

STATE OF RHODE ISLAND  
 PROVIDENCE, SC.

SUPERIOR COURT

ATLANTA FALCONS STADIUM  
 COMPANY, LLC, ATLANTA FALCONS  
 FOOTBALL CLUB, LLC, and ATLANTA  
 UNITED FOOTBALL CLUB, LLC,  
 Plaintiffs,

vs.

FACTORY MUTUAL INSURANCE  
 COMPANY and  
 AFFILIATED FM INSURANCE  
 COMPANY,  
 Defendants.

C.A. No. \_\_\_\_\_

**ORIGINAL COMPLAINT AND JURY DEMAND**

Plaintiffs, Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC, and Atlanta United Football Club, LLC (collectively hereafter “Plaintiffs” or “Insureds”), file this Complaint for damages and declaratory judgment against Defendants, Factory Mutual Insurance Company (“FM Global”) and Affiliated FM Insurance Company (“AFM”), alleging the following:

**I. INTRODUCTION**

1. This action for breach of contract, declaratory judgment, and bad faith arises out of FM Global’s and AFM’s failure to comply with their obligations and provide coverage for Plaintiffs’ claims under two “all risks” insurance policies, one sold by FM Global to Plaintiffs (“FM Global Policy”), and one sold by AFM to Plaintiffs (“AFM Policy”) (both policies collectively, “Policies”).

2. Plaintiffs’ businesses are conducted in Mercedes-Benz Stadium and The Home Depot Backyard, and in the Children’s Healthcare of Atlanta Training Ground (Atlanta United FC’s training facility, referred to hereafter as “Atlanta United FC Training Facility”) and IBM

Performance Field (Atlanta Falcons' training facility, referred to hereafter as "Atlanta Falcons Training Facility") (both training facilities hereafter collectively referred to as "Training Facilities") in the greater Atlanta, Georgia area. Mercedes-Benz Stadium and The Home Depot Backyard are world-class event spaces that host National Football League, Major League Soccer, and collegiate football and basketball games, in addition to numerous other sporting events, concerts, entertainment events, private events, and tours. The Atlanta United FC Major League Soccer team and Atlanta Falcons National Football League team train, study, and practice at the Training Facilities for their matches and games. The Atlanta Falcons also hold public training camp sessions at the Atlanta Falcons Training Facility where fans can watch the team practice and purchase merchandise, and where sponsors pay for advertising space and activations in order to advertise to those fans. Atlanta United also holds numerous youth sports camps at Atlanta United FC Training Facility and in the Home Depot Backyard.

3. The Policies provide business interruption coverage for business income and other related losses caused by "direct physical loss or damage." Due to COVID-19, Plaintiffs' properties have suffered "direct physical loss or damage"—under the plain and ordinary meaning of that term. Plaintiffs have suffered "direct physical loss or damage" because COVID-19 impaired Plaintiffs' properties—COVID-19 made Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities unusable in the way that they had been used before COVID-19.

4. Instead of being able to pack fans into Mercedes-Benz Stadium and The Home Depot Backyard to enjoy football, soccer, and other sporting events, concerts, entertainment events, private events, and tours, Plaintiffs had to keep the properties closed, and upon reopening had to substantially limit public attendance. And instead of being able to study, work out, train, practice for their soccer matches and football games, and host public training camps and youth sports

camps, Plaintiffs had to keep the Training Facilities closed for a considerable period of time for all but injured players, and still must keep a reduced capacity at the Training Facilities.

5. These losses are direct—Plaintiffs are not asking their insurers to reimburse them after someone obtained a judgment against Plaintiffs for getting them sick. That might be an indirect loss. Rather, Plaintiffs are asking the insurers to pay for their loss of business income occasioned directly by being unable to use their properties.

6. These losses are physical. Plaintiffs have been and are unable to use Mercedes-Benz Stadium and The Home Depot Backyard and Training Facilities in the manner in which they had previously used them.<sup>1</sup> The properties have lost at least part of their functionality, and most of their ability to generate revenue. The probability of illness prevents the use of the spaces in their normal way in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable. Moreover, the SARS-CoV-2 virus that causes COVID-19 is physical—it can be seen, counted, measured, and destroyed; it replicates itself and destroys other cells and organisms. Importantly, it can exist in the air and on surfaces for indeterminate periods of time, and be transferred from the air and surfaces into human bodies. The presence of the virus in a facility is a *physical* presence, and it is a damaging one.

7. These losses are losses. They are the loss of functionality of the spaces for the purpose of generating business income. The losses are the diminishment of the physical space in the building. What once could hold tens of thousands of raucous and energetic fans can now hold

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<sup>1</sup> Note, however, that Plaintiffs are not seeking recovery for their loss of use. Plaintiffs are seeking coverage for their loss of business income. As an example that drives home the difference, some law firms have been unable to use their office space because of COVID-19, but nevertheless the law firms' business income has increased and they thus have faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a "loss of use" claim. But the law firm would have no loss of *business income* claim. Here, Plaintiffs' businesses have stalled because of the impairment of their business space, and Plaintiffs are seeking the loss of business income under the business interruption coverage of their property insurance Policies.

few fans, and what once could hold both professional and amateur athletes training to perfect their skills now hold limited training athletes in the same space at the same time.

8. These losses constitute damage. A physical object has been present in and around Plaintiffs' facilities, impairing their function for their ordinary and intended uses, forcing their closure, and requiring steps to be taken to physically restore the facilities to a usable state.

9. Insurers around the country are now wanting federal and state judges to interpret the words "direct physical loss or damage," but those words need no interpretation. What insurers want is for courts to change the meaning of those terms—instead of just letting a jury apply the facts of the case to these ordinary words and reach a verdict in the same way a jury would reach a verdict if it were called upon to answer whether a person was injured or property was damaged.

10. Despite the fact that Plaintiffs entered into insurance contracts with FM Global and AFM to cover them from "all risks," including that of business interruption and related losses due to physical loss or damage to property, FM Global and AFM have reneged on their obligations. FM Global and AFM have relied on inapplicable exclusions and their own internal schemes to limit or altogether deny Plaintiffs from the recovery to which they are entitled. Plaintiffs have paid their premiums in full and have relied on the insurance policies as a shield against unforeseen loss or damage and resulting loss of income. Yet instead of following through on their end of the bargain, FM Global and AFM have failed to honor their duties under the Policies.

## **II. THE PARTIES**

11. Atlanta Falcons Stadium Company, LLC is a limited liability company organized under the laws of the State of Georgia, with its principal place of business at 1 AMB Drive NW, Atlanta, Georgia, 30313. No member of Atlanta Falcons Stadium Company, LLC is a citizen of Rhode Island.

12. Atlanta Falcons Football Club, LLC is a limited liability company organized under the laws of the State of Georgia, with its principal place of business at 4400 Falcon Parkway, Flowery Branch, Georgia 30542. No member of Atlanta Falcons Football Club, LLC is a citizen of Rhode Island.

13. Atlanta United Football Club, LLC is a limited liability company organized under the laws of the State of Georgia, with its principal place of business at 861 Franklin Gateway, Marietta, Georgia, 30067. No member of Atlanta United Football Club, LLC is a citizen of Rhode Island.

