filing Company: American Guarantee and Liability Insurance Company, ...

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	09/08/2020
Submitted Date	09/18/2020

Dear Octavia Joseph,

Introduction:

The following information is in response to your comments.

Response 1

Comments:

We are not providing coverage for the actions described in the policy itself. We are providing coverage for the effects the action have on the use and value of the insured property - the resulting loss of use/diminution of value of the property by a covered peril, as identified in the specific coverage part. This is an extension of business interruption and time element losses which are routinely included in Property policy forms.

Removing the Crisis Event coverage would put us at a significant competitive disadvantage in New York. We have identified at least four products approved for use in New York by our competitors which include virtually identical coverage using substantially similar language. These include:

1. Liberty Mutuals Premier Property Protector, Form # PY 00 01 02 17, State filing # R2018003607, filed under Property TOI
2. FMs Crisis Management Endorsement, Form # FMG7439, State filing # R2019000991, filed under Property TOI
3. Allianz Property-Gard Pinnacle® Crisis Management Coverage, Form # 250062NY 01 13, State filing # R2017004244, filed under Property TOI
4. Novas PROPERTY ULTRA COVERAGE NOT-FOR-PROFIT ORGANIZATIONS endorsement, Form # ACP01770319, State filing # R2019001811, filed under Property TOI.

Again, we believe that Crisis Event coverage is appropriate under a Property policy. We request that you reconsider your objection to this aspect of the coverage.

Related Objection 1

Applies To:

- The Zurich EDGE II Global Healthcare Policy, EDGE II-405-B, (07/20) (Form)
- The Zurich EDGE II Healthcare Policy, EDGE II-404-C, (07/20) (Form)
- The Zurich EDGE II Global Policy, EDGE II-401-C, (07/20) (Form)
- The Zurich EDGE II Policy, EDGE II-400-C, (07/20) (Form)
- Side-By-Side Comparisons (Supporting Document)

Comments: (a) Crisis Event - Notwithstanding the Company's response to Department's concerns, the trigger for Property coverage is as a result of loss by a covered peril. It does not appear that a violent event would effectuate coverage under a Property policy.

Changed Items:

No Supporting Documents changed.

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2

Comments:

2a. - Please see the attached ZPR Group Rate Derivation.

2b. - Please see the attached New York Rating Example.

Related Objection 2

Applies To:

- Rates and/or Rating Plans (Supporting Document)

Comments: (a) ZPR Group Rate Derivation - It appears that captioned is in a format other than PDF. Please be advised that due to changes made by the NAIC to the SERFF PDF Pipeline, the Department requires all documents to be in PDF format. Please refer to the general instructions.

(b) We note your advice stating that this filing includes a new rating plan and is different from that which was previously filed, as such please provide a hypothetical example of the calculation of a final premium.

Changed Items:

Supporting Document Schedule Item Changes	
Satisfied - Item:	Support for Objection 2
Comments:	
Attachment(s):	New York Rating Example.pdf ZPR Group rate derivation for New York.pdf

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

If I can be of further assistance please do not hesitate to contact me.

Sincerely,

Paula Bartell

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State:

New York

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

The Zurich Edge II Program

Project Name/Number:

/43318

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	08/27/2020
Submitted Date	08/27/2020

Dear Octavia Joseph,

Introduction:

Thank you for discussing these issues with us.

Response 1

Comments:

Please see revised form EDGE II-233-C NY

Related Objection 1

Applies To:

- Amendatory Endorsement - New York, EDGE II-233-C NY, (07/20) (Form)

Comments: (a) As previously advised in OL dated May 28 and August 11, the appraisal condition is not in compliance with New York State Laws. Please refer to Section 3408(c) of the New York Insurance Law.

Changed Items:

State: New York
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

First Filing Company: American Guarantee and Liability Insurance Company, ...

Supporting Document Schedule Item Changes

Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	<p> Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf Redline Compare EDGE 303 Policy Changes.pdf Redline Compare EDGE 310 Additional Insured.pdf Redline Compare Edge II D 100 Domestic Declarations.pdf Redline Compare Edge II D 101 Global Declarations.pdf Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf Redline Compare EDGE-103-Global Healthcare Covg Form.pdf Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf Redline Compare Edge II D 103 Global Healthcare Declarations.pdf Redline Compare EDGE-100-Domestic Covg Form.pdf Redline Compare EDGE-101-Global Covg Form.pdf REDLINE EDGE II-233-C NY.pdf </p>
<i>Previous Version</i>	
Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	<p> <i>Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf</i> <i>Redline Compare EDGE 303 Policy Changes.pdf</i> <i>Redline Compare EDGE 310 Additional Insured.pdf</i> <i>Redline Compare Edge II D 100 Domestic Declarations.pdf</i> <i>Redline Compare Edge II D 101 Global Declarations.pdf</i> <i>Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf</i> <i>Redline Compare EDGE-103-Global Healthcare Covg Form.pdf</i> <i>Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf</i> <i>Redline Compare Edge II D 103 Global Healthcare Declarations.pdf</i> <i>Redline Compare EDGE-100-Domestic Covg Form.pdf</i> <i>Redline Compare EDGE-101-Global Covg Form.pdf</i> <i>REDLINE EDGE II-233-C NY.pdf</i> </p>
<i>Previous Version</i>	
Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	<p> <i>Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf</i> <i>Redline Compare EDGE 303 Policy Changes.pdf</i> <i>Redline Compare EDGE 310 Additional Insured.pdf</i> <i>Redline Compare Edge II D 100 Domestic Declarations.pdf</i> <i>Redline Compare Edge II D 101 Global Declarations.pdf</i> <i>Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf</i> <i>Redline Compare EDGE-103-Global Healthcare Covg Form.pdf</i> <i>Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf</i> <i>Redline Compare Edge II D 103 Global Healthcare Declarations.pdf</i> <i>Redline Compare EDGE-100-Domestic Covg Form.pdf</i> </p>

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Redline Compare EDGE-101-Global Covg Form.pdf
REDLINE EDGE II-233-C NY.pdf

Previous Version

Satisfied - Item: Side-By-Side Comparisons

Comments:

Attachment(s):

Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf
Redline Compare EDGE 303 Policy Changes.pdf
Redline Compare EDGE 310 Additional Insured.pdf
Redline Compare Edge II D 100 Domestic Declarations.pdf
Redline Compare Edge II D 101 Global Declarations.pdf
Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf
Redline Compare EDGE-103-Global Healthcare Covg Form.pdf
Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf
Redline Compare Edge II D 103 Global Healthcare Declarations.pdf
Redline Compare EDGE-100-Domestic Covg Form.pdf
Redline Compare EDGE-101-Global Covg Form.pdf
EDGE II-233-C NY Redline.pdf

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Form Schedule Item Changes

Item No.	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments	Submitted
1	Amendatory Endorsement - New York	EDGE II-233-C NY	(09/19)	END	Replaced	Previous Filing Number: ZURC-1270175-24 Replaced Form Number: EDGE-233-B (2/11)		EDGE II-233-C NY.pdf	Date Submitted: 08/27/2020 By: Paula Bartell
<i>Previous Version</i>									
1	Amendatory Endorsement - New York	EDGE II-233-C NY	(07/20)	END	Replaced	Previous Filing Number: ZURC-1270175-24 Replaced Form Number: EDGE-233-B (2/11)		EDGE II-233-C NY.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
<i>Previous Version</i>									
1	Amendatory Endorsement - New York	EDGE II-233-C NY	(09/19)	END	Replaced	Previous Filing Number: ZURC-1270175-24 Replaced Form Number: EDGE-233-B (2/11)		EDGE II-233-C NY.pdf	Date Submitted: 04/03/2020 By: Paula Bartell

No Rate/Rule Schedule items changed.

