

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

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UNITED CENTER JOINT VENTURE, :

Plaintiff, :

v. :

AFFILIATED FM INSURANCE  
COMPANY, :

Defendant. :

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

**COMPLAINT**

Plaintiff, United Center Joint Venture, (“UC”), files this Complaint for damages and declaratory judgment against Defendant, Affiliated FM Insurance Company (“AFM”), alleging the following:

**I. INTRODUCTION**

1. This action for declaratory judgment and bad faith breach of contract arises out of UC’s claim of insurance coverage under an “all risks” insurance policy sold by AFM to UC.

2. Despite agreement to cover UC for all risks of physical loss or damage to property unless specifically excluded in the policy, as well as UC’s resulting business interruption loss, AFM has denied UC the recovery it is entitled to receive under an insurance contract it has relied on as protection against unforeseen loss or damage and resulting loss of income. Undeniably, AFM chose to insure against loss caused by COVID-19, a communicable disease. AFM should be required to cover UC’s losses.

## **II. THE PARTIES**

3. UC is a joint venture organized under the laws of the State of Illinois, with its principal place of business at 1901 West Madison Street, Chicago, IL, 60612.

4. AFM is incorporated under the laws of Rhode Island with a principal place of business at 270 Central Avenue, Johnston, RI 02919.

5. AFM is authorized to do business and issue insurance policies in Illinois.

## **III. JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to the provisions of Rhode Island Superior Court Rules of Civil Procedure 57 and R.I.G.L. § 9-30-2.

7. This matter is subject to the jurisdiction of this Court, as AFM is a resident of the State of Rhode Island and does business in the State of Rhode Island, and the value of UC's claims exceed the jurisdictional requirement.

8. This Court has personal jurisdiction over AFM because it does business within the State of Rhode Island.

9. Venue is proper in this county as AFM was, at all relevant times, a resident of Providence County, in the State of Rhode Island.

## **IV. FACTUAL BACKGROUND**

10. The UC is home to the Chicago Blackhawks hockey team and Chicago Bulls basketball team and is the largest arena in the United States. It is owned as a joint venture between the Blackhawks and Bulls owners. Construction was begun in April of 1992, with the ribbon cutting ceremony being held on August 18, 1994.

11. Since opening, the UC has hosted over 200 events each year, including Bulls and Blackhawks games. Some of the events the UC has been proud to host include the 1996

Democratic National Convention, The Rolling Stones, Eric Clapton, Bruce Springsteen and the E Street Band, Paul McCartney, U2, The Who, The 3 Tenors, Ringling Brothers and Barnum & Bailey Circus, Disney on Ice, the Big Ten Men's Basketball Tournament, the Men's NCAA Basketball Tournament, the Great Eight Classic, Illinois College Basketball, Champions on Ice and the NBA All-Star Game.

12. The UC has hosted over forty million guests since its opening in 1994.

13. AFM is an insurance company that sold an insurance policy to UC providing coverage to UC against “all risks of physical loss or damage, except as ... excluded.” (See Policy No. ES076, attached as Exhibit A (the “Policy”).)

14. The Policy had an effective term of August 1, 2019 through August 1, 2020.

15. The Policy also affords coverage to UC for business interruption losses occurring as a result of physical loss or damage of the type insured under the Policy.

16. The Policy provides up to \$725 million in coverage for property damage and business interruption losses, in addition to a number of other coverages, including coverages for communicable disease. Exhibit A, at page 1 of the Declarations.

17. In exchange for AFM’s agreement to take on UC’s risk of loss, UC paid AFM \$427,965 in premium.

**A. COVID-19 Is a Deadly Disease that Causes Physical Loss or Damage to Property.**

18. A disease of unknown origin was first reported to the World Health Organization (“WHO”) on December 31, 2019. This has become known as the SARS-CoV-2 virus (the “Coronavirus”).