14. Defendant Factory Mutual Insurance Company (“FM Global”) is incorporated under the laws of Rhode Island with its principal place of business at 270 Central Avenue, Johnston, Rhode Island, 02919.

15. Defendant Affiliated FM Insurance Company (“AFM”) is incorporated under the laws of Rhode Island with a principal place of business at 270 Central Avenue, Johnston, Rhode Island 02919.

16. FM Global and AFM are authorized to do business and issue insurance policies in the State of Georgia.

### **III. JURISDICTION AND VENUE**

17. 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.

18. This matter is subject to the jurisdiction of this Court, as Defendants are residents of the State of Rhode Island and do business in the State of Rhode Island, and the value of the Plaintiffs’ claims exceed the jurisdictional requirement

19. This Court has personal jurisdiction over Defendants because Defendants do business within the State of Rhode Island.

20. Venue is proper in this county as the Defendants were, at all relevant times, residents of Providence County, in the State of Rhode Island.

#### **IV. FACTUAL BACKGROUND**

21. The Policy that Defendant FM Global sold to all three Plaintiffs covers Mercedes-Benz Stadium and The Home Depot Backyard, located at 1 AMB Drive Northwest, Atlanta, Georgia, 30313. Mercedes-Benz Stadium and The Home Depot Backyard are world-class sports and entertainment facilities that opened in August 2017 and September 2018, respectively. Mercedes-Benz Stadium can seat up to 75,000 people. The Home Depot Backyard is an eleven-acre greenspace that can host a variety of events, including concerts, tailgates, and community activities.

22. The Policy that Defendant AFM sold to two of the Plaintiffs, Atlanta United Football Club, LLC and Atlanta Falcons Football Club, LLC, covers many properties, including the Training Facilities, located at 4400 Falcon Parkway, Flowery Branch, Georgia, 30542 and 861 Franklin Gateway SE, Marietta, Georgia, 30067.

23. FM Global and AFM are related entities.<sup>2</sup>

24. The Atlanta Falcons professional football team and Atlanta United FC professional soccer team play at Mercedes-Benz Stadium and train at their respective Training Facilities.

25. Mercedes-Benz Stadium and The Home Depot Backyard also host a number of other events, including concerts, other sporting events, entertainment events, private events, and tours.

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<sup>2</sup> All allegations in this suit related to FM Global are on behalf of all three plaintiffs: Atlanta Falcons Stadium Company, LLC, Atlanta United Football Club, LLC, and Atlanta Falcons Football Club, LLC. All allegations related to AFM in this suit are on behalf of only two of the plaintiffs: Atlanta United Football Club, LLC and Atlanta Falcons Football Club, LLC.

26. In fact, the 2020 NCAA Men’s Basketball Tournament semifinal and championship games (the “Final Four”) were set to take place at Mercedes-Benz Stadium and The Home Depot Backyard, but the event was cancelled due to COVID-19. The Chick-fil-A Kickoff collegiate football games were cancelled due to COVID-19. Concerts by Justin Bieber, Kenny Chesney, and the Rolling Stones scheduled at Mercedes-Benz-Stadium have also been cancelled or postponed due to COVID-19—however, even the concerts that have merely been *postponed* and not *cancelled* are not rescheduled for anytime during 2020.

27. In addition, the Atlanta Falcons host public team training camps with sponsor activities (earning sponsor revenue) and Atlanta United FC hosts youth sports camps at the Training Facilities.

28. Further, Plaintiff Atlanta Falcons Stadium Company, LLC generates significant revenue through the City of Atlanta hotel and motel tax, which will be substantially reduced this year due to COVID-19. It also would have received a sizeable “marquee event” yearly payment from Mercedes-Benz for hosting the 2020 Final Four, but in light of the cancellation of that event, it will not receive that payment.

29. FM Global is an insurance company that sold an insurance policy to Plaintiffs providing coverage to Plaintiffs against “all risks of physical loss or damage, except as hereinafter excluded<sup>3</sup>. . .” *See* Policy No. 105814, attached as Exhibit 1 (the “FM Global Policy”).

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<sup>3</sup> Though the FM Global Policy includes some coverage exclusions, none of the exclusions are applicable to Plaintiffs’ claims.

30. AFM is an insurance company that sold an insurance policy to Plaintiffs also covering “all risks of physical loss or damage, except as hereinafter excluded<sup>4</sup>. . .” *See* Policy No. 1A301, attached as Exhibit 2 (the “AFM Policy”).

31. The FM Global Policy has an effective term of August 18, 2019, through August 18, 2020.

32. The AFM Policy has an effective term of August 1, 2019 through August 1, 2020.

33. The FM Global and AFM Policies provide coverage to Plaintiffs for business interruption losses occurring as a result of physical loss or damage of the type insured under the Policies. Exhibit 1, FM Global Policy at ATLPOLICY040; Exhibit 2, AFM Policy at AFMPOLICY005.

34. The FM Global Policy provides up to \$1,600,000,000 in coverage for property damage per occurrence, which includes business interruption losses.

35. The AFM Policy provides up to \$142,141,666 in coverage for property damage per occurrence, which includes business interruption losses.

36. The Policies both provide Civil Authority coverage for business interruption loss resulting from the prohibition of access to covered property. Exhibit 1, FM Global Policy at ATLPOLICY010 and ATLPOLICY052; Exhibit 2, AFM Policy at AFMPOLICY048.

37. The FM Global Policy and AFM Policy both also provide coverage for losses incurred due to the necessary interruption of the Plaintiffs’ businesses due to partial or total prevention of ingress or egress from Mercedes-Benz Stadium and The Home Depot Backyard and

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<sup>4</sup> Although the AFM Policy includes some coverage exclusions, none of the exclusions are applicable to Plaintiffs’ claims.



Training Facilities. Exhibit 1, FM Global Policy at ATLPOLICY052; Exhibit 2, AFM Policy at AFMPOLICY005.

38. In exchange for FM Global's agreement to take on Plaintiffs' risk of loss, Plaintiffs paid \$606,753 in premium for the FM Global Policy. Likewise, in exchange for AFM's promise to cover Plaintiffs' risk of losses to the Training Facilities, Plaintiffs paid \$76,100 in premium for the AFM Policy. Plaintiffs have paid or tendered all consideration required under the Policies.

**A. COVID-19 Is A Highly Contagious and Deadly Communicable Disease**

39. COVID-19, a disease resulting from the SARS-CoV-2 novel coronavirus, is a deadly communicable disease that has already infected over 8.8 million people in the United States and killed more than 227,000 Americans.<sup>5</sup>

40. A vaccine does not exist for COVID-19.<sup>6</sup>

41. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak as a pandemic.<sup>7</sup> On March 13, 2020, President Trump declared a national emergency due to the outbreak in the United States.<sup>8</sup>

42. The time between exposure to the coronavirus and first symptoms, otherwise known as the incubation period, for COVID-19 can last up to 14 days.<sup>9</sup> Some COVID-19 patients show

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<sup>5</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed October 29, 2020).

<sup>6</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last viewed October 29, 2020).

<sup>7</sup> See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last viewed October 29, 2020).

<sup>8</sup> See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last viewed October 29, 2020).

