

FILED DATE: 3/16/2022 4:42 PM 2022CH02329

Chancery Division Civil Cover Sheet  
General Chancery Section

(12/01/20) CCCH 0623

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

EBNB 70 PINE OWNER RESTAURANT, LLC,  
\_\_\_\_\_  
Plaintiff  
v.  
FIREMAN'S FUND INSURANCE COMPANY,  
\_\_\_\_\_  
Defendant

2022CH02329

Case No: \_\_\_\_\_

CHANCERY DIVISION CIVIL COVER SHEET  
GENERAL CHANCERY SECTION

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| 0007 <input type="checkbox"/> General Chancery                | 0021 <input type="checkbox"/> Quo Warranto                                    |
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| 0015 <input type="checkbox"/> Equitable Lien                  | 0050 <input type="checkbox"/> Internet Take Down Action (Compromising Images) |
| 0016 <input type="checkbox"/> Interpleader                    | <input type="checkbox"/> Other (specify) _____                                |

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Firm No. 44486  
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
CHANCERY DIVISION

**2022CH02329**

EBNB 70 PINE OWNER RESTAURANT,  
LLC,

Plaintiff,

v.

FIREMAN'S FUND INSURANCE  
COMPANY,

Defendant.

Case No. \_\_\_\_\_

Jury Trial Demanded

**COMPLAINT**

Plaintiff EBNB 70 Pine Owner Restaurant, LLC ("Plaintiff"), by its undersigned counsel, hereby submits its Complaint against Defendant, Fireman's Fund Insurance Company, ("Defendant"), and in support thereof, alleges as follows:

**I. NATURE OF ACTION**

1. This is an action for declaratory judgment and breach of contract arising out of the refusal of Defendant, a multi-billion dollar business, to live up to its promise to its policyholder, Plaintiff. Defendant promised to pay for, in exchange for premiums paid, physical loss of or damage to and related business interruption losses and expenses under an "all risk" insurance policy.

2. Plaintiff owns and operates Crown Shy, a restaurant and bar located on the ground floor of a historic high-rise building located at 70 Pine Street, New York, New York 10005.

3. Plaintiff, and Crown Shy restaurant plus 70 Pine OPS, LLC are Named Insureds listed in the insurance policy issued to EBNB 70 Pine Owner Restaurant, LLC by Defendant. 70 Pine Ops, LLC is the entity that hires and manages the employees who work for Plaintiff's restaurant and bar operations.

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4. Crown Shy’s location in the Art Deco building in the heart of the financial district of New York city, along with its fine dining reputation, made it a popular destination for lunches and dinners for those who work in the financial district and visitors to New York.

5. This all changed in 2020 with the COVID-19 pandemic. The pandemic had an unprecedented and catastrophic effect on Plaintiff’s property and business operations, causing tremendous financial losses.

6. The havoc wrought by the pandemic is well-documented. According to the Centers for Disease Control (“CDC”), to date, COVID-19 has infected more than thirty-three million people and killed OVER 965,000 in the United States. Plaintiff’s business operations in New York City have not been spared from this tragedy.

7. Beyond the human toll, the pandemic has had a devastating impact on the economies of the state, county and city of New York where Plaintiff’s business operations are located, causing widespread physical losses, property damage and loss for many businesses, including Plaintiff’s. As a result of the pandemic, Plaintiff has been prevented from conducting normal business operations and deprived of the use of its business premises. Even when permitted to open, as a result of the spread of COVID-19, Plaintiff was unable to operate and its business locations were unusable for over one year without substantial physical alterations and other protective measures. Further, the presence of COVID-19 and SARS-CoV-2 within Plaintiff’s insured property also caused direct physical loss of or damage to properties (or both) by transforming the property from usable and safe into property that is unsatisfactory and prohibited for use, uninhabitable, unfit for their intended function, and extremely dangerous and potentially deadly for humans.

8. SARS-CoV-2 and COVID-19 caused direct physical loss of or damage to the property (or both) to Plaintiff’s business operations, including to Plaintiff’s covered businesses and surrounding properties, by altering the physical conditions of the property so that they were no longer safe or fit for occupancy or use, and/or permitted to be used. Specifically, SARS-CoV-2 attaches itself to surfaces and properties, thereby producing physical change in the condition of

the surfaces and properties—from safe and touchable to unsafe and deadly. SARS-CoV-2 and COVID-19 also physically alter and damage the air within buildings such that the air is no longer safe to breathe.

9. It is often the case that the source of a covered property insurance loss can ultimately be cleaned, removed, contained, or remediated, yet that does not mean that there was no “loss of or damage to” property in the first place. This was true for mold, odors, smoke, fumes, and asbestos fibers that triggered coverage in other cases and the same is true here. That is especially significant when it comes to business interruption losses, where even modest impacts to property lead to covered losses. The coronavirus can be disinfected or cleaned, but it still causes a distinct and demonstrable alteration to property. That is what has triggered coverage for Plaintiff’s significant losses here.

10. Because of the physical alterations of its property, including the air, airspaces, and surfaces in its properties, which rendered the insured property incapable of performing its essential functions, Plaintiff sustained direct physical loss of or damage to its property (or both). The disruption of normal business operations resulted in the severe and substantial losses more particularly described below.

11. To date, Plaintiff has suffered millions of dollars in loss and damage, all of which remains unreimbursed by Defendant despite being covered under the terms of the policy purchased.

12. Plaintiff is yet another victim of the insurance industry’s universal denial and rejection of its coverage obligations for COVID-19 business interruption losses. Defendant has left Plaintiff with no choice but to seek judicial intervention to enforce the obligations owed to it by Defendant pursuant to the terms and conditions of the “all risk” policy (the “All Risk Policy”). The All Risk Policy is attached hereto as **Exhibit A**, and is incorporated herein by reference.

13. Prior to the pandemic, Plaintiff purchased an “all risk” insurance policy from Defendant, which included coverage for direct physical loss of or damage to properties (or both)

for business interruption exactly like that caused by the COVID-19 pandemic and/or closure orders.

14. The All Risk Policy specifically insures against business interruption losses, losses occasioned by government orders, decontamination costs, extra expense payments to continue business as nearly normal as practicable, loss as a result of communicable disease, among many other covered losses. Plaintiff has experienced losses that fall within all of these coverages. For this broad, “all risk” business interruption protection, Plaintiff paid significant premium.

15. Plaintiff’s purchase of this broad “all risk” coverage created a reasonable expectation that the coverage will apply if Plaintiff has a business interruption resulting from unforeseen and fortuitous events, such as the physical damage to and inability to use its property or a forced government shutdown of its businesses as a result of a pandemic, terrorist attacks or other large-scale natural disaster. In particular, Plaintiff could not foresee the physical damage produced by the COVID-19 pandemic or the government orders shuttering businesses as a result of the physical damage produced by the COVID-19 pandemic. After faithfully paying a high premium for “all risk” coverage, business owner-insured Plaintiff, who was forced to modify its business operations from these unprecedented events, had a reasonable expectation that its “all risk” business interruption insurance would apply and protect it. Plaintiff had such expectations and sought coverage from Defendant for the losses.