Response 2

Comments:

2(a) and (b) We have revised our form to address your concerns. Please see revised form EDGE II-233-C NY.

2(c) Yes, the companies are licensed for Burglary and Theft (1113(a)(7)) coverage (NAIC Line 26)

Related Objection 2

Applies To:

- THE ZURICH EDGE II COVERAGE FORM, EDGE II-100-C, (07/20) (Form)
- THE ZURICH EDGE II COVERAGE FORM , EDGE II-103-B, (07/20) (Form)
- THE ZURICH EDGE II COVERAGE FOM, EDGE II-101-C, (07/20) (Form)
- THE ZURCIH EDGE II COVERAGE FORM, EDGE II-102-C, (07/20) (Form)

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State:

New York

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

The Zurich Edge II Program

Project Name/Number:

/43318

Comments: (a) Crisis Event Expense (Item c) - We note your advice that the captioned are filed under Line 32 of Section 1113(a) of the New York Insurance Law. Therefore, please advise which kind of insurance is Crisis Event Expenses substantially similar to.

(b) As previously advised, please note that Section 1113(a)(7)(D) applies to homeowners and personal auto as it relates to violent events. Please refer to Section 3450 for guidance.

(c) Money During Normal Business Hours - Please advise whether the companies are licensed to write Line 7 of the Section 1113(a).

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

If I can be of further assistance please do not hesitate to contact me.

Sincerely,

Paula Bartell

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State:

New York

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

The Zurich Edge II Program

Project Name/Number:

/43318

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	08/18/2020
Submitted Date	08/18/2020

Dear Octavia Joseph,

Introduction:

Response 1

Comments:

Please see revised redlined form.

Related Objection 1

Applies To:

- Amendatory Endorsement - New York, EDGE II-233-C NY, (07/20) (Form)
- Side-By-Side Comparisons (Supporting Document)

Comments: (a) Please note that the Appraisal condition still does not comply with Section 3408 of the New York Insurance Law. Please revise.

(b) Please note that the captioned should highlight all changes being proposed with this submission.

Changed Items:

State: New York
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

First Filing Company: American Guarantee and Liability Insurance Company, ...

Supporting Document Schedule Item Changes

Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	<p> Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf Redline Compare EDGE 303 Policy Changes.pdf Redline Compare EDGE 310 Additional Insured.pdf Redline Compare Edge II D 100 Domestic Declarations.pdf Redline Compare Edge II D 101 Global Declarations.pdf Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf Redline Compare EDGE-103-Global Healthcare Covg Form.pdf Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf Redline Compare Edge II D 103 Global Healthcare Declarations.pdf Redline Compare EDGE-100-Domestic Covg Form.pdf Redline Compare EDGE-101-Global Covg Form.pdf REDLINE EDGE II-233-C NY.pdf </p>
<i>Previous Version</i>	
Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	<p> <i>Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf</i> <i>Redline Compare EDGE 303 Policy Changes.pdf</i> <i>Redline Compare EDGE 310 Additional Insured.pdf</i> <i>Redline Compare Edge II D 100 Domestic Declarations.pdf</i> <i>Redline Compare Edge II D 101 Global Declarations.pdf</i> <i>Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf</i> <i>Redline Compare EDGE-103-Global Healthcare Covg Form.pdf</i> <i>Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf</i> <i>Redline Compare Edge II D 103 Global Healthcare Declarations.pdf</i> <i>Redline Compare EDGE-100-Domestic Covg Form.pdf</i> <i>Redline Compare EDGE-101-Global Covg Form.pdf</i> <i>REDLINE EDGE II-233-C NY.pdf</i> </p>
<i>Previous Version</i>	
Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	<p> <i>Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf</i> <i>Redline Compare EDGE 303 Policy Changes.pdf</i> <i>Redline Compare EDGE 310 Additional Insured.pdf</i> <i>Redline Compare Edge II D 100 Domestic Declarations.pdf</i> <i>Redline Compare Edge II D 101 Global Declarations.pdf</i> <i>Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf</i> <i>Redline Compare EDGE-103-Global Healthcare Covg Form.pdf</i> <i>Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf</i> <i>Redline Compare Edge II D 103 Global Healthcare Declarations.pdf</i> <i>Redline Compare EDGE-100-Domestic Covg Form.pdf</i> <i>Redline Compare EDGE-101-Global Covg Form.pdf</i> </p>

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Redline Compare EDGE-101-Global Covg Form.pdf
EDGE II-233-C NY Redline.pdf

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 2

Comments:

Confirmed, either American Guarantee and Liability Insurance Company or Zurich American insurance Company will be listed in that space.

Related Objection 2

Applies To:

- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-100 C, (07/20) (Form)
- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-101 C, (07/20) (Form)
- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-102 C, (07/20) (Form)
- THE ZURICH EDGE II DECLARATIONS, EDGE II-D-103 B, (07/20) (Form)

Comments: (a) Please confirm that either one of the companies listed in this filing will populate in the <list applicable company> variable space.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Response 3

Comments:

State: New York
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318
First Filing Company: American Guarantee and Liability Insurance Company, ...

a) Section 1113(a) of the New York Insurance Law specifically states that [t]he power to do any kind of insurance against loss of or damage to property shall include the power to insure all lawful interests in such property and to insure against loss of use and occupancy, rents and profits resulting therefrom. Surely, this would include the money on the premises during business hours or locked in a safe or vault.

b)i) As noted, Section 1113(a) grants insurers the power to insure against loss of profits resulting from an insureds lawful interest in such property. Crisis Event coverage is a means of protecting the insureds profits, including the loss of use and occupancy of the property during and resulting from an event. ii) As noted under our response to (a), we believe we are in compliance with New York Insurance law, including through providing coverage explicitly allowed under Section 1113(a)(7)(D).

c) The overall impact is intended to provide the customer with many enhancements to existing coverages (for example, removal of sublimits on several Special Coverages or the option for the customer on being paid under either Gross Profits or Gross Earnings). For a customer that moves from the current form to the new filed form keeping all same coverages, our overall impact would be an enhanced coverage form broadening many coverages. That customer has an option to purchase some of the newly added coverages in the form of which some have an associated premium charge as outlined in the rating plan. The intent of the filing of the new form and rate was to align our coverages with market competition and maintain a sophisticated rate plan to provide our Large Property Customers with the flexible solutions they need.

Related Objection 3

Applies To:

- THE ZURICH EDGE II COVERAGE FORM, EDGE II-100-C, (07/20) (Form)
- The Zurich EDGE II Global Healthcare Policy, EDGE II-405-B , (07/20) (Form)
- The Zurich EDGE II Healthcare Policy, EDGE II-404-C, (07/20) (Form)

Comments: (a) Money During Normal Business Hours and Money In Locked Safe or Vault appear to be coverages which would fall under line 7 of Section 1113 of the New York Insurance Law, as such, please explain why the Company(ies) believe that such coverage can be offered under a Commercial Property submission.

(b)(i) We note your response that Crisis Event would fall under Line (32) "Substantially similar kind of insurance"; therefore, please advise which Line is being referred to.

(ii) Please note that pursuant to Section 1113(a)(7)(D) and 3450 of the New York Insurance Law, expenses to respond to a violent act are permitted as part of a homeowners or personal auto policy. Please confirm compliance.

(c) Notwithstanding your response advising that the changes made to the policy forms can be found in the policyholders disclosure notices, please note that such response has not address Department's concerns. As previously requested, what is the overall impact of the changes being submitted on existing coverage; given that a majority of the policy enhancements afforded would have to be elected by the insured and the corresponding premium paid in some instances.

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State:

New York

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

The Zurich Edge II Program

Project Name/Number:

/43318

No Rate/Rule Schedule items changed.

