

FAX FILE

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PER LOCAL RULE, THIS  
CASE IS ASSIGNED TO  
DEPT 23, FOR ALL  
PURPOSES

FILED

SEP 01 2020

By *As for*

SUMMONS ISSUED

7 Attorney for Plaintiff Tarrar Enterprises, Inc.,  
8 DBA Tarrar Utility Consultants

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR CONTRA COSTA COUNTY

11 TARRAR ENTERPRISES, INC., a California  
12 Corporation,

Case No. **C20-01776**

COMPLAINT FOR:  
(1) INSURER'S BREACH OF  
CONTRACT; and  
(2) BAD FAITH

13 Plaintiff,

14 v.

15 ASSOCIATED INDEMNITY CORP., a  
16 California Corporation, and Does 1 to 20,

17 Defendants.  
18

19 Plaintiff declares as follows:

20  
21 1. Plaintiff TARRAR ENTERPRISES, INC. ("TARRAR"), is a California  
22 Corporation doing business in Contra Costa County, California.

23  
24 2. Defendant ASSOCIATED INDEMNITY CORP. ("AIC") is a California  
25 corporation which offers policies of insurance to California residents, including Plaintiff herein,  
26 and is regulated by the California Department of Insurance. On information and belief, AIC is a  
27 subsidiary of and/or otherwise affiliated with, global insurance giant Allianz Global Corporate  
28

Submitted By:  
D&T Legal Services 925-947-1221  
2146 N. Main Street, Suite A  
Walnut Creek, CA 94596

1 & Specialty ("Allianz"), part of the Allianz Group, the world's second largest insurance  
2 company.

### 3 **DOE ALLEGATIONS**

4 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as  
5 Does 1 through 20, inclusive, and therefore sues these defendants by such fictitious names.  
6 Plaintiff will seek leave to amend this complaint if necessary to allege their true names and  
7 capacities when ascertained. Plaintiff is informed and believe and thereupon alleges that each  
8 of the fictitiously named defendants is responsible in some manner for the occurrences herein  
9 alleged, and that Plaintiff's losses and damages as herein alleged were proximately caused by  
10 the acts and conduct of such fictitiously named defendants.  
11

12 4. Plaintiff is informed and believes and based thereon alleges that Defendants, and  
13 each of them, gave consent to, ratified, and/or authorized the acts alleged herein as to each of  
14 the remaining Defendants  
15

### 16 **THE POLICY**

17 5. AIC issued to TARRAR an insurance policy providing coverage for lost business  
18 income, and coverage for its business property, for losses caused by certain types of civil  
19 authority, and for business income lost as a consequence of losses suffered by certain third  
20 parties, bearing policy number TGF07300643, with a policy period from 11/02/2019 until  
21 11/02/2020 (the "Policy.") A true and correct copy of the Policy is attached hereto as Exhibit  
22 "A" and incorporated herein.  
23

24 6. Allianz expressly touted the Policy as one "designed to support the increasingly  
25 complex risks your business faces."  
26

27 7. The Policy expressly provided for coverage for business income losses as follows:  
28

1 **g. Business Income**

2 We will pay for the actual loss of Business Income you sustain due to the  
3 necessary suspension of your OPERATIONS during the PERIOD OF  
4 RESTORATION. We will also pay for the actual loss of Business Income you  
5 incur during the period that: (1) Begins on the date property is actually repaired,  
6 rebuilt or replaced and operations are resumed; and (2) Ends on the earlier of: (a)  
7 The date you could restore operations with reasonable speed, to the condition that  
8 would have existed if no direct physical loss or damage occurred; or (b) 365  
9 consecutive days after the date determined in (1) above. But we will not pay for  
10 any loss of Business Income beyond 24 consecutive months after the date of  
11 direct physical loss or damage. The suspension must be caused by direct physical  
12 loss of or damage to property at the described premises, including personal  
13 property in the open (or in a vehicle) within 100 feet, caused by or resulting from  
14 any Covered Causes of Loss.

15 BUSINESS INCOME means the: (1) Net Income (Net Profit or Loss before  
16 income taxes) that would have been earned or incurred; and (2) Continuing  
17 normal operating expenses incurred, including payroll.

18 8. The Policy also provided for "civil authority" coverage as follows:

19 **i. Civil Authority**

20 We will pay for the actual loss of Business Income you sustain and necessary  
21 Extra Expense caused by action of civil authority that prohibits access to the  
22 described premises due to direct physical loss of or damage to property, other than  
23 at the described premises, caused by or resulting from any Covered Cause of  
24 Loss. This coverage will apply for a period of up to two consecutive weeks from  
25 the date of that action.