16. Despite the coverage provided and the expectations of Plaintiff, who paid a significant premium for it, Defendant preemptively denied claims submitted by businesses for “all risk” coverage during the COVID-19 pandemic. In violation of state law, Defendant denied coverage without conducting an investigation or considering supporting evidence. Through its conduct, Defendant wrongfully breached its obligations under the All Risk Policy and left Plaintiff without the insurance benefits it paid for, relied upon, and desperately needed during the business closures and interruptions and to remediate its ongoing property damage.

17. The insurance industry has repeatedly and falsely warned courts and the media that COVID-19-related claims will bankrupt insurers and force them to raise premiums and restrict

coverages – but they have reaped enormous profits by denying covered claims and have continued to raise premiums despite refusing to uphold their coverage obligations.

18. Plaintiff seeks a declaration that the presence, statistically certain presence, or suspected presence of the SARS-CoV-2 virions in or on Plaintiff's property and the ubiquitous presence of the virions throughout Plaintiff's covered business operations, causes direct physical loss or damage to property within the meaning of those phrases as used in the All Risk Policy sufficient to trigger coverage under the All Risk Policy, including under the coverages for Business Income, Extra Expense, and various Additional Coverages and Coverage Extensions.

19. Plaintiff also seeks a declaration that various orders issued by governmental officials on account of the presence of persons infected with and/or suffering from COVID-19 and the presence of SARS-CoV-2 in places of business and gathering prevented Plaintiff from accessing and using its insured property to conduct its ordinary business activities and deprived Plaintiff of its property and the functionality of its property, thereby constituting "physical loss or damage" to property within the meaning of that phrase as used in the All Risk Policy sufficient to trigger coverage in favor of Plaintiff under the All Risk Policy, including under the coverages for Business Income, Extra Expense, and various Additional Coverages and Coverage Extensions.

20. Plaintiff seeks a further declaration that the terms of the All Risk Policy obligate Defendant to pay for physical loss or damage to the premises described in the Location Schedule attached to the All Risk Policy, and all Business Interruption loss, and Extra Expense incurred, including those expenses that would not have been incurred if there had not been "risk of physical loss or damage" or "physical loss or damage" to covered property, including expenses to temporarily continue as close to normal the conduct of the insured premises, and all incurred and to be incurred losses falling within the scope of Additional Coverages and Coverage Extensions.

21. Plaintiff also seeks monetary damages for Defendant's breach of its obligations under the All Risk Policy as declared by the Court and to pay Plaintiff's losses in full including, without limitation, loss mitigation expenses.

## II. PARTIES

22. Plaintiff, EBNB 70 Pine Owner Restaurant, LLC, is a limited liability company with its principal place of business located at 70 Pine Street, 10<sup>th</sup> Floor Office, New York, New York 10005.

23. At all relevant times, Plaintiff was and still is in the business of operating Crown Shy restaurant and bar located on the ground floor of the high-rise building located at 70 Pine Street, New York, New York.

24. Additional Named Insured, 70 Pine Ops, LLC, was and is a limited liability company located at the same address as Plaintiff, and it employed numerous individuals pre-pandemic to keep Plaintiff's operations running on a daily basis.

25. Plaintiff's premises is insured under the All-Risk Policy.

26. At all relevant times, Defendant, was and continues to be an insurance company with its principal place of business located at 225 W. Washington Street, Suite 1800, Chicago, Illinois 60606. Defendant sells policies of insurance, including property and business interruption insurance policies.

27. At all relevant times Defendant was, and presently is, duly authorized to transact the business of insurance in Illinois and is in fact transacting the business of insurance in Illinois.

## III. JURISDICTION AND VENUE

28. This Court has jurisdiction over this action because Defendant's principal place of business is in Chicago, Illinois.

29. Venue in this Court is proper because Defendant is located and conducts business in Cook County, Illinois.

## IV. THE COVID-19 GLOBAL PANDEMIC

30. In December 2019, during the term of the All Risk Policy, an outbreak of illness known as COVID-19 caused by a novel coronavirus formally known as SARS-CoV-2 was first identified in Wuhan, Hubei Province, China. In an unprecedented event that has not occurred in

more than a century, a pandemic of global proportions then ensued, with the illness and virus quickly spreading to Europe and then to the United States.

31. In 2020, COVID-19 decimated the economies of New York where Plaintiff's business operations are located.

32. COVID-19 is highly transmissible and spreads rapidly. For example, as of March 1, 2020 there were 87,137 confirmed COVID-19 cases across the globe.<sup>1</sup> That number increased to over 432,000,000 confirmed cases as of February 2022.<sup>2</sup> According to the CDC, to date, COVID-19 has infected more than seventy-eight million people and killed over 940,000 in the United States.<sup>3</sup>

33. At the pandemic's peak, over 4,000 Americans were perishing per day from COVID-19.<sup>4</sup> A substantial number of Americans are still dying daily, with surges of cases and new and ever more contagious variants of the Coronavirus occurring throughout the U.S.<sup>5</sup> COVID-19 was the third-leading cause of death in this country in 2020, surpassed only by heart disease and cancer.<sup>6</sup>

34. COVID-19 can be transmitted in several ways, including via human-to-human contact, airborne viral particles, particularly within enclosed properties like the insured locations, and touching surfaces or objects that have SARS-CoV-2 virions on them.

35. COVID-19 spreads easily from person to person and person to surface or object. Research has revealed that COVID-19 primarily is spread by small, physical droplets expelled from the nose or mouth when an infected person talks, yells, sings, coughs, or sneezes. A person

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<sup>1</sup> See <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200301-sitrep-41-covid-19.pdf>.

<sup>2</sup> See <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/> (last visited February 27, 2022).

<sup>3</sup> See <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited February 27, 2022).

<sup>4</sup> Eugene Garcia, Lisa Marie Pane and Thalia Beaty, *U.S. tops 4,000 daily deaths from coronavirus for 1st time*, AP NEWS, Jan. 8, 2021, <https://apnews.com/article/us-coronavirus-death-4000-daily-16c1f136921c7e98ec83289942322ee4> (last visited February 27, 2022).

<sup>5</sup> See [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailydeaths](https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths) (last visited February 27, 2022).

<sup>6</sup> See <https://www.cdc.gov/nchs/products/databriefs/db427.htm> (last visited February 27, 2022).



who sneezes can release a cloud of SARS-CoV-2-containing droplets that can span as far as 23 to 27 feet. The CDC has stated that SARS-CoV-2 is most likely to spread when people are within six feet of each other, but has also recognized that SARS-CoV-2 may spread from an infected person who is more than six feet away or who has left a given space. Further, according to the CDC, longer exposure time likely increases exposure risk to COVID-19.