Conclusion:

Sincerely,

Paula Bartell

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Response Letter

Response Letter Status	Submitted to State
Response Letter Date	06/08/2020
Submitted Date	06/08/2020

Dear Octavia Joseph,

Introduction:

The following information is in response to your comments.

Response 1

Comments:

Please see the corrected prior filing number.

Related Objection 1

Applies To:

- The Zurich EDGE II Global Healthcare Policy, EDGE II-405-B, (07/20) (Form)
- The Zurich EDGE II Healthcare Policy, EDGE II-404-C, (07/20) (Form)
- The Zurich EDGE II Global Policy, EDGE II-401-C, (07/20) (Form)
- The Zurich EDGE II Policy, EDGE II-400-C, (07/20) (Form)
- Policy Changes, EDGE II-303-B, (07/20) (Form)

Comments: (a) Notwithstanding the filing number provided under the Form Schedule, please note that we were unable to locate the SERFF filing number under which the captioned were previously accepted by this Department.

Changed Items:

No Supporting Documents changed.

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Form Schedule Item Changes

Item No.	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments	Submitted
1	The Zurich EDGE II Global Healthcare Policy	EDGE II-405-B	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-130715980 Replaced Form Number: EDGE 405-A (08 16)		EDGEII405B0720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
<i>Previous Version</i>									
1	The Zurich EDGE II Global Healthcare Policy	EDGE II-405-B	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-13075980 Replaced Form Number: EDGE 405-A (08 16)		EDGEII405B0720.pdf	Date Submitted: 04/03/2020 By: Paula Bartell
2	The Zurich EDGE II Healthcare Policy	EDGE II-404-C	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-130715980 Replaced Form Number: EDGE 404-B (08 16)		EDGEII404C0720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
<i>Previous Version</i>									
2	The Zurich EDGE II Healthcare Policy	EDGE II-404-C	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-13075980 Replaced Form Number: EDGE 404-B (08 16)		EDGEII404C0720.pdf	Date Submitted: 04/03/2020 By: Paula Bartell
3	The Zurich EDGE II Global Policy	EDGE II-401-C	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-130715980 Replaced Form Number: EDGE 401-B (08 16)		EDGEII401C0720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
<i>Previous Version</i>									
3	The Zurich EDGE II Global Policy	EDGE II-401-C	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-13075980 Replaced Form Number: EDGE 401-B (08 16)		EDGEII401C0720.pdf	Date Submitted: 04/03/2020 By: Paula Bartell

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Form Schedule Item Changes

Item No.	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments	Submitted
4	The Zurich EDGE II Policy	EDGE II-400-C	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-130715980 Replaced Form Number: EDGE 400-B (08 16)		EDGEII400C0720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
<i>Previous Version</i>									
4	The Zurich EDGE II Policy	EDGE II-400-C	(07/20)	OTH	Replaced	Previous Filing Number: ZURC-13075980 Replaced Form Number: EDGE 400-B (08 16)		EDGEII400C0720.pdf	Date Submitted: 04/03/2020 By: Paula Bartell
5	Policy Changes	EDGE II-303-B	(07/20)	END	Replaced	Previous Filing Number: ZURC-130715980 Replaced Form Number: EDGE 303-A NY (08 16)		EDGEII303B0720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
<i>Previous Version</i>									
5	Policy Changes	EDGE II-303-B	(07/20)	END	Replaced	Previous Filing Number: ZURC-13075980 Replaced Form Number: EDGE 303-A NY (08 16)		EDGEII303B0720.pdf	Date Submitted: 04/03/2020 By: Paula Bartell

No Rate/Rule Schedule items changed.

Response 2

Comments:

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

(a) No we have always filed the Edge as an all encompassing form. We are trying to make the distinguishment that all coverages are in the form and then controlled by the declarations as to whether they apply on that customers policy instead of a short base form with endorsements to add the additional coverages to the policy. The only changes to the previously department approved Edge filing are shown in the red lines.

(b). Please see the attached red-line.

(c). Please see policyholder notices which will be sent to all existing policyholders when the new forms are issued at renewal

Related Objection 2

Applies To:

- Explanatory Memorandum (Supporting Document)

Comments: (a) The explanatory memorandum states that the flexibility of the Declarations allows Zurich the ability to offer a policy with built in coverages that are typically added by endorsement and that this allows Zurich to have a form that offers all coverages in one place rather than in multiple forms. Please advise whether such endorsements providing these coverages were filed with this Department; in doing so, please indicate whether there is any change in the proposed language as opposed to that which was filed in the endorsements.

(b) The Company has not made reference to the changes being proposed in the Amendatory Endorsement.

(c) We note the following: "These refreshed forms will apply to existing customers currently insured under the Edge Program"; as such, what is the overall impact on existing insureds with the changes being proposed?

Changed Items:

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Supporting Document Schedule Item Changes**Satisfied - Item:** Side-By-Side Comparisons**Comments:**

Attachment(s):

Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf
 Redline Compare EDGE 303 Policy Changes.pdf
 Redline Compare EDGE 310 Additional Insured.pdf
 Redline Compare Edge II D 100 Domestic Declarations.pdf
 Redline Compare Edge II D 101 Global Declarations.pdf
 Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf
 Redline Compare EDGE-103-Global Healthcare Covg Form.pdf
 Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf
 Redline Compare Edge II D 103 Global Healthcare Declarations.pdf
 Redline Compare EDGE-100-Domestic Covg Form.pdf
 Redline Compare EDGE-101-Global Covg Form.pdf
 REDLINE EDGE II-233-C NY.pdf

*Previous Version***Satisfied - Item:** *Side-By-Side Comparisons***Comments:**

Attachment(s):

*Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf
 Redline Compare EDGE 303 Policy Changes.pdf
 Redline Compare EDGE 310 Additional Insured.pdf
 Redline Compare Edge II D 100 Domestic Declarations.pdf
 Redline Compare Edge II D 101 Global Declarations.pdf
 Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf
 Redline Compare EDGE-103-Global Healthcare Covg Form.pdf
 Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf
 Redline Compare Edge II D 103 Global Healthcare Declarations.pdf
 Redline Compare EDGE-100-Domestic Covg Form.pdf
 Redline Compare EDGE-101-Global Covg Form.pdf
 EDGE II-233-C NY Redline.pdf*

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Form Schedule Item Changes

Item No.	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments	Submitted
1	The Zurich Edge II Multistate Revision Important Notice To Policyholders	U-PHN-EDGEII-100	(07/20)	DSC	New			EDGEIIPHN1000720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
2	The Zurich Edge II Multistate Revision Important Notice To Policyholders	U-PHN-EDGE-II-1010	(07/20)	DSC	New			EDGEIIPHN1010720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
3	The Zurich Edge II Multistate Revision Important Notice To Policyholders	U-PHN-EDGE II-102	(07/20)	DSC	New			EDGEIIPHN1020720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
4	The Zurich Edge II Multistate Revision Important Notice To Policyholders	U-PHN-EDGE II-103	(07/20)	DSC	New			EDGEIIPHN1030720.pdf	Date Submitted: 06/08/2020 By: Paula Bartell

No Rate/Rule Schedule items changed.

Response 3

Comments:

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

a) Please see revised EDGE II-233-C NY

b) This coverage falls under 1113(a)(32), "Substantially similar kind of insurance,." We are paying 1st party coverages for expenses and loss of income the insured sustains due to a narrowly defined Crisis Event which takes place at an Insured Location.

Related Objection 3

Applies To:

- THE ZURCIH EDGE II COVERAGE FORM, EDGE II-102-C, (07/20) (Form)

Comments: (a) Please note that the appraisal condition must comply with the language as prescribed by Section 3408(c) of the New York Insurance Law.