19. By the end of January 2020, the WHO had declared a global health emergency.

20. The disease caused by the Coronavirus was identified and denoted as “COVID-19” on February 11, 2020.

21. Over the next six weeks, the number of cases, deaths and affected countries continued to climb to the point that the WHO classified the COVID-19 outbreak as a “pandemic.”

22. As a global pandemic, the presence of COVID-19 is, by definition, worldwide.

23. As of the date of this complaint, COVID-19 has infected nearly 80 million people in the U.S. and caused nearly a million deaths here, and continues to spread, including through variants.

24. It has scientifically been shown that the Coronavirus bonds with various materials. These bonds between the Coronavirus and different materials explains why the virus is known to persist on inanimate objects for days at a time. For example, according to one study, the Coronavirus was found in substantive concentrations on cloth for up to 24 hours, on steel for up to 48 hours, and on plastics for up to 72 hours.

25. Other studies have found similar results, indicating that the Coronavirus can persist at infectious levels on plastics and metals for up to 3-4 days, and glass, ceramic, and rubber for up to 3-5 days.

26. Another study concluded that the virus was detectable and remains variable for at least 28 days on a variety of surfaces, including glass and stainless steel —significantly longer than previously thought.

27. All of these materials are used and present in the UC.

28. When the Coronavirus bonds with a surface, that surface, is, by definition, physically altered and changed from a benign state to a condition blighted with viral contagion.

29. The Centers for Disease Control and Prevention has also confirmed that the Coronavirus is subject to airborne transmission, particularly in confined, indoor spaces, where virus-containing respiratory droplets comprised of smaller droplets and particles can remain suspended in the air over long distances (usually greater than 6 feet) and for long periods (from minutes to hours).

30. Research has clarified that COVID-19 is not spread only by the inhalation of droplets (which studies have shown can have a range of about 13 feet) but also by airborne transmission.

31. The Centers for Disease Control and Prevention confirms that exposure to the Coronavirus occurs in three principal ways: (1) inhalation of very fine respiratory droplets and aerosol particles, (2) deposition of respiratory droplets and particles on exposed mucous membranes in the mouth, nose, or eye, and (3) by touching mucous membranes in the mouth, nose, or eye after touching surfaces with the virus.

32. Therefore, when an infected person—whether symptomatic, asymptomatic, or pre-symptomatic—coughs, sneezes, talks, sings, or breathes, infectious virions physically, if not chemically, alter the ambient breathable air.

33. While the contaminated respiratory droplets and aerosols may remain airborne for several hours, once they fall from airborne suspension and become deposited on solid property, the Coronavirus can physically bond with and alter metal, wood, plastics, fabrics, glass, and other materials leaving such property susceptible to further transmission of COVID-19.

34. COVID-19 physically can exist on surfaces for significant periods of time, can be spread by pre-symptomatic and asymptomatic infected persons, and can become aerosolized and spread through indoor air.

35. The first case of COVID-19 in Chicago was confirmed in mid-January, 2020.

Notwithstanding the confirmation of this case, it is now generally understood that because of the unavailability of widespread testing for COVID-19 in the early stages of the spread of the disease, COVID-19 was spreading exponentially in the population largely unchecked and undetected.

36. In January, February and March, 2020, during this period of exponential exposure and spread of COVID-19, the UC had hosted hundreds of thousands of people (including during NBA All-Star Weekend in mid-February) until the closure to the public of the UC on March 13, 2020 per Illinois Governor J.B. Pritzker's Executive Order 2020-04 which, *inter alia*, prohibited public gatherings of 1000 or more people, specifically including sporting events. Other states and localities have issued similar orders and restrictions (collectively the "Stay at Home Orders"). Notably, Governor Pritzker's Executive Order 2020-32 regarding Covid-19 issued on April 30, 2020, expressly recognized "the virus's propensity to physically impact surfaces and personal property."

37. Because of the largely undetected exponential spread of COVID-19 from January through March 2020, and the thousands upon thousands of people who attended events at the UC during that time, COVID-19 was necessarily actually present at the UC at the time of the initial Illinois Stay at Home order.