36. Making matters worse, pre-symptomatic and asymptomatic individuals can also transmit COVID-19.<sup>7</sup> Over 40% of all infections occur from people without any symptoms.<sup>8</sup> Thus, even individuals who appear healthy and present no identifiable symptoms of the disease have and continue to spread the virus by breathing, speaking, or touching objects and surfaces. These activities deposit SARS-CoV-2 virions in the air and on surfaces rendering the air and surfaces changed from their previous condition. According to the World Health Organization (the “WHO”), the incubation period for COVID-19, *i.e.*, the time between exposure to SARS-CoV-2 and symptom onset, can be up to 14 days. Other studies suggest that the period may be up to 21 days.

37. According to a report in The New York Times, “[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough.”<sup>9</sup> And one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles an hour.<sup>10</sup>

38. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have become carriers. In addition, studies from the CDC and others estimate that 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic”

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<sup>7</sup> See <https://www.nature.com/articles/s41591-020-0869-5> (last visited February 27, 2022).

<sup>8</sup> See *id.*; <https://www.nbcnews.com/health/healthnews/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481> (last visited February 27, 2022).

<sup>9</sup> See <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html> (last visited February 27, 2022).

<sup>10</sup> See <https://www.nationalgeographic.com/science/article/coronavirus-covid-sneeze-fluid-dynamics-in-photos> (last visited February 27, 2022).

carriers). Pre-symptomatic and asymptomatic carriers are likely unaware that they are spreading SARS-CoV-2 by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that the majority of transmission is attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

39. Although these virus-containing droplets are very small, they are still physical, tangible objects that can travel and attach to other surfaces, “such as tables, doorknobs, and handrails,” and cause harm, loss, and damage, and physically alter the property and/or the integrity of the property. Viruses, themselves, are microscopic and made up of genetic material surrounded by a protein shell<sup>11</sup>, but they are capable of being observed and can attach themselves to other things they encounter. When droplets and viruses contact objects, they alter those objects, although not in way perceptible by the naked human eye. These virus-containing droplets physically exist ubiquitously in the community and building in which Plaintiff operates.

40. According to the CDC and the WHO, a person may become infected by touching these surfaces or objects that have SARS-CoV-2 on them, and then touching his or her mouth, eyes, or nose. And, when an uninfected person touches a surface containing SARS-CoV-2, the uninfected person may transmit COVID-19 to another person, by touching and infecting a second surface, which is subsequently touched by that other person. The CDC has thus recommended certain physical and structural remedial measures for businesses to put into place in order to limit transmission and continued surface alteration.

41. Numerous scientific studies have reported that SARS-CoV-2 can survive and persist within the air and on surfaces and buildings after infected persons are present at a given location. Studies have found that SARS-CoV-2 remains active and dangerous in the air in properties and on common surfaces, including plastic, stainless steel, glass, wood, cloth, ceramics, rubber, and even money.<sup>12</sup> All of these materials are widely present at Plaintiff’s insured location

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<sup>11</sup> See <https://rockedu.rockefeller.edu/component/what-are-viruses-made-of/> (last visited February 27, 2022).

<sup>12</sup> See, e.g., [https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext) (last visited February 27, 2022);

and subject to touch by the multitudes of people visiting Plaintiff's restaurant daily. For example, in Plaintiff's restaurant, Crown Shy, the cookware and flatware are stainless steel; tables and chairs used in the restaurant are composed of plastic and/or wood; the menus are plastic-coated; restaurant windows and doors, and glasses and stemware are glass-based; cloth table coverings and napkins are used in the restaurant; ceramic plates are used; and the takeout containers are cardboard.

42. Generally being in enclosed spaces where large numbers of people gather in close proximity for social and business purposes, especially highly trafficked ones like Plaintiff's, are reportedly particularly susceptible to circumstances favorable to the spread of SARS-CoV-2 virions. An article published in April 2020 analyzed a case study of three families (families A, B, and C) who had eaten at an air-conditioned restaurant in Guangzhou, China.<sup>13</sup> One member of family A, patient A1, had recently traveled from Wuhan, China. On January 24, 2020, that family member ate at a restaurant with families A, B, and C. By February 5, 2020, 4 members of family A, 3 members of family B, and 2 members of family C had become ill with COVID-19. The only known source for those affected persons in families B and C was patient A1 at the restaurant. Moreover, a study detected SARS-CoV-2 inside the heating and ventilation ("HVAC") system connected to hospital rooms of sick patients. The study found SARS-CoV-2 in ceiling vent openings, vent exhaust filters, and ducts located as much as 56 meters (over 183 feet) from the rooms of the sick patients.<sup>14</sup>

43. Additionally, the CDC has stated that "there is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away"

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4659470/> (last visited February 27, 2022); <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last visited February 27, 2022); <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html> (last visited February 27, 2022).

<sup>13</sup> See [https://wwwnc.cdc.gov/eid/article/26/7/20-0764\\_](https://wwwnc.cdc.gov/eid/article/26/7/20-0764_) (last visited February 27, 2022).

<sup>14</sup> Karolina Nissen, et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, 10 NATURE SCI. REPORTS 19589 (Nov. 11, 2020), <https://doi.org/10.1038/s41598-020-76442-2> (last visited February 27, 2022).

and infected people who entered the space shortly after the person with COVID-19 had left.<sup>15</sup> A published systematic review of airborne transmission of SARS-CoV-2 corroborated the CDC's concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and physically reduce potential spread of SARS-CoV-2 in properties like the insured locations.<sup>16</sup>

44. The CDC has recommended "ventilation interventions" to help reduce exposure to the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such as with high-efficiency particulate air ("HEPA") fan/filtration systems).<sup>17</sup> These and other remedial measures must be implemented, at high cost and extra expense, to reduce the amount of the SARS-CoV-2 present in a given space and to make property safe for its intended use. These remedial measures demonstrate direct physical loss of or damage to interior spaces like the insured locations even where no virus is present.

45. The proposition advanced by the insurance industry that an indoor space containing the infectious SARS-CoV-2 virions can be made safe and fit for its functional and intended use even though the virions remain in the air and circulating throughout indoor environments either affixed to property or in an aerosol capacity because the virions can be removed by routine surface cleaning is false.

46. A number of studies have also demonstrated that SARS-CoV-2 is "much more resilient to cleaning than other respiratory viruses so tested."<sup>18</sup> The measures that must be taken

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<sup>15</sup> CDC, *How COVID-19 Spreads* (last updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited February 27, 2022).

<sup>16</sup> 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 ENV'T RSCH. 110612, 1-6 (Feb. 2021), [https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss\\_sd\\_all](https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all) (last visited February 27, 2022).

<sup>17</sup> CDC, *Ventilation in Buildings* (last updated Feb. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2> (last visited February 27, 2022).

<sup>18</sup> *Id.*

to remove the Coronavirus from property are significant and far beyond ordinary or routine cleaning.