(b) Crisis Event and Crisis Event Expenses: Please advise under which line of business per Section 1113(a) of the New York Insurance Law that allows for such coverage.

Changed Items:

No Supporting Documents changed.

Form Schedule Item Changes										
Item No.	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data		Readability Score	Attachments	Submitted
1	Amendatory Endorsement - New York	EDGE II-233-C NY	(07/20)	END	Replaced	Previous Filing Number: 24	ZURC-1270175		EDGE II-233-C NY.pdf	Date Submitted: 06/08/2020 By: Paula Bartell
<i>Previous Version</i>										
1	Amendatory Endorsement - New York	EDGE II-233-C NY	(09/19)	END	Replaced	Previous Filing Number: 24	ZURC-1270175		EDGE II-233-C NY.pdf	Date Submitted: 04/03/2020 By: Paula Bartell
						Replaced Form Number: (2/11)	EDGE-233-B (2/11)			

No Rate/Rule Schedule items changed.

Response 4

Comments:

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

4a) Please see attached Exhibit RP-1.

b) Please see attached ZPR Group Rate Derivation for New York.

c) The proposed rating plan is a new rate plan that encompasses detailed risk characteristics of the insureds and differentiation of terms and coverages. This rate plan relies heavily on the in-depth underwriting and engineering analysis. It permits us to differentiate insureds from one another and provides the ability to offer greater differentiation in price, terms and conditions than the current rating plan.

Related Objection 4

Applies To:

- Rates and/or Rating Plans (Supporting Document)

Comments: a) Notwithstanding the proposed rating plan, please note information as required by Exhibit RP-1 has to be provided; in doing so, please refer to the Rate Filing Sequence Checklist Detailed Instructions for guidance.

b) The Company has not provided information in support of the various proposed loss cost. Please note that all rates and factors have to be supported. Please refer to the aforementioned exhibit.

(c) Please explain how the proposed rating plan differ from the current rating of the existing Edge II program.

Changed Items:

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Supporting Document Schedule Item Changes	
Satisfied - Item:	Rates and/or Rating Plans
Comments:	
Attachment(s):	Exhibit JDG-1 New York.pdf Exhibit RT-4 New York final.pdf New York Filing Sequence Checklist.pdf NY ZPR Exhibit RF-2.pdf NY ZPR Exhibit RT-1.pdf NY ZPR Exhibits RF 3-4.pdf ZPR Group rate derivation for New York.xlsx
<i>Previous Version</i>	
Satisfied - Item:	<i>Rates and/or Rating Plans</i>
Comments:	
Attachment(s):	<i>Exhibit JDG-1 New York.pdf</i> <i>Exhibit RT-4 New York final.pdf</i> <i>New York Filing Sequence Checklist.pdf</i> <i>NY ZPR Exhibit RF-2.pdf</i> <i>NY ZPR Exhibit RT-1.pdf</i> <i>NY ZPR Exhibits RF 3-4.pdf</i>

No Form Schedule items changed.

Rate Schedule Item Changes					
Item No.	Exhibit Name	Rule # or Page #	Rate Action	Previous State Filing Number	Date Submitted
1	Zurich North America Zurich Property Rating Plan - NY	Pages 1-112	New		06/08/2020 By: Paula Bartell
<i>Previous Version</i>					
1	<i>Zurich North America Zurich Property Rating Plan - NY</i>	<i>Pages 1-112</i>	<i>New</i>		<i>04/03/2020 By: Paula Bartell</i>

Response 5

Comments:

The Department has previously approved the product we are refreshing eff 12/14/2011. See SERFF tracking for previous approval and current forms that the red lines of this filing represent. There is not a key for the differences in color, they are all changes from current to new form and they appear in different colors as the redlines were authored by two persons partnered on the changes so their changes show up in different colors on the document.

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Related Objection 5

Applies To:

- Side-By-Side Comparisons (Supporting Document)

Comments: (a) We note the changes being proposed with the submission of the captioned side-by-side comparisons; however, it is unclear whether language was previously approved or not. Please provide a key for the various colors used (for example: the language in blue).

Changed Items:

Supporting Document Schedule Item Changes	
Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf Redline Compare EDGE 303 Policy Changes.pdf Redline Compare EDGE 310 Additional Insured.pdf Redline Compare Edge II D 100 Domestic Declarations.pdf Redline Compare Edge II D 101 Global Declarations.pdf Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf Redline Compare EDGE-103-Global Healthcare Covg Form.pdf Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf Redline Compare Edge II D 103 Global Healthcare Declarations.pdf Redline Compare EDGE-100-Domestic Covg Form.pdf Redline Compare EDGE-101-Global Covg Form.pdf REDLINE EDGE II-233-C NY.pdf
<i>Previous Version</i>	
Satisfied - Item:	<i>Side-By-Side Comparisons</i>
Comments:	
Attachment(s):	<i>Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf</i> <i>Redline Compare EDGE 303 Policy Changes.pdf</i> <i>Redline Compare EDGE 310 Additional Insured.pdf</i> <i>Redline Compare Edge II D 100 Domestic Declarations.pdf</i> <i>Redline Compare Edge II D 101 Global Declarations.pdf</i> <i>Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf</i> <i>Redline Compare EDGE-103-Global Healthcare Covg Form.pdf</i> <i>Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf</i> <i>Redline Compare Edge II D 103 Global Healthcare Declarations.pdf</i> <i>Redline Compare EDGE-100-Domestic Covg Form.pdf</i> <i>Redline Compare EDGE-101-Global Covg Form.pdf</i> <i>EDGE II-233-C NY Redline.pdf</i>

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State:

New York

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

The Zurich Edge II Program

Project Name/Number:

/43318

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

If I can be of further assistance please do not hesitate to contact me.

Sincerely,

Paula Bartell

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Form Schedule

Item No.	Schedule Item Status	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data		Readability Score	Attachments
							Previous Filing Number:	Replaced Form Number:		
1		The Zurich EDGE II Global Healthcare Policy	EDGE II-405-B	(07/20)	OTH	Replaced	ZURC-130715980	EDGE 405-A (08 16)		EDGEII405B0720.pdf
2		The Zurich EDGE II Healthcare Policy	EDGE II-404-C	(07/20)	OTH	Replaced	ZURC-130715980	EDGE 404-B (08 16)		EDGEII404C0720.pdf
3		The Zurich EDGE II Global Policy	EDGE II-401-C	(07/20)	OTH	Replaced	ZURC-130715980	EDGE 401-B (08 16)		EDGEII401C0720.pdf
4		The Zurich EDGE II Policy	EDGE II-400-C	(07/20)	OTH	Replaced	ZURC-130715980	EDGE 400-B (08 16)		EDGEII400C0720.pdf
5		Policy Changes	EDGE II-303-B	(07/20)	END	Replaced	ZURC-130715980	EDGE 303-A NY (08 16)		EDGEII303B0720.pdf
6		Additional Insured	EDGE II-310-B	(07/20)	END	Replaced	ZURC-128301394	EDGE 310-A (03 12)		EDGEII310B0720.pdf
7		Modification for Contractually Required Deductible Amounts (CRDA)	EDGE II-311-B	(07/20)	END	Replaced	ZURC-128380925	EDGE 311-A (03 12)		EDGEII311B0720.pdf
8		THE ZURICH EDGE II DECLARATIONS	EDGE II-D-100 C	(07/20)	DEC	Replaced	ZURC-127017524	EDGE- D-100-B (12 10)		EDGEIID100C0720.pdf
9		THE ZURICH EDGE II DECLARATIONS	EDGE II-D-101 C	(07/20)	DEC	Replaced	ZURC-127017524	EDGE - D-101-B (12 10)		EDGEIID101C0720.pdf