26 9. The Policy also provides coverage for losses caused by losses to "income support  
27 properties" as follows:

28 **j. Income Support Properties**

We will pay for the actual loss of Business Income you sustain due to direct  
physical loss or damage at the premises of an income support property not  
described in the schedule caused by or resulting from any Covered Cause of Loss.  
Income Support Property means property operated by others on whom you  
depend to: (1) Deliver material or services to you, or to others for your account;  
(2) Accept your products or services; (3) Manufacture products for delivery to  
your customers under contract of sale; or (4) Attract customers to your business.  
The most we will pay for this coverage is \$15,000.

10. The Policy also provides coverage for loss of TARRAR's physical premises as  
follows:

1 We will pay for direct physical loss of or damage to Covered Property at the  
2 premises described in the Declarations caused by or resulting from any Covered  
3 Cause of Loss.

4 11. In 2006, following the 2003 SARS (Severe Acute Respiratory Syndrome) viral  
5 epidemic, the Insurance Services Office ("ISO") drafted ISO form CP 01 40 07 06 titled  
6 "Exclusion for Loss Due To Virus Or Bacteria," which excludes losses for business income  
7 caused by "loss or damage caused by or resulting from any virus, bacterium or other  
8 microorganism that induces or is capable of inducing physical distress, illness or disease." That  
9 form exclusion (the "Virus Exclusion") was expressly intended to exclude losses for such viral  
10 and bacterial contaminants as rotavirus, SARS, influenza legionella and anthrax (see ISO's July  
11 6, 2006 circular [LI-CF-2006-175]). The ISO's Virus Exclusion was quickly adopted by many  
12 insurers specifically to exclude virus risks from coverage.  
13

14 12. The **Policy does not contain the ISO form Virus Exclusion**, nor any language  
15 remotely purporting to exclude damages caused by a virus, and it is only logical to presume that  
16 AIC's failure to exclude such a known risk means it understood quite well that such risks would  
17 be covered by the Policy.  
18

19 **TARRAR'S LOSSES CAUSED BY COVID-19 AND**  
20 **ACTIONS OF CIVIL AUTHORITIES**

21 13. TARRAR operated a utility consultant business at its premises located in  
22 Brentwood, California, in Contra Costa County.

23 14. In early 2020, reports of the spread of the novel coronavirus (COVID-19) began to  
24 circulate in the United States and in Contra Costa County. To date, over 150,000 people have  
25 died in the United States alone, as a result of the COVID-19 pandemic, and the pandemic has  
26 seriously interfered with TARRAR's business and caused a loss of business income and other  
27 losses.  
28

1           15. Since it was first reported, COVID-19 has physically impacted public and private  
2 property, and physical spaces in communities around the world. The global pandemic is  
3 exacerbated by the fact that the potentially deadly virus contaminates and stays on the surface of  
4 objects or materials for weeks. The duration of the virus's lethal staying power, and the  
5 conditions upon which the COVID-19 virus can continue to propagate and infect people, are  
6 known facts under continued scrutiny by the scientific community. It is know that the virus can  
7 persist in an infectious state on surfaces for weeks, up to twenty-eight days under some  
8 estimates.  
9

10           16. Thus, a significant component of the public health crisis is the risk of continued  
11 contamination of the surface of objects and materials which could propagate infections.  
12 Accordingly, the COVID-19 virus has caused damage, including damage to property, as a result  
13 of the staying power of the virus and the communicability of disease from exposure to the  
14 surface of objects and materials.  
15

16           17. One of the most insidious hallmarks of the COVID-19 virus is the extent that it can  
17 be spread by asymptomatic carriers. Thus, without conducting testing, it is impossible to know  
18 whether an asymptomatic person is infectious at any given time or whether that person is  
19 shedding virions that are infectious into the environment, including their work areas.  
20

21           18. Starting on or about March 6, 2020 Contra Costa Health Services (CCHS) reported  
22 instances of persons in Contra Costa county being infected with the COVID-19 and issued  
23 guidelines for reducing the spread of the virus.

24           19. On March 10, 2020, the Contra Costa County Board of Supervisors proclaimed a  
25 state of emergency caused by COVID-19 in the County, stating that "this Board found that due  
26 to the introduction of coronavirus disease 2019 (COVID-19), conditions of disaster or **extreme**  
27 **peril to the safety of persons and property** did exist in the County of Contra Costa  
28

1 commencing on or about March 3, 2020, and therefore the Board proclaimed the existence of a  
2 local emergency throughout this county.” (emphasis added).