47. Efficacy of decontaminating agents for viruses is based on a number of factors, including the initial amount of virus present, contact time with the decontaminating agent, dilution, temperature, and pH, among many others. Detergent surfactants are not recommended as single agents, but rather in conjunction with complex disinfectant solutions.<sup>19</sup>

48. Additionally, it can be challenging to accurately determine the efficacy of decontaminating agents. The toxicity of an agent may inhibit the growth of cells used to determine the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces.<sup>20</sup>

49. In order to be effective, cleaning and decontamination procedures require strict adherence to protocols not necessarily tested under “real life” or practical conditions, where treated surfaces or objects may not undergo even exposure or adequate contact time.<sup>21</sup> Studies of coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.<sup>22</sup>

50. When considering disinfection and decontamination, the safety of products and procedures must be considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials, flammability, and potential for allergen exposure.<sup>23</sup>

51. Moreover, the aerosolized SARS-CoV-2 particles and virions cannot be eliminated by routine cleaning. Cleaning surfaces in an indoor space will not remove the aerosolized SARS-CoV-2 particles and virions from the air that people can inhale and develop COVID-19 – no more

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Joon Young Song, et al., *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome Coronavirus Infection*, 47 *INFECTION & CHEMOTHERAPY* 4, 252-5 (2015), <https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252> (last visited February 27, 2022).

<sup>23</sup> *Id.*

than cleaning friable asbestos particles that have landed on a surface will remove the friable asbestos particles suspended in the air that people can inhale.

52. Moreover, given the ubiquity and pervasiveness of SARS-CoV-2, no amount of cleaning or ventilation intervention will prevent a person infected and contagious with the virus from entering an indoor space like the insured properties and exhaling millions of additional particles and virions into the air, further: (a) filling the air with the aerosolized SARS-CoV-2 virions that can be inhaled, sometimes with deadly consequences; and (b) depositing SARS-CoV-2 particles and virions on surfaces, physically altering and transforming those surfaces into disease-transmitting fomites.

53. Even as vaccines to protect against COVID-19 have recently become more available, distribution remains uneven in the United States. Effective control of the disease's spread since the pandemic began has necessarily relied on measures designed to reduce human-to-human and surface-to-human exposure. Similarly, the governmental orders closing or severely limiting use of non-essential business premises like Plaintiff's business premises are one of the most common modes of preventing transmission of the disease because, among other things, the orders reduce the size and frequency of social gatherings and the physical use of properties.

#### **V. COVID-19 AND SARS-CoV-2 CAUSE DIRECT PHYSICAL LOSS AND DAMAGE**

54. Virologists, scientists, and researchers all have confirmed that SARS-CoV-2 remains viable and is active on physical surfaces and in the air. The persistent presence of the deadly, viable SARS-CoV-2 on surfaces and in the air damages buildings and properties rendering them damaged, lost, unsafe, unfit, and uninhabitable for normal occupancy or use.

55. Specifically, the scientific community has confirmed that SARS-CoV-2 and COVID-19 alter the conditions of properties and buildings such that the premises are physically damaged and no longer safe and habitable for normal use. In this regard, SARS-CoV-2 and COVID-19 cause direct physical loss of or damage to buildings and properties (or both).

56. This direct physical loss of or damage to property (or both) results because SARS-CoV-2 has a corporeal existence and is contained in respiratory droplets. Once expelled from infected individuals, these droplets land on, attach, and adhere to surfaces and objects and physically changes these once safe surfaces to “fomites.” Fomites are objects, previously safe to touch, that now serve as a vehicle and mechanism for transmissions of an infectious agent. Fomites are the result of SARS-CoV-2 physically changing air and property, making it unsafe. This physical alteration and change makes physical contact with those previously safe indoor spaces and inert surfaces (*e.g.*, walls, handrails, desks) unsafe and potentially deadly. This represents a physical change in the affected enclosed space, surface or object, causing severe property loss and damage. Affected properties are unusable, dangerous, and unsafe until the COVID-19-related conditions are fully rectified.

57. Medical and scientific research also has established that SARS-CoV-2 and COVID-19 spread through indoor airborne transmission. When individuals carrying SARS-CoV-2 breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air, accumulate in buildings, and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. According to experts, buildings and properties accumulate the airborne SARS-CoV-2 indoors, which plays a significant role in community transmission. As a result, SARS-CoV-2 and COVID-19 cause direct physical loss of or damage to properties and buildings (or both) by changing the physical condition of air in buildings from safe and breathable to unsafe and dangerous.

58. Further, airborne viral particles are known to be able to spread into a facility’s HVAC system, leading to transmission of SARS-CoV-2 from person to person. The Environmental Protection Agency (“EPA”) has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with air filtration

and outdoor air. Accordingly, COVID-19 and SARS-CoV-2 cause direct physical loss of or damage to property (or both) by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended functions, dangerous, and unsafe.

59. Fomites, droplets, droplet nuclei, and aerosols containing SARS-CoV-2 are not theoretical, informational, or incorporeal, but rather are dangerous physical objects that have a tangible existence. Their presence within an insured property causes direct physical loss of or damage to property (or both) by necessitating remedial measures that include without limitation repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, removal of fomites by certified technicians, and other measures. The presence of COVID-19 and SARS-CoV-2 within an insured property also causes direct physical loss of or damage to properties (or both) by transforming property from usable and safe into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

60. The presence of SARS-CoV-2 on property similarly creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the property by touching a doorknob, table, or handrail, will carry those droplets on their hands and deposit them elsewhere in the property, causing additional damage and loss. Property impacted by SARS-CoV-2 is just as dangerous as property impacted by fire or fumes or vapors (if not more), and all such damaged property is equally incapable of producing revenues. Like the impact of fire, smoke, or noxious fumes, the impact of potentially fatal COVID-19 constitutes direct physical loss of or damage to property (or both).



61. The direct physical loss of or damage to property (or both) described in this section has occurred at Plaintiff's insured location, leading to losses covered by the All Risk Policy. Plaintiff had to take action to secure and preserve its properties and its business operations. To the extent that the All Risk Policy requires structural alteration to establish "physical damage," which Plaintiff disputes, such alteration has occurred and rendered the insured properties incapable of performing their essential functions. Plaintiff's losses are ongoing and are likely to increase substantially given the length and ultimate severity of the outbreak and the government response. Moreover, to the extent that the All Risk Policy requires a permanent loss of property to establish "physical loss," which Plaintiff disputes, such permanent loss has occurred.

#### **VI. REACTIONS AT THE NATIONAL, STATE, AND LOCAL LEVELS**

62. Federal and state governments tried to slow the spread of COVID-19 and protect people, property, and businesses. Unprecedented directives were issued, requiring certain businesses to close and requiring residents to remain in their homes unless performing "essential" activities.

63. On January 31, 2020, the United States Department of Health and Human Services declared that a public health emergency existed nationwide because of confirmed cases of COVID-19 in the United States.