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Item No.	Schedule Item Status	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data		Readability Score	Attachments
10		THE ZURICH EDGE II DECLARATIONS	EDGE II-D-102 C	(07/20)	DEC	Replaced	Previous Filing Number:	ZURC-127017524		EDGEIID102C0720.pdf
							Replaced Form Number:	EDGE - D-102-B (12 10)		
11		THE ZURICH EDGE II DECLARATIONS	EDGE II-D-103 B	(07/20)	DEC	Replaced	Previous Filing Number:	ZURC-127017524		EDGEIID103B0720.pdf
							Replaced Form Number:	EDGE-D-103-A (12 10)		
12		THE ZURICH EDGE II COVERAGE FORM	EDGE II-100-C	(07/20)	PCF	Replaced	Previous Filing Number:	ZURC-127017524		EDGEII100C0720.pdf
							Replaced Form Number:	EDGE-100-B (12 10)		
13		THE ZURICH EDGE II COVERAGE FORM	EDGE II-103-B	(07/20)	PCF	Replaced	Previous Filing Number:	ZURC-127017524		EDGEII103B0720.pdf
							Replaced Form Number:	EDGE-103-A (12 10)		
14		THE ZURICH EDGE II COVERAGE FOM	EDGE II-101-C	(07/20)	PCF	Replaced	Previous Filing Number:	ZURC-127017524		EDGEII101C0720.pdf
							Replaced Form Number:	EDGE-101-B (12 10)		
15		THE ZURCIH EDGE II COVERAGE FORM	EDGE II-102-C	(07/20)	PCF	Replaced	Previous Filing Number:	ZURC-127017524		EDGEII102C0720.pdf
							Replaced Form Number:	EDGE-102-B (12 10)		
16		Amendatory Endorsement - New York	EDGE II-233-C NY	(09/19)	END	Replaced	Previous Filing Number:	ZURC-127017524		EDGE II-233-C NY.pdf
							Replaced Form Number:	EDGE-233-B (2/11)		
17		The Zurich EDGE II Multistate Revision Important Notice To Policyholders	U-PHN-EDGEII-100	(07/20)	DSC	New				EDGEIIPHN1000720.pdf
18		The Zurich Edge II Multistate Revision Important Notice To Policyholders	U-PHN-EDGE-II-1010	(07/20)	DSC	New				EDGEIIPHN1010720.pdf
19		The Zurich Edge II Multistate Revision Important Notice To Policyholders	U-PHN-EDGE II-102	(07/20)	DSC	New				EDGEIIPHN1020720.pdf

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State: New York**First Filing Company:** American Guarantee and Liability Insurance Company, ...**TOI/Sub-TOI:** 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)**Product Name:** The Zurich Edge II Program**Project Name/Number:** /43318

Item No.	Schedule Item Status	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data	Readability Score	Attachments
20		The Zurich Edge II Multistate Revision Important Notice To Policyholders	U-PHN-EDGE II-103	(07/20)	DSC	New			EDGEIIPHN1030720.pdf

Form Type Legend:

ABE	Application/Binder/Enrollment	ADV	Advertising
BND	Bond	CER	Certificate
CNR	Canc/NonRen Notice	DEC	Declarations/Schedule
DSC	Disclosure/Notice	END	Endorsement/Amendment/Conditions
ERS	Election/Rejection/Supplemental Applications	OTH	Other

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Rate Information

Rate data applies to filing.

Filing Method: PriorApproval

Rate Change Type: Neutral

Overall Percentage of Last Rate Revision: %

Effective Date of Last Rate Revision:

Filing Method of Last Filing:

SERFF Tracking Number of Last Filing: New Coverage Plan

Company Rate Information

Company Name:	Overall % Indicated Change:	Overall % Rate Impact:	Written Premium Change for this Program:	Number of Policy Holders Affected for this Program:	Written Premium for this Program:	Maximum % Change (where req'd):	Minimum % Change (where req'd):
American Guarantee and Liability Insurance Company	0.000%	0.000%	\$0	0	\$0	0.000%	0.000%
Zurich American Insurance Company	0.000%	0.000%	\$0	0	\$0	0.000%	0.000%

SERFF Tracking #:

ZURC-132179751

State Tracking #:

R2020001089

Company Tracking #:

43318

State:

New York

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

The Zurich Edge II Program

Project Name/Number:

/43318

Rate/Rule Schedule

Item No.	Schedule Item Status	Exhibit Name	Rule # or Page #	Rate Action	Previous State Filing Number	Attachments
1		Zurich North America Zurich Property Rating Plan - NY	Pages 1-112	New		ZPR Rating Plan Exh MRP-1 NY rev.pdf

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Supporting Document Schedules

Satisfied - Item:	Explanatory Memorandum
Comments:	
Attachment(s):	Edge II Explanatory Memorandum.pdf
Item Status:	
Status Date:	

Bypassed - Item:	Highly Protected Risks
Bypass Reason:	N/A
Attachment(s):	
Item Status:	
Status Date:	

Bypassed - Item:	Minimum Premium/Return Premium and Minimum Earned Premium Rules
Bypass Reason:	N/A
Attachment(s):	
Item Status:	
Status Date:	

Satisfied - Item:	Side-By-Side Comparisons
Comments:	
Attachment(s):	Redline Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf Redline Compare EDGE 303 Policy Changes.pdf Redline Compare EDGE 310 Additional Insured.pdf Redline Compare Edge II D 100 Domestic Declarations.pdf Redline Compare Edge II D 101 Global Declarations.pdf Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf Redline Compare EDGE-103-Global Healthcare Covg Form.pdf Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf Redline Compare Edge II D 103 Global Healthcare Declarations.pdf Redline Compare EDGE-100-Domestic Covg Form.pdf Redline Compare EDGE-101-Global Covg Form.pdf REDLINE EDGE II-233-C NY.pdf
Item Status:	
Status Date:	

Satisfied - Item:	Property Review Standards Checklist
Comments:	

State: New York
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318
First Filing Company: American Guarantee and Liability Insurance Company, ...

Attachment(s):	NY clcnr - CLCNR Ed. 08-2018.pdf NY Commercial Lines Property Insurance Form Filing Compliance Questionnaire - CLP - Copy.pdf NY Department Financial Services Review Standards For Commercial Property - CP.pdf NY Standard Fire Policy Form Filing Compliance Questionnaire - FIRE done.pdf
Item Status:	
Status Date:	

Satisfied - Item:	Rates and/or Rating Plans
Comments:	
Attachment(s):	Exhibit JDG-1 New York.pdf Exhibit RT-4 New York final.pdf New York Filing Sequence Checklist.pdf NY ZPR Exhibit RF-2.pdf NY ZPR Exhibit RT-1.pdf NY ZPR Exhibits RF 3-4.pdf ZPR Group rate derivation for New York.xlsx
Item Status:	
Status Date:	

Bypassed - Item:	Forced Fire Insurance Filing Compliance Questionnaire
Bypass Reason:	N/A
Attachment(s):	
Item Status:	
Status Date:	

Bypassed - Item:	Consent-to-rate requirements
Bypass Reason:	N/A
Attachment(s):	
Item Status:	
Status Date:	

Satisfied - Item:	Support for Objection 2
Comments:	
Attachment(s):	New York Rating Example.pdf ZPR Group rate derivation for New York.pdf
Item Status:	
Status Date:	

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Superseded Schedule Items

Please note that all items on the following pages are items, which have been replaced by a newer version. The newest version is located with the appropriate schedule on previous pages. These items are in date order with most recent first.