<sup>9</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html#:~:text=The%20incubation%20period%20for%20COVID,CoV%2D2%20infection.> (last viewed October 29, 2020).

symptoms, and some are asymptomatic. Even asymptomatic persons can transmit COVID-19 for an extended period of time, thought to be even longer than 14 days.<sup>10</sup> Those people who eventually show symptoms can also spread the disease even in their pre-symptomatic state.<sup>11</sup>

43. COVID-19 can also exist on surfaces for days. COVID-19 remains active on plastic and stainless steel surfaces for up to three days, on cardboard for 24 hours, on copper for four hours, and is detectable in aerosols for up to three hours.<sup>12</sup>

44. All of these materials are used by Plaintiffs and otherwise present in Mercedes-Benz Stadium and The Home Depot Backyard and Training Facilities.

**B. An Employee at Mercedes-Benz Stadium and The Home Depot Backyard Contracted COVID-19, and Exposed Employees Then Entered the Training Facilities**

45. On the evening of March 11, 2020, a ticket sales associate of Plaintiffs based at Mercedes-Benz Stadium and The Home Depot Backyard posted on social media that she had symptoms of COVID-19.

46. Plaintiffs' senior management became aware of this social media post early the next morning, on March 12, 2020.

47. Based on this information, due to COVID-19 it became necessary to close the administration offices of the stadium on March 12, 2020, and the entire stadium on March 13, 2020, for intense cleaning and to facilitate the testing of the ticket sales associate.

48. The ticket sales associate subsequently tested positive for COVID-19.

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<sup>10</sup> See <https://www.acpjournals.org/doi/10.7326/M20-3012> (last viewed October 29, 2020).

<sup>11</sup> See [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2) (last viewed October 29, 2020).

<sup>12</sup> See <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last viewed October 29, 2020).

49. This ticket sales associate had been in Mercedes-Benz Stadium during the two-week period prior to her reporting her COVID-19 symptoms on March 11, 2020. Within that two-week period, she had been in multiple locations within and throughout Mercedes-Benz Stadium on February 27, February 28, March 3, March 4, and March 7, 2020.

50. During that two-week period, that sales associate was in contact with employees of Plaintiffs who subsequently entered the Training Facilities, bringing this highly contagious disease with them. Additionally, on information and belief, other employees with COVID-19 also entered the Training Facilities.

51. On March 12, 2020, due to the virtually-certain presence of COVID-19, the Training Facilities were also closed.

52. Moreover, during the period from January 1, 2020, to March 12, 2020, Plaintiffs' employees recorded more than 163 sick days. During that same time period, more than 400,000 people from all over the world attended events at Mercedes-Benz Stadium and The Home Depot Backyard.

**C. Federal, State, and Local Governments Issue Civil Authority Orders Because of COVID-19**

53. Due to the highly-contagious nature of COVID-19, in an effort to slow the spread of COVID-19 and as a consequence of physical loss or damage caused by COVID-19, federal, state, and local governments issued orders limiting the amount of people who could congregate in a group, requiring many businesses to close, and ordering individuals to stay at home except to participate in "essential" activities like going to the grocery store or going to a doctor for a pressing medical issue ("Stay at Home Orders").

54. Under the Stay at Home Orders, businesses that were deemed to be “non-essential” were required to be closed, with their employees working from home (if they were able to work at home, depending on the type of business—if not, they could not work).

55. Yet, even businesses that were labeled as “essential” under the Stay at Home Orders have been severely affected—for example, restaurants could stay open under many State at Home Orders but were originally limited to take-out or delivery only.

56. Mass gatherings were restricted under all Stay at Home Orders. Additionally, the Stay at Home Order mandated that gyms, like the Training Facilities, must remain closed due to COVID-19.

57. The first confirmed case of COVID-19 in Georgia was found in two individuals in Fulton County at least as early as March 2, 2020.<sup>13</sup>

58. On March 16, 2020, Atlanta Mayor Keisha Lance Bottoms issued an executive order banning gatherings of more than 50 people in the City of Atlanta in response to the COVID-19 pandemic crisis. *See* Exhibit 3, March 16, 2020 Atlanta Order.

59. On March 19, 2020, Atlanta Mayor Keisha Lance Bottoms issued an executive order closing all gyms and fitness facilities. *See* Exhibit 4, March 19, 2020 Atlanta Order.

60. On March 23, 2020, Georgia Governor Brian Kemp issued an executive order banning public gatherings over 10 people if such a gathering required persons to stand or be seated within six feet of each other. *See* Exhibit 5, March 23, 2020 Georgia Order.

61. On March 24, 2020, Fulton County issued an order banning gatherings countywide of more than ten people. *See* Exhibit 6, March 24, 2020 Fulton County Order.

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<sup>13</sup> *See* <https://www.foxnews.com/health/georgias-first-coronavirus-cases-reported-in-father-15-year-old-son> (last viewed October 29, 2020).

62. On March 24, 2020, Cobb County issued an order banning gatherings countywide of more than ten people. *See* Exhibit 7, March 24, 2020 Cobb County Order.

63. As a result of these orders, Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities had to remain closed. None of Plaintiffs' businesses were or are considered "essential" under any of the Stay at Home Orders.

64. At the time of this filing, Atlanta, Fulton County, and Georgia all remain under some level of Stay at Home Orders. *See* Exhibit 8, October 15, 2020 Georgia Order; Exhibit 9, March 31, 2020 Fulton County Order; and Exhibit 10, October 19, 2020 Atlanta Order. Under all versions of the current orders, mass gatherings, like ones at concerts and other entertainment events which are regularly held at Mercedes-Benz Stadium and The Home Depot Backyard, are prohibited. *Id.* Though the current orders have exceptions for professional sports teams to allow fans, if and as allowed by the Leagues in which the teams operate, the teams must still comply with CDC guidelines on social distancing, which highly impacts the amount of fans allowed to be inside Mercedes-Benz Stadium during any games or matches. Likewise, under the current Georgia order, training facilities are allowed to be opened under extremely strict guidelines, and sporting camps may proceed but also under extremely strict rules.

**D. Plaintiffs' Businesses Interrupted and Events Cancelled Due to the Actual Presence of COVID-19**

65. The actual presence of COVID-19 caused direct physical loss or damage to Plaintiffs' properties, by (i) causing direct physical loss or damage to Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities; (ii) denying use of and damaging Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities; (iii) requiring physical repair and/or alterations to Mercedes-Benz Stadium and The Home Depot Backyard and

the Training Facilities; and (iv) by causing a necessary suspension of operations during a period of liability.

66. Because of the spread or presence of COVID-19, the functional spaces in Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities have been diminished by the spread or presence of COVID-19. For example, Plaintiff Atlanta United FC, a Major League Soccer team, was scheduled to host eighteen home matches at Mercedes-Benz Stadium. However, many of the matches, as of the date of this filing, have been indefinitely postponed because Mercedes-Benz Stadium was closed. There is no indication that they will be rescheduled. A few of the games have been rescheduled at home, but the matches will be played with no or limited fans, due to COVID-19.

67. Atlanta United FC has had to cancel multiple youth camps at its training facility because of COVID-19.

68. The Atlanta Falcons were unable to hold public training camp at the Falcons Training Facility due to COVID-19.

69. Moreover, due to COVID-19, the 2020 Final Four, which was scheduled to be held at Mercedes-Benz Stadium, was canceled.

70. Almost all business operations of Plaintiffs', most of which involve large gatherings at the insured properties, were initially canceled, and some remain canceled.