64. The earliest two confirmed deaths in the United States due to COVID-19 occurred in early and mid-February 2020.

65. On March 11, 2020, the WHO officially declared the COVID-19 outbreak a worldwide pandemic.

66. Beginning in early March 2020, U.S. state and local governments issued orders suspending or severely curtailing the operations of all "non-essential" or "high risk" businesses in

response to the virus and/or risks created by virus. This included businesses such as those owned and operated by Plaintiff.

67. On or about March 2020, states, counties, and cities where Plaintiff's insured business is located declared states of emergency to help prepare for broader spread of COVID-19.

68. On or about March 2020, states where Plaintiff's insured business is located issued orders requiring business to operate their premises and conduct their operations on those premises so as to reduce their customer occupancy by a significant percentage to create space between customers.

69. On or about March 2020, states, counties, and cities where Plaintiff's insured business is located issued orders closing or restricting access to numerous business locations insured under the Policy.

70. These orders, together with similarly construed orders issued by government officials, effectively curtailed Plaintiff's on-premises operations, resulting in an interruption of business operations and an immediate Business Income and Extra Expense loss.

71. Because of the danger posed by COVID-19 and its spread as described above, Plaintiff also determined that closure was necessary to slow the spread of COVID-19 as a result of infected persons on the property or from those who would enter the property.

72. Other states, and county and city officials have issued similar orders throughout the United States referencing physical property loss or damage or imminent threatened physical property loss or damage from the virus.

73. Prior to the issuance of any of the orders curtailing or suspending non-essential business operations, hundreds of individuals would be present in Plaintiff's business location on a daily basis.

74. These individuals were on-site diners, who would spend a substantial period of time in the restaurant consuming a meal and often enjoying the company of others in celebratory settings involving conversation, laughing, and close interaction among individuals.

75. Given the number of infected individuals, it is a virtual certainty that infected individuals, both symptomatic and asymptomatic, were present in Plaintiff's business on a daily basis even prior to the issuance of the governmental orders and would have been present daily in Plaintiff's business in an ever-increasing number in the absence of the issuance of those orders.

76. Exhalation by these infected individuals when coughing, sneezing, talking, laughing, and even simply breathing created respiratory droplets and aerosolized particles containing the SARS-CoV-2 virus that were inhaled into the noses, mouths, and lungs of other individuals and deposited on surfaces within Plaintiff's business where later contact by uninfected individuals undoubtedly resulted in transmission of SARS-CoV-2 to those individuals.

77. Each visit by an individual, whether symptomatic or asymptomatic, infected with SARS-CoV-2 resulted in either the actual or an imminent threat of deposition and transmission of the SARS-CoV-2 into the air and onto the surfaces within Plaintiff's business.

78. For the reasons described above, COVID-19 and the governmental orders caused a total or partial prohibition of access to Plaintiff's business as well as partial or total interruption of Plaintiff's business operations. The direct physical loss of or damage to property (or both) caused by COVID-19 and/or the orders and the further direct physical loss of or damage to property (or both) threatened by COVID-19 have combined to devastate Plaintiff's business operations.

## **VII. PLAINTIFF SUFFERED AND CONTINUES TO SUFFER COVERED LOSSES**

79. The SARS-CoV-2 virus is a covered cause of loss, because it is a risk of physical loss or damage, and not otherwise excluded under the All Risk Policy.

80. The issuance of the above-referenced closure orders by state, county, and city officials is a covered cause of loss because it is a risk of physical loss or damage, and not otherwise excluded under the All Risk Policy.

81. Whether the SARS-CoV-2 virus and/or the above-referenced orders caused Plaintiff's losses and expenses presents a factual question that is inappropriate for resolution at the motion to dismiss stage.

82. The SARS-CoV-2 virus and/or the above-referenced orders issued by state, county, and city officials have directly impacted Plaintiff's business, which do not qualify as essential businesses. The damage and far-reaching restrictions and prohibitions on the activities that can be conducted at Plaintiff's business premises, and restoration efforts necessary to rid the premises of COVID-19, have been catastrophic for Plaintiff's business – interrupting operations so pervasively as to effectively force Plaintiff to close, thereby enduring a prolonged curtailment of earnings that threatens Plaintiff's survival.

83. Plaintiff's operations were suspended in order for Plaintiff to repair the insured properties, including restoration efforts to rid the premises of and attempt to protect against further physical loss and/or damage SARS-CoV-2. Plaintiff suffered a complete and permanent loss of use of its business premises and the premises were unfit for use for their intended purposes.

84. Plaintiff's business was frequented by hundreds of individuals a day, including patrons, employees, vendors, and other individuals carrying SARS-CoV-2 and COVID-19. In addition to breathing SARS-CoV-2 and COVID-19 into the air, these individuals touched countless surfaces in Plaintiff's insured premises, including walls, furniture, doors, tables, and other surfaces on the floors, restrooms, and other areas on the premises.

85. The hundreds of individuals that frequent Plaintiff's business daily, ranging from patrons to vendors, are carrying or otherwise exposed to SARS-CoV-2 and COVID-19 and would have been in contact with each other, furniture, doors, and other surfaces on the floors, restrooms, and other areas on the premises.

86. Plaintiff has thus been forced to pay decontamination costs, covered under the All Risk Policy, to repair the physical damage caused by COVID-19. It became clear that Plaintiff's insured premises were (and continue to be) inoperable and unusable without the alterations necessary to protect the safety of its visitors, guests, and employees. These decontamination costs also were necessary to comply with the emergency directives, laws, and/or ordinances promulgated by governmental authorities and the CDC, among others. None of these costs would have been incurred but for the impacts of the COVID-19 pandemic and the resulting closure orders.

87. In addition to decontamination costs, Plaintiff has incurred significant losses and extra expense in nearly all aspects of its business. Again, none of these expenses would have been incurred but for the impacts of the COVID-19 pandemic and the resulting closure orders.

88. The SARS-CoV-2 virus and/or the above-referenced closure orders issued by state, county, and city officials have caused physical loss or damage to business Plaintiff depends on to attract customers to its insured business premises.

89. Plaintiff's business is within five miles of many other restaurants, cafes, bars, parks, and hotels that have also suffered and continue to suffer physical damage due to the SARS-CoV-2 virus and/or closure orders. Many of these restaurants, cafes, bars, parks, and hotels almost certainly suffered alteration of their premises and contents as a result of the virtually certain and ubiquitous presence of SARS-CoV-2 due to gathering of people affected by COVID-19, whether symptomatic or asymptomatic.

90. The SARS-CoV-2 virus and/or the above-referenced closure orders have further caused Plaintiff to suffer loss of earnings directly resulting from physical loss or damage to property at the premises of Plaintiff's suppliers, customers, and/or contract service providers.

#### **VIII. THE INSURANCE COVERAGE PURCHASED BY PLAINTIFF**

91. Plaintiff and its business location is protected by the All Risk Policy sold to Plaintiff by Defendant for the time period March 5, 2020 to March 5, 2021.