38. As a business that relies on customers, vendors, and suppliers locally, from across the country, and around the world, the UC was directly affected by Stay-at-Home Orders, wherever issued.

39. The Stay at Home Orders, the damage caused by COVID-19, the transmission of COVID-19, and the UC's efforts to preserve and protect its property from COVID-19 have had a devastating impact on the UC's business.

40. Simply stated, the UC lost its intended functionality and was impaired by the existence of COVID-19. Where people were once able to go to the UC to watch the Bulls, Blackhawks or concerts and other live entertainment, they were not able to do so until the UC was able to begin operating again, initially at partial and limited capacity in roughly May 2021. The UC did not get back to near full capacity for events until more than a year after its initial closure to the public.

**B. The UC's "All Risks" Policy**

41. The Policy covers property located at 1901 West Madison Street, Chicago, IL 60612 "against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded..." *See* Exhibit A, All Risk Coverage Form, at 1 of 44.

42. AFM drafted the Policy.

43. Pursuant to the "Communicable Disease – Property Damage" additional coverage, the Policy expressly covers, among other things, "the reasonable and necessary costs incurred ... for the: (a) Cleanup, removal and disposal of ... communicable disease from insured property." *See* Exhibit A, All Risk Coverage Form, at 7 of 44.

44. By providing for the "cleanup, removal and disposal of ... **communicable disease**," under the "Communicable Disease – Property Damage" additional coverage, the Policy explicitly recognizes that **communicable disease** physically damages property.<sup>1</sup>

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<sup>1</sup> Bolded terms are defined in the Policy.

45. Accordingly, because the Policy specifically covers remediation of the damage caused by **communicable disease**, the physical damage to property caused by **communicable disease** is “physical damage of the type insured” under the Policy.

**1. COVID-19 Triggered Coverage Under the “All Risks” Policy**

46. The existence and actual presence of COVID-19 at the UC has triggered coverage under the Policy.

47. In addition, the existence and presence of COVID-19 on property away from the UC has triggered coverage under the Policy’s Attraction Property and/or Civil or Military Authority coverages.

48. COVID-19 has caused physical loss or damage to property, including the UC’s property. The property was impaired. It could not be used in the same way that it was used before the spread of COVID-19 throughout Chicago and the world. COVID-19 also impaired many properties within a mile radius of the UC.

49. Those properties, including bars, restaurants, and other businesses were not able to be used in the manner in which they were before the spread of COVID-19.

50. The loss of functionality is no less physical than the impact of a property having structural damage. Where once the property could carry on its business function, and could seat patrons away from the elements, it could no longer do so. That is physical loss, caused by COVID-19.

51. COVID-19 has also caused the UC to experience covered business interruption.

52. In accordance with the Policy’s procedures, the UC noticed a claim for coverage as a result of sustaining losses covered by the Policy. AFM, however, has denied coverage for Plaintiff’s claim by contending that no physical loss has taken place and that a contamination



exclusion applies to Plaintiff's loss. AFM also contends that although COVID-19 is a communicable disease under the policy, absent a confirmed case of COVID-19 at the UC, it would not proceed further with an analysis of applicable communicable disease coverage. This effective denial of communicable disease coverage during a worldwide pandemic, based on the absence of a confirmed case of COVID-19 at the UC when covid testing was largely unavailable, constitutes a bad faith claim denial.

**2. Multiple Coverages are Triggered under the "All Risks" Policy**

53. In addition to triggering the Policy's "all risks" coverage, Plaintiffs' claim also triggers multiple "Additional Coverages" and "Coverage Extensions" provided under the Policy including but not limited to the following.

***i. COVID-19 Triggered the Policy's Communicable Disease – Property Damage and Communicable Disease – Business Interruption Coverage***

54. The actual presence of COVID-19 at the UC resulted in the issuance of orders by authorized governmental agencies regulating communicable disease, thereby triggering coverage under the Policy's Communicable Disease – Property Damage coverage.

