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Courtroom Number: 2510
Location: District 1 Court
Cook County, IL

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2021CH04195

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Chancery Division Civil Cover Sheet
General Chancery Section

(12/01/20) CCCH 0623

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

OTIS WORLDWIDE CORPORATION

Plaintiff

v.

ZURICH AMERICAN INSURANCE COMPANY

Defendant

Case No: _____

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

Only one (1) case type may be checked with this cover sheet.

- 0005 ☐ Administrative Review
0001 ☐ Class Action
0002 ☒ Declaratory Judgment
0004 ☐ Injunction

- 0007 ☐ General Chancery
0010 ☐ Accounting
0011 ☐ Arbitration
0012 ☐ Certiorari
0013 ☐ Dissolution of Corporation
0014 ☐ Dissolution of Partnership
0015 ☐ Equitable Lien
0016 ☐ Interpleader

- 0017 ☐ Mandamus
0018 ☐ Ne Exeat
0019 ☐ Partition
0020 ☐ Quiet Title
0021 ☐ Quo Warranto
0022 ☐ Redemption Rights
0023 ☐ Reformation of a Contract
0024 ☐ Rescission of a Contract
0025 ☐ Specific Performance
0026 ☐ Trust Construction
0050 ☐ Internet Take Down Action (Compromising Images)

☐ Other (specify) _____

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Pro Se Only: ☐ I have read and agree to the terms of the Clerk's Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

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Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois

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OTIS WORLDWIDE CORPORATION,

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ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

JURY DEMANDED

2021CH04195

COMPLAINT

Plaintiff Otis Worldwide Corporation (“Otis”), by its undersigned counsel Reed Smith LLP, hereby submits its Complaint against Defendant, Zurich American Insurance Company (“Zurich”), and in support thereof, alleges as follows:

NATURE OF ACTION

1. This is an action for a declaratory judgment and breach of contract arising out of Zurich’s refusal to provide insurance coverage to Otis, a leading supplier, manufacturer, and servicer of elevators, escalators, moving walkways, and related equipment, under all-risk property and business interruption insurance Otis purchased from Zurich and its affiliates (the “All-Risk Coverage”). Otis’ claim for insurance coverage concerns its business income and other related losses and expenses sustained as a result of the physical loss of and damage to property and resulting interruptions in business caused by the ubiquitous actual, threatened and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2¹ and/or COVID-19,² which caused disruptions of Otis’ manufacturing and production and

¹ As used in this Complaint, “SARS-CoV-2” refers to SARS-CoV-2 virus and/or virions.

² COVID-19 is a disease caused by SARS-CoV-2.

other business operations in those regions and rendered them unusable and unfit for regular business activities, and the series of related orders issued by national, state and/or local civil authorities and guidance and advice from public health authorities impacting Otis' facilities and operations, and those of its suppliers and customers, in those regions.

2. These causes of loss have resulted in substantial negative impacts on and challenges to Otis' operations, suppliers and customers, which have had an adverse financial impact. As a direct result of the impacts of SARS-CoV-2 and/or COVID-19, many of Otis' production and manufacturing facilities and other locations in North America, South America, Europe, the Middle East and Asia Pacific were completely or partially closed or physically altered, and/or had their operations substantially curtailed, resulting in losses of business income. Otis has been required to implement physical changes to its facilities and impose heightened safety measures and restrictions to resume or continue its business operations and to address the threat and mitigate against the actual, threatened and/or suspected presence of SARS-CoV-2 and/or COVID-19 and has incurred significant extra expenses to implement these measures. With respect to Otis facilities that are leased, Otis also has incurred loss in the form of continuing required rental payments for facilities that have been partially or wholly untenable or unusable.

3. Otis purchased the All-Risk Coverage to protect itself from these and other covered types of losses. "All risk" property insurance policies are comprehensive policies that broadly cover "*all risks directly resulting from physical loss of or damage to insured properties from any cause,*" unless particular risks are expressly and unambiguously excluded. Therefore, unless an insurance company specifically and clearly excludes the particular risk at issue, the policy is designed, intended and written to cover all loss and damage from that risk.

4. The All-Risk Coverage does not expressly and unambiguously exclude Otis' losses and expenses resulting from the causes of loss described above resulting and arising from SARS-CoV-2 and/or COVID-19. Otis thus is entitled to insurance coverage for its lost business income, extra expense, continuing payroll and wages and other losses and expenses under the All-Risk Coverage.