92. Plaintiff is a Named Insured under the All Risk Policy. Other Named Insureds are Crown Shy and 70 Pine Ops, LLC, the limited liability company that hired and managed employees of Plaintiff.

93. Plaintiff paid all premiums due to Defendant to purchase the All Risk Policy and otherwise complied with all applicable terms and conditions of coverage.

94. The All Risk Policy provides a maximum limit of liability with various sublimits and time limits. Claims are subject to a deductible per occurrence.

95. Shortly after Plaintiff ceased business operations, Plaintiff's losses far exceeded the deductible under the All Risk Policy.

96. The policy Defendant sold to Plaintiff is an "all-risk" insurance policy. An "all-risk" policy provides the broadest insurance coverage available to policyholders for protection of their property interests, including protection against disruption to their business operations. Under an all-risk policy, the insured's burden to obtain coverage for a loss is very limited—the insured needs only to show that its loss occurred and that the loss was fortuitous. The burden then shifts to the insurer to show that a clear, express, and unambiguous exception or exclusion in the policy bars or limits coverage.

97. The damages, Business Interruption loss, Extra Expense, and other losses incurred and continuing to be incurred by Plaintiff are covered under the All Risk Policy sold to Plaintiff by Defendant.

98. Plaintiff gave timely notice of its claims and has satisfied, is excused from performing, or Defendant has waived or is estopped from insistence upon performance of, all conditions of the All Risk Policy, including but not limited to payment of required premiums and provision of timely notice of claim.

**IX. MULTIPLE COVERAGES ARE TRIGGERED UNDER THE ALL RISK POLICY**

99. In addition to triggering the policy’s “all risk” Property Damage and Business Income coverages, Plaintiff’s claims also trigger multiple “Additional Coverages” and “Coverage Extensions” provided under the All Risk Policy.

**A. Plaintiff sustained losses and expenses caused by the suspension of its operations resulting from covered direct physical loss of or damage to Plaintiff’s insured premises.**

100. The All Risk Policy contains an obligation to pay for direct physical loss of or physical damage to Covered Property caused by or resulting from a Covered Cause of Loss.

101. The All Risk Policy does not define direct physical loss of or physical damage.

102. The presence of the disjunctive “or” in “physical loss or damage to property” means that coverage is triggered if *either* a physical loss of property or damage to property occurs.

103. SARS-CoV-2 or SARS-CoV-2-containing fomites, respiratory droplets, and droplet nuclei physically alter the air and airspaces they enter and the property to which they adhere, attach or come in contact, including without limitation, by physically altering the surfaces of those properties and by making air inhalation or physical contact with those previously safe, inert air and air spaces inside the properties and the properties dangerous.

104. When individuals carrying SARS-CoV-2 breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous as SARS-CoV-2 physically alters the air. Air inside buildings that was previously safe to breathe, but can no longer safely be breathed due to SARS-CoV-2 and COVID-19, has undergone a physical alteration.

105. In addition, the presence of SARS-CoV-2 and COVID-19, including but not limited to SARS-CoV-2 droplets or droplet nuclei on solid surfaces and in the air at insured property, also has caused and will continue to cause direct physical damage to physical property and ambient air at the premises. SARS-CoV-2, a physical entity, has attached and adhered to Plaintiff's insured property and by doing so, altered the property. This has directly resulted in loss of use of the property and the properties are unusable without substantial physical alteration.

106. Given published reports about SARS-CoV-2 and the outbreak of the pandemic, it is likely that persons who were pre-symptomatic or asymptomatic and unknowingly carrying SARS-CoV-2, including but not limited to patrons, visitors, and employees were present at Plaintiff's business premises immediately before the closure orders were issued.

107. SARS-CoV-2 droplets have been conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to furniture, doors, floors, bathroom facilities, and restaurant supplies, and into the air and HVAC systems at Plaintiff's business premises, causing damage and alteration to physical property and ambient air at the premises. Aerosolized SARS-CoV-2 has entered the air in Plaintiff's business premises.

108. Plaintiff sustained actual loss, including but not limited to substantial sums spent to remediate physical damage to its property, such as for cleaning and disinfecting premises, repairing



or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of the SARS-CoV-2 on its properties. Such remediation measures have been ongoing because of the continuous and repeated recurrence of SARS-CoV-2 while the pandemic persists.

109. Pursuant to the “Communicable Disease – Property Damage” additional coverage, the Policy expressly covers, among other things, “the reasonable and necessary costs incurred . . . for the: (a) Cleanup, removal and disposal of . . . communicable disease from insured property.” By providing for the “cleanup, removal and disposal of . . . communicable disease,” the All Risk Policy explicitly recognizes that communicable disease, like COVID-19, physically damages property.

110. In addition to physical damage, Plaintiff’s insured premises also have suffered direct physical loss. The on-site SARS-CoV-2, fomites, and respiratory droplets or droplet nuclei containing SARS-CoV-2 have attached to and deprived, partially and totally, Plaintiff of the physical use of its insured premises by making them unsafe and unusable and thereby lost.

111. These direct physical losses to Plaintiff’s insured premises include without limitation the rendering of its insured property from a satisfactory state to a state dangerous and/or unsatisfactory for use because of the fortuitous presence and effect of SARS-CoV-2, fomites, and respiratory droplets or droplet nuclei directly upon the property.

112. These direct physical losses to Plaintiff’s insured premises include without limitation the direct physical loss of the ability to use Plaintiff’s premises for their primary functions.

113. Plaintiff also has incurred substantial costs in an attempt to mitigate the suspension of its business operations, including without limitation expenses incurred for reconfiguration, to

the extent possible. Plaintiff would not have incurred those costs but for either direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19.

**B. Plaintiff has sustained actual losses and incurred extra expenses insured by the All Risk Policy's Business Income coverage.**

114. As part of the protection from "all risk," the All Risk Policy contains "Business Income" and "Extra Expense" coverage where operations are suspended because of direct physical loss of physical damage caused by a covered loss. The amount payable as indemnity thereunder includes payroll.

115. The Business Income coverages include Extra Expense to minimize the suspension of business and to continue operations, or to repair or replace property in order to reduce the amount of loss that would have been payable under this Policy.

116. Coverage under the policy also extend to business income loss for off-premises operations.

117. The onset of COVID-19, the ensuing closure orders, direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19, and the effects of all of these (including restoration efforts to rid the premises of COVID-19) on Plaintiff's businesses triggered the All Risk Policy's Business Income coverage. Plaintiff paid substantial premium in anticipation of those coverages being provided.

**C. Plaintiff has sustained actual losses and incurred extra expenses insured by the All Risk Policy's Civil Authority coverage.**

118. The All Risk Policy affords a Business Income Coverage where the premises is specifically prohibited by order of a civil authority as the direct result of a Covered Loss.