55. The business interruption losses sustained by UC as a result of such civil authority orders issued because of the actual presence of COVID-19 at the UC triggers coverage under the Policy's Communicable Disease – Business Interruption coverage.

56. Plaintiffs sustained losses due to access limitations or restrictions or prohibitions caused by the actual presence of COVID-19 at the UC.

57. AFM is liable under the Policy for such losses under the Policy's Communicable Disease – Property Damage and Communicable Disease – Business Interruption coverages.

***ii. COVID-19 Triggered the Policy's Protection and Preservation of Property – Property Damage and Protection and Preservation of Property – Business Interruption Coverage***

58. COVID-19 also caused physical loss or damage to insured property. In addition, COVID-19 has threatened to cause immediately impending physical loss or damage to property.

59. This actual and threatened physical loss or damage to insured property prompted Plaintiff to take action to temporarily protect or preserve its property, thereby triggering the Policy's Protection and Preservation of Property – Property Damage and Protection and Preservation of Property – Business Interruption Coverage.

***iii. COVID-19 Triggered the Policy's Business Interruption Coverage***

60. The Policy affords coverage for UC's business interruption losses, subject to the Policy's terms and conditions.

61. COVID-19 has caused UC to suffer business interruption loss as a direct result of physical loss or damage of the type insured under the Policy.

62. This loss triggers coverage under the Policy's Business Interruption provisions including, without limitation, coverage for Gross Earnings loss, Gross Profits loss, and Rental Income Loss.

***iv. COVID-19 Triggered the Policy's Extra Expense Coverage***

63. COVID-19 has caused UC to incur reasonable and necessary expenses to continue, as close to normal as possible, the conduct of UC's business. Such expenses are beyond those that would have normally been incurred in conducting the business absent the presence of COVID-19.

64. The expense incurred by UC beyond those necessary in the normal operation of its business, solely as a result of the physical loss or damage caused by COVID-19, trigger coverage under the Policy's Extra Expense coverage.

***v. COVID-19 Triggered the Policy's Attraction Property Coverage***

65. COVID-19 has also caused physical loss and damage to property away from the UC, including property within one statute mile of the UC that attracts business to the UC.

66. Plaintiff has sustained a loss of business income directly resulting from (i) physical loss or damage of the type insured (ii) to property of the type insured that attracts business to the UC.

***vi. COVID-19 Triggered the Policy's Civil Authority Coverage***

67. The physical damage caused by the presence of COVID-19 at property located within five statute miles of the UC has directly resulted in the issuance of orders and directives by Governor Pritzker and other civil authorities which prohibited access to the UC.

68. The UC has sustained business interruption losses because orders from civil authorities issued as a direct result of physical damage of the type insured at the UC or within five statute miles of the UC, have prohibited access to the UC.

***vii. COVID-19 Triggered the Policy's Ingress/Egress Coverage***

69. COVID-19 and the physical loss or damage it has caused has resulted in the necessary interruption of Plaintiff's business by totally or partially preventing ingress to or egress from the UC as a direct result of physical loss or damage of the type insured to property of the type insured.

70. The business interruption losses sustained by the UC as a result of the necessary suspension of Plaintiff's business as a result of the total or partial denial of access to the UC triggered coverage under the Policy's Ingress/Egress coverage.

***viii. COVID-19 Triggered the Policy's Supply Chain Coverage***

71. COVID-19 has caused physical loss or damage of the type insured to property of the type insured at the premises of Plaintiff's direct customers and direct contract service

providers, and the direct and indirect suppliers, customers, and contract service providers of Plaintiff's direct customers and contract service providers.

72. The loss of business income sustained by Plaintiff as a result of such supply chain interruption(s) triggers coverage under the Policy's Supply Chain coverage.

### **3. No Exclusion Impacts Coverage**

73. No exclusion in the Policy applies to preclude or limit coverage for the actual presence of COVID-19 at or away from the UC, the physical loss or damage to property at the UC, and/or the business interruption losses that have resulted from the physical loss or damage to property.

### **4. The Policy's Contamination Exclusion Does Not Apply**

74. The Policy's "Communicable Disease – Property Damage" coverage provides coverage for, among other things, "the reasonable and necessary costs incurred...for the: (a) Cleanup, removal and disposal of ... **communicable disease** from insured property." See Exhibit A, All Risk Coverage Form, at 7 of 44.

75. AFM has stated, in writing, that COVID-19 meets the definition of **communicable disease** under the Policy.

76. The Policy also contains an exclusion that purports to preclude coverage for "**contamination.**" See Exhibit A, All Risk Coverage Form, at 5 of 44.

77. The Policy defines "**contamination**" as, "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, at 42 of 44.

78. The Policy’s “**contamination**” exclusion does not exclude coverage for loss caused by “communicable disease.”

79. The Policy’s “**contamination**” exclusion does not exclude coverage for the costs to protect or preserve insured property from impending physical loss or damage.”

80. The Policy’s “**contamination**” exclusion does not exclude coverage for business interruption losses.

81. To the extent that AFM contends that the Policy’s “**contamination**” exclusion bars coverage for loss caused by “**communicable disease**,” costs incurred to preserve or protect insured property, business interruption loss, or some other aspect of Plaintiff’s claim, the Policy is, at best, ambiguous, and therefore, must be construed in favor of coverage.

#### **5. The Policy’s Communicable Disease Sublimit Does Not Cap UC’s Losses**

82. Under the Policy, AFM must cover Plaintiff for the actual presence of “communicable disease” at the UC, pursuant to two sections in the Policy, titled “Communicable Disease – Property Damage” and “Communicable Disease – Business Interruption” (collectively, “Communicable Disease Sublimits”).

83. These two Communicable Disease Coverages are denoted as Additional Coverages or Coverage Extensions and do not purport to reduce other coverages available under the Policy. They are additive. Other coverages under the Policy that might also apply to loss or damage from or caused by virus, the threat of virus, or communicable disease or the threat of communicable disease, are not impacted by the Communicable Disease Sublimits. Further, any sublimit applicable to the Communicable Disease Sublimits Coverages does not apply to limit the Policy’s other coverages that may apply to physical loss or damage to the UC.

#### **C. AFM’s Bad Faith Conduct**

84. AFM is subsidiary of FM Global and is under its control.

85. Based on information and belief, FM Global and AFM are, in fact, engaged in a scheme to deny the UC's and its other insureds' similar COVID-19 related claims.

86. FM Global's and AFM's systemic practice and procedure is noted in FM Global's internal memo, entitled "Talking Points on the Novel 2019 Coronavirus." See Exhibit B, "Talking Points."

87. On information and belief, AFM follows FM Global's Talking Points.

88. The FM Global 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 damage and is not of the type insured against. . ." See Exhibit B, Talking Points.

89. In contrast, the UC's Policy explicitly acknowledges 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."

90. The FM Global Talking Points document is an effort to maneuver the investigation and impending decision on coverage to only the Communicable Disease Sublimits.

91. And, with respect to the Communicable Disease Sublimits, the Talking Points assert that a definitive medical diagnosis is needed in order to establish the actual presence of a communicable disease. No such requirement appears in the Policy. AFM also deliberately ignores that COVID-19 testing was not generally available at the time and COVID-19 was spreading exponentially largely undetected. It also deliberately ignores that an insured like the UC is not realistically able to obtain medical diagnoses from the members of the general public

that attended events at the UC at or just prior to the time it was shut down because of the COVID-19 pandemic.

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

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

94. FM Global's and AFM's actions in using the Talking Points demonstrates an intentional, conscious disregard of Plaintiff's rights under the Policy.

95. FM Global and AFM intentionally continued to place arbitrary and unfounded requirements on the coverage under Plaintiff's Policy.

96. FM Global's and AFM's intentional imposition of arbitrary and unfounded requirements in Plaintiff's Policy are unreasonable and are done in bad faith.