Creation Date	Schedule Item Status	Schedule	Schedule Item Name	Replacement Creation Date	Attached Document(s)
08/18/2020		Supporting Document	Side-By-Side Comparisons	08/27/2020	Redline Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf Redline Compare EDGE 303 Policy Changes.pdf Redline Compare EDGE 310 Additional Insured.pdf Redline Compare Edge II D 100 Domestic Declarations.pdf Redline Compare Edge II D 101 Global Declarations.pdf Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf Redline Compare EDGE-103-Global Healthcare Covg Form.pdf Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf Redline Compare Edge II D 103 Global Healthcare Declarations.pdf Redline Compare EDGE-100-Domestic Covg Form.pdf Redline Compare EDGE-101-Global Covg Form.pdf REDLINE EDGE II-233-C NY.pdf (Superceded)

State: New York **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: The Zurich Edge II Program
Project Name/Number: /43318

Creation Date	Schedule Item Status	Schedule	Schedule Item Name	Replacement Creation Date	Attached Document(s)
06/08/2020		Supporting Document	Side-By-Side Comparisons	08/18/2020	Redlie Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf Redline Compare EDGE 303 Policy Changes.pdf Redline Compare EDGE 310 Additional Insured.pdf Redline Compare Edge II D 100 Domestic Declarations.pdf Redline Compare Edge II D 101 Global Declarations.pdf Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf Redline Compare EDGE-103-Global Healthcare Covg Form.pdf Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf Redline Compare Edge II D 103 Global Healthcare Declarations.pdf Redline Compare EDGE-100-Domestic Covg Form.pdf Redline Compare EDGE-101-Global Covg Form.pdf REDLINE EDGE II-233-C NY.pdf (Superseded)
06/08/2020		Form	Amendatory Endorsement - New York	08/27/2020	EDGE II-233-C NY.pdf (Superseded)
04/03/2020		Rate	Zurich North America Zurich Property Rating Plan - NY	06/08/2020	ZPR Rating Plan Exh MRP-1 NY.pdf (Superseded)
04/03/2020		Form	Amendatory Endorsement - New York	06/08/2020	EDGE II-233-C NY.pdf (Superseded)
04/03/2020		Form	The Zurich EDGE II Global Healthcare Policy	06/08/2020	EDGEII405B0720.pdf
04/03/2020		Form	The Zurich EDGE II Healthcare Policy	06/08/2020	EDGEII404C0720.pdf
04/03/2020		Form	The Zurich EDGE II Global Policy	06/08/2020	EDGEII401C0720.pdf
04/03/2020		Form	The Zurich EDGE II Policy	06/08/2020	EDGEII400C0720.pdf
04/03/2020		Form	Policy Changes	06/08/2020	EDGEII303B0720.pdf

State: New York

First Filing Company: American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: The Zurich Edge II Program

Project Name/Number: /43318

Creation Date	Schedule Item Status	Schedule	Schedule Item Name	Replacement Creation Date	Attached Document(s)
12/05/2019		Supporting Document	Side-By-Side Comparisons	06/08/2020	Redline Compare EDGE 311 Modification for Contractually Required Deductible Amounts CRDA.pdf Redline Compare EDGE 303 Policy Changes.pdf Redline Compare EDGE 310 Additional Insured.pdf Redline Compare Edge II D 100 Domestic Declarations.pdf Redline Compare Edge II D 101 Global Declarations.pdf Redline Compare EDGE-102-Domestic Healthcare Covg Form.pdf Redline Compare EDGE-103-Global Healthcare Covg Form.pdf Redline Compare Edge II D 102 Domestic Healthcare Declarations.pdf Redline Compare Edge II D 103 Global Healthcare Declarations.pdf Redline Compare EDGE-100-Domestic Covg Form.pdf Redline Compare EDGE-101-Global Covg Form.pdf EDGE II-233-C NY Redline.pdf (Superseded)
12/05/2019		Supporting Document	Rates and/or Rating Plans	06/08/2020	Exhibit JDG-1 New York.pdf Exhibit RT-4 New York final.pdf New York Filing Sequence Checklist.pdf NY ZPR Exhibit RF-2.pdf NY ZPR Exhibit RT-1.pdf NY ZPR Exhibits RF 3-4.pdf

Exhibit B

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: Louisiana HB 407 Refund of Unearned Premium

Project Name/Number: 44283/44283

Table of Contents

User Usage Agreement

Attachments

Usage Agreement

[Usage Agreement.pdf](#)

Form Attachments

(ex. Form Name Form Number Attachment Name)

Amendatory Endorsement -
Louisiana

EDGE-219-D

[EDGE219D1020.pdf](#)

Supporting Document

(ex. Supporting Document Name Attachment Name)

Attachments

Explanatory Memorandum-P&C

[Exp Memo.pdf](#)

Redline

[REDLINEEDGE219D1020.pdf](#)

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: Louisiana HB 407 Refund of Unearned Premium

Project Name/Number: 44283/44283

Filing at a Glance

Companies: American Guarantee and Liability Insurance Company
Zurich American Insurance Company

Product Name: Louisiana HB 407 Refund of Unearned Premium

State: Louisiana

TOI: 01.0 Property

Sub-TOI: 01.0001 Commercial Property (Fire and Allied Lines)

Filing Type: Form

Date Submitted: 08/31/2020

SERFF Tr Num: ZURC-132513500

SERFF Status: Closed-Approved

State Tr Num: 792269

State Status: Approved

Co Tr Num: 44283

Effective Date: 10/01/2020

Requested (New):

Effective Date: 10/01/2020

Requested (Renewal):

Author(s): Lia Gewargis

Reviewer(s): Jessica Creel (primary), Jake Riviere

Disposition Date: 09/08/2020

Disposition Status: Approved

Effective Date (New): 10/01/2020

Effective Date (Renewal): 10/01/2020

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: Louisiana HB 407 Refund of Unearned Premium

Project Name/Number: 44283/44283

General Information

Project Name: 44283 Status of Filing in Domicile: Not Filed

Project Number: 44283 Domicile Status Comments:

Reference Organization: Reference Number:

Reference Title: Advisory Org. Circular:

Filing Status Changed: 09/08/2020

State Status Changed: 09/08/2020 Deemer Date:

Created By: Lia Gewargis Submitted By: Lia Gewargis

Corresponding Filing Tracking Number:

State TOI: 01.0 Property State Sub-TOI: 01.0001 Commercial Property (Fire and Allied Lines)

Filing Description:

Pursuant to La. Stat. § 22:885(B), Zurich North America and all affiliated companies are updating Louisiana Amendatory Endorsements. The change removes language concerning premium refunds attributable to mortgagees when there is a policy cancellation. The only changes are those in the above referenced code. The new versions will replace previously approved forms.

Company and Contact

Filing Contact Information

Lia Gewargis, Regulatory Services Analyst lia.gewargis@zurichna.com
1299 Zurich Way 847-605-1473 [Phone]
Schaumburg, IL 60196

Filing Company Information

American Guarantee and Liability Insurance Company	CoCode: 26247	State of Domicile: New York
1299 Zurich Way	Group Code: 212	Company Type:
Schaumburg, IL 60196	Group Name:	State ID Number:
(847) 605-6000 ext. [Phone]	FEIN Number: 36-6071400	

Zurich American Insurance Company	CoCode: 16535	State of Domicile: New York
1299 Zurich Way	Group Code: 212	Company Type:
Schaumburg, IL 60196	Group Name:	State ID Number:
(847) 605-6000 ext. [Phone]	FEIN Number: 36-4233459	

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: Louisiana HB 407 Refund of Unearned Premium
Project Name/Number: 44283/44283

Filing Fees

State Fees

Fee Required? Yes
 Fee Amount: \$100.00
 Retaliatory? No
 Fee Explanation:
 Per Company: Yes