71. All of Plaintiffs' business operations have been severely negatively impacted.

72. To repair the physical loss or damage and the infestation on the surface of Plaintiffs' insured properties caused by COVID-19, Mercedes-Benz Stadium and The Home Depot Backyard and Training Facilities made numerous physical changes and/or structural alterations, including but not limited to, installing and bolting in hundreds of hand sanitizer towers throughout the

covered properties; installing new equipment, machines, and a computer system to measure individuals' temperatures and monitor people specifically for COVID-19 prior to their entry at Mercedes-Benz Stadium; installing protection shields/dividers and building new walls in locker rooms, corridors, and other areas in the stadium; remodeling and/or repurposing locker rooms, suites, press box, and other areas to permit additional spacing for social distancing; removing and/or relocating chairs, tables, and/or other furniture to provide additional spacing for social distancing; repackaging all food and beverage items to prevent human contact; and installing touchless concession stands.

73. Thus, because the spread and presence of COVID-19 altered the structure of the physical spaces and property surfaces of the insured properties, there have been even more obvious structural alterations, changes and/or repairs made to the Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities so that Plaintiffs can continue their businesses after experiencing direct property damage which was caused by COVID-19 and to avoid imminent threat of further property damage.

74. Plaintiffs have suffered substantial losses due to the actual physical presence of COVID-19 and the ongoing threat of immediately impending COVID-19 which forced the closure of Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities, and the subsequent civil authority orders which kept these properties closed in full for months.

**E. Plaintiffs' "All Risks" Policies Cover Plaintiffs' Claims**

75. The FM Global and AFM Policies (collectively, "Policies") cover property at the insured locations "against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as

hereinafter excluded<sup>14</sup>. . .” See Exhibit 1, FM Global Policy, at ATLPOLICY001 (emphasis in original) and ATLPOLICY015; Exhibit 2, AFM Policy, at AFMPOLICY005.

76. Plaintiffs’ insured location under the FM Global Policy includes Mercedes-Benz Stadium and The Home Depot Backyard at 1 AMB Drive Northwest, Atlanta, Georgia, 30313.

77. FM Global drafted the FM Global Policy.

78. Plaintiffs’ insured locations under the AFM Policy include, among others, the Training Facilities located at 4400 Falcon Parkway, Flowery Branch, GA 30542 and 861 Franklin Gateway Southeast, Marietta, GA 30067.

79. AFM drafted the AFM Policy.

80. The Policies explicitly recognize that physical loss or damage to property can result from communicable disease.

81. Under the “Communicable Disease Response” coverage section of the Policies, the Policies expressly cover, among other things, “the reasonable and necessary costs incurred . . . for the: 1) cleanup, removal and disposal of . . . presence of communicable diseases from insured property[.]” See Exhibit 1, FM Global Policy at ATLPOLICY028; Exhibit 2, AFM Policy at AFMPOLICY030.

82. Because the Policies provide for the “cleanup, removal, and disposal of . . . communicable diseases” the Policies explicitly recognize that physical loss or damage to property can result from communicable disease.

83. The fact that the Policies expressly cover *remediation* of the damage caused by communicable disease means that the physical damage to the property caused by communicable disease is “physical damage of the type insured” under the Policies.

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<sup>14</sup> None of the exclusions in the Policies apply to Plaintiffs’ claims.



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

84. Coverage under the Policies is triggered due to the actual presence of COVID-19 at Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities and the ongoing threat of immediately impending COVID-19 and resulting loss or damage.

85. Furthermore, the presence of COVID-19 on property within 1,000 feet of Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities triggered coverage under the Policies.

86. COVID-19 has caused (and continues to cause) direct physical loss and physical damage, as described above, to property, including Plaintiffs’ properties.

87. Additionally, COVID-19 has caused (and continues to cause) Plaintiffs to experience covered business interruption and time element losses.

88. Due to the losses covered by the Policies, Plaintiffs submitted claims to FM Global and AFM. Both FM Global and AFM have failed to acknowledge their responsibility to cover and pay Plaintiffs’ claim.

89. FM Global’s and AFM’s bad faith conduct stems from a systemic company-wide policy designed to refuse or minimize warranted payments to its insureds for COVID-19 related claims, as described in more detail below.

## **2. Multiple Coverages Are Triggered Under the “All Risks” Policies**

90. Plaintiffs’ claims triggered not only the Policies’ “all risks” coverages, they also triggered numerous coverage “extensions” in the Policies. These include, but are not limited to, the following coverages:

***a. FM Global and AFM Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policies' Time Element/Business Interruption Coverages***

91. Under the Policies, Plaintiffs are covered for time element/business interruption losses.

92. Due to the spread and actual presence of COVID-19 at Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities, Plaintiffs have suffered time element/business interruption losses as a direct result of physical loss and damage that is insured by the Policies as described above.

93. According to the Policies, Plaintiffs are covered from the date of the loss until the covered properties can be made ready for normal operations.

***b. FM Global Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policy's Communicable Disease Response and Interruption By Communicable Disease Coverages***

94. COVID-19 was actually present at Mercedes-Benz Stadium and The Home Depot Backyard.

95. As a result, access to those properties was limited or restricted or prohibited by the authorized government agencies regulating the local governmental response to the pandemic.

96. Plaintiffs sustained losses due to access limitations or restrictions or prohibitions caused by the actual presence of COVID-19 at Mercedes-Benz Stadium and The Home Depot Backyard.

97. FM Global is liable under the FM Global Policy for such losses under the Additional Coverage for Communicable Disease Response and Interruption By Communicable Disease.

***c. FM Global and AFM Should Compensate Plaintiffs for Their Reasonable and Necessary Costs Incurred to Temporarily Protect or Preserve Their Property Because COVID-19 Triggered the Policies' Protection and Preservation of Property Additional Coverages***

98. Due to the actual presence and spread of COVID-19 causing direct physical loss or damage, and the ongoing threat of immediately impending physical loss or damage (as described above) at Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities, Plaintiffs incurred costs to temporarily protect or preserve their insured property, including all costs associated with having to close down Mercedes-Benz Stadium and The Home Depot Backyard and Training Facilities and the costs to make the properties safe. The Policies provide coverage for such costs to the extent they are reasonable and necessary.

99. Such costs were reasonably necessary because incurring the costs prevented further insured physical loss or damage.

100. Accordingly, under the Policies, FM Global and AFM must compensate Plaintiffs for those costs.

***d. FM Global and AFM Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policies' Civil Authority Coverages***

101. Due to the actual physical presence of COVID-19 at and nearby Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities, Georgia's governor, the Fulton County Board of Health executive, the Cobb County Chairman of the Board of Commissioners, and the Atlanta mayor all issued orders which limited, restricted, and/or prohibited access to Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities.

102. Because of this, Plaintiffs have suffered actual losses and incurred extra expenses. The Policies afford coverage to Plaintiffs due to the civil authority orders which have caused substantial losses and extra expenses to Plaintiffs.

***e. FM Global and AFM Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policies' Ingress/Egress Coverages***

103. Due to COVID-19 and the physical loss and damage of COVID-19 at other nearby properties, Plaintiffs' businesses have been interrupted because of the total or partial prevention of ingress or egress to and from Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities.

104. The business interruption/time element losses caused by the prevention of ingress or egress to and from Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities are covered under the Policies.

