

STATE OF RHODE ISLAND  
 PROVIDENCE COUNTY

SUPERIOR COURT

EHT CPDCT, LLC; EHT CPDGA, LLC; §  
 EHT DHS LC, LLC; EHT ESAN, LLC: §  
 EHT ESPD, LLC; EHT FPSJ, LLC; §  
 EHT HAN, LLC; EHT HHG, LLC; §  
 EHT HIA, LLC; EHT HIDH, LLC; §  
 EHT HIOR, LLC; EHT HISM, LLC; §  
 EHT QMLB, LLC; EHT RDH, LLC; §  
 EHT RWH, LLC; EHT SDTC, LLC; §  
 EHT SPH, LLC; EHT WSAC, LLC; §  
 EHT ASSET MANAGEMENT, LLC; and §  
 URBAN COMMONS, LLC; §

C.A. NO. \_\_\_\_\_

*Plaintiffs,* §

v. §

FACTORY MUTUAL INSURANCE §  
 COMPANY, §

*Defendant.* §

**PLAINTIFFS' ORIGINAL COMPLAINT**

Plaintiffs EHT CPDCT, LLC, EHT CPDGA, LLC, EHT DHS LC, LLC, EHT ESAN, LLC, EHT ESPD, LLC, EHT FPSJ, LLC, EHT HAN, LLC, EHT HHG, LLC, EHT HIA, LLC, EHT HIDH, LLC, EHT HIOR, LLC, EHT HISM, LLC, EHT QMLB, LLC, EHT RDH, LLC, EHT RWH, LLC, EHT SDTC, LLC, EHT SPH, LLC, EHT WSAC, LLC, EHT ASSET MANAGEMENT, LLC and URBAN COMMONS, LLC (collectively "Plaintiffs") hereby file this Original Complaint against Defendant FM Global Insurance Company ("FM Global" or "Defendant") and allege as follows:

**I.**  
**INTRODUCTION**

1. This action for declaratory judgment arises out of Plaintiffs' claim for insurance coverage under an "all risk" property insurance policy sold by FM Global.

2. Plaintiffs operate a series of hotels in multiple states across the country ("the insured properties").

3. Plaintiffs' ordinary business operations have been interrupted - through no fault of their own -- by the spread of the novel COVID-19 virus and by related orders of local, state and national officials that were issued due to the actual presence of the virus and the risks of physical loss or damage posed by the virus. Since March 17, 2020, Plaintiffs have had to close multiple hotels due to the presence of the COVID-19 virus at surrounding businesses and ordered COVID-19 restrictions. As a result, Plaintiffs suffered losses that fell within the coverage terms of their FM Global Policy.

4. Despite having promised that the insurance policy it sold to Plaintiffs was "broad," "comprehensive," and "certain," and would provide coverage against "all *risks* of physical loss or damage," FM Global has conducted an improper investigation of Plaintiffs' claim and has wrongly failed to provide the promised coverage.

## **II.** **PARTIES**

5. Plaintiff EHT CPDCT, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. At all relevant times, EHT CPDCT, LLC was the Lessee, and operator, of the Crowne Plaza Danbury hotel.

6. Plaintiff EHT CPDGA, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. At all relevant times, EHT CPDGA, LLC was the Lessee, and operator, of the Crowne Plaza Dallas Near Galleria-Addison hotel.

7. Plaintiff EHT DHS LC, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. At all relevant times, EHT DHS LC, LLC was the Lessee, and operator, of the Doubletree by Hilton Salt Lake City Airport hotel.

8. Plaintiff EHT ESAN, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. At all relevant times, EHT ESAN, LLC was the Lessee, and operator, of the Embassy Suites Anaheim hotel.

9. Plaintiff EHT ESPD, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. At all relevant times, EHT ESPD, LLC was the Lessee, and operator, of the Embassy Suites by Hilton Palm Desert hotel.

10. Plaintiff EHT FPSJ, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. At all relevant times, EHT FPSJ, LLC was the Lessee, and operator, of the Four Points San Jose hotel.

11. Plaintiff EHT HAN, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. At all relevant times, EHT HAN, LLC is the Lessee, and operator, of the Hilton Atlanta Northeast hotel.

12. Plaintiff EHT HHG, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd,

Suite 1750, Los Angeles, California. At all relevant times, EHT HHG, LLC was the Lessee, and operator, of the Hilton Houston Galleria Area hotel.

13. Plaintiff EHT HIA, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT HIA, LLC is the Lessee, and operator, of the Holiday Inn Anaheim hotel.

14. Plaintiff EHT HIDH, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT HIDH, LLC is the Lessee, and operator, of the Holiday Inn Denver.

15. Plaintiff EHT HIOR, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT HIOR, LLC is the Lessee, and operator, of the Holiday Inn Orlando hotel.

16. Plaintiff EHT HISM, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT HISM, LLC is the Lessee, and operator, of the Holiday Inn San Mateo.

17. Plaintiff EHT QMLB, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT QMLB, LLC is the Lessee, and operator, of the Queen Mary Hotel.

18. Plaintiff EHT RDH, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT RDH, LLC is the Lessee, and operator, the Renaissance Denver hotel.

19. Plaintiff EHT RWH, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT RWH, LLC is the Lessee, and operator, Renaissance Woodbridge Hotel.

20. Plaintiff EHT SDTC, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT SDTC, LLC is the Lessee, and operator, of the Sheraton Denver Tech Center hotel.

21. Plaintiff EHT SPH, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT SPH, LLC is the Lessee, and operator, of the Sheraton Pasadena hotel.

22. Plaintiff EHT WSAC, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. EHT WSAC, LLC is the Lessee, and operator, of the Westin Sacramento hotel.

23. Plaintiff EHT ASSET MANAGEMENT, LLC is domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at

10250 Constellation Blvd, Suite 1750, Los Angeles, CA 90067. EHT ASSET MANAGEMENT, LLC is the sole owner of the entities listed in paragraphs 5 to 22.

24. Plaintiff URBAN COMMONS, LLC is a domestic limited liability company, formed under the laws of the State of Delaware, with its principal place of business at 10250 Constellation Blvd, Suite 1750, Los Angeles, California. URBAN COMMONS, LLC is the sole owner of EHT ASSET MANAGEMENT, LLC.

25. Defendant Factory Mutual Insurance Company ("FM Global") is incorporated under the laws of Rhode Island, with a principal place of business at 270 Central Avenue, Johnston, Rhode Island 02919. FM is authorized to do business and issue insurance policies in the State of New York. FM may be served with process at 270 Central Avenue, Johnston, Rhode Island 02919.

### **III.**

#### **JURISDICTION AND VENUE**

26. This Court has jurisdiction over this action because FM Global is incorporated under the laws of Rhode Island, with a principal place of business at 270 Central Avenue, Johnston, Rhode Island 02919, and under Rhode Island General Laws § 8-2-14 because the amount in controversy exceeds the sum of ten thousand dollars (\$10,000).

27. Venue is proper in this Court, pursuant to Rhode Island General Laws § 9-4-4, because FM Global is located in Providence County.

28. All conditions precedent to recovery by Plaintiffs have been performed or occurred.

29. To the extent any facts or claims alleged herein are inconsistent, they are respectfully asserted in the alternative.

### **IV.**

#### **FACTS**

**A. Plaintiffs' Insured Properties.**

30. FM Global issued Policy No. 1052608 (“the Policy”), with a policy period of April 4, 2019 to April 4, 2020. *Attached as Exhibit A and incorporated herein by reference.*

31. The Policy includes a “Schedule of Locations, Appendix A” which lists all of the properties described above, and made the basis of this lawsuit, as covered properties under the policy. The Policy provides coverage to those properties for, among other things, Time Element, Attraction Property, Civil or Military Authority, Contingent Time Element Extended, Expediting Costs and Extra Expense, Extended Period of Liability, Interruption by Communicable Disease, Ingress Egress and Claims Preparation Costs.

32. The Named insured on the Policy is Pyramid Management Holdings, LLC. Plaintiffs were additional named insureds, additional insureds, and/or intended beneficiaries of the Policy.

33. At all relevant times, Plaintiffs leased and operated the Hotels described above.

34. At the time of loss, Pyramid Management Holdings, LLC served as Risk Manager for Plaintiffs, including them under the Policy as insureds with respect to the properties made the basis of this complaint.

35. In exchange for FM Global's agreement to take on Plaintiffs' risk of loss, Plaintiffs, through Pyramid, paid FM Global significant annual premiums.

**B. The Hotels**

36. Each covered property, described below, suffered direct physical loss of or damage to its property, and associated Time Element, Extra Expense and other losses as a result of COVID-19 and the attendant government shutdown orders.

**Crowne Plaza Danbury**

37. Crowne Plaza Danbury is a 242-room hotel located at 18 Old Ridgebury Road, Danbury, CT, 06810. The hotel property includes 22 meeting rooms and over 26,000 square feet of meeting and event space.

38. The Crowne Plaza Danbury includes the Ridgebury Café and Hat City Tavern onsite, as well as, an open-concept lobby bar, indoor pool and fitness center.

**Crowne Plaza Dallas Near Galleria-Addison**

39. Crowne Plaza Dallas Near Galleria-Addison is a 428-room hotel located at 14315 Midway Road, Addison, TX 75001. The hotel property includes 22 meeting rooms and 32,000 square feet of meeting and event space.

40. The Crowne Plaza Dallas Near Galleria-Addison includes McArthurs Restaurant, The Atrium Lounge, The Market and IHG Club Lounge onsite, as well as, a spa, gift shop, outdoor pool, business center and two fitness centers.