97. FM Global and AFM have not only intentionally failed to apply their own Policy language in good faith but have also established a standard for demonstrating the actual presence of communicable disease that deliberately ignores relevant facts at the time the claims were made, and deliberately ignores the applicable law which requires only that COVID-19 was more likely than not actually present in order for the insurance claim to be valid. FM Global and AFM have thus failed to consider the relevant facts and law related to Plaintiff's entire claim.

98. AFM has effectively denied the UC's claim and in doing so has knowingly or

recklessly failed to reasonably evaluate the UC's claim under the applicable facts and the law. Therefore, the basis for AFM's denial is unreasonable, and the UC has suffered substantial damages due to AFM's wrongful denial and bad faith conduct.

## **V. CLAIMS ALLEGED**

### **COUNT I**

#### **Declaratory Judgment**

99. The UC repeats and realleges the allegations in Paragraphs 1-98, as if fully set forth herein.

100. The UC seeks the Court's declaration of the parties' rights and duties under the Policy, pursuant to Rhode Island Superior Court Rules of Civil Procedure 57 and R.I.G.L. § 9-30-2. A justiciable controversy exists between the UC and AFM regarding the availability of coverage under the Policy for the UC's claims.

101. Accordingly, the UC seeks a declaration from the Court that:

- a. The various coverage provisions identified herein are triggered by the UC's claim;
- b. No Policy exclusion applies to bar or limit coverage for UC's claim; and
- c. The Policy covers UC's claim.

### **COUNT II**

#### **Breach of Contract (Property Damage)**

102. UC repeats and realleges the allegations in Paragraphs 1-98, as if fully set forth herein.

103. The Policy is a valid and enforceable contract between UC and AFM.



104. In the Policy, AFM agreed to cover property against all risks of physical loss or damage not otherwise excluded.

105. COVID-19 has caused physical loss and/or physical damage to Plaintiffs' property.

106. No exclusions apply to bar coverage.

107. UC is entitled to coverage for the physical loss and/or damage up to the Policy's \$725 million per occurrence limit of liability or any applicable sublimits.

108. Plaintiffs complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

109. Nonetheless, AFM refuses to pay for UC's physical loss or damage in breach of the Policy.

110. UC has suffered and continues to suffer damages as a result of AFM's breach(es) of the Policy.

111. UC is entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

**COUNT III**  
**Breach of Contract**  
**(Business Interruption)**

112. UC repeats and realleges the allegations in Paragraphs 1-98, as if fully set forth herein.

113. The Policy is a valid and enforceable contract between UC and AFM.

114. In the Policy, AFM agreed to cover Business Interruption loss and Incurred Extra Expense, as provided in the Business Interruption Coverage, as a direct result of physical loss or damage of the type insured under the Policy.

115. COVID-19 has caused physical loss and/or physical damage to UC's property and the property of others that has caused UC to suffer business interruption losses and incur extra expenses.

116. No exclusions bar to apply coverage.

117. UC is entitled to coverage for their business interruption losses and incurred extra expenses related to COVID-19 up to the Policy's per occurrence limits of liability for business interruption losses or any applicable sublimits.

118. Plaintiff complied with all applicable Policy provisions, including paying premiums.

119. Nonetheless, AFM refuses to pay for these losses and expenses in breach of the Policy.

120. UC has suffered and continues to suffer damages as a result of AFM's breach of the Policy.

121. UC is entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

#### **COUNT IV**

#### **Breach of Contract (Communicable Disease-Property Damage and Communicable Disease-Business Interruption)**

122. Plaintiff repeats and realleges the allegations in Paragraphs 1-98, as if fully set forth herein.

123. The Policy is a valid enforceable contract between UC and AFM. In the Policy, AFM agreed to afford additional coverages as provided in the Policy's Additional Coverages and Coverage Extensions, including Communicable Disease-Property Damage and Communicable Disease-Business Interruption.