***f. FM Global and AFM Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policies' Extra Expense Coverages***

105. The actual physical presence and spread of COVID-19 at Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities has caused Plaintiffs to incur reasonable and necessary extra expenses in an effort to continue as nearly normal as practicable the conduct of Plaintiffs' businesses. These expenses are in addition to what Plaintiffs would have normally incurred in conducting their businesses without the presence of COVID-19.

106. The Policies cover such reasonable and necessary extra expenses.

***g. FM Global and AFM Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policies' Attraction Property Coverages***

107. The Policies provide coverage for actual loss sustained and extra expense incurred resulting from physical loss or damage to property of the type insured that is within one mile of and attracts business to Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities.

108. Plaintiffs have suffered losses as a result of physical loss or damage to the attraction properties of the same type as described above with respect to Plaintiffs' properties within one mile of Mercedes-Benz Stadium and The Home Depot Backyard and within one mile of the Training Facilities.

***h. FM Global Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the Policy's Contingent Time Element Coverage***

109. The FM Global Policy also confers coverage for actual loss sustained and extra expense incurred directly resulting from physical loss or damage at contingent time element locations.

110. Plaintiffs have suffered actual losses and incurred extra expenses directly resulting from physical loss or damage at contingent time element locations due to COVID-19.

***i. AFM Should Compensate Plaintiffs for Their Losses Because COVID-19 Triggered the AFM Policy's Communicable Disease – Property Damage Coverage***

111. The actual presence of COVID-19 at the Training Facilities caused physical loss or damage to the Training Facilities. This resulted in orders by authorized governmental agencies which regulate communicable disease.

112. This triggered coverage under the AFM Policy's Communicable Disease – Property Damage Coverage, so Plaintiffs should be compensated for their losses.

113. The sales associate at Mercedes-Benz Stadium and The Home Depot Backyard interacted with Plaintiffs' employees who then entered the Training Facilities. On information and belief, those employees carried the actual presence of COVID-19 into the Training Facilities.

114. On information and belief, others who entered the Training Facilities also carried with them the actual presence of COVID-19 into the Training Facilities.

***j. AFM Should Compensate Plaintiffs for their Losses Because COVID-19 Triggered the AFM Policy's Communicable Disease – Business Interruption Coverage***

115. The actual presence of COVID-19 in Georgia, Cobb County, and Hall County, including at the Training Facilities, has resulted in state and county orders by those authorized to regulate communicable disease.

116. The business interruption losses suffered by Plaintiffs because of the civil authority orders due to the actual presence of COVID-19 at the Training Facilities conferred coverage to Plaintiffs under the AFM Policy's Communicable Disease – Business Interruption Coverage.

***k. AFM Should Compensate Plaintiffs for their Losses Because COVID-19 Triggered the Policy's Supply Chain Coverages***

117. COVID-19 has caused direct physical loss or damage of the type insured at the premises of the Plaintiffs' direct customers and direct contract service providers, as well as the direct and indirect suppliers, customers, and contract service providers of Plaintiffs' direct customers and direct service providers.

118. Plaintiffs have lost business income due to the supply chain interruptions.

119. These losses triggered coverage under the AFM Policy's supply chain coverage.

### **3. No Exclusion Applies Which Affects Coverage**

120. The Policies contain no exclusion which limits or bars coverage for the actual presence of COVID-19 or the threat created by that presence at and near Mercedes-Benz Stadium and The Home Depot Backyard and Training Facilities, the physical loss and damage to property at Mercedes-Benz Stadium and The Home Depot Backyard and Training Facilities, and/or the time element/business interruption losses which have resulted and will continue to result from the physical loss and damage to property.

121. In fact, the Policies specifically cover business interruption/time element losses due to the “actual not suspected presence of communicable disease.”

122. To the extent the Court finds that any exclusion(s) apply, they are unenforceable.

### **4. The Policies’ Contamination Exclusions Do Not Apply**

123. Although the Policies include so-called “contamination exclusions,” those exclusions do not apply to Plaintiffs’ claims, and they do not exclude coverage related to *business interruption/time element* losses.

124. The FM Global Policy’s “Communicable Disease Response” coverage provides coverage for, 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 . . . communicable diseases from insured property[.]” Exhibit 1, FM Global Policy at ATLPOLICY028.

125. Likewise, the AFM Policy’s “Communicable Disease – Property Damage” coverage provides for, among other things, “the reasonable and necessary costs incurred by the Insured at such described location for the: a) cleanup, removal and disposal of . . . communicable disease from insured property[.]” Exhibit 2, AFM Policy at AFMPOLICY030.

126. The FM Global Policy contains an exclusion that purports to preclude coverage for “contamination.” Exhibit 1, FM Global Policy at ATLPOLICY020.

127. Similarly, the AFM Policy contains an exclusion that purports to preclude coverage for “contamination.” Exhibit 2, AFM Policy at AFMPOLICY028.

128. These purported “contamination” exclusions do not exclude coverage for loss caused by “communicable disease,” which is in fact expressly covered. Exhibit 1, FM Global Policy at ATLPOLICY020; Exhibit 2, AFM Policy at AFMPOLICY028.

129. The Policies’ “**contamination**” exclusions do not exclude coverage for *business interruption* or *time element* losses.

130. The Policies have three types of exclusions: Group I, Group II, and Group III in the AFM Policy, and Group B, Group C, and Group D in the FM Global Policy.<sup>15</sup> See Exhibit 2, AFM Policy at AFMPOLICY025-028; Exhibit 1, FM Global Policy at ATLPOLICY016-020.

131. The contamination exclusion is a Group III exclusion in the AFM Policy and a Group D exclusion in the FM Global Policy.

132. Group I/Group B exclusions specifically exclude coverage for business interruption losses caused by a particular risk of loss, such as nuclear reaction, war, and rebellion. Group I exclusions do so by stating specifically in its prefatory phrase that “This Policy excludes *loss or damage directly or indirectly caused by or resulting from any of the following . . .*”

133. Group II and III/Group C and D exclusions, however, do not exclude business interruption losses. Again, the contamination exclusions fall under Group III and Group D. The prefatory language to those two groups of exclusions does not state explicitly or otherwise that

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<sup>15</sup> Although the group nomenclature is different, these exclusions are substantially similar in the AFM and FM Global Policies.



they are excluding loss. Instead, the two groups of exclusions exclude particular *conditions*, rather than seeking to exclude any loss or damage arising from a particular cause.

134. The contamination exclusion itself excludes not losses resulting from contamination, but, at most, costs to remedy contamination and, in particular, the cost to decontaminate and the cost to use other non-contaminated space.

135. In addition, Plaintiffs' Premises Pollution Liability Insurance Policy ("Pollution Policy"),<sup>16</sup> insured separately by Chubb, illustrates the scope of what is excluded by the FM Global and AFM Policies' "contamination" exclusions and further supports that coverage exists under Plaintiffs' FM Global and AFM Policies for losses suffered and extra expense incurred due to COVID-19.

136. A basic tenant of insurance law is that the plain meaning of a policy is determined by dictionaries, statutes, and other insurance policy forms, among other things.