Company	Amount	Date Processed	Transaction #
American Guarantee and Liability Insurance Company	\$50.00	08/31/2020 01:28 PM	183520144
Zurich American Insurance Company	\$50.00	08/31/2020 01:28 PM	183520264
EFT Total	\$100.00		

SERFF Tracking #:

ZURC-132513500

State Tracking #:

792269

Company Tracking #:

44283

State:

Louisiana

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

Louisiana HB 407 Refund of Unearned Premium

Project Name/Number:

44283/44283

Correspondence Summary

Dispositions

Status	Created By	Created On	Date Submitted
Approved	Jessica Creel	09/08/2020	09/08/2020

Amendments

Schedule	Schedule Item Name	Created By	Created On	Date Submitted
Supporting Document	Statement of Compliance (P&C Forms)	Lia Gewargis	09/04/2020	09/04/2020

Filing Notes

Subject	Note Type	Created By	Created On	Date Submitted
Statement of Compliance	Note To Filer	Jessica Creel	09/03/2020	09/03/2020
DEEMER DATE EXTENDED DUE TO COVID-19	Note To Filer	Jessica Creel	09/03/2020	09/03/2020

SERFF Tracking #:

ZURC-132513500

State Tracking #:

792269

Company Tracking #:

44283

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: Louisiana HB 407 Refund of Unearned Premium
Project Name/Number: 44283/44283

Disposition

Disposition Date: 09/08/2020
 Effective Date (New): 10/01/2020
 Effective Date (Renewal): 10/01/2020
 Status: Approved

Comment: The Louisiana Department of Insurance approves the form(s) you submitted in the referenced filing, with any applicable substitutions and/or corrections.

If you submitted a rate/rule filing in conjunction with this form filing, the Rating Division of the Office of Property and Casualty will notify you of the rate/rule approval or disapproval.

Rate data does NOT apply to filing.

Overall Rate Information for Multiple Company Filings

Overall Percentage Rate Indicated For This Filing	0.000%
Overall Percentage Rate Impact For This Filing	0.000%
Effect of Rate Filing-Written Premium Change For This Program	\$0
Effect of Rate Filing - Number of Policyholders Affected	0

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Explanatory Memorandum-P&C	Receipt Acknowledged	Yes
Supporting Document	Filing Fee - Form Filings Only	Receipt Acknowledged	Yes
Supporting Document (revised)	Statement of Compliance (P&C Forms)	Receipt Acknowledged	Yes
Supporting Document	Statement of Compliance (P&C Forms)	Replaced/Revised	Yes
Supporting Document	Redline	Receipt Acknowledged	Yes
Form	Amendatory Endorsement - Louisiana	Approved	Yes

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: Louisiana HB 407 Refund of Unearned Premium
Project Name/Number: 44283/44283

Amendment Letter

Submitted Date: 09/04/2020

Comments:
 Correct Property Statement of Compliance.

Changed Items:
No Form Schedule Items Changed.

No Rate Schedule Items Changed.

Supporting Document Schedule Item Changes	
Satisfied - Item:	Statement of Compliance (P&C Forms)
Comments:	
Attachment(s):	StatementOfComplianceProperty_44283.pdf
<i>Previous Version</i>	
Satisfied - Item:	<i>Statement of Compliance (P&C Forms)</i>
Comments:	
Attachment(s):	<i>StatementOfCompliance 44283.pdf</i>

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: Louisiana HB 407 Refund of Unearned Premium

Project Name/Number: 44283/44283

Note To Filer

Created By:

Jessica Creel on 09/03/2020 12:21 PM

Last Edited By:

Jessica Creel

Submitted On:

09/08/2020 03:48 PM

Subject:

Statement of Compliance

Comments:

Statement of Compliance

In accordance with LAC 37:XIII.10113.C (Regulation 78), a Statement of Compliance for said product(s) must accompany policy form filings. Statements of Compliance should be completed and submitted for each filing company. Statements of Compliance can be found at the following address:

<http://ia.lda.state.la.us/productmatrix/>

Please send the Commercial Property Statement of Compliance.

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: Louisiana HB 407 Refund of Unearned Premium

Project Name/Number: 44283/44283

Note To Filer

Created By:

Jessica Creel on 09/03/2020 12:18 PM

Last Edited By:

Jessica Creel

Submitted On:

09/08/2020 03:48 PM

Subject:

DEEMER DATE EXTENDED DUE TO COVID-19

Comments:

The Louisiana Department of Insurance (LDI) acknowledges receipt of the above captioned filing.

Please be advised that due to precautions taken in response to COVID-19, the LDI is hereby providing you with notice that the forty-five (45) day deemer period for this filing is now extended by an additional fifteen (15) days to sixty (60) days. This sixty (60) day extension of the deemer date is being implemented in conjunction with the time periods established in La. R.S. 22:861(B) for policy form filings and La. R.S. 22:1451(C)(1) for rate and/or rule filings. The LDI appreciates your patience during this difficult time.

SERFF Tracking #:

ZURC-132513500

State Tracking #:

792269

Company Tracking #:

44283

State: Louisiana **First Filing Company:** American Guarantee and Liability Insurance Company, ...
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: Louisiana HB 407 Refund of Unearned Premium
Project Name/Number: 44283/44283

Form Schedule

Item No.	Schedule Item Status	Form Name	Form Number	Edition Date	Form Type	Form Action	Action Specific Data		Readability Score	Attachments
							Previous Filing Number:	Replaced Form Number:		
1	Approved 09/08/2020	Amendatory Endorsement - Louisiana	EDGE-219-D	10 20	END	Replaced	684787	EDGE-219-C		EDGE219D1020.pdf

Form Type Legend:

ABE	Application/Binder/Enrollment	ADV	Advertising
BND	Bond	CER	Certificate
CNR	Canc/NonRen Notice	DEC	Declarations/Schedule
DSC	Disclosure/Notice	END	Endorsement/Amendment/Conditions
ERS	Election/Rejection/Supplemental Applications	OTH	Other

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State:

Louisiana

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name:

Louisiana HB 407 Refund of Unearned Premium

Project Name/Number:

44283/44283

Supporting Document Schedules

Satisfied - Item:	Explanatory Memorandum-P&C
Comments:	
Attachment(s):	Exp Memo.pdf
Item Status:	Receipt Acknowledged
Status Date:	09/08/2020

Satisfied - Item:	Filing Fee - Form Filings Only
Comments:	Acknowledged.
Attachment(s):	
Item Status:	Receipt Acknowledged
Status Date:	09/08/2020

Satisfied - Item:	Statement of Compliance (P&C Forms)
Comments:	
Attachment(s):	StatementOfComplianceProperty_44283.pdf
Item Status:	Receipt Acknowledged
Status Date:	09/08/2020

Satisfied - Item:	Redline
Comments:	
Attachment(s):	REDLINEEDGE219D1020.pdf
Item Status:	Receipt Acknowledged
Status Date:	09/08/2020

SERFF Tracking #:

ZURC-132513500

State Tracking #:

792269

Company Tracking #:

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State:

Louisiana

First Filing Company:

American Guarantee and Liability Insurance Company, ...

TOI/Sub-TOI:

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Product Name:

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Superseded Schedule Items

Please note that all items on the following pages are items, which have been replaced by a newer version. The newest version is located with the appropriate schedule on previous pages. These items are in date order with most recent first.

Creation Date	Schedule Item Status	Schedule	Schedule Item Name	Replacement Creation Date	Attached Document(s)
08/31/2020	Replaced/Revised 09/08/2020	Supporting Document	Statement of Compliance (P&C Forms)	09/04/2020	StatementOfCompliance 44283.pdf (Superseded)

**Zurich North America
Explanatory Memorandum**

Pursuant to La. Stat. § 22:885(B), Zurich North America and all affiliated companies are updating Louisiana Amendatory Endorsements. The change removes language concerning premium refunds attributable to mortgagees when there is a policy cancellation. The only changes are those in the above referenced code. The new versions will replace previously approved forms.