124. FM admits COVID-19 is a **Communicable Disease** under the Policy. COVID-19 was actually present at the UC and that has caused UC to suffer losses under the Policy's Communicable Disease-Property Damage and Communicable-Disease Business Interruption Additional Coverages and Coverage Extensions.

125. No exclusions apply to bar coverage.

126. UC is entitled to Communicable Disease Property Damage and Communicable Disease-Business Interruption coverage under the Policy.

127. UC complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

128. Nonetheless, AFM unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

129. UC has suffered damages as a result of AFM's breach of the Policy.

130. UC is entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

## COUNT V

### **Breach of Contract (Additional Coverages and Coverage Extensions)**

131. Plaintiff repeats and realleges the allegations in Paragraphs 1-98, as if fully set forth herein.

132. The Policy is a valid enforceable contract between UC and AFM.

133. In the Policy, AFM agreed to afford other additional coverages as provided in the Policy's Additional Coverages and Coverage Extensions.

134. COVID-19 has caused physical loss and/or physical damage to Plaintiff's property and the property of others that has caused UC to suffer losses under the Policy's other Additional Coverages and Coverage Extensions.

135. No exclusions apply to bar coverage.

136. UC is entitled to coverage for losses related to COVID-19 up to each Additional Coverage's and Coverage Extension's limit of liability or any applicable sublimits.

137. UC complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

138. Nonetheless, AFM refuses to pay for these losses and expenses in breach of the Policy.

139. UC has suffered damages as a result of AFM's breach of the Policy.

140. UC is entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

## COUNT VI

### **Breach of the Covenant of Good Faith and Fair Dealing**

141. UC repeats and realleges the allegations in Paragraphs 1-98, as if fully set forth herein.

142. AFM has denied UC's claim for coverage under the Policy relating to its losses from COVID-19.

143. AFM's denial of Plaintiffs' claim lacks any reasonable basis.

144. AFM employed a systematic "one-size-fits-all" approach to adjusting and denying coverage for all COVID-19 claims, including UC's claim.

145. AFM knew or was actually or implicitly aware of the lack of any reasonable basis to deny coverage.

146. AFM acted with reckless disregard as to the unreasonableness of its denial.

147. AFM breached its duty of good faith and fair dealing by failing to reasonably evaluate the facts and the law and provide coverage.

148. AFM's denial of coverage constitutes bad faith.

149. As a result of AFM's bad faith, UC has suffered and is continuing to suffer damages.

150. UC is entitled to an award of damages as a result of AFM's bad faith in an amount to be determined at trial, including attorney's fees, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

## **COUNT VII**

### **Bad Faith – R.I.G.L. § 9-1-33**

151. UC repeats and realleges the allegations in Paragraphs 1-98, as if fully set forth herein.

152. The acts and omissions of AFM as complained of in this Complaint, and also yet to be discovered in this matter, constitute bad faith under R.I.G.L. § 9-1-33.

153. UC sustained damages due to the physical presence of COVID-19, the existence and ongoing threat of COVID-19, and the civil authority orders prohibiting large gatherings resulting from COVID-19, but AFM has failed to comply with its obligations and has failed to compensate UC for its claim.

154. UC is entitled to compensatory damages and punitive damages as a result of AFM's bad faith.

155. UC has been required to retain the services of attorneys to commence this action and are further entitled to attorneys' fees and costs.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff UC respectfully requests that the Court enter judgment in its favor and against AFM as follows:

1. A declaration from the Court that:
  - a. The various coverage provisions identified herein are triggered by UC's claim;
  - b. No Policy exclusion applies to bar or limit coverage for UC's claim; and
  - c. The Policy covers UC's claim.
2. For special and consequential damages against AFM in an amount to be proved at trial, in excess of \$10,000;
3. Pre- and post-judgment interest, as provided by law;
4. An award of attorney's fees and costs of suit incurred; and
5. For such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs demand a trial by jury on all issues so triable.

Date: March 10, 2022

Respectfully submitted,

/s/ Stephen M. Prignano  
Stephen M. Prignano (#3649)  
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