ØŚÖÖ G€GFÁRWŠÁĒÍÁEHKI FÁÚT SOÞÕÁÔUWÞVŸ ÙWÚÒÜOUÜÁÔUWÜVÁÔŠÒÜS ÒĒZŚÖÖ ÔOTÙÒÁNKÁGFÉÐĒÌÌ€FÉFÁÙÒCE

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

NORDSTROM, INC., a Washington corporation,

NO.

Plaintiff,

COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES

INCI

v.

XL INSURANCE AMERICA, INC.; ACE AMERICAN INSURANCE COMPANY; AIG SPECIALTY INSURANCE COMPANY; CONTINENTAL CASUALTY COMPANY; IRONSHORE SPECIALTY INSURANCE COMPANY; and FACTORY MUTUAL INSURANCE COMPANY,

Defendants.

Nordstrom, Inc. alleges for its Complaint as follows:

I. INTRODUCTION

1.1. This is an insurance coverage dispute. Nordstrom has incurred substantial business losses and extraordinary expenses as a result of the COVID-19 pandemic. The defendant insurers issued policies that insure Nordstrom "against all risks of direct physical loss or damage to insured property" and "all risks of physical loss or damage." Nordstrom has

COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES - 1

GORDON TILDEN THOMAS CORDELL 600 University Street Suite 2915 Seattle, WA 98101 206.467.6477 submitted claims to defendants seeking coverage for its COVID-19-related loss. No defendant has agreed to cover this loss; some have denied coverage outright and others have yet to state a coverage position.

- 1.2. In this action Nordstrom seeks:
- 1.2.1. A declaration of the rights, duties, and liabilities of the parties under the subject insurance policies with respect to Nordstrom's loss from the governmental orders issued during the COVID-19 pandemic, which limited or eliminated Nordstrom's ability to use its physical locations; and
- 1.2.2. Damages for defendants' breach of their contractual duties under the policies.

II. THE PARTIES

- 2.1. **Plaintiff Nordstrom, Inc.** Plaintiff Nordstrom, Inc. is a Washington corporation, with its primary place of business in Seattle, Washington. Founded in 1901 in Seattle as a retail shoe store, Nordstrom went on to become one of the leading U.S.-based fashion retailers. In addition to its robust online retail business, Nordstrom operates approximately 350 brick-and-mortar retail stores in 40 U.S. states and Canada, employing more than 50,000 workers.
- 2.2. Defendant XL Insurance America, Inc. Defendant XL Insurance America, Inc. ("XL") is a foreign corporation domiciled in Delaware, with its primary place of business in Stamford, Connecticut. XL conducts business in King County.
- 2.3. **Defendant ACE American Insurance Company.** Defendant ACE American Insurance Company ("ACE") is a foreign corporation domiciled in Pennsylvania, with its primary place of business in Philadelphia, Pennsylvania. ACE conducts business in King County.

- 2.4. **Defendant AIG Specialty Insurance Company.** Defendant AIG Specialty Insurance Company ("AIG") is a foreign corporation domiciled in Illinois, with its primary place of business in New York, New York. AIG conducts business in King County.
- 2.5. **Defendant Continental Casualty Company.** Defendant Continental Casualty Company ("Continental") is a foreign corporation domiciled in Illinois, with its primary place of business in Chicago, Illinois. Continental conducts business in King County.
- 2.6. **Defendant Ironshore Specialty Insurance Company.** Defendant Ironshore Specialty Insurance Company ("Ironshore") is a foreign corporation domiciled in Arizona, with its primary place of business in Boston, Massachusetts. Ironshore conducts business in King County.
- 2.7. **Defendant Factory Mutual Insurance Company.** Defendant Factory Mutual Insurance Company ("FM Global") is a foreign corporation domiciled in Rhode Island, with its primary place of business in Johnston, Rhode Island. FM Global conducts business in King County.

III. JURISDICTION AND VENUE

- 3.1. **Subject Matter Jurisdiction.** This Court has jurisdiction over the subject matter of this action pursuant to RCW 2.08.010.
 - 3.2. **Personal Jurisdiction.** This Court has personal jurisdiction over the parties.
- 3.3. **Venue.** Venue is proper in this Court under RCW 48.05.220 and 4.12.025. Nordstrom sustained covered losses in King County, and the defendants transact business in King County.

IV. FACTUAL BACKGROUND

A. The COVID-19 Pandemic

- 4.1. In or about February 2020, the United States and Canada saw their first cases of persons infected by COVID-19, which has been designated a worldwide pandemic.
- 4.2. COVID-19 can be spread in many ways, including by breathing, coughing, sneezing, and talking. Persons infected with COVID-19 can be asymptomatic. To slow or stop the spread of COVID-19, the United States Centers for Disease Control and Prevention recommended avoiding indoor activities, avoiding crowded and congested areas, selecting seating based on the ability to maintain six feet of space from people outside your household, and otherwise maintaining social distance of at least six feet between people. The Public Health Agency of Canada has made similar recommendations.

B. Federal, State, Provincial, and Local Governments Imposed Orders Restricting Retail and Other Businesses

4.3. In response to the COVID-19 pandemic, federal, state (or, in Canada, provincial), and local governments issued numerous orders limiting travel, temporarily closing and/or limiting the capacity of businesses, and requiring social distancing (collectively, "Governmental Orders"). The Governmental Orders prevented in-person retail businesses from using their physical locations, or in some cases severely restricted such use, which impacted their ability to continue normal business operations and serve their customers.

C. Nordstrom Sustained Losses as a Result of the Governmental Orders

4.4. The Governmental Orders greatly affected Nordstrom's ability to use its physical store locations throughout the United States and Canada as intended. The Governmental Orders

required temporary store closures, prevented Nordstrom from reopening its stores, and prevented Nordstrom from servicing the number of in-person customers it typically served.

4.5. As a result of the restrictions imposed by the Governmental Orders, Nordstrom sustained significant loss in its gross earnings and/or gross profit and incurred certain extraordinary expenses.

D. Insurance Policies at Issue

- 4.6. For the period of December 1, 2019 to December 1, 2020, defendants XL Insurance, ACE, AIG, Continental, and Ironshore sold all-risk property insurance policies to Nordstrom, covering "direct physical loss or damage to" insured property occurring during the policy term. These policies provide broad property and business interruption coverage except where excluded. These policies each provide coverage for a fixed percentage of a \$25 million quota-share layer of coverage over a \$1 million per-occurrence deductible.
- 4.7. For the period of December 1, 2019 to December 1, 2020, defendant FM Global sold an excess insurance policy to Nordstrom, covering "direct physical loss or damage to" insured property occurring during the policy term. The FM Global policy is an "all-risk" policy that provides broad property and business interruption coverage except where excluded.
- 4.8. The insurance policies referenced in paragraphs 4.6 and 4.7 are referred to in this Complaint collectively as "the Policies."

E. Nordstrom's Efforts to Obtain the Coverage to Which it Is Entitled

4.9. The Governmental Orders deprived Nordstrom of the use of its insured property. This deprivation constitutes a direct physical loss of Nordstrom's property within the meaning of the Policies. In March 2020, Nordstrom submitted a claim to defendants seeking coverage for its loss stemming from the Governmental Orders.

- 4.10. Certain of the insurers asked Nordstrom to respond to requests for information related to its claim. Nordstrom has provided responses to these requests.
- 4.11. The insurers have either denied coverage for Nordstrom's loss or have not issued a definitive coverage determination. None of the insurers has accepted coverage, nor has any insurer provided funds to Nordstrom on account of this loss.
- 4.12. All conditions precedent to recovery under the Policies have been satisfied or discharged.

V. FIRST CLAIM: DECLARATORY JUDGMENT

- 5.1. Incorporation by Reference. Nordstrom realleges the allegations of paragraphs1.1 through 4.12 above.
- 5.2. **Duty to pay.** Under the Policies, defendants undertook to pay Nordstrom for direct physical loss or damage to insured property occurring during the policy term.
- 5.3. **Breach of Duties under the Policies.** Defendants have breached their duty to pay by failing to fully reimburse Nordstrom for its covered losses stemming from the Governmental Orders.
- 5.4. **Actual Controversy.** An actual controversy of a justiciable nature presently exists between Nordstrom and defendants regarding the proper construction of the Policies and the rights and obligations of the parties with respect to this claim. Issuance of declaratory relief by this Court will terminate the existing and any future controversies between the parties.
- 5.5. **Relief Sought.** Nordstrom asks the Court to declare that (1) Nordstrom's losses from the Governmental Orders constitute direct physical loss and/or damage under each of the Policies; and (2) Nordstrom is entitled to coverage under each of the Policies.

VI. SECOND CLAIM: BREACH OF CONTRACT

- 6.1. Incorporation by reference. Nordstrom realleges the allegations of paragraphs1.1 through 5.5 above.
- 6.2. **Breach of Contract.** Defendants have failed and refused to: (1) fully reimburse Nordstrom for its covered losses up to the applicable policy limits; and (2) acknowledge that Nordstrom's loss from the Governmental Orders constitutes direct physical loss and/or damage.
- 6.3. **Damages.** As a direct and proximate result of the breaches of these insurance contracts, Nordstrom has been deprived of the benefits of its insurance coverage with respect to the Governmental Orders.
- 6.4. **Additional Damages.** As another direct and proximate result of defendants' breaches of their Policies, Nordstrom has been forced to incur attorney's fees and other expenses in order to prosecute this action.

VII. PRAYER FOR RELIEF

Nordstrom prays for the following relief:

- 7.1. **Declaratory Judgment.** A declaratory judgment in favor of Nordstrom that:
- (1) Nordstrom's losses from the Governmental Orders constitute direct physical loss and/or damage under each of the Policies; and (2) Nordstrom is entitled to coverage under each of the Policies.
- 7.2. **Money Damages.** For money damages, in an amount to be proved at trial, together with pre-judgment and post-judgment interest.
- 7.3. **Attorney's Fees and Costs of Suit.** For reasonable attorney's fees and costs, including, without limitation, actual attorney's fees pursuant to *Olympic Steamship Co. v.*Centennial Ins. Co., 117 Wn.2d 37, 811 P.2d 673 (1991).

7.4. **Other Relief.** For such other and further relief as the Court deems just, proper, and equitable.

DATED this 6th day of July, 2021.

GORDON TILDEN THOMAS & CORDELL LLP Attorneys for Plaintiff

By: s/ Michael Rosenberger

Michael Rosenberger, WSBA #17730
Kasey D. Huebner, WSBA #32890
Guinevere Becker Bogusz, WSBA #52937
600 University Street, Suite 2915
Seattle, Washington 98101
206.467.6477
mrosenberger@gordontilden.com
khuebner@gordontilden.com
gbogusz@gordontilden.com