119. Plaintiff has sustained actual loss because state and local authorities governing the locales in which Plaintiff's insured business premises are situated, have issued orders that impair, limit, restrict, or prohibit partial or total access to insured properties.

120. These civil orders limiting, restricting, prohibiting, or impairing access to Plaintiff's insured business premises have all been issued as a direct result of, among other things, direct physical loss of or damage to property (or both) caused by the SARS-CoV-2 and COVID-19, including but not limited to physical damage either at insured locations or within five statute miles thereof. This direct physical damage is caused by the physical presence of, and structural damage caused by, SARS-CoV-2 and COVID-19 on furniture, doors, floors, bathroom facilities, and business supplies; and in the air within the premises, including offices, restrooms, and HVAC systems at the insured premises. Such direct physical loss of or damage to property (or both) is of the type insured by the All Risk Policy generally as well as by the Civil Authority coverage provisions specifically.

121. Numerous outbreaks of COVID-19 in the vicinities of Plaintiff's business have led to numerous discrete direct physical loss of or damage to property (or both) at or within five statute miles of the insured locations, and those losses or damages have in turn led to numerous discrete civil orders limiting, restricting, impairing or prohibiting access to insured locations. Certain civil orders that purport to prevent against future proliferation of SARS-CoV-2 and future transmission of COVID-19 are the direct result of direct physical loss of or damage to property (or both) of the type insured. Such direct physical loss of or damage to property (or both) is of the type insured by the All Risk Policy generally as well as by the Civil Authority coverage provisions specifically.

**D. Plaintiff has sustained actual losses and incurred extra expenses insured by the All Risk Policy's Dependent Property coverage.**

122. The All Risk Policy affords a Business Income Coverage for Dependent Property where actual loss is sustained due to physical loss of or physical damage at the premises of a Dependent Property caused by or resulting from a covered loss. The definition of Dependent Property includes property that attract customers to the insured businesses.

123. For the reasons described above, Plaintiff has sustained actual loss and has incurred extra expense directly resulting from direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19 to properties within one mile of Plaintiff's business premises that attract business to its business.

**E. No exclusions apply to Plaintiff's losses and damages.**

124. No exclusions under the All Risk Policy unambiguously preclude coverage for Plaintiff's claims. And, more specifically, no exclusions unambiguously preclude coverage for direct physical loss of or damage to property (or both) from the effects of the COVID-19 pandemic and the ensuing closure orders and emergency directives.

125. Defendant knew how to draft an exclusion specifically excluding losses or damage arising from a pandemic. The risks associated with viruses and pandemics have been known to the insurance industry for a century and have been well known to Defendant in recent decades during which we all have witnessed outbreaks and pandemics involving viruses such as SARS, MERS, H1N1, and Zika.

126. Because these risks are well known, there are exclusions in common usage in the insurance industry that specifically reference losses caused by pandemics. However, Defendant did not include such a specific pandemic exclusion as part of the All Risk Policy it sold to Plaintiff.

127. A pandemic is a natural disaster comprising unique features such as the emergence of a *new* communicable disease-causing strain to which the general populations lack sufficient immunity, the ability of this *new* strain to infect humans and to cause severe reactions, and the new strain's highly contagious transmission capability among humans as a vehicle for worldwide spread. Indeed, the Chief Executive Officer of Zurich Insurance Group AG, a major insurance

company, in an interview with media outlets, referenced the COVID-19 pandemic as “put[ting] it in the framework of a natural catastrophe.”<sup>24</sup>

128. Plaintiff also has a reasonable expectation that the onset of the COVID-19 pandemic, the ensuing closure orders and later emergency directives, direct physical loss of or damage to property (or both) caused by SARS-CoV-2 and COVID-19, and the effects of all of these on Plaintiff’s businesses would trigger multiple Business Income and Property Damage coverages under the All Risk Policy described above as no exclusion unambiguously applied to preclude coverage and Plaintiff had paid for extremely broad “all risk” coverage.

#### **X. DEFENDANT’S IMPROPER DENIAL OF PLAINTIFF’S CLAIMS**

129. Plaintiff has sustained actual loss and has incurred extra expense directly resulting from direct physical loss of or damage to property (or both) of the type insured under the All Risk Policy. No exclusions under the All Risk Policy apply to preclude coverage for Plaintiff’s claims. As a result, Plaintiff promptly notified Defendant of its claims for losses under the All Risk Policy.

130. At no time subsequent to Plaintiff providing notice to Defendant of the claims has Defendant, or its representatives, requested to access, inspect, and/or test the properties at issue.

131. Rather, Defendant preemptively sought to limit Plaintiff’s coverage.

132. Plaintiff has substantially performed or otherwise satisfied all conditions precedent to bringing this action and obtaining coverage pursuant to the All Risk Policy and applicable law, or alternatively, Plaintiff has been excused from performance by Defendant’s acts, representations, conduct, or omissions.

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<sup>24</sup> <https://www.bloomberg.com/news/videos/2020-05-14/zurich-may-pay-out-750-million-in-2020-due-to-virus-video> (advance video to 1:36).

## **XI. DEFENDANT'S DUTIES PURSUANT TO GOVERNING LAW**

133. On information and belief, Defendant adopted a company-wide stance at the beginning of the pandemic to deny insureds like Plaintiff business interruption claims, regardless of the facts giving rise to each policyholder's loss.

134. State insurance law requires that insurance companies act in good faith, abstain from deception and practice honesty and equity in all insurance matters. The business of insurance is affected by the public interest and engaging in the business of insurance requires insurers like Defendant to promptly conduct fair, balanced, and thorough investigations of all bases of claims for benefits made by their insureds, with a view toward honoring the claims. As part of these obligations, an insurance company is obligated to diligently search for and consider evidence that supports coverage of the claimed loss, and in doing so must give at least as much consideration to the interests of its insured as it gives to its own interests.

135. Defendant has a duty to adopt and maintain a consistent and rational interpretation of the All Risk Policy sold to Plaintiff.

136. Defendant is bound to interpret and administer its insurance policies in accordance with the requirements of governing state law.

137. Defendant is bound to investigate Plaintiff's claims in good faith and with an individualized investigation into the cause of loss.

138. Defendant has failed to honor its obligations under the All Risk Policy and governing law to Plaintiff. As described in greater detail below, Defendant denied coverage and breached (a) the All Risk Policy sold to Plaintiff and (b) the duties of good faith and fair dealing owed to Plaintiff. These breaches have caused great and incalculable damages to Plaintiff. Defendant has threatened to violate and has violated its fiduciary duties to Plaintiff.

139. By engaging in evasive, dilatory, inconsistent and litigious tactics, Defendant breached its obligation to act in good faith towards its policyholders, including Plaintiff, and the public.