3 20. As COVID-19 continued to spread throughout the County, the official government  
4 health guidelines became increasingly severe. Effective March 17, 2020 the chief Health  
5 Officers from Contra Costa and other Bay Area counties issue a new Order that is required  
6 residents, with certain limited exceptions, to “shelter in place.”  
7

8 21. TARRAR’s business was not considered an “essential business,” and was therefore  
9 not exempted from the governmental shelter in place Order which expressly required businesses  
10 such as TARRAR to **cease all operations at its physical location in the County of Contra**  
11 **Costa.**

12 22. As a further consequence of COVID-19, on March 19, 2020 Governor Gavin  
13 Newsom issued Executive Order N-33-20, which ordered all residents to stay home “excepted  
14 as needed to maintain continuity of operations of the federal critical infrastructure sectors” and  
15 access “such necessities as food, prescriptions, and health care.”  
16

17 23. As a result, TARRAR was legally required to close its business premises for the  
18 duration of the orders because of the COVID-19 outbreak, and did so, in compliance with the  
19 directives of civil authorities and because of the conditions of “disaster or extreme peril to the  
20 safety of persons and property” both at TARRAR’s business premises and elsewhere.  
21 TARRAR thereby suffered a lost of use of its insured premises in Contra Costa County as a  
22 result of property damage caused by COVID-19 and the actions of civil authorities.  
23

24 24. The closure of TARRAR’s business premises caused TARRAR to suffer a serious  
25 and sustained loss of business income. In addition, TARRAR suffered a loss of business  
26 income because of the spread of COVID-19 at other places throughout the the world which  
27 impacted other businesses and individuals which constituted Income Support Properties and  
28



1 which lead to other actions of federal, state, and local civil authorities prohibiting travel and  
2 access to locations and properties that were contaminated with COVID-19 virus, or were at risk  
3 of being contaminated with the virus, further impacting TARRAR's business income. Such  
4 actions taken by various civil authorities in the United States began in January of 2020 and are  
5 ongoing as of the date of this filing.

6  
7 **AIC'S PATENTLY FRIVOLOUS, ERROR-FILLED 'INVESTIGATION'**  
8 **AND ITS RESULTING WRONGFUL DENIAL OF COVERAGE**

9 25. On or about April 21, 2020, TARRAR tendered a claim for its ongoing losses to  
10 AIC, which purported to conduct an investigation of the claims. On information and belief,  
11 AIC's "investigation" was merely a charade designed to cover up the insurer's preexisting  
12 decision to deny all COVID-19 related claims, including those of TARRAR.

13 26. AIC did not conduct a physical investigation of the TARRAR's premises to  
14 determine whether it was contaminated with infectious material, or was otherwise at risk of  
15 being contaminated with the virus.

16 27. Nor did AIC conduct any tests on TARRAR's employees or otherwise attempt to  
17 arrange for such testing, if and when it became available to determine if they were infected.

18 28. Nor did AIC conduct any tests in any other locations and properties where  
19 contamination had been reported that led to the actions of the civil authorities requiring  
20 Plaintiff's business to be shuttered.

21 29. Instead, by letter dated June 19, 2020, AIC denied TARRAR's claims entirely,  
22 almost entirely on its unsubstantiated supposition that there was no physical damage to  
23 TARRAR's location. A true and correct copy of the denial letter is attached hereto as Exhibit  
24 "B".  
25

26 30. AIC's denial letter purported to discuss an "investigation" that AIC had allegedly  
27  
28

1 performed with the assistance of the Sedgwick firm, but – inexplicitly -- contained a detailed  
2 examination and evaluation of governmental shut-down orders issued by the County of Los  
3 Angeles, not those of Contra Costa County in reaching its conclusion.