**Doubletree by Hilton Salt Lake City Airport**

41. Doubletree by Hilton Salt Lake City Airport is a 288-room hotel located at 5151 Wiley Post Way, Salt Lake City, UT 84116. The hotel property includes 10 meeting rooms and 8,800 square feet of meeting and event space.

42. The Doubletree by Hilton Salt Lake City Airport includes the Lakeview and The Club onsite, as well as, an executive lounge, indoor pool, business center, and fitness center.

**Embassy Suites Anaheim**

43. Embassy Suites Anaheim is 223-room hotel located at 3100 East Frontera Street, Anaheim, CA 92806. The hotel property includes 9 meeting rooms and nearly 8,000 square feet of meeting and event space.



44. The Embassy Suites Anaheim includes the Bistro 3100 onsite, as well as, an indoor pool, sundeck, business center and fitness center.

**Embassy Suites by Hilton Palm Desert**

45. Embassy Suites by Hilton Palm Desert is a 198-room hotel located at 74-700 Highway 111, Palm Desert, CA 92260. The hotel property includes 10 meeting rooms and over 7,029 square feet of meeting and event space.

46. The Embassy Suites by Hilton Palm Desert includes the Sonoma Grille onsite, as well as, a bar and lounge area, outdoor pool, business center, fitness center and six tennis courts.

**Four Points San Jose**

47. Four Points San Jose is a 195-room hotel located at 1471 North 4th Street, San Jose, CA 95112. The hotel property includes 5 event rooms and over 4,800 square feet of meeting and event space.

48. The Four Points San Jose includes the Hangar Bar and Grill onsite, as well as, an outdoor pool and fitness center.

**Hilton Atlanta Northeast**

49. Hilton Atlanta Northeast is a 271-room hotel located at 5993 Peachtree Industrial Boulevard, Norcross, GA 30092. The property includes 10 meeting rooms and nearly 20,000 square feet of meeting and event space.

50. The Hilton Atlanta Northeast includes the Latitude 33 and Latitude 33's Bar onsite, as well as, an executive lounge, indoor pool, outdoor pool, business center, and fitness center.

**Hilton Houston Galleria Area**

51. Hilton Houston Galleria Area is a 292-room hotel located at 6780 Southwest Freeway, Houston, TX 77074. The property includes 11 meeting rooms and over 13,300 square feet of meeting and event space.

52. The Hilton Houston Galleria Area includes the Veranda Cafe and the Veranda Kitchen and Bar onsite, as well as, an executive lounge, outdoor pool with sundeck, business center and fitness center.

**Holiday Inn Anaheim**

53. Holiday Inn Anaheim is a 255-room hotel located at 1240 South Walnut Street, Anaheim, CA 92802. The property includes 2 meeting rooms and nearly 3,400 square feet of meeting and event space.

54. The Holiday Inn Anaheim includes the Onyx Restaurant and Lounge and The Onyx Bar onsite, as well as an outdoor pool with poolside service, water playground, business center, and fitness center.

**Holiday Inn Denver**

55. Holiday Inn Denver is a 298-room hotel located at 3333 Quebec Street, Denver, CO 80207. The property includes 22 meeting rooms and over 13,000 square feet of meeting and event space.

56. The Holiday Inn Denver includes the Burgers and Crafts onsite, as well as, an open-concept lobby lounge/bar, indoor hot tub, outdoor pool, convenience store, business center, and fitness center.

**Holiday Inn Orlando**

57. Holiday Inn Orlando is a 777-room hotel located at 14500 Continental Gateway Drive, Orlando, FL 32821. The property includes 2 meeting rooms and over 3,900 square feet of meeting and event space.

58. The Holiday Inn Orlando includes the Lakeside Cafe, Sombreros Cantina, Antonio's Pizzeria, Subway, Burger Theory, Hersey's Ice Cream, Hideaway Lounge, and Lagoon Bar onsite, as well as, a large waterpark, 3,000 square foot arcade, Bank Heist Laser Challenge, 4-D Experience Movie Theater, two outdoor pools, gift shop, convenience store, business center and fitness center.

#### **Holiday Inn San Mateo**

59. Holiday Inn San Mateo is a 219-room hotel located at 330 North Bayshore Boulevard, San Mateo, CA 94401. The property includes 3 meeting rooms and 2,000 square feet of meeting and event space.

60. The Holiday Inn San Mateo includes the Bistro 330 Bar & Grill onsite, as well as, an indoor Whirlpool, sauna, business center and fitness center.

#### **Queen Mary Hotel**

61. Queen Mary Hotel is a 347-room hotel located at 1126 Queens Highway Long Beach, CA 90802. The property includes 14 ballrooms and salons and over 80,000 square feet of meeting and event space.

62. The Queen Mary Hotel includes the Midship Marketplace, Chelsea Chowder House & Bar, Sir Winston's Restaurant & Lounge, Promenade Café, Queen Mary Royal Sunday Brunch, Observation Bar, Starboard Lounge, Marketplace & Starboard Shoppe, Centerline Boutique, and Queen Mary Spa on site, as well as, a 4-D Movie Theater, wedding chapel, business center, and fitness center. Additionally, the Queen Mary Hotel offers guided tours, shows and exhibits, the

Haunted Encounters Tour, on board shopping, yoga on the sun deck, and education programs and educational group tours for students.

### **Renaissance Denver**

63. Renaissance Denver is a 400-room hotel located at 3801 Quebec Street, Denver, CO 80207. The property includes 22 meeting rooms and 30,000 square feet of meeting and event space.

64. The Renaissance Denver includes the Fifty300 and Elevate Lounge onsite, as well as, a Club Lounge, library, indoor pool, outdoor pool, business center and fitness center.

### **Renaissance Woodbridge Hotel**

65. Renaissance Woodbridge Hotel is a 312-room hotel located at 515 US Highway 1 South, Iselin, NJ, 08830. The property includes 10 meeting rooms and over 19,900 square feet of meeting and event space<sup>1</sup>.

66. The Renaissance Woodbridge Hotel includes the OLIO Restaurant/Lounge/Patio onsite, as well as, a concierge lounge, beauty shop, indoor pool, outdoor pool, and fitness center.

### **Sheraton Denver Tech Center**

67. Sheraton Denver Tech Center is a 263-room hotel located at 7007 South Clinton Street, Greenwood Village, CO 80112. The property includes 10 meeting rooms and over 14,000 square feet of meeting and event space.

68. The Sheraton Denver Tech Center includes the Redfire Restaurant onsite, as well as, an open-concept lobby bar and lounge, club lounge, outdoor pool, sun deck lounge, business center and fitness center.

### **Sheraton Pasadena**

---

<sup>1</sup> The Renaissance Woodbridge was subsequently rebranded to the Delta Woodbridge.

69. Sheraton Pasadena is a 311-room hotel located at 303 Cordova Street, Pasadena, CA 91101. The property includes 12 meeting rooms and over 12,000 square feet of meeting and event space.

70. The Sheraton Pasadena includes the Restaurant Soleil, Charlie's Bar and Sheraton Club Lounge onsite, as well as, an outdoor pool, barber, beauty shop, business center and fitness center.

### **Westin Sacramento**

71. Westin Sacramento is a 101-room hotel located at 4800 Riverside Boulevard, Sacramento, CA 95822. The property includes 3 meeting rooms and 9,000 square feet of meeting and event space.

72. The Westin Sacramento includes Scott's Seafood on the River onsite, as well as, a full service spa (Spa LaLe), outdoor pool, patio lounge and fitness center.

## **B. The COVID-19 Pandemic.**

73. COVID-19 is a deadly communicable disease that has infected nearly thirty million people in the United States and caused over 520,000 deaths in the United States.<sup>2</sup> The World Health Organization has declared the COVID-19 outbreak a pandemic. Former President Donald Trump declared a nationwide emergency due to the public health crisis caused by the COVID-19 outbreak in the United States.

74. Governors and Mayors in every State and City containing the hotels made the basis of this complaint issued government orders regarding business closures and "stay-at-home" orders for citizens starting in Mid-March, 2020.

## **CALIFORNIA**

---

<sup>2</sup> See <https://covid.cdc.gov/covid-data-tracker/#cases>

75. On March 16, 2020 the California Department of Public Health put out guidelines which included recommendations to shutdown indoor dining for restaurants and bars. On March 19, 2020, Governor Gavin Newsome of California issued Executive Order N-33-20 identifying critical infrastructure and ordering all individuals living in California to stay at home, except where part of the critical infrastructure.<sup>3</sup>

76. On March 15, 2020, Mayor Garcetti of the City of Los Angeles issues a Public Order closing all bars and nightclubs and disallowing indoor dining at restaurants.

77. On March 15, 2020 the San Mateo County Health Officer issued an order restricting gatherings to less than 10 people.

78. On March 16, 2020, the Health Officer of the County of Riverside issued an order cancelling all gatherings over 10 individuals.

79. On March 16, 2020 the San Mateo County Health Officer issued an order directing all individuals living in the county to shelter in place.

80. On March 19, 2020 Mayor Garcetti issued a stay at home order for the City of Los Angeles. The order commanded that “all businesses within the City of Los Angeles are ordered to cease operations that require in-person attendance by workers at a workplace.”

81. On March 19, 2020 the Health Officer of the County of Sacramento issued a stay-at-home order, which was superseded by a more restrictive order on April 7, 2020.

82. On April 4, 2020, the Health Officer of the County of Riverside issued a stay-at-home order valid through April 30, specifying that there would be no gatherings of any number of people outside the family members residing in the same home.

---

<sup>3</sup> State and Local Orders for California are attached as Exhibit B and incorporated fully herein.