**XII. FIRST CAUSE OF ACTION  
(For Declaratory Relief)**

140. Plaintiff incorporates by reference the allegations contained in the above-stated paragraphs.

141. The controversy between Plaintiff and Defendant is ripe for judicial review.

142. The controversy is of sufficient immediacy to justify the issuance of declaratory relief.

143. Plaintiff accordingly seeks a declaration from the Court that:

- a. Each coverage provision identified in the Complaint is triggered by Plaintiff's claims;
- b. No exclusion in the All Risk Policy applies to preclude or limit coverage for Plaintiff's claims;
- c. Plaintiff has satisfied or been excused from satisfying, or Defendant has waived or is estopped from enforcing, all conditions precedent under the All Risk Policy;
- d. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiff for its claims of Property Damage losses, Business Income losses, Extra Expense, and other losses sustained as a result of direct physical loss of or damage to property (or both) due to COVID-19, the ensuing closure orders, and emergency directives, up to the applicable limit(s) of liability;
- e. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiff for its claims of Business Interruption losses for gross Earnings or gross Profits loss, at Plaintiff's election, during the Period of Liability;

- f. Defendant is contractually obligated under its All Risk Policy to indemnify Plaintiff for its claims of Extra Expense incurred to continue business during the Period of Liability, up to the applicable limit(s) of liability;
- g. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiff for its claims of Business Interruption losses and Extra Expense as a result of orders of Civil Authority that have limited, restricted, or prohibited access to insured properties, including Plaintiff's premises, as a result of COVID-19 at insured properties or other locations within five statute (5) miles, up to the applicable limit(s) of liability;
- h. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiff for its claims of Business Interruption losses and Extra Expense directly resulting from direct physical loss of or damage of the type insured (or both) to property of the type insured (or both) that attracts business to an insured location and is within one (1) statute mile of the insured location, up to the applicable limit(s) of liability;
- i. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiff for its claims of lost Gross Earnings during the Extended Period of Liability after the end of the Period of Liability;
- j. Defendant is contractually obligated under the All Risk Policy to indemnify Plaintiff for actual loss sustained to prevent and costs incurred to temporarily protect actual or impending direct physical loss of or damage to insured property (or both), up to the applicable limit(s) of liability; and
- k. The award of such additional relief as the Court deems just and appropriate.



**XIII. SECOND CAUSE OF ACTION  
(Breach of Contract)**

144. Plaintiff incorporates by reference the allegations contained in the above-stated paragraphs.

145. As set forth above, in return for premiums paid, Defendant sold Plaintiff the Global All-Risk Policy, in which Defendant promised to pay for covered losses and expenses up to the applicable Limit of Liability for an Occurrence.

146. Plaintiff promptly advised Defendant it sustained and is sustaining losses and expenses covered by the Global All Risk Policy.

147. Defendant has failed to accept, acknowledge or provide coverage for or make any payment with respect to Plaintiff's losses and expenses.

148. Defendant's failure to provide coverage for Plaintiff's losses and expenses constitutes a breach of the Global All Risk Policy.

149. As a direct and proximate result of Defendant's breach, Plaintiff has been deprived of the benefits of insurance coverage for which it paid substantial premiums, and has suffered substantial damage.

**XIV. THIRD CAUSE OF ACTION  
(Breach of the Duty of Good Faith and Fair Dealing and Bad Faith)**

150. Plaintiff incorporates by reference the allegations contained in the above-stated paragraphs.

151. The Policies all contain an implied covenant of good faith and fair dealing that imposes on Defendant an obligation to not do anything to injure the rights of Plaintiff's to receive the benefits of the All-Risk Policy and to not place its own interests above those of its policyholder.

152. Defendant has an obligation to act in good faith towards Plaintiff in every decision it makes regarding the claim and to respond and investigate claims in good faith. Unfortunately, as set forth above, Defendant has repeatedly placed its own interests ahead of those of Plaintiff

and other policyholders nationwide and across the Commonwealth, to the detriment of Plaintiff, and Defendant continues to refuse to undo its bad faith decisions in relation to Plaintiff's claim.

153. Defendant has acted in bad faith towards Plaintiff with respect to its claim by, among other things: a) denying coverage without any investigation or effort to adjust the claim; b) denying coverage without reference to individual policy terms or individual causes of loss; costs after accepting the duty to defend the Underlying Claims; c) acting in a one-sided manner and exposing Plaintiff to severe losses for which Plaintiff purchased appropriate insurance coverage by way of the All-Risk Policy; and d) refusing to pay for claims without legal compulsion and forcing Plaintiff to protect itself by way of this lawsuit against Defendant.

154. Defendant is ignoring the interests of its policyholders and coverage owed to them in favor of its own interests. Defendant is acting only out of its self-interest.

155. As set forth above, Defendant has not offered a reasonable basis or explanation for its immediate denial of coverage and has not even considered the specific terms of the All-Risk Policy as endorsed nor sought any further detail from Plaintiff concerning Plaintiff's claim.

156. Defendant's failure to investigate or adjust the claim of Plaintiff's and claims of other policyholders in good faith has caused severe detriment to Plaintiff and other policyholders across Pennsylvania and the nation and unnecessarily exposes businesses to severe financial hardship and potentially bankruptcy, threatening the employment of thousands, and damaging the economic well-being of society as a whole.

157. As a result of Defendant's refusal to honor its obligation to act in good faith with respect to Plaintiff's claim, Plaintiff has incurred costs and expenses including attorneys' fees in connection with its pursuit for insurance coverage in this lawsuit.

#### **XV. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks judgment against Defendant as follows:

- i. On the First Count, a judicial declaration by this Court that there has been and continues to be direct physical loss of or damage to Plaintiff's Insured Location;

ii. Plaintiff seeks a further declaration by this Court that Defendant is obligated under the Global All-Risk Policy to pay Plaintiff up to the Limit of Liability for all loss and expenses arising out of SARS-CoV-2 and/or COVID-19 under coverages for Extra Expense, Civil Authority, Business Income, Property Damage and any and all other applicable coverages under the Global All-Risk Policy.

iii. Plaintiff seeks a further declaration by this Court that there are no applicable exclusions in the Policy that bar coverage for Plaintiff's claim.

iv. On the Second Count, Plaintiff requests all actual and compensatory monetary damages in an amount to be proven at trial and all relief available at law for Defendant's breach of contract in denying coverage to Plaintiff under the Global All-Risk Policy, and failing to pay any losses or expenses under the Global All-Risk Policy, in relation to any insured Location, including costs, expenses, pre-judgment and post-judgment interest, and reasonable attorneys' fees in this action.

v. The award of such additional relief as the Court deems just and appropriate, including pre-judgment and post-judgment interest and attorneys' fees and costs to the fullest extent permitted by law.

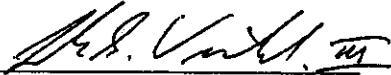
vi. The award of such additional relief as the Court deems just and appropriate.

#### XVI. JURY DEMAND

Plaintiff demands a trial by jury as to all issues properly so tried.

Dated: March 16, 2022

Respectfully submitted,

  
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