137. Specifically, the Chubb Pollution Policy covers losses from viruses, such as COVID-19, but (1) only for remediation costs; (2) only if not the result of communication through human-to-human bodily fluid contact; and (3) only if Plaintiffs were required to report the pollution event to federal or state authorities. *See* Exhibit 11, Chubb Pollution Policy. This suggests that the "contamination" exclusions in the FM Global and AFM Policies do *not* apply to:

- a. Human-to-human spread;
- b. Business interruption losses;
- c. The spread of virus, like COVID-19, that does not require the reporting of a pollution or contamination event to authorities.

138. Therefore, this is further evidence that FM Global Policy's and AFM Policy's "contamination" exclusions do not apply to Plaintiffs' claims.

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<sup>16</sup> Plaintiffs obtained a separate Pollution Policy, under policy number PPL G46803814 001, from Chubb. This Pollution Policy is not subject to this lawsuit.

139. If FM Global or AFM should contend that the purported “contamination” exclusions prohibit coverage for loss caused by “communicable disease” (or any other aspect of Plaintiffs’ claims), the Policies are ambiguous, and therefore, must be construed in favor of coverage. *See Textron, Inc. v. Aetna Cas. & Sur. Co.*, 754 A.2d 742, 756 (R.I. 2000) (holding that the word “sudden” within the “sudden and accidental” exception to the pollution exclusion was ambiguous and therefore construed against the drafter); *Dutchman Dental LLC v. The Providence Mut. Fire Ins. Co.*, No. KC-2016-1281, 2020 WL 1275581, at \*5 (R.I. Super. Mar. 11, 2020) (“As the insurer, Defendant has the ability to change the language in its policies or move the pollution exclusion into section B(1). However, because it has not done so, the ambiguity created is held strictly against the insurer, and this Court finds that the lack of such language in section B(2) allows for coverage where there is a concurrent covered risk.”).

**5. The Policies’ Communicable Disease Additional Coverages’  
Sublimits Do Not Restrict Plaintiffs’ Recovery**

140. Under the FM Global Policy, in addition to the general all-risks coverage, FM Global must cover Plaintiffs for the actual presence of “communicable disease” at Mercedes Benz Stadium and The Home Depot Backyard pursuant to two sections in the Policy titled “Communicable Disease Response” and “Interruption by Communicable Disease.” Under the AFM Policy, in addition to the general all-risks coverage, AFM must cover Plaintiffs for the actual presence of “communicable disease” at the Training Facilities under two sections of the policy titled “Communicable Disease – Property Damage” and “Communicable Disease – Business Interruption” (both sections in the FM Global and AFM Policies hereafter referred to collectively as, “Communicable Disease Additional Coverages”) for which the Plaintiffs specifically purchased insurance. Plaintiffs purchased these Communicable Disease Additional Coverages as additional coverages.

141. Even in the Policies, these Communicable Disease Additional Coverages are denoted as **Additional** Coverages or Coverage **Extensions** and do not purport to reduce other coverages available under the Policy. They were sold simply as *additions* to the Policies.

142. Any notion that Plaintiffs would purchase Additional Coverages to *reduce* other coverages is illogical. Plaintiffs purchased the additional coverages for the “additional coverage.”

143. Other coverages under the Policies 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 Additional Coverages. Further, any sublimits applicable to the Communicable Disease Additional Coverages do not apply to limit the Policies’ other coverages that may apply to physical loss or damage to Mercedes-Benz Stadium and The Home Depot Backyard and the Training Facilities.

**F. Defendants’ Bad Faith Conduct**

144. As demonstrated in detail below, FM Global and AFM have engaged in bad-faith conduct by: (1) predetermining that they would not cover Plaintiffs’ (or any insureds’) business interruption/time element claims related to COVID-19 even prior to conducting any investigation, as unearthed in an internal memo circulated to adjusters at both companies; and (2) developing a scheme to make Plaintiffs believe that only the Communicable Disease Additional Coverages (with their sublimits) apply, if at all, to Plaintiffs’ claims. Defendants FM Global and AFM also further engaged in bad faith conduct by conducting an onerous pretextual investigation (though they had already predetermined there is no business interruption/time element coverage) and, in FM Global’s case, requested hundreds of pieces of information and certain documents issued by the state or city that it knows are not required by the FM Global Policy.

145. Despite their knowledge that the Policies cover Plaintiffs' losses beyond simply the Communicable Disease Additional Coverages sublimit amounts, FM Global and AFM concocted a plan to steer its policyholders into, at most, its sublimits for the interruption by communicable disease and communicable disease response.

146. Plaintiffs submitted their claim for coverage under the FM Global Policy on March 23, 2020. *See* Exhibit 12, Email dated March 23, 2020.

147. Plaintiffs and adjusters for FM Global continued to correspond by email and letter. However, each time Plaintiffs sent information responsive to FM Global's requests, FM Global moved the goal posts and requested more and more information, claiming such requests were part of an effort to determine its coverage position. *See* Exhibit 13, FM Letter dated March 26, 2020; Exhibit 14, M. Altman Email to C. Chandler dated April 17, 2020 and Attachments; Exhibit 15, FM Letter to M. Altman dated April 23, 2020.

148. In reality, as evidenced by the internal memo, prior to the Request for Information process, FM Global and AFM had already incorrectly and in bad faith pre-determined their coverage positions—namely, that there is no coverage for Plaintiffs' (or any other insureds') business interruption/time element losses.

149. For example, even though Plaintiffs submitted conclusive proof of the ticket sales employee's positive COVID-19 test result (directly from the Emory Sports Medicine Center), the employee's initial social media post about the COVID-19 symptoms, a comprehensive list of all locations within the stadium entered by the employee and the times the employee entered those locations (taken from the employee's facility access card records) in the six-week period leading up to the COVID-19 symptoms, and a memo with the stadium cleaning regimen utilized by Plaintiffs after the stadium's shutdown, that information, astonishingly, was still not enough to

satisfy FM Global. *See* Exhibit 14, M. Altman Email to C. Chandler dated April 17, 2020 and Attachments; Exhibit 15, FM Letter to M. Altman dated April 23, 2020.

150. Despite having been provided the positive COVID-19 test result for the ticket sales employee, FM Global issued an additional request for information with 10 questions, some of which request as many as *100* separate sets of responsive information and/or documentation. FM Global claimed this onerous request was made to assist in its “investigation as it relates to the questions and [FM Global’s] determination of the actual presence of COVID-19 at any location in the Policy.” *See* Exhibit 14, M. Altman Email to C. Chandler dated April 17, 2020 at Exhibit D; Exhibit 15, FM Global Letter to M. Altman dated April 23, 2020. But, pursuant to FM Global’s own unearthed internal memo (described in detail below), by providing just the test result of an infected employee, Plaintiffs provided all that FM Global admittedly needed to provide coverage.

151. Plaintiffs submitted their final answers and documents responsive to FM Global’s Request for Information on August 5, 2020.

152. On August 17, 2020, FM Global issued its coverage letter, which admitted coverage only up to \$1 million under the Additional Coverages, but did not admit coverage for time element/business interruption coverage. *See* Exhibit 16, Letter from C. Chandler dated August 17, 2020.

153. FM Global’s and AFM’s systemic practice and procedure is detailed in FM Global’s and AFM’s internal memo entitled “Talking Points on the Novel 2019 Coronavirus.” *See* Exhibit 17, Talking Points.