- 960098 Louisiana Changes - Cancellation And Nonrenewal
- EDGE219D Amendatory Endorsement - Louisiana
- EDGEII219ELA Amendatory Endorsement - Louisiana
- EM3091BLA Louisiana Changes - Cancellation And Nonrenewal
- EM3942B Louisiana Changes - Cancellation and Nonrenewal
- F2404D Louisiana Amendatory Rider
- FRP8266 Louisiana Amendatory Endorsement
- HBIS61LA Louisiana Changes
- PPP1171 Louisiana Changes
- UAAM243DLA Louisiana Changes
- UCIM267CLA Louisiana Changes
- UCR573CLA Louisiana Amendatory Endorsement
- UFIB2035DLA Louisiana Amendatory Rider
- UFIB2039DLA Louisiana Amendatory Rider
- UFIB2055CLA Louisiana Amendatory Rider
- ULPR1119CLA Lenders Property Reporting Policy Louisiana Amendatory Endorsement
- UMPP1116CLA Louisiana Amendatory Endorsement
- UPL612ELA Amendatory Endorsement Louisiana
- USI117DLA Louisiana Changes - Cancellation and Nonrenewal
- USII119CLA Louisiana Changes - Cancellation and Nonrenewal
- UUMB291ELA Louisiana Amendatory Endorsement
- UZBR0500DLA Louisiana Changes - Cancellation

Amendatory Endorsement - Louisiana



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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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THIS ENDORSEMENT ONLY APPLIES TO LOCATIONS IN LOUISIANA.

1. SECTION III – PROPERTY DAMAGE, C. EXCLUSIONS, paragraph 3.03.01.01 is deleted in its entirety and replaced by the following:
 - 3.03.01.01. **Contamination** or asbestos, and any cost due to **Contamination** or asbestos including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.
2. SECTION III – PROPERTY DAMAGE, C. EXCLUSIONS, paragraph 3.03.03.03 is deleted in its entirety and replaced by the following:
 - 3.03.03.03 Any weapon of war or of mass destruction employing biological or chemical warfare, atomic fission, atomic fusion, radioactive force or radioactive material, regardless of who commits the act.
3. Section VI-GENERAL POLICY CONDITIONS, CANCELLATION/NON-RENEWAL is deleted in its entirety and replaced with the following::

If this Policy is cancelled, the Company will return any premium refund due. The cancellation will be effective even if the Company has not made or offered a refund.

1. If the first Named Insured cancels, the refund will not be less than 90% of the pro rata unearned premium, rounded to the next higher whole dollar. The refund will be returned within 30 days after the effective date of cancellation.

~~We will send the refund to the first Named Insured and any mortgagee that has provided us with written notice of the percentage of the premium being funded with the mortgagee's own funds. The percentage of the unearned premium attributable to the mortgagee shall be returned to the mortgagee and the percentage of the unearned premium attributable to the first Named Insured shall be returned to the first Named Insured.~~

2. If we cancel, the refund will be pro rata and we will send the refund to the first Named Insured

If we cancel a policy that has been in effect for fewer than 60 days and is not a renewal of a policy we issued, we will give written notice to the **First Named Insured** at least:

1. 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
2. 60 days before the effective date of cancellation, if we cancel for any other reason.

If we cancel a policy that has been in effect for 60 days or more, or is a renewal of a policy we issued, we will give written notice to the **First Named Insured** at least:

1. 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
2. 30 days before the effective date of cancellation, if we cancel for any other reason.

Cancellation of a policy in effect more than 60 days will be based on one of the following reasons:

1. Nonpayment of premium.
2. Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or presenting a claim under the policy.
3. Activities or omissions on the part of the named insured change or increase any hazard insured against.
4. Change in the risk, which increases the risk of loss after coverage has been issued or renewed.
5. Determination by the Commissioner (of Insurance) that the continuation of the policy would jeopardize the solvency of the insurer or place the insurer in violation of the law.
6. Violation or breach of policy terms or conditions by the Insured.
7. Other approved reasons.

If we elect not to renew the policy, we will mail or deliver written notice of nonrenewal to the **First Named Insured** at least 60 days before its expiration date, or its anniversary date if it is a policy written for a term of more than one year or with no fixed expiration date. The notice will include the insured's loss run information for the period the policy has been in force, not to exceed three years.

4. SECTION VI – GENERAL POLICY CONDITIONS, CONCEALMENT, MISREPRESENTATION OR FRAUD is deleted in its entirety and replaced by the following:

This Policy will be canceled in any case of fraud by any Insured as it relates to this Policy at any time. It will also be canceled if any Insured, at any time, intentionally conceals or misrepresents a material fact, with the intent to deceive concerning:

1. This Policy;
2. The Covered Property;
3. The interest in the Covered Property; or
4. A claim under this Policy.

5. Section VI-GENERAL POLICY CONDITIONS, LOSS CONDITIONS, SUBROGATION is amended by the addition of the following:

The Company will be entitled to recovery only after the insured has been fully compensated for the loss or damage sustained, including expenses incurred in obtaining full compensation for the loss or damage.

6. Section VI-GENERAL POLICY CONDITIONS, LOSS CONDITIONS, APPRAISAL is deleted in its entirety.

7. The following is deleted from SECTION VI – GENERAL POLICY CONDITIONS, SETTLEMENT OF CLAIMS, Loss Payment:

The Company has reached agreement on the amount of loss; or

and replaced by the following:

The Company has reached agreement on a portion of or the total amount of loss; or

8. SECTION VI – GENERAL POLICY CONDITIONS, LOSS CONDITIONS, SUIT AGAINST THE COMPANY, is deleted in its entirety and replaced by the following:

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No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless the Insured has fully complied with all the provisions of this Policy. Legal action must be started within (24) twenty-four months after the date of direct physical loss or damage to Covered Property or to other property as set forth herein.

9. The following is deleted from SECTION VI –GENERAL POLICY CONDITIONS, VALUATION:

Any reference to “ the most functionally equivalent “ shall be replaced with “of like kind and quality”.

10. SECTION II – DECLARATIONS, Time Specifications, is deleted in its entirety and replaced by the following:

2.03.10. Time Specifications: As follows:

EARTH MOVEMENT Occurrence	168 hours
NAMED STORM Occurrence	72 hours
Cancellation for nonpayment of premium	10 days
Cancellation for any other reason	60 days

11. The following is deleted from SECTION VII - DEFINITIONS

Contamination(Contaminated) - Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, **Fungus**, mold or mildew.

and replaced by the following:

Contamination(Contaminated) - Any condition of property due to the actual presence of any **Contaminant(s)**.

12. The following is deleted from SECTION VII – DEFINITIONS:

Contaminant(s) - Any solid, liquid, gaseous, thermal or other irritant, pollutant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), asbestos, ammonia, other hazardous substances, **Fungus** or **Spores**.

And replaced with the following:

Contaminant(s) - Any solid, liquid, gaseous, thermal or other irritant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), other hazardous substances, **Fungus** or **Spores**.

All other terms, conditions and limitations of this Policy remain unchanged.



Amendatory Endorsement - Louisiana

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3. Section VI-GENERAL POLICY CONDITIONS, CANCELLATION/NON-RENEWAL is deleted in its entirety and replaced with the following::

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2. If we cancel, the refund will be pro rata and we will send the refund to the first Named Insured

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4. Change in the risk, which increases the risk of loss after coverage has been issued or renewed.
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6. Violation or breach of policy terms or conditions by the Insured.
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Exhibit C

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Amendatory Endorsement - Louisiana



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