4 31. TARRAR's insured Contra Costa County physical premises is obviously not subject  
5 to the authority of the County of Los Angeles, and TARRAR never claimed that it was. It  
6 appears most likely that AIC, in a rush to deny the claim, simply "cut and pasted" parts of a  
7 denial letter that it had previously issued to a Los Angeles County insured – but in any event, it  
8 is clear that AIC did not act reasonably in conducting its investigation to determine that AIC's  
9 physical premises were subject to the authority of the Contra Costa County governmental  
10 authorities, not those of Los Angeles County. Nowhere is the Contra Costa County shut down  
11 order, the state of emergency existing in Contra Costa County, the express finding of extreme  
12 peril to property in Contra Costa County by civil authorities, nor the impact of COVID-19 or  
13 shut down orders on other "Income Support Properties" *even mentioned* in AIC's denial letter.  
14 Those were all highly salient facts in TARRAR's losses – which AIC completely overlooked in  
15 conducting its bogus "investigation."  
16

17 32. Although AIC's denial letter did not attempt to claim that the Policy was subject to  
18 any virus exclusion (though such exclusions have widely existed in the industry since 2006),  
19 AIC took the position that all of TARRAR's COVID-19 related losses were nevertheless  
20 entirely uncovered.  
21

22 33. AIC's coverage analysis in its denial letter was as sloppy and self-serving as its  
23 purported "investigation."  
24

25 34. AIC's denial letter took the position there was no coverage under the Civil  
26 Authority coverage on the grounds that:  
27  
28



1 “The Civil Authority additional coverage prefaces coverage upon actual loss of  
2 Business Income and necessary Extra Expense caused by ‘action of civil authority  
3 that prohibits access to your business due to direct physical loss of or damage to  
4 property’ other than at the insured location. Additionally, the physical loss or  
5 damage to property must be based by or result from a ‘Covered Cause of Loss.’”

6 35. The first problem with this analysis, is AIC’s presumption that there was no  
7 “physical loss of” “or damage to” property other than the insured location. That  
8 completely unprincipled assertion was either plainly wrong on its face, or, at a minimum,  
9 an interpretation that grossly violates the reasonable expectations of the insured when  
10 reading the Policy. The County of Contra Costa justified its own shut down order on,  
11 among other things, “extreme peril” to property, yet AIC simply presumed there was no  
12 property damage without any justification or any attempt to investigate.

13 36. That was unreasonable. This Court will be able to take judicial notice of  
14 reports of widespread COVID-19 contamination of properties throughout the county  
15 (including to wide spread decontamination procedures at many places) and the world  
16 which were widely disseminated in the press and became one of the reasons behind the  
17 governmental shut down orders.

18 37. Furthermore, under case authority such as *Gregory Packaging, Inc. v.*  
19 *Travelers Property and Casualty Company of America*, No. 12-cv-04418, 2014 U.S. Dist.  
20 LEXIS 165232 (D.N.J. Nov. 25, 2014) (ammonia, a dangerous gas, rendered insured  
21 buildings uninhabitable and therefore constituted “direct physical loss” sufficient to  
22 trigger coverage under the policy), the presence of COVID-19 contamination actual or  
23 potential, particularly in conjunction with a governmental shut down order premised on,  
24 *inter alia*, extreme peril to property and humans, plainly satisfies the “direct physical loss  
25 of or damage to” requirement.  
26

27 38. The second problem with AIC’s pretext for denying coverage is that there are  
28

1 at least three different definitions of "Covered Cause of Loss" in the Policy, making any  
2 exclusion of coverage based thereupon unreasonably confusing.

3 39. The third problem is that one of the Policy's three definitions of "Covered  
4 Cause of Loss" (in Section I - Property Coverages) provides the following definition:

5 3. Covered Causes of Loss RISKS OF DIRECT PHYSICAL LOSS unless the  
6 loss is:

- 7 a. Excluded in Part B., Exclusions; or  
8 b. Limited in Paragraph A.4., Limitations; that follow.

9 40. But, nothing in Part B. (Exclusions) or Paragraph A.4 excludes the COVID-19  
10 related damages to TARRAR's physical premises or those of Income Support Properties  
11 or other places from the definition of a "Covered Cause of Loss." The Exclusions  
12 exclude losses caused by (*inter alia*):

- 13 b. Governmental Action Seizure or destruction of property by order of  
14 governmental authority. But we will pay for acts of destruction ordered by  
15 governmental authority and taken at the time of a fire to prevent its spread, if the  
fire would be covered under this policy.

16 [Here, there was neither any seizure nor destruction of property by order of governmental  
17 authority.] And,

- 18 q. We will not pay for loss or damage caused by or resulting from the release,  
19 discharge or dispersal of POLLUTANTS unless the release, discharge or dispersal  
20 is itself caused by any of the SPECIFIED CAUSES OF LOSS. But if loss or  
21 damage by the SPECIFIED CAUSES OF LOSS results, we will pay for the  
resulting damage caused by the SPECIFIED CAUSE OF LOSS.