83. On May 4, 2020, Governor Newsom issued Executive Order-60-20 which directed residents to comply with State public health directives as the state started moving towards allowing reopening of “lower-risk businesses and spaces.”

84. On September 3, 2020, Mayor Garcetti issued a Public Order called “Safer L.A.” which rescinded prior orders and re-established a stay-at-home order for “all persons living within the City of Los Angeles.”

85. On November 19, 2020, The California Department of Public Health issued a “Limited Stay at Home Order” reverting to a stay-at-home order between 10 p.m. and 5 a.m.

86. On November 20, 2020, the Health Officer of the County of Sacramento reissued an order restricting restaurants to outdoor dining and reaffirmed a 10 p.m. to 5 a.m. restriction on gatherings.

87. On December 3, 2020, the Limited Stay at Home Order was modified to a Regional Stay at Home Order, which continued to prohibit indoor dining and sale of beverages at restaurants and bars.

88. As of this date, California still has certain restrictions through Civil Authority orders.

### **CONNECTICUT**

89. On March 16, 2020, Governor Ned Lamont issued Executive Order No. 7D prohibiting on-premises consumption of food and alcoholic beverages at restaurants, bars, and private club-operations.<sup>4</sup> On March 18, 2020, Governor Lamont issued Executive Order No. 7F which ordered the closure of all places of public amusement, including bowling alleys.

---

<sup>4</sup> See Exhibit C, Relevant Connecticut Orders of Civil Authorities, attached hereto and incorporated herein by reference.

90. In the following months, the State of Connecticut (like cities, counties, and states across the nation) issued a series of orders (collectively the "Connecticut Government Orders").

The Connecticut Government Orders included (but are not limited to) the following:

- Connecticut Executive Order 7H (March 20, 2020)
  - established "Stay Safe, Stay Home" restrictions on all workplaces for non-essential businesses.
- Connecticut Executive Order 7J (March 22, 2020)
  - clarified "Stay Safe, Stay Home" EO 7H
  - permitted non-essential retailers to be staffed on site, provided they only offer remote ordering and delivery or curbside pick-up service.
- Connecticut Executive Order 7N (March 26, 2020)
  - reduced size of social and recreational gatherings to not more than 5 individuals
  - restricted restaurants and bars that are open for sales of food for off-premise consumption to only allowing customers into their locations to pick up and pay for orders.
- Connecticut Executive Order 7T (April 2, 2020)
  - prohibited non-essential lodging in: bed and breakfasts, hotels, motels, short-term rentals, resorts, and related lodging locations; allowed lodging for only essential workers
  - allowed that restaurants and bars may sell sealed alcoholic beverages for off-site consumption or pick up.
- Connecticut Executive Order 7MM (May 12, 2020)
  - allowed restaurants and other establishments that serve food to create or expand outdoor dining areas
  - allowed other businesses such as retail stores to sell goods on the sidewalk or in other outdoor areas.
- Connecticut Executive Order 7PP (May 18, 2020)
  - established Phase 1 of Reopening.
  - extended prohibition on large gatherings to June 20, 2020
  - extended prohibition on indoor fitness and movie theatres to June 20, 2020
  - allowed restaurants and other businesses to sale mixed drinks for takeout.
- Connecticut Executive Order 7QQ (May 20, 2020)
  - established that any orders issued from a Commissioner or a Department head pursuant to a Governor's Executive Order are to be superseded by Governor's executive orders.
- Connecticut Executive Order 7ZZ (June 16, 2020)



- established Phase 2 Reopening.
- lifted the ban on temporary lodging
- allowed large gatherings and events to take place outside
- allowed indoor dining to resume with restrictions but continued to prohibit the sale of alcohol without the sale of food until July 20, 2020.
  
- Connecticut Executive Order 7000 (August 21, 2020)
  - extended allowance of expanded outdoor dining
  - extended eviction moratorium.
  
- Connecticut Executive Order 9A (September 8, 2020)
  - extended and reissued Executive Orders to November 9, 2020.

## **FLORIDA**

91. On March 17, 2020, Governor of Florida Ron DeSantis issued Executive Order 20-68 - restricting access to restaurants by requiring restaurants immediately limit occupancy to 50% of its current building occupancy and requiring six feet of distance between groups of patrons. Parties could not exceed 10 individuals.<sup>5</sup>

92. On March 17, 2020, the county of Miami-Dade similarly ordered the closure of all bowling alleys through Miami-Dade County Emergency Order 03-20. Following the Miami-Dade closure, on March 20, 2020, after declaring a state of emergency for the entire state of Florida, Governor DeSantis issued a state-wide order, Executive Order No. 20-70, closing all bowling alleys noting bowling alleys, bars and restaurants as potential gathering places for the spread of COVID-19.

93. On March 20, 2020 – Executive Order 20-70 Added additional restrictions in unincorporated Palm Beach and Broward Counties but did not apply to restaurants in airports. It does apply to the portions of gas stations and convenience stores that provide alcohol and/or food service with seating for more than 10 people. (Section 2).

---

<sup>5</sup> See *Exhibit D*, Relevant Florida Orders of Civil Authorities, attached hereto and incorporated herein by reference.

94. Executive Order 20-71 Included restaurant restrictions by suspending on-premises food consumption for customers.

95. March 30, 2020 - Executive Order 20-89 Ordered Miami-Dade, Broward, Palm Beach, and Monroe County to restrict public access to non-essential businesses.

96. April Executive Order Number 20-91 (Florida's Stay at Home Order). Recognized "interstate travel" was a risk to the state. Limited all persons in Florida's movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or activities. The Order kept Executive Order 20-68 pertaining to bars and restaurants in effect.

97. March 30, 2020 - Executive Order 20-89 Ordered Miami-Dade County< Broward County, Palm Beach County, and Monroe County to restrict access to non-essential business pursuant to Miami-Dade County Emergency Order 07-20. Restaurants were still subject to limitations under Miami Dade order 3-20 (closed on-premises services for restaurants).

98. April 29, 2020 - Executive Order 20-112 Allowed restaurants to have on-premises dining but limited occupancy to 25% of the building occupancy. Tables must be spaced at least 6 feet apart. Ordered that for the duration of the order all persons in Florida should avoid nonessential travel.

99. May 8, 2020 Executive Order 20-114 Kept the restrictions of Executive Order 20-112 in place.

### **TEXAS**

100. On March 13, 2020, a Declaration of State of Disaster was issued by Governor Greg Abbott as a result of COVID-19.<sup>6</sup> This Order certified that COVID-19 poses an imminent threat of disaster for all counties in the state of Texas. This Order, together with subsequent Executive

---

<sup>6</sup> See *Exhibit E*, Relevant Texas Orders of Civil Authorities, attached hereto and incorporated herein by reference.

Orders, amendments, and extensions issued by Texas Governor Greg Abbott, are attached hereto as ***Exhibit D*** and incorporated herein by reference.

101. On March 19, 2020, Governor Greg Abbott issued Executive Order GA 08 “Relating to COVID-19 preparedness and mitigation” in “accordance with the Guidelines from the President and the CDC” which stated: ...every person in Texas shall avoid social gatherings in groups of more than 10 people...people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors; provided, however, that the use of drive-thru, pickup, or delivery options is allowed and highly encouraged throughout the limited duration of this executive order...people shall not visit nursing homes or retirement or long-term care facilities unless to provide critical assistance...schools shall temporarily close. ***Exhibit D***, Relevant Texas Orders of Civil Authorities.

102. In the following months, the State of Texas (like cities, counties, and states across the nation) issued a series of orders (collectively the "Texas Government Orders"). The Texas Government Orders included (but are not limited to) the following:

- Texas COVID-19 Disaster Proclamation (March 13, 2020)
  - certified that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas.
- Texas State Executive Order GA 08 (March 19, 2020)
  - prohibited gatherings in groups of more than 10 people
  - prohibited eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors, encouraged use of drive-thru, pickup, or delivery options.
  - temporarily closed schools.
- Texas State Executive Order GA 11 (March 26, 2020)
  - required every person who entered Texas as the final destination via airports from New York, New Jersey, Connecticut, or the City of New Orleans to self-quarantine for 14 days, only leaving to seek medical care or depart from Texas.
- Texas State Executive Order GA 12 (March 29, 2020)

- required every person who entered Texas as the final destination via roadways from Louisiana to self-quarantine for 14 days, only leaving to seek medical care or depart from Texas.
- Texas State Executive Order GA 14 (March 31, 2020)
  - established shelter-in-place order requiring every person to minimize social gatherings and minimize in-person contact with people who are not in the same household, unless such activity is necessary to provide or obtain essential services
  - required all services to be provided through remote telework from home unless they are essential services that cannot be provided through remote telework
  - extended closure of eating or drinking at bars, restaurants, and food courts, or visiting gyms
- Texas State Executive Order GA 16 (April 17, 2020)
  - established “Open Texas” order to Phase 1
  - non-essential retail services allowed to open and operate via pickup, delivery by mail, or delivery to customer’s doorstep starting April 24, 2020 but remain working from home unless not possible
  - extended closure of eating or drinking at bars, restaurants, and food courts for in-person dining, as well as closure of gyms
- Texas State Executive Order GA 18 (April 27, 2020)
  - expanded “Open Texas” order
  - required people to stay home except where necessary to provide or obtain essential or reopened services
  - extended minimization of social gatherings or in-person contact of people not within same household
  - strongly encouraged people over age of 65 to stay home
  - reopened in-store retail services, dine-in restaurant services, movie theatres, shopping malls, museums, and libraries at 25% capacity starting on May 1, 2020; only restaurants with less than 51% of their gross receipts from sale of alcohol.
- Texas State Executive Order GA 20 (April 27, 2020)
  - rescinded self-quarantine requirement for State of Louisiana but expanded to include States of California and Washington; and Cities of Atlanta, Georgia; Detroit, Michigan; Chicago, Illinois; and Miami, Florida.
- Texas State Executive Order GA 21 (May 5, 2020)
  - expanded “Open Texas” order
  - directed previous occupancy requirement for restaurants to not apply to customers in outdoor areas of the restaurant
  - reopened wedding venues and reception facilities at 25% capacity but did not apply this requirement to outdoor areas
  - reopened office spaces, manufacturing services/facilities, and gym/exercise facilities at 25% occupancy starting May 18, 2020.

- allowed previously opened non-essential services to operate at 50% occupancy in counties with five or fewer cases of COVID-19.
- Texas State Executive Order GA 23 (May 18, 2020)
  - expanded “Open Texas” order to Phase 2
  - starting May 22, 2020 directed all Texas counties except, Deaf Smith, El Paso, Moore, Potter, and Randall counties to allow:
    - dine-in restaurant services to operate at 50% capacity
    - reopening of bars and similar establishments at 25% capacity
    - aquariums, natural caverns, and similar facilities (excluding zoos) to operate at 25% capacity
  - reopened professional sporting events starting May 31, 2020.
- Texas State Executive Order GA 24 (May 21, 2020)
  - rescinded travel restrictions and self-quarantine requirements.
- Texas State Proclamation Amending GA 23 (May 26, 2020)
  - permitted food-court dining areas within shopping malls to open
  - allowed water parks to open at 25% capacity.
- Texas State Executive Order GA 26 (June 3, 2020)
  - allowed every business establishment in Texas to operate at 50% capacity with certain exceptions. . .
  - allowed restaurants to operate at 75% capacity provided less than 51% of their gross receipts are from the sale of alcoholic beverages.
- Texas State Executive Order GA 28 (June 26, 2020)
  - allowed cosmetology salons, hair salons, barber shops, nail salons, massage establishments, tattoo parlors, tanning salons, and other personal-care and beauty services to no longer abide by 50% occupancy limit as long as able to maintain six feet of social distancing between work stations.
- Texas State Executive Order GA 29 (July 2, 2020)
  - due to substantial increases in COVID-19 cases and hospitalizations” in June 2020, established a statewide mask mandate.
- Texas State Executive Order GA 30 (September 17, 2020)
  - extended requirement that every business establishment in Texas operates at no more than 50% of total occupancy with certain exceptions; religious services, government operations, schools, etc.
  - allowed in-store, non-CISA retail establishments, dine-in restaurants, museums, libraries, and gyms to operate at 75% total capacity provided they are not located in an area with high hospitalizations.
- Texas State Executive Order GA 32 (October 7, 2020)

- allowed every business establishment to operate at no more than 75% total capacity except for areas with high hospitalizations that must abide by 50% requirement.

## **UTAH**

103. On March 6, 2020, a “State of Emergency” was declared by Governor of Utah, Gary R. Herbert, as a result of COVID-19.<sup>7</sup> This Order certified that COVID-19 poses “a threat to the health and safety of the residents of Utah. This Order, together with subsequent Executive Orders, amendments, and extensions issued by Governor Gary R. Herbert, are attached hereto as *Exhibit E* and incorporated herein by reference.

104. On March 27, 2020, Governor Gary R. Herbert passed the first “Directive to the State of Utah” that recommended citizens stay at home and work from home as much as possible. The Direct also stated that individuals should self-quarantine for 14 days after traveling or being exposed to an individual presenting symptom of COVID-19.

105. On April 2, 2020, Executive Order 2020-12 prohibited residential eviction of individuals experiencing wage or job loss as a result of COVID-19.

106. On April 14, 2020, the State of Utah passed a Public Health Order that required individuals who tested positive for COVID-19, those who came into contact with such individuals who tested positive for COVID-19, and members of the same household of COVID-19 positive individuals to self-isolate or quarantine. It also prohibited food service establishments to provide dine-in food service and only allowed to conduct take-out, curbside, or drive-through services.

107. On April 17, 2020, Governor Gary R. Herbert passed the second “Direct to the State of Utah” that extended the stay at home order.

108. On April 29, 2020, Executive Order 2020-19, Utah’s COVID-19 Public Health Risk Status was moved from Red (High Risk) to Orange (Moderate Risk).

---

<sup>7</sup> See *Exhibit F*, Relevant Utah Orders of Civil Authorities, attached hereto and incorporated herein by reference.

109. On May 8, 2020, Executive Order 2020-21, allowed restaurants to have on-premises dining but limited occupancy to 25% of the building occupancy. Tables must be spaced at least 6 feet apart. Ordered that for the duration of the order all persons in Florida should avoid nonessential travel.

110. On August 20, 2020, Executive Order 2020-51 declared another State of Emergency due to the “COVID-19 pandemic and its continuing threat to public health and economic and social stability.”

### **COLORADO**

111. On March 11, 2020, Executive Order D 2020-003 a declaration of a Disaster Emergency was issued by Colorado State Governor Jared Polis as a result of COVID-19.<sup>8</sup> This Order certified that COVID-19 poses an imminent threat of disaster for all counties in the state of Colorado. This Order, together with subsequent Executive Orders, amendments, and extensions issued by Colorado Governor Jared Polis, are attached hereto as ***Exhibit F*** and incorporated herein by reference.

112. In the following months, the State of Colorado (like cities, counties, and states across the nation) issued a series of orders (collectively the "Colorado Government Orders"). The Colorado Government Orders included (but are not limited to) the following:

- Colorado State Executive Order 2020-07 (March 18, 2020)
  - ordered the suspension of normal in-person instruction at all public and private elementary and secondary schools.
- Colorado State Executive Order 2020-13 (March 22, 2020)
  - ordered Colorado employers to reduce in-person workforce by fifty percent.
- Colorado State Executive Order 2020-17 (March 25, 2020)
  - established Stay at Home order.

---

<sup>8</sup> See *Exhibit G*, Relevant Colorado Orders of Civil Authorities, attached hereto and incorporated herein by reference.

- Colorado State Executive Order 2020-44 (April 26, 2020)
  - established Safer at Home order
  - allowed retail business to open for curbside delivery starting April 27, 2020 and to allow retail business to phase-in public opening if implementing best practices on May 1, 2020.
- Colorado State Executive Order 2020-79 (May 25, 2020)
  - amended Safer at Home order
  - allowed places of public accommodation to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, outside dining, and limited indoor dining.
  - allowed access to outdoor recreation areas.
- Colorado State Executive Order 2020-91 (June 1, 2020)
  - established Safer at Home and in the Vast, Great Outdoors order
  - maintained ban on gatherings of over 10 individuals and required vulnerable individuals stay home or distanced from others in outdoor recreational settings.

### **NEW JERSEY**

113. On March 16, 2020, Governor Philip Murphy signed Executive Order No. 104 which banned gatherings over 50 people, closed schools to in-person instruction, closed all “non-essential retail, recreational and entertainment businesses from 8:00 p.m. until 5 a.m.”, and closed all restaurants to indoor dining.<sup>9</sup>

114. On March 21, 2020, Governor Murphy signed Executive Order No. 107 which ordered all New Jersey residents to “remain home or at their place of residence” unless obtaining goods and services from essential businesses, seeking medical attention, or other essential actions. This order also commanded that all “gatherings of individuals” were cancelled and that residents maintain six (6) feet of social distancing at all times when outside their home.\

115. On May 6, 2020, Governor Murphy signed Executive Order No. 138, continuing the prior orders in force and effect.

---

<sup>9</sup> See *Exhibit H*, Relevant New Jersey Orders of Civil Authorities, attached hereto and incorporated herein by reference.



116. On June 4, 2020, Governor Murphy Signed Executive Order No. 151, continuing the prior orders in force and effect.

117. On June 9, 2020, Governor Murphy Signed Executive Order No. 152 commanding that all indoor gatherings must be limited to 25% capacity, observe masks and social distancing, and that attendees have no contact (except for family members).

118. On June 26, 2020, Governor Murphy Signed Executive Order No. 157 allowing restaurants to conduct indoor dining at 25% capacity with social distancing. That order was then rescinded by Executive Order 158 which eliminated the ability for restaurants to offer indoor dining on June 29.

119. Executive order 183, signed on September 1, 2020, reinstituted indoor dining under a 25% cap.

120. Executive Order 194, signed November 10, 2020, set a curfew of 10 p.m. to 5 a.m., during which time all restaurants and bars were to remain closed.

121. As of February 3, Executive Order 219 restricted indoor dining and service of beverages to 35% capacity for restaurants and bars, and the nighttime curfew established in EO 194 was lifted.

### **GEORGIA**

122. On March 14, 2020, Georgia Governor Brian Kemp issued an Executive Order declaring a state of emergency.<sup>10</sup>

123. On March 23, 2020 Governor Kemp ordered certain persons “who have serious underlying conditions,” including nursing home or long-term care residents to shelter in place, and that all bars were to close.

---

<sup>10</sup> See *Exhibit I*, Relevant Georgia Orders of Civil Authorities, attached hereto and incorporated herein by reference.

124. On April 3, 2020 Governor Kemp issued a stay at home order.

125. On April 23, 2020 Governor Kemp issued an Executive Order that provided for resumption of indoor dining for restaurants and bars as of May 1, 2020.

126. On May 12, 2020, Governor Kemp reversed course and reissued a detailed shelter-in-place order and re-implemented prior restrictions on businesses.

127. As of December 30, 2020, Governor Kemp continued with an order requesting social distancing, quarantines for elderly and others at risk, masks and other restrictions carried over from prior orders.