154. Interestingly, the Talking Points specifically admit that an employee affected with a communicable disease at the covered property would be considered to be the “actual presence” of communicable disease if it is confirmed that the employee actually has the communicable disease

and that the presence of the communicable disease was the basis for the decision to limit access to the covered property. *See* Exhibit 17, Talking Points.

155. Yet despite this admission, and the fact that Plaintiffs had provided proof of the “actual presence” of COVID-19 at the stadium, FM Global acted in bad faith for months and demanded even more information—including over 100 questions—from Plaintiffs before FM Global gave its position on coverage in August 2020—which it had already pre-determined to be a denial.

156. Thus, based on information and belief and on the Talking Points, both FM Global and AFM are in fact engaged in a calculated scheme to deny Plaintiffs’ and its other insureds’ similar COVID-19 related claims.

157. FM Global and AFM have also acted in bad faith by developing a practice and procedural scheme to steer their policyholders into thinking only the Communicable Disease Additional Coverages (with their sublimits) apply, not the total coverages under the “all risks” Policies that actually, in fact, apply. But again, as explained in detail above, these sublimits are simply part of the *additional* coverages, and do not represent the totality of coverage.

158. The Talking Points memo reflects FM Global’s and AFM’s schemes to limit coverage to the Communicable Disease Additional Coverages incorrectly and in bad faith.

159. The Talking Points memo incorrectly and in a conclusory fashion states that (a) the FM Global 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. . .” and that (b) the AFM Policy’s coverages for Civil or Military Authority, Supply Chain, and Ingress/Egress do not apply for the same reasons. *See* Exhibit 17,

Talking Points. But the conclusory Talking Points memo is incorrect, as the language of the Policies clearly shows that total coverage is available to Plaintiffs due to the physical loss and damage caused by COVID-19.

160. FM Global's and AFM's inclusion of only the Communicable Disease Additional Coverages in their Talking Points causes its adjusters to request information tied only to the Communicable Disease Additional Coverages.

161. Indeed, FM Global's March 26, 2020 letter to Plaintiffs demonstrates the adjuster's adherence to FM Global's company-wide policy of limiting the claims to those related to COVID-19 only to the Communicable Disease Additional Coverages. In his March 26, 2020 letter, the adjuster wrote only about the Communicable Disease \$1,000,000 sublimit, and did not address or acknowledge any of the coverages beyond that sublimit. *See* Exhibit 13, FM Letter dated March 26, 2020.

162. Furthermore, the adjuster's April 23, 2020 letter requested specific state, county, or city orders *where Mercedes-Benz Stadium is specifically identified* as a location that, due to the presence of COVID-19, should remain closed. Exhibit 15, FM Letter to M. Altman dated April 23, 2020. The letter goes on to state that "we do not consider general orders for the public welfare such as sheltering in place or closure of businesses in which more than 10 people gather as qualifying orders." *Id.*

163. Nothing in the FM Global Policy states that such specificity in a civil order is required, nor does the ingress/egress coverage require such specificity. *See* Exhibit 1, FM Global Policy.

164. On information and belief, in furtherance of FM Global's company scheme laid out in the Talking Points, the adjuster resorted to creating arbitrary requirements by requesting from

Plaintiffs governmental closure orders specifically identifying Mercedes-Benz Stadium by name—knowing no such order exists, or is necessary to mandate the closure of the stadium by the government, or is required to establish coverage under the FM Global Policy.

165. In the face of FM Global’s and AFM’s bad faith coverage positions, the Policies explicitly acknowledge 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.” Exhibit 1, FM Global Policy at ATLPOLICY028; Exhibit 2, AFM Policy at AFMPOLICY030.

166. The Talking Points memo constitutes a deceitful effort by FM Global and AFM to maneuver the investigation and impending decision on coverage to only the Communicable Disease Additional Coverages—and that is exactly what happened here.

167. FM Global’s reliance on the Talking Points, plus its other conduct in requiring onerous prerequisites to coverage that it knew were not required by the FM Global Policy and were unreasonable, amount to a positive and unconditional refusal to honor the contract FM Global entered into with Plaintiffs.

168. Additionally, Plaintiffs submitted their Notice of Loss to AFM on June 4, 2020. *See* Exhibit 18, Notice of Loss to AFM.

169. AFM used the same exact insurance adjuster as FM Global used for Plaintiffs’ claims.

170. Plaintiffs submitted their comprehensive 212-page Response to AFM’s Requests for Information on October 13, 2020.

171. Despite Plaintiffs’ exhaustive response, AFM’s adjuster requested even further information from Plaintiffs, which is unnecessary as Plaintiffs’ submitted responses already demonstrate that they are entitled to coverage under the AFM Policy.



172. While AFM is apparently still participating in its pretextual “investigation” and has not provided its coverage position, the internal memo Talking Points circulated within AFM and used by AFM constitutes a positive and unconditional refusal to honor the contract AFM entered into with Plaintiffs.

173. On information and belief, based on, but not limited to, FM Global’s coverage decision and the Talking Points, the AFM adjuster also is conducting a pretextual investigation, while simply planning to come to the incorrect conclusion provided in the Talking Points, that only the Communicable Disease Additional Coverages and sublimits are applicable to a COVID-19 claim, if any.

174. The Talking Points memo instructs claims 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.

175. To the extent that the Court or fact-finder interprets the Policies to require Plaintiffs to complete any conditions precedent for coverage and performance under the FM Global and AFM Policies, FM Global’s and AFM’s reliance on the Talking Points and sham claims “investigations” constitute material breaches, excusing any alleged failure (if any) by Plaintiffs to complete conditions precedent.

176. Plaintiffs have complied with the Requirements in Case of Loss provisions in the Policies. To the extent the Court or fact-finder interprets the Policies to require additional compliance, FM Global’s and AFM’s reliance on the Talking Points and sham claims “investigations” constitute material breaches, excusing any alleged failure (if any) by Plaintiffs to comply with all requirements.

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

178. FM Global's and AFM's explicit practices and procedures on COVID-19 related claims constitute unfair or deceptive acts or practices and bad faith.

179. FM Global's and AFM's actions in utilizing the Talking Points demonstrate an intentional, conscious disregard of Plaintiffs' rights under the Policies.

180. FM Global and AFM intentionally placed arbitrary requirements on the time element/business interruption loss portion of Plaintiffs' Policies, and requested additional and increasingly unnecessary information from Plaintiffs related to its Communicable Disease Additional Coverages.

181. FM Global intentionally drew out its pretextual "investigation," and then finally gave its position on coverage, providing coverage only as to the Additional Coverages.

182. Similarly, AFM has intentionally drawn out its pretextual sham "investigation" and has yet to provide its position on coverage.

183. FM Global's and AFM's intentional imposition of arbitrary requirements on the time element/business interruption coverage in Plaintiffs' Policies, and onerous requests for more information from Plaintiffs, were unreasonable and done in bad faith.

184. FM Global and AFM have not only intentionally failed to apply their own Policy language in good faith, but have also intentionally conducted a pretextual investigation (or in AFM's case, is currently conducting a pretextual investigation) with a pre-determined decision based on the arbitrary conclusions in the Talking Points without regard to the Policies' language as interpreted under applicable law. FM Global and AFM have additionally intentionally failed to

consider the relevant facts related to Plaintiffs' *entire* claims against the Policies' language as interpreted under applicable law.

185. Plaintiffs have attempted to mitigate their losses.

186. Therefore, due to the actual spread or presence of COVID-19, Plaintiffs have suffered, are suffering, and continue to suffer substantial damages due to FM Global's and AFM's bad faith conduct and breach of contract.

187. Plaintiffs' damages include, but are not limited to, the reduction of revenue and income related to the cancellation and/or indefinite postponements of Atlanta United FC home matches, Atlanta Falcons home preseason games, concerts, private events, tours, youth camps, and public training camps. Plaintiffs' damages further include, but are not limited to, the reduction of revenue and income related to: the fact that the Atlanta United FC and Atlanta Falcons must have home games with limited or no fans; the stadium retail stores' and concession stands' limited sales due to the cancelled events and/or fan-free events or limited-fan events; the cancellation, reduction, or seasonal postponement of brand sponsorships due to the cancelled or limited-capacity or fan-free events and games; the lack of ability to have sponsor activations at the Atlanta Falcons Training Facility due to the training camp being closed to the public; a sizable reduction in the hotel and motel tax revenue that the Plaintiffs would have received but for COVID-19; and loss of the "marquee event" payment from sponsor Mercedes-Benz as a result of not hosting the 2020 Final Four. Plaintiffs will continue to suffer damages if other scheduled events and games are cancelled or limited in the future due to COVID-19.

**V. CLAIMS ALLEGED**

**COUNT I**

**Declaratory Judgment as to Defendant FM Global**

188. Plaintiffs Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

189. Plaintiffs Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC seek 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 Plaintiffs and FM Global regarding the availability of coverage under the FM Global Policy for Plaintiffs' claims.

190. The controversy between Plaintiffs and FM Global is ripe for judicial review.

191. Therefore, Plaintiffs Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC seek a declaration from this Court that:

- a. The various FM Global Policy coverage provisions identified in this Complaint are triggered by Plaintiffs' claim;
- b. No FM Global Policy exclusion applies to prohibit or limit coverage for Plaintiffs' claims; and
- c. The FM Global Policy covers Plaintiffs' claim.

**COUNT II**

**Declaratory Judgment as to Defendant AFM**

192. Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

193. Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC seek the Court's declaration of the parties' rights and duties under the AFM 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 Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC and FM Global regarding the availability of coverage under the AFM Policy for Plaintiffs' claims.

194. The controversy between Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC and AFM is ripe for judicial review.

195. Therefore, Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC seek a declaration from this Court that:

- a. The various AFM Policy coverage provisions identified in this Complaint are triggered by Plaintiffs' claim;
- b. No AFM Policy exclusion applies to prohibit or limit coverage for Plaintiffs' claims;  
and
- c. The AFM Policy covers Plaintiffs' claim.

**COUNT III**  
**Breach of Contract as to Defendant FM Global**

196. Plaintiffs Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

197. The FM Global Policy constitutes a valid and existing contract of insurance requiring Defendant FM Global to properly compensate Plaintiffs for their losses.

198. FM Global has breached the contract by failing to pay Plaintiffs for their business interruption/time element losses, and instead tendering payment related only to the Additional Coverages.

199. Plaintiffs sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings resulting from COVID-19, but Defendant FM Global has failed to comply with its obligation and has failed to compensate Plaintiffs for their claim.

200. Plaintiffs are entitled to actual damages as a result of FM Global's breach of contract.

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

**COUNT IV**  
**Breach of Contract (Anticipatory Repudiation) as to Defendant AFM**

202. Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

203. The AFM Policy constitutes a valid and existing contract of insurance requiring Defendant AFM to properly compensate Plaintiffs for their losses.

204. AFM has anticipatorily repudiated the contract by, *inter alia*, relying on the Talking Points which summarily pre-determine that AFM intends to deny Plaintiffs' claims.

205. Plaintiffs sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings and requiring the initial closure of fitness and training facilities and subsequent limitations due to COVID-19, but Defendant AFM has failed to comply with its obligation and has failed to compensate Plaintiffs for their claim.

206. Plaintiffs are entitled to actual damages as a result of AFM's anticipatory repudiation/breach of contract.

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

**COUNT V**  
**Bad Faith – Common Law as to Defendant FM Global**

208. Plaintiffs Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

209. The acts and omissions of Defendant FM Global as complained of in this Complaint, and also yet to be discovered in this matter, constitute bad faith.

210. Plaintiffs Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings resulting from COVID-19, but Defendant FM Global has failed to comply with its obligation to conduct a reasonable and good-faith investigation of Plaintiffs' claim, and has further failed and refused in bad faith to compensate Plaintiffs for their claim.

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

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

**COUNT VI**  
**Bad Faith – Common Law as to Defendant AFM**

213. Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

214. The acts and omissions of Defendant AFM as complained of in this Complaint, and also yet to be discovered in this matter, constitute bad faith.

215. Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings and requiring the closure of fitness and training facilities due to COVID-19, but Defendant AFM has failed to comply with its obligation to conduct a reasonable and good-faith investigation of Plaintiffs' claim, and has further failed in bad faith to compensate Plaintiffs for their claim.

216. Plaintiffs are entitled to actual damages and punitive damages as a result of AFM's bad faith.

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

**COUNT VII**  
**Bad Faith as to Defendant FM Global – R.I.G.L. § 9-1-33**

218. Plaintiffs Atlanta Falcons Stadium Company, LLC, Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

219. The acts and omissions of Defendant FM Global 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.

220. Plaintiffs sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings resulting from COVID-19, but Defendant FM Global has failed to comply with its obligation and has failed to compensate Plaintiffs for their claim.



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

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

**COUNT VIII**  
**Bad Faith as to Defendant AFM – R.I.G.L. § 9-1-33**

223. Plaintiffs Atlanta Falcons Football Club, LLC and Atlanta United Football Club, LLC incorporate by reference the allegations contained in Paragraphs 1-187, as if set out in full herein.

224. The acts and omissions of Defendant 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.

225. Plaintiffs sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings and requiring the closure of gyms and fitness facilities due to COVID-19, but Defendant AFM has failed to comply with its obligation and has failed to compensate Plaintiffs for their claim.

226. Plaintiffs are entitled to compensatory damages and punitive damages as a result of Defendant AFM's bad faith.

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

**VI. REQUEST FOR RELIEF**

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

- 1) A declaration from this Court that:

- a. The various coverage provisions identified in this Complaint are triggered by Plaintiffs' claims;
  - b. No exclusion in the Policies applies to prohibit or limit coverage for Plaintiffs' claims; and
  - c. The Policies cover Plaintiffs' claims.
- 2) For actual, special, compensatory, and consequential damages against FM Global and AFM in an amount to be proved at trial in excess of the minimum jurisdictional limits of this Court;
  - 3) For punitive and/or double and/or treble damages due to FM Global's and AFM's intentional bad faith conduct;
  - 4) Pre- and post-judgment interest as provided by law;
  - 5) An award of attorneys' fees and cost of suit incurred; and
  - 6) For such other and further relief as the Court deems proper.

## **VII. JURY TRIAL DEMANDED**

Plaintiffs respectfully request a trial by jury on all issues so triable.

Date: October 30, 2020

Respectfully submitted,

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\*Applications for admission *pro hac vice* to be filed