22 In turn POLLUTANTS is defined as:

23 Pollutants means one or more man made or naturally occurring solid, liquid,  
24 gaseous or thermal irritant or contaminant including but not limited to smoke,  
25 vapor, soot, fumes, acids, alkalis, chemicals, minerals, chemical elements and  
waste.

26 [Here, the Policy's definition of POLLUTANT does not include viruses, though it easily  
27 could have, and there is no Virus Exclusion, as noted previously].

41. Thus none of the Policy's various definitions of Covered Cause of Loss could reasonably be understood to exclude business income losses, civil authority losses, losses resulting from losses at Income Support Properties, or business property losses of the type suffered by Plaintiff herein caused by COVID-19 damages.

42. But even if one or more of the Policy's three individual definitions of Covered Cause of Loss *could* otherwise be reasonably so construed, the fact that the Policy contained *three* different definitions of Covered Cause of Loss makes the use of any such definition to exclude Plaintiff's losses unenforceable under California law because it does not constitute a conspicuous, plain and clear exclusion from coverage.

43. AIC's denial letter also took the position there was no coverage under the Business Income coverage on the grounds it was not caused by a "Covered Cause of Loss" – which is blatantly wrong for the identical reasons.

44. Finally, AIC's denial letter did not even bother to address losses under the Income Support Properties coverage. The denial letter simply assumed *all* of TARRAR's damages were uncovered based on a spurious and utterly self-serving interpretation of the "physical loss or damage" policy language completely divorced from the reality of the COVID-19 epidemic.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

45. Plaintiff realleges and incorporates herein as if fully set forth all of the allegations contained in paragraphs 1 through 44 of this Complaint.

46. Plaintiff TARRAR was an insured under the Policy.

47. The Policy is a binding contract between TARRAR and AIC.

48. The commercial, business, and property losses and damages, business interruption,

1 income losses sustained, and costs and expenses incurred, as a result of COVID-19 and the  
2 civil authority response to the COVID-19, are covered by the Policy. AIC owes Plaintiff  
3 compensation for its damages, losses, costs, and expenses arising from and related to COVID-19,  
4 COVID-19 contamination, the threat of COVID-19 contamination, and/or the civil authority  
5 response related to COVID-19, and losses triggered by damages to Income Support Properties as  
6 defined in the Policy.  
7

8 49. AIC breached the Policy by denying all coverage under the Policy, as detailed herein,  
9 and by conducting an utterly unreasonable investigation of the claim.

10 50. As a direct and proximate result of the acts and conduct of AIC, TARRAR suffered  
11 damages from the defendant's conduct in an amount according to proof at trial, but, in no event  
12 less than \$100,000.  
13

14 **SECOND CAUSE OF ACTION**  
15 **(Bad Faith)**

16 51. Plaintiff realleges and incorporates herein as if fully set forth all of the allegations  
17 contained in paragraphs 1 through 50 of this Complaint.

18 52. AIC's conduct as alleged hereinabove was unreasonable and thereby violated the  
19 implied covenant of good faith and fair dealing.

20 53. AIV acted in bad faith by willfully and recklessly failing to conduct a reasonable  
21 investigation of the Plaintiff's losses, disregarding the particular facts and language of the Policy,  
22 and taking objectively unreasonable and factually unsupported positions in its denial letter, as  
23 detailed herein.  
24

25 54. AIV acted in bad faith by willfully and recklessly failing to acknowledge any coverage  
26 under the Policy.

27 55. AIC's conduct constituted an intentional misrepresentation, deceit or concealment of  
28

1 a material fact known to AIC with the intention of depriving Plaintiff of property, legal rights or  
2 of causing other injury. AIC's conduct therefore constitutes malice, oppression or fraud under  
3 California Civil Code §3294, entitling Plaintiff to punitive damages in an amount appropriate to  
4 punish and set an example of AIC and deter future similar conduct.

5  
6 56. As a direct and proximate result of the acts and conduct of AIC, Plaintiff suffered  
7 damages from the defendant's conduct in an amount according to proof at trial, but, in no event  
8 less than \$100,000.00.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment as follows;

- 11 1. For compensatory damages according to proof;  
12 2. For attorney's fees;  
13 3. For costs of suit;  
14 4. For punitive damages; and  
15 5. For such other and further relief as the court deems just and proper.  
16  
17

18 Dated: September 1, 2020

Timothy D. McGonigle Professional Corporation

19  
20 

21  
22 By: \_\_\_\_\_  
23 Timothy D. McGonigle  
24 Attorney for Plaintiff Tarrar Enterprises, Inc.  
25  
26  
27  
28