**COVID-19 was present at Locations Near the Insured Properties.**

128. COVID-19 was prevalent in the states with properties made the basis of this complaint in mid-March of 2020, and the spread of the communicable disease amongst vulnerable senior citizens at nursing and long-term care homes was a major cause of the ever-increasing government orders.

129. All of the subject properties were located within 5 statute miles of long-term care facilities, assisted living facilities, nursing homes and/or memory care facilities that housed older, more vulnerable residents and suffered COVID-19 outbreaks in March and April of 2020.

130. Officials from every state relevant to this action expressed a concern over the safety of the elderly, vulnerable population occupying assisted living facilities and nursing homes in March of 2020 at or before the time that Civil Authority orders restricting gatherings, closing restaurants and bars, and ordering people to stay at home, were instituted. Below is a partial list of examples of facilities with early COVID-19 cases located near insured properties:

131. For example, in Danbury, Connecticut, Saint John Paul II Center had already registered a 21% COVID infection rate amongst its senior residents by April 16, with 9 deaths.<sup>11</sup>

132. Western Rehabilitation Care Center, located under 4 miles from the Crowne Plaza Danbury, had 7 deaths by April 16, 2020 with a COVID-19 infection rate over 15%.<sup>12</sup> As of April 14, 2020, 375 nursing home patients had died of COVID-19 in Connecticut.<sup>13</sup>

133. Governor Ned Lamont signed Executive Order No. 7A on March 13, 2020, specifically restricting visitors at nursing homes for 30 days because “the risk of severe illness and death from COVID-19 is higher for people who are 60 years old or older and for those who have chronic health conditions. . . .” EO No. 7A is attached Exhibit B and incorporated herein by reference.

134. In Colorado, the Renaissance Denver was located about 4.8 miles away from Berkley Manor Care Center. By April 22, 2020, 13 people had been infected and 4 had died from COVID-19.<sup>14</sup> ManorCare Health Services-Denver, located 4 miles away, had 20 people infected, with 4 deaths by that same time.<sup>15</sup>

135. Governor Polis stated on March 10, 2020, that his “top priority is protective public health and our vulnerable populations, . . .” and then requested the next day that the Colorado Department of Public Health and the Environment and the Colorado Department of Human Services “engage in emergency rulemaking” to limit visitation at “facilities that serve older Coloradans.”<sup>16</sup>

---

<sup>11</sup> <https://ctmirror.org/2020/04/24/covid-19-deaths-among-ct-nursing-home-residents-doubles-since-mid-april/>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.9news.com/article/news/health/coronavirus/covid-19-cases-nursing-homes-senior-care-centers/73-f9b20786-cd92-4c23-97b0-842088bec437>

<sup>15</sup> *Id.*

<sup>16</sup> <https://www.colorado.gov/governor/news/gov-polis-provides-update-states-response-covid-19>  
<https://www.colorado.gov/governor/news/gov-polis-announces-additional-measures-address-spread-covid-19-provides-update-states>

136. In Utah, Pine Creek Rehabilitation and Nursing Facility, located about 5 miles from the Doubletree by Hilton Salt Lake City Airport property, had suffered such a serious outbreak that it was taken over by the Utah Department of Health and turned into a dedicated COVID-19 care facility on or around April 4, 2020.<sup>17</sup> The decision to turn it into a dedicated COVID-19 care facility took place following the death of two of its residents after both testing positive for COVID-19.<sup>18</sup>

137. As of April 22, 2020, 12 of 19 deaths from COVID-19 in Salt Lake County were linked to nursing homes or long-term care facilities.<sup>19</sup>

138. In New Jersey, by March 24, 2020, the St. Joseph Senior Home in Woodbridge, located about 2 miles from Renaissance Woodbridge, was forced to close down after suffering 11 cases of COVID-19.<sup>20</sup>

139. The Westin Sacramento is located about 3.5 miles from ACC Care Center which had multiple positive for Covid-19 by early April, 2020.<sup>21</sup>

140. Governor Newsom issued Executive Order N-27-20 on March 15, 2020 which acknowledged that facilities serving “senior citizens and other vulnerable populations” were of particular focus by the state in its COVID-19 response and set out directives for different state agencies. Attached as Exhibit B.

---

<sup>17</sup> <https://www.sltrib.com/news/2020/04/04/utah-health-department/> ; <https://www.sltrib.com/news/2020/04/06/four-utahs-five-new/>

<sup>18</sup> <https://www.sltrib.com/news/2020/04/22/utah-nursing-home-deaths/>

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

<sup>20</sup> <https://www.nj.com/middlesex/2020/03/nj-nursing-home-with-8-cases-of-coronavirus-to-close-move-patients-to-another-facility.html>

<sup>21</sup> <https://www.sacbee.com/news/local/health-and-medicine/article242095051.html>

141. The Sheraton Denver Tech Center Hotel was less than 1 mile from Brookdale Greenwood Village assisted living facility. Brookdale had multiple cases of COVID-19 and at least 1 death by early April, 2020.<sup>22</sup>

142. The Sheraton Pasadena is located about 1 mile away from Pasadena Meadows Nursing Center. The outbreak of COVID-19 was so bad at Pasadena Meadows that the National Guard was deployed there in the third week of April, 2020.<sup>23</sup>

143. The Brighton Care Center, less than 3 miles from Sheraton Pasadena, had “20 cases among its staff and 43 among its residents” as of April 17, 2020.<sup>24</sup>

**COVID-19 has caused physical loss and damage to property.**

144. The COVID-19 virus is a tangible, physical object that has caused: (a) physical damage at multiple locations within 5 statute miles of the insured properties, (b) physical loss of use and functionality of the insured properties, and (c) a *risk* of physical loss or damage at the insured properties and the surrounding high-risk locations.

145. The World Health Organization ("WHO") has confirmed that COVID-19 can exist on objects or surfaces and that the transmission of COVID-19 can occur by indirect contact with surfaces in the immediate environment or with objects that were touched by an infected person hours before.<sup>25</sup> The persistent physical presence of the COVID-19 virus has been affirmed by a study documented in The New England Journal of Medicine establishing that COVID-19 can remain present in aerosols for up to three hours, up to four hours on copper, up to 24 hours on

---

<sup>22</sup> <https://www.9news.com/article/news/health/coronavirus/covid-19-cases-nursing-homes-senior-care-centers/73-f9b20786-cd92-4c23-97b0-842088bec437>

<sup>23</sup> <https://www.pasadenastarnews.com/2020/04/28/4-out-of-5-of-pasadenas-recent-coronavirus-cases-involve-elderly-care-facilities/>

<sup>24</sup> *Id.*

<sup>25</sup> See <https://www.who.int/publications/i/item/cleaning-and-disinfection-of-environmental-surfaces-inthe-context-of-cvid-19>

cardboard, and up to three days on plastic and stainless steel.<sup>26</sup> The study's results further confirmed that individuals can become infected with COVID-19 through indirect contact with surfaces or objects contacted by an infected person - whether or not the infected person was symptomatic.<sup>27</sup>

146. The Policy also recognizes that the presence of communicable disease causes physical loss or damage to property because the Policy covers the costs of "cleanup, removal and disposal of such presence of communicable disease..." *See* Exhibit A, All Risk Coverage Form, at p.24. Further, if it did not produce "physical loss or damage," then the coverage would be illusory.

147. The presence of the COVID-19 virus in proximity to the insured properties, caused a physical loss or damage at such properties which were deprived of their functionality and rendered unusable.

148. Because of the restrictions imposed by civil authority orders issued due to the presence and spread of the virus, Plaintiffs suffered a physical loss or damage to the insured properties. Plaintiffs were required to cease operation at most of the insured properties. More specifically, customers were directly prohibited from accessing the Restaurants, Bars and other amenities on the hotel premises. Additionally, Plaintiffs lost the use and function of the property when the virus and civil authority orders rendered the Hotel, Meeting Spaces, Restaurants, Bars and other amenities unusable for their full, intended purposes.

---

<sup>26</sup> van Doremalen, N., Bushmaker, T., Morris, D.H., Holbrook, M.G., Gamble, A., Williamson, B.N., et al., 2020. Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1. *N Engl J Med* 382, 1564–1567. (<https://doi.org/10.1056/NEJMc2004973>, accessed 6 May 2020)

According to the World Health Organization ("WHO"): "People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth, which are spread when a person with COVID-19 coughs or simply exhales. These droplets land on objects and surfaces all around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth. People also catch COVID-19 if they breathe in droplets from an infected person who coughs out or exhales droplets." The time from exposure (infection) to the development of COVID-19 symptoms - the incubation period - can be up to fourteen days. During this period (the "pre-symptomatic" period), those infected can be contagious and transmit the disease before they show any symptoms or have any reason to believe they are sick.<sup>27</sup>

149. The Policy does not clearly and unambiguously require physical *deformation* or *structural alteration* of property for there to be physical loss or damage that comes within the coverage terms.

**Actions and Orders of Civil Authorities.**

150. COVID-19 is widespread in every state in which a subject property is located.

151. The widespread physical presence of the virus in the cities of Danbury, Salt Lake City, Addison, Anaheim, Palm Desert, San Jose, Norcross, Houston, Denver, Orlando, San Mateo, Long Beach, Iselin, Greenwood Village, Pasadena and Sacramento -- including in proximity to the insured properties in each of those locations -- and the virus' propensity to cause actual physical loss or damage and to present a *risk* of physical loss or damage, caused civil authorities to prohibit access to the subject hotels, in whole or in part, where the virus was presumed to exist and to pose a risk of transmission, illness and even death, if access to the public were permitted.