5. Otis submitted timely notice of its covered losses and expenses to Zurich, which nevertheless has failed to provide coverage for Otis' claim, denied its obligations to provide coverage for Otis' losses and expenses, and repeatedly adopted positions in its communications to Otis, public pronouncements, and legal proceedings concerning insurance coverage for SARS-CoV-2 and/or COVID-19 business interruption claims that are contrary to those on which Otis bases its claim.

6. Accordingly, Otis seeks a declaration that it has suffered losses and expenses resulting or arising from direct physical loss of or damage to insured locations and/or third-party locations caused by the ubiquitous actual, threatened and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and/or COVID-19, which caused Otis' facilities and other facilities to be physically altered and/or rendered or determined to be unusable and unfit for regular business activities and otherwise reduced Otis' business income, and/or the series of related orders issued by national, state and/or local civil authorities and guidance and advice issued by public health authorities in those regions impacting Otis' facilities and those of its suppliers, customers and supply chain providers, all of which are covered causes of loss under the All-Risk Coverage.

7. Otis further seeks monetary damages and all relief available at law (including but not limited to consequential damages and pre- and post-judgment interest) for Zurich's breach of

contract in failing to provide coverage to Otis for a covered claim under the All-Risk Coverage and failing to pay any of its covered losses and expenses.

PARTIES

8. Plaintiff Otis Worldwide Corporation is a Delaware corporation with its principal place of business in Connecticut.

9. Otis operates approximately 1,400 branches and offices in more than 200 countries and territories, including in North America, South America, Europe, the Middle East and Asia Pacific.

10. Otis brings this action on behalf of itself and on behalf of all Otis subsidiaries and affiliates insured under the All-Risk Coverage.

11. At all relevant times, Defendant Zurich was and continues to be an insurance company organized and existing under the laws of the State of New York with its principal place of business located in Illinois.

12. On information and belief, at all relevant times Zurich was, and presently is, duly authorized to transact the business of insurance in Illinois and is in fact transacting the business of insurance in Illinois.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action against Zurich pursuant to 735 ILCS 5/2 209(a)(1) because it transacts business in Illinois and pursuant to 735 ILCS 5/2 209(a)(4) because it contracts to insure property and risks located within Illinois, including property of Otis.

14. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because Zurich is a resident of Cook County, Illinois and the transaction or part of the transaction giving rise to the

cause of action arose in Cook County, Illinois, in that Zurich evaluated and denied Otis' claim for insurance coverage at issue in this case in Cook County, Illinois.

15. Additionally, Zurich has contractually consented to the jurisdiction of any court of competent jurisdiction in the United States with respect to this dispute.

FACTUAL BACKGROUND

I. The Global All-Risk Policy

16. To protect against physical loss of or damage to property, imminent threats of such physical loss of or damage to property, and interruptions to Otis' business due to these conditions, and to protect against business interruption resulting from orders of civil and military authorities and guidance and advice from public health authorities, as part of its All-Risk Coverage, Otis purchased from Zurich a Zurich EDGE Global Policy, No. PPR 7047616-00, for the period of December 15, 2019 to December 15, 2020 (the "Global All-Risk Policy"). A true and correct copy of the Global All-Risk Policy is attached as Exhibit A.

17. Under the Global All-Risk Policy's Insuring Agreement, Zurich insures Otis and its subsidiaries against "direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property, at an Insured Location described in Section II-2.01, all subject to the terms, conditions and exclusions stated in this Policy." (Ex. A, §1.01, *Insuring Agreement*)

18. The Global All-Risk Policy defines a "Covered Cause of Loss" as "[a]ll risks of direct physical loss of or damage from any cause unless excluded". (*Id.*, §7.11, *Definitions*) (emphasis added)

19. Otis is the First Named Insured under the Global All-Risk Policy, which states "loss, if any, will be adjusted with and payable to the First Named Insured as shown on this Policy,

or as directed by the First Named Insured.” (*Id.*, §6.12, *Loss Adjustment/Payable*) Insureds under the Policy include Otis and any subsidiary of Otis.