152. The Government Orders, some of which remain in effect as of the date of this filing, caused Plaintiffs to suspend or limit their businesses at Plaintiff's insured properties and/or rendered the property unusable for its intended purpose.

153. In addition, Connecticut, Florida, Texas, Utah, Colorado, New Jersey and many other cities and states issued orders that discouraged travel to and from their respective states, including imposing quarantine restrictions on travelers returning from their respective destinations.<sup>28</sup>

154. Quarantine requirements or recommendations have also been in effect in Alaska, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, Ohio, and Pennsylvania

---

<sup>28</sup> See *Exhibits B – G* Collective Government Orders.

amongst other states. To avoid the quarantine requirements, travelers were advised by government officials to cancel or postpone travel to impacted states.

155. As businesses that rely upon customers, both locally and from across the country and around the world, Plaintiffs' insured properties are directly affected by the Government Orders and by similar orders issued by other counties, states, and countries.

156. Plaintiffs' insured properties have lost their functionality and has been impaired by the risk of COVID-19 and the resultant Government Orders.

157. Plaintiffs have suffered physical loss or damage at the insured properties based on the Civil Authority orders which increasingly tightened restrictions on Plaintiffs' core business – hospitality – in response to the unfolding communicable disease disaster at nursing homes in close proximity to insured properties.

158. The Government Orders, and the property loss and property damage caused by both the actual presence and spread of COVID-19 at the nursing homes and the risk of COVID-19 spreading uncontrollably beyond the nursing homes, has had a devastating impact on Plaintiffs' businesses.

**C. Coverage Under the FM Policy.**

159. The Policy issued to Plaintiffs was FM Global's Advantage – TE Select “all risks” policy. As an all risks Policy, the perils insured against are defined by the Policy's exclusions and limitations -- not by positive grants of coverage for damage due to particular perils as is provided by a "named peril" policy. All risk policies cover all losses to the covered property unless the loss is excluded elsewhere within the policy.



160. The Policy contains numerous different coverage parts, each with an applicable limit or sublimit of liability. The majority of the coverage parts are not mutually exclusive. Thus, a policyholder's loss may trigger several different coverage parts.

161. The Policy was drafted by FM Global.

**The Policy's Basic Insuring Provision**

162. The Policy's basic insuring provision states as follows:

**INSURANCE PROVIDED:**

**This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy.**

*See Exhibit A*, All Risk Coverage Form, p. 1.

163. The Policy's basic insuring provision differs from many business insurance policies. While many policies define coverage in terms of "direct physical loss or damage," the Policy provides coverage against "all *risks* of physical loss or damage." In so doing, the Policy expands coverage beyond actual physical loss and damage to "all risks" of physical loss and damage. In addition, the Policy omits the requirement that the physical loss or damage be "direct."

164. The Policy expressly recognizes that property is physically damaged by the presence of communicable disease. Under a heading titled "Communicable Disease Response," the Policy expressly states that it covers, among other things "the reasonable and necessary costs incurred by the Insured at such **location** with the actual not suspected presence of **communicable disease** for the: 1) cleanup, removal and disposal of the actual not suspected presence of **communicable disease** from insured property." *See Exhibit A*, All Risk Coverage Form, at 24. Accordingly, because the Policy specifically covers cleanup, removal and disposal of the damage

caused by the “actual not suspected presence of communicable disease” is “physical damage of the type insured” under the Policy.

**Business Interruption Coverage**

165. The Policy affords coverage for Plaintiffs' business interruption losses. The Policy includes a Business Interruption provision which states:

**A. LOSS INSURED**

**This Policy insures TIME ELEMENT loss, as provided in the TIME ELEMENT COVERAGES, directly resulting from physical loss or damage of the type insured:**

- 1) to property described elsewhere in this Policy and not otherwise excluded by this Policy or otherwise limited in the TIME ELEMENT COVERAGES below;**

*See Exhibit A, All Risk Coverage Form, p. 38.*

166. COVID-19 has caused Plaintiffs to suffer business interruption loss as a direct result of physical loss and damage of the type insured under the Policy. It will also cause Plaintiffs to incur extra expenses in the event it is able to reopen to even limited operations, that are beyond those expenses that would have normally been incurred in conduct business absent the presence of COVID-19. These losses and expenses trigger coverage under the Policy's Business Interruption provisions including, but not limited to, coverage for Business Interruption Gross Earnings or Gross Profits for a 12 month period, as well as, Extra Expense loss.

**Attraction Property Coverage Extension**

167. In addition to the general Business Insurance Coverage Provision, the Policy provides certain Additional Coverages or Coverage Extensions. These additional coverages and coverage extensions, for which Plaintiff paid an increased premium, do not reduce other coverages

available under the Policy. They are additive. The sublimits applicable to any particular coverage provision do not limit the amount of coverage available under the Policy through other provisions that might also apply. Applicable extensions supplying additional coverage include the following:

168. The Policy's "Attraction Property" endorsement provides coverage for losses directly resulting from physical loss, damage, or destruction (of the type insured by the insured's property policy) to property not owned or operated by the insured that attracts business to the insured. To come within the coverage terms, the Attraction Property must be located within one mile of the insured's property. Specifically, the Policy states:

**A. ATTRACTION PROPERTY**

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to an insured **location** and is within 10 statute miles/16.1kilometres of the insured **location**.

*See Exhibit A, All Risk Coverage Form, p. 55.*

169. COVID-19 has caused, and is continuing to cause, physical loss and damage to properties within 10 miles of the Locations that attract business to Plaintiffs' Properties, including but not limited to, Walt Disney World in Orlando, Florida.

170. Plaintiffs have sustained, and will continue to sustain, business interruption loss as a direct result of physical loss and damage of the type insured under the Policy to properties within one statute mile of the Properties which attracted business to the Properties.

**Civil of Military Authority Coverage Extension**

171. The Policy's "Civil or Military Authority" extension provides coverage to an insured for the actual loss of business income it sustains during the length of time when access to

its premises is prohibited by order of civil authority as a direct result of physical damage—as insured against in the policy—to property of the type insured. Specifically, the Policy provides:

**2. Civil or Military Authority**

**This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY if an order of civil or military authority limits, restricts or prohibits partial or total access to an insured location provided such order is the direct result of physical damage of the type insured at the insured location or within five statute miles/eight kilometres of it.**

*See Exhibit A*, All Risk Coverage Form, p. 50.

172. The Policy provides coverage where, as here, a Civil Authority has issued an order prohibiting customer access to the insured property as a direct result of physical damage. The physical damage must be within five statute miles of the insured property and must be "of the type insured" (which under the Policy is "*all risks* of physical loss or damage"). The Civil Authority Provision also applies a 30-day time limitation to the damages recoverable, extended to 365 days by the Extended Period of Coverage extension coverage in the policy.

173. As a direct and proximate result of the Government Orders, access to Plaintiffs' insured Property has been prohibited or limited. Plaintiffs were required by Civil Authority orders to close their doors to customers and cease certain businesses, particularly Restaurants, Bars and Retail. Restrictions on travel, gathering size, and "shelter-in-place" and "stay at home" orders effectively prohibited access to the Hotel by eliminating the functions for which the Property would be used and/or the guests ability to use them.

174. The Government Shutdown Orders in the states containing the insured properties were issued as the direct result of the loss or damage and the *risk* of loss or damage posed by the

COVID-19 virus' physical presence throughout those States and cities -- including at and near the insured properties.

175. Plaintiffs have sustained, and will continue to sustain, business interruption loss due to orders issued by civil authorities directly resulting from physical damage of the type insured under the Policy to properties within five statute miles of the Properties.

**Communicable Disease-Property Damage Additional Coverage and  
Communicable Disease - Business Interruption Coverage Extension**

176. Under the Policy, FM Global must cover Plaintiffs for the actual presence of "communicable disease", pursuant to two sections in the Policy the "Communicable Disease Response" provision in the "Additional Coverages" section and the "Interruption by Communicable Disease" provision in "Additional Time Element Coverage Extensions" section of the Policy..<sup>29</sup> The Policy includes the following provisions and definition relating to Communicable Disease:

---

<sup>29</sup> The "Communicable Disease Response" provision is listed as an "Additional Coverage" in connection with the All Risk Coverage Provision. See Exhibit A, All Risk Coverage Form, at p.24. The "Interruption by Communicable Disease" provision is listed as a coverage extension under the Business Interruption coverage section. See Exhibit A, All Risk Coverage Form, at p.57. Because of the overlap in subject matter between the two provisions, they are addressed collectively in this section of Plaintiffs' Complaint.

**F. COMMUNICABLE DISEASE RESPONSE**

**If a location owned, leased or rented by the Insured has the actual not suspected presence of communicable disease and access to such location is limited, restricted or prohibited by:**

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease; or**
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of communicable disease,**

**this Policy covers the reasonable and necessary costs incurred by the Insured at such location with the actual not suspected presence of communicable disease for the:**

- 1) cleanup, removal and disposal of the actual not suspected presence of communicable diseases from insured property; and**
- 2) actual costs of fees payable to public relations services or actual costs of using the Insured's employees for reputation management resulting from the actual not suspected presence of communicable diseases on insured property.**

**This Additional Coverage will apply when access to such locations limited, restricted or prohibited in excess of 48 hours. This Additional Coverage does not cover any costs incurred due to any law or ordinance with which the Insured was legally obligated to comply prior to the actual not suspected presence of communicable disease.**

*See Exhibit A, All Risk Coverage Form, at p.24.*

**E. INTERRUPTION BY COMMUNICABLE DISEASE**

**If a location owned, leased or rented by the Insured has the actual not suspected presence of communicable disease and access to such location is limited, restricted or prohibited by:**  
**1) an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease;**  
**or**  
**2) a decision of an Officer of the Insured as a result of the actual not suspected presence of communicable disease, this Policy covers the Actual Loss Sustained and EXTRAEXPENSE incurred by the Insured during the PERIOD OF LIABILITY at such location with the actual not suspected presence of communicable disease. This Extension will apply when access to such location is limited, restricted, or prohibited in excess of 48 hours**

*See Exhibit A, All Risk Coverage Form, at p. 57.*

**Communicable disease:**

**disease which is:**

**1. Transmissible from human to human by direct or indirect contact with an affected individual or the individual's discharges. . .**

*See Exhibit A, All Risk Coverage Form, at p.70.*

177. The actual presence of COVID-19 at other businesses within a 5 statute mile radius of the insured properties caused physical loss and damage and led authorized governmental agencies to issue orders prohibiting, restricting or limiting access and use of area properties, including the insured properties, due to the presence of, or risk of, communicable disease.

178. The actual presence and spread of COVID-19 at Saint John Paul II Center, Western Rehabilitation Care Center, Pine Creek Rehabilitation and Nursing Facility and other nursing

homes, in particular, directly led to the government shutdown orders which effectively closed Plaintiffs' businesses. As such, Plaintiffs meet the requirements for Civil or Military Authority coverage under the policy.

### **Leasehold Interest**

179. The Policy's "Leasehold Interest" extension provides coverage for business interruption losses incurred when a the lease agreement requires continuation of rent and the insured property is wholly untenable or unusable. . The Policy specifically states:

#### **E. LEASEHOLD INTEREST**

##### **Measurement of Loss:**

**The recoverable LEASEHOLD INTEREST incurred by the Insured of the following:**

**1) If the lease agreement requires continuation of rent; and if the property is wholly untenable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially untenable or unusable, the proportion of the rent payable for the unexpired term of the lease.**

**2) If the lease is cancelled by the lessor pursuant to the lease agreement or by the operation of law; the Lease Interest for the first three months following the loss; and the Net Lease Interest for the remaining unexpired term of the lease.3)As used above, the following terms mean: Net Lease Interest: That sum which placed at 6% interest rate compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).Lease Interest: The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.**

*See Exhibit A, All Risk Coverage Form, p. 43.*

180. Coverage is triggered under the Leasehold Interest provision because Plaintiffs sustained leasehold interest losses when state and local officials mandated that access to portions of the Property be wholly untenable or unusable due to the presence of COVID-19.



**Protection and Preservation of Property - Business Interruption Coverage Extension**

181. The Policy includes a provision for Protection and Preservation of Property which states as follows:

**G. PROTECTION AND PRESERVATION OF PROPERTY TIME ELEMENT**

**This Policy covers the Actual Loss Sustained by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending insured physical loss or damage to such insured property.**

**This Extension does not cover the Actual Loss Sustained by the Insured to temporarily protect or preserve insured property from actual, or to prevent immediately impending, physical loss or damage covered by TERRORISM coverage as provided in the PROPERTY DAMAGE section. This Extension is subject to the deductible provisions that would have applied had the physical loss or damage happened. . .**

*See Exhibit A, All Risk Coverage Form, p. 58.*

182. In addition to the steps taken in compliance with civil authority orders, Plaintiffs implemented reasonable restrictions regarding the physical use of and access to their Property to prevent immediately impending physical loss or damage caused by the COVID-19 virus. These restrictions included, but are not limited to, closing the Property for a period of time when the risk of COVID-19 exposure escalated in mid-March, 2020, even before full restaurant shutdown and resident “shelter-in-place” orders were in effect.

183. Plaintiffs' preventative measures aligned with the spirit and intent of various civil authority directives and were also independently necessary. Plaintiffs' actions were taken to protect and preserve Plaintiffs' Insured Property.

### **Extended Period of Liability**

184. The Policy includes a provision for Extended Period of Liability which states as follows:

#### **D.EXTENDED PERIOD OF LIABILITY**

**The GROSS EARNINGS coverage is extended to cover the reduction in sales resulting from:**

- 1) the interruption of business as covered by GROSS EARNINGS;**
- 2) for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss happened; and**
- 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included in this Policy.**

*See Exhibit A, All Risk Coverage Form, p. 56.*

185. This provision applies to extend the coverage available to Plaintiffs to cover the rental income and extra expense losses resulting from business interruptions for such additional length of time (up to 365 days) as is required to restore Plaintiffs' businesses to the condition that would have existed if no loss had happened.

### **No Exclusion In the Policy Impacts Coverage**

186. No exclusion in the Policy applies to preclude or limit coverage for the actual presence of COVID-19 at or away from the Property, the physical loss and damage to the Property, and/or the business interruption losses that have, and will continue to, result from the physical loss and/or damage to property. To the extent that FM Global contends any exclusion(s) do apply, such exclusions are unenforceable.

187. The Policy has four categories of “Property” exclusions: Group A, Group B, Group C and Group D.<sup>30</sup> The Contamination exclusion is a Group D exclusion and states the following:

**GROUP D. This Policy excludes the following unless directly resulting from other physical damage not excluded by this Policy:**

**1). CONTAMINATION**

**Contamination, and any cost due to contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If contamination due only to the actual not suspected presence of contaminant(s) directly results from other physical damage not excluded by this Policy, then only physical damage caused by such contamination may be insured. This exclusion does not apply to radioactive contamination which is excluded elsewhere in this Policy.**

*See Exhibit A, All Risk Coverage Form, p. 16.*

**“Contamination means any condition of property due to the actual or suspected 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.”**

*See Exhibit A, All Risk Coverage Form, p. 42 of 44 (emphasis added).*

188. In 2006, the Insurance Services Office ("ISO"), an entity charged with drafting standard form policy language for use by the insurance industry, developed a standard form and broadly worded "virus exclusion" numbered CP 01 40 0706 and titled "loss due to Virus or Bacteria." FM Global did not include that exclusion in the Policy.

189. The "Contamination" exclusion FM Global chose to use in the Policy does not, itself, exclude coverage for business interruption losses. It does not exclude coverage for costs

---

<sup>30</sup> *See Exhibit A, All Risk Coverage Form, at 12-13.*

and expenses incurred to protect or preserve insured property from impending physical loss or damage.

190. The Policy expressly provides insurance coverage for loss and damage caused by Communicable Disease. Thus, for that coverage to not be rendered illusory, the term "virus" as used in the Contamination exclusion is best understood as referring to food-borne viruses (such as E. coli or salmonella), but not viruses that are transmitted from human-to-human so as to fall within the meaning and coverage afforded to Communicable Disease.

191. Most importantly, the Contamination exclusion does not exclude losses based on acts of Civil Authorities at the subject property due to a communicable disease loss at another property like the nursing homes described above.

192. To the extent that FM Global contends that any of the Policy's provisions do not provide coverage or otherwise bar or limit coverage for the losses and damage alleged herein, the Policy is, at best, ambiguous and must therefore be construed in favor of coverage.

**D. FM Global's Bad Faith Conduct**

193. FM Global is a subsidiary of FM Global and is under its control. Based on information and belief, FM Global and FM Global are, in fact, engaged in a calculated scheme to ensure that FM Global's adjusters reached the same conclusion for all COVID-19 claims.

194. Claims personnel were instructed to follow FM Global's internal memo entitled "Talking Points on the Novel 2019 Coronavirus." without regard to any individual investigation of each claim. Pursuant to the Talking Points, FM Global instructed its claims personnel to deny coverage under several pertinent coverage provisions regardless of what the claims handler's investigation revealed. *See Exhibit J, "Talking Points."*

195. Upon information and belief, FM Global follows FM Global's Talking Points.

196. The Talking Points incorrectly and summarily state that the Policy coverages for Civil or Military Authority, Contingent Time Element Extended, and Ingress/Egress do not apply because "[a] virus will typically not cause physical damage" and because "the presence of a communicable disease does not constitute physical damages and is not of the type insured against..." See **Exhibit J**, Talking Points.

197. FM Global's bad faith position that the virus does not cause physical damage is contrary to the Policy's acknowledgement that the presence of communicable disease causes physical damage to property because it provides coverage for the resulting "cleanup, removal and disposal of...communicable disease."

198. The Talking Points document is an effort to maneuver and limit the investigation and impending decision on coverage to only the Communicable Disease coverages -- which have lower sublimits. Inclusion of only the Communicable Disease coverage in its Talking Points causes FM Global's adjusters to request information tied only to Communicable Disease coverage.

199. Consistent with the approach set forth in the Talking Points, FM Global conducted an inadequate and improper investigation of Plaintiffs' claim. FM Global intentionally conducted a pretextual investigation. In response to Plaintiffs' request for loss, FM Global cited only the communicable disease provisions of the policy and made informational requests calculated solely to relate to and support FM Global's predetermined decision that only the sub-limited Communicable Disease provisions could possibly afford coverage. FM Global failed to request or consider relevant facts relating to Plaintiffs' *entire* claim under the Policy language.

200. The Talking Points instruct claims adjusters, including FM Global adjusters, to reach conclusions without considering the specific facts relating to an insured's particular claim, and without considering the applicable law which controls the insurance policy's interpretation.

201. FM Global's actions, including but not limited to the Talking Points, are in direct opposition to the accepted practices of good faith insurance claims handling.

202. FM Global's explicit practice and procedure on COVID-19-related claims constitute an unfair or deceptive act or practice and bad faith.

203. FM Global's actions in using the Talking Points demonstrates an intentional, conscious disregard of Plaintiffs' rights under the Policy.

204. FM Global has intentionally failed to apply its own Policy language in good faith.

205. FM Global intentionally placed, and continues to place, arbitrary requirements on the coverage provided by Plaintiffs' Policy. FM Global's intentional imposition of arbitrary requirements upon Plaintiffs' ability to recover under the Policy is unreasonable.

206. FM Global has effectively denied Plaintiffs' claim and in so doing has knowingly or recklessly failed to conduct a reasonable investigation of Plaintiffs' entire claim and has issued a denial lacking a reasonable basis. Therefore, the basis for FM Global's effective denial of the entire claim is unreasonable.

207. Plaintiffs have suffered and continue to suffer substantial damages due to FM Global's wrongful denial and bad faith conduct.

**E. Plaintiffs' Losses.**

208. The continuous presence of the coronavirus around the insured properties has created the risk of a dangerous condition and rendered the Property unsafe and unfit for its intended use.

209. As a direct result of (1) the COVID-19 virus' actual presence in the state of New York and the area within 5 statute miles of the insured property (2) the risk posed by the COVID-19 virus, and (3) Civil Authorities' issuance of Shutdown Orders that prohibited, limited, or otherwise interfered with Plaintiffs' businesses, Plaintiffs have suffered physical losses and/or damage.

210. The COVID-19 virus and the Shutdown Orders have caused direct physical loss of Plaintiffs' insured property in that the Property has been rendered useless and/or uninhabitable by the risk of virus and the related Shutdown Orders. The Property's functionality for its ordinary and intended uses has been prevented.

211. As a result of COVID-19 and the Shutdown Orders, the insured properties have suffered direct physical loss and/or damage. Plaintiffs have been forced to suspend their operations resulting in substantial business interruption and losses of business revenue which are ongoing and continue to increase every day.

**V.  
CAUSES OF ACTION**

**COUNT ONE:  
DECLARATORY RELIEF**

212. Plaintiffs repeat and re-allege each and every allegation in this Petition and incorporate each allegation into this Count, as if fully set forth herein.

213. Pursuant to Rhode Island Superior Court Rule of Civil Procedure 57 and the Rhode Island Uniform Declaratory Judgment Act, R.I.G.L. 1956 § 9-30-1, 90-30-2, a person interested under a written contract or other writing or whose rights, status or other legal relations are affected by a statute or ordinance may have determined any question of construction or validity arising

under the contract or ordinance and obtain a declaration of the rights, status and other legal relations thereunder.

214. An actual and justiciable controversy has arisen between Plaintiff and FM Global regarding the availability of coverage under the Policy for Plaintiffs' claims.

215. Accordingly, Plaintiffs seek a Declaratory Judgment to determine the following:

- (a) that the COVID-19 virus caused physical loss or damage to properties within 5 statute miles of the insured properties;
- (b) that the Shutdown Orders limited, restricted, or prohibited partial or total access to the Insured Property as a direct result of physical damage of the type insured at a location, or locations within five statute miles of the insured properties;
- (c) that Business Interruption coverage exists for losses incurred due to *the risk* of physical loss or damage, and actual physical loss or damage, due to the presence of COVID-19 in the area around subject properties;
- (d) that the loss of use of the insured properties for their intended purpose and the monetary and other losses and damages resulting therefrom, due to COVID-19 and government Shutdown Orders, constitutes physical loss or damage to the insured properties under the Policy;
- (e) that the Policy's coverage provisions are triggered by the facts set forth herein;
- (f) that no Policy exclusion applies to bar or limit coverage for Plaintiffs' claims;
- (g) that the Policy provides coverage for Plaintiffs' claims.

**COUNT TWO:**  
**BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**



216. Plaintiffs repeat and re-allege each and every allegation in this Petition and incorporate each allegation into this Count, as if fully set forth herein.

217. FM Global has failed to pay Plaintiffs' claim for coverage under the Policy relating to its losses due to the risk posed by the Covid-19 virus and government orders put in place to address the spread of Covid-19.

218. FM Global's effective denial of Plaintiffs' full claim lacks any reasonable basis.

219. FM Global failed to conduct a reasonable investigation to determine whether the losses and damage being claimed by Plaintiffs were covered under the Policy. FM Global also failed to conduct a reasonable investigation to determine whether the losses and damage being claimed by Plaintiffs were subject to an exclusion under the Policy. Without having performed a reasonable investigation, FM Global's basis for denying Plaintiffs' claim is unreasonable.

220. Upon information and belief, FM Global employed a systematic, one-size-fits-all approach to denying coverage for all COVID-19 claims, including Plaintiffs' claim.

221. FM Global knew, or was actually or implicitly aware, of the lack of any reasonable basis to deny coverage.

222. FM Global acted with reckless disregard as to the reasonableness of its refusal to pay claims, such as Plaintiffs, that were within the coverage terms of the Policy FM Global sold.

223. FM Global breached its duty of good faith and fair dealing by failing to reasonably investigate Plaintiffs' entire claim and by failing to pay Plaintiffs' claim without a reasonable basis for doing so.

224. FM Global's denial of full coverage under the Policy constitutes bad faith.

225. The physical loss and damage caused by the risk of COVID-19 and the civil authority orders put in place to address COVID-19 are ongoing and causing undue burden and

hardship on Plaintiffs. The failure of FM Global to promptly accept Plaintiffs' entire claim under the Policy have caused (and will continue to cause) Plaintiffs to incur direct and consequential damages.

226. As a result of FM Global's bad faith, Plaintiffs have suffered, and continue to suffer, damage including but not limited to: (a) loss of rental income; (b) loss of use of property; (c) damage to property; (d) extra expenses incurred, (e) economic hardship, (f) reasonable and necessary attorney's fees, (g) consequential damages; and (h) reasonable and necessary costs.

**COUNT THREE:**  
**INSURER'S BAD FAITH REFUSAL TO PAY A CLAIM**  
**PURSUANT TO R.I.G.L. 9-1-33**

227. Plaintiffs repeat and re-allege each and every allegation in this Petition and incorporate each allegation into this Count, as if fully set forth herein.

228. The acts and omissions of FM Global as set forth herein, and also yet to be discovered in this matter, constitute bad faith under R.I.G.L. § 9-1-33.

229. Plaintiffs sustained physical loss and damage due to the ongoing threat of COVID-19 and the civil authority orders restricting Plaintiffs' businesses, but FM Global has failed to comply with its obligation and has failed to compensate Plaintiffs for their claim.

230. Plaintiffs are entitled to compensatory damages and punitive damages as a result of FM Global's bad faith.

231. Plaintiffs have been required to retain the services of attorneys to commence this action and are further entitled to attorney's fees and costs.

**VI.**  
**REQUESTED RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that the Court enter judgment in their favor and against FM Global as follows:

1. For a declaration from the Court that:
  - a. that the COVID-19 virus caused physical loss or damage to properties within 5 statute miles of the insured properties;
  - (b) that the Shutdown Orders limited, restricted, or prohibited partial or total access to the Insured Property as a direct result of physical damage of the type insured at a location, or locations within five statute miles of the insured properties;
  - (c) that Business Interruption coverage exists for losses incurred due to the risk of physical loss or damage, and actual physical loss or damage, due to the presence of COVID-19 in the area around subject properties;
  - (d) that the loss of use of the insured properties for their intended purpose and the monetary and other losses and damages resulting therefrom, due to COVID-19 and government Shutdown Orders, constitutes physical loss or damage to the insured properties under the Policy;
  - (e) that the Policy's coverage provisions are triggered by the facts set forth herein;
  - (f) that no Policy exclusion applies to bar or limit coverage for Plaintiffs' claims;
  - (g) that the Policy provides coverage for Plaintiffs' claims.
2. That FM Global breached its duty of good faith, including refusing in bad faith to pay a claim;
3. For all damages, including actual, compensatory, special, consequential and punitive damages against FM Global in an amount to be proven at trial, in excess of \$10,000;
4. For statutory damages, including pre- and post-judgment interest, as permitted by law;
5. For an award of attorneys' fees and costs of suit incurred;
6. For any other and further relief, either in at law or in equity, to which Plaintiffs may show themselves to be justly entitled.

**VII.**  
**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all claims so triable.

Respectfully Submitted,

MCINTYRE TATE LLP

/s/ Stephen M. Prignano

Stephen M. Prignano  
R.I. Bar No. 3649  
50 Park Row West, Suite 109  
Providence, Rhode Island 02903  
Telephone: (401) 351-7700  
Facsimile: (401) 331-6095  
Email: [SPrignano@McIntyreTate.com](mailto:SPrignano@McIntyreTate.com)

*Pro Hac Vice Applications to be filed:*

Tim K. Goss  
Tex. Bar No. 08222660  
FREESE & GOSS, PLLC  
3500 Maple Ave., Suite 1100  
Dallas, TX 75219  
Telephone: (214) 761-6610  
Email: [tim@freeseandgoss.com](mailto:tim@freeseandgoss.com)

David P. Matthews  
Tex. Bar No. 13206200  
Timothy A. Bearb  
Tex. Bar No. 24104741  
MATTHEWS & ASSOCIATES  
2905 Sackett St.  
Houston, TX 77098  
Telephone: (713) 522-5250  
Facsimile: (713) 535-7132  
Email:  
[dmatthews@thematthewslawfirm.com](mailto:dmatthews@thematthewslawfirm.com)  
[tbearb@thematthewslawfirm.com](mailto:tbearb@thematthewslawfirm.com)

JOHN W. HOUGHTALING, II  
LA State Bar No. 25099  
GAUTHIER MURPHY &  
HOUGHTALING LLC

3500 North Hullen Street  
Metairie, LA 70002  
Telephone: (504) 456-8600  
Facsimile: (504) 456-8624

*Attorneys for Plaintiffs*