20. All of Otis’ facilities and locations addressed herein are located within the “territory” of coverage, which is “worldwide,” and are Insured Locations, as defined in the Global All-Risk Policy. (*Id.*, §1.03, *Territory* and §2.01, *Insured Location*)

21. The Global All-Risk Policy provides up to \$750,000,000 for all coverages combined for any one Occurrence. (*Id.*, §2.03, *Policy Limits of Liability*)

22. The Global All-Risk Policy includes a “Jurisdiction” clause providing that “[a]ny disputes arising hereunder will be exclusively subject to the jurisdiction of a court of competent jurisdiction within the USA.” (*Id.*, §6.09, *Jurisdiction*)

23. The Global All-Risk Policy includes multiple coverages, some of which are summarized below, that respond to and insure Otis’ losses and expenses arising from SARS-CoV-2 and/or COVID-19. Otis incorporates by reference the full and complete terms of each of the respective coverages and special coverages cited below, as set forth in the Global All-Risk Policy.

1. Time Element Coverage

24. As a fundamental component of the coverage for “all risks of direct physical loss of or damage caused by” a non-excluded cause of loss, Zurich agreed to provide Otis “Time Element” coverage (commonly referred to as “Business Interruption” coverage), which insures “loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability.” (Ex. A, §4.01.01, *Time Element Loss Insured*)

25. The purpose of Time Element coverage is to reimburse the insured for lost business income and extra expense resulting from physical loss of or damage to insured property. Such physical loss of or damage to property includes the partial or total closure of or disruption and interruption of operations at Otis’ facilities and other facilities resulting from the actual, threatened

and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and COVID-19, which caused Otis' facilities and locations to be physically altered and rendered and determined to be unusable and unfit for regular business activities, and/or the partial or total closure of Otis' facilities and locations caused by the related orders of national, and/or local civil authorities and guidance and advice from public health authorities as a result of the ubiquitous actual, threatened and/or suspected presence of SARS-CoV-2 and/or COVID-19.

26. Specific Time Element coverages in the Global All-Risk Policy applying to Otis' losses and expenses include, by way of example and not limitation, the following.

A. **Gross Earnings, Gross Profit, Ordinary Payroll and Wages**

27. Under the Gross Earnings and Gross Profit coverages, Zurich is required, at a minimum, to pay for the loss of business income sustained during the Period of Liability, with Gross Profit Coverage applying to loss in connection with facilities outside the United States, its territories and possessions and the Commonwealth of Puerto Rico. (*Id.*, §4.02.01.01, *Gross Earnings* and §4.02.05, *Gross Profit*)

28. The Period of Liability applying to all Time Element Coverages, except Gross Profit and Leasehold Interest, under the Global All-Risk Policy is, as is pertinent here:

For building and equipment: The period starting from the time of physical loss or damage of the type insured against and ending when with due diligence and dispatch the building and equipment could be repaired or replaced, and made ready for operations under the same or equivalent physical and operating conditions that existed prior to the damage. The expiration of this Policy will not limit the Period of Liability.

(*Id.*, §4.03.01.01-02, *Period of Liability*)

29. The Period of Liability applying to Gross Profit under the Global All-Risk Policy is:

The period starting from the time of direct physical loss or damage of the type insured against and ending not later than the period of time shown in 2.03.09., during which period the results of the business shall be directly affected by such direct physical loss or damage. The expiration of this Policy will not limit the Period of Liability.

(*Id.*, §4.03.02.01, *Period of Liability*)

30. The Global All-Risk Policy also allows for an Extended Period of Liability for Gross Earnings coverage, such that “[u]pon the termination of the coverage for Gross Earnings loss ... this Policy will continue to pay the actual Gross Earnings loss sustained by the Insured” for up to an additional 365 days. (*Id.*, §4.02.02, *Extended Period of Liability*)

31. The Global All-Risk Policy also allows for additional coverage for up to 90 days for “Ordinary Payroll,” which includes expenses for employees, and additional losses and expenses described under but supplemental to the “Gross Earnings” coverage section. (*Id.*, §4.02.01.02.03 - 05, *Gross Earnings*)

32. For Insured Locations outside of the USA, its territories and possessions and the Commonwealth of Puerto Rico, the Global All-Risk Policy also allows coverage for up to 90 days for “[w]ages that continue in excess, of the number of consecutive days as stated in the Declarations or the limit shown, for Wages.” (*Id.*, §4.02.05.01.03, *Gross Profit*) The Global All-Risk Policy defines “Wages” as “[t]he remuneration (including where applicable, bonuses, overtime, living allowance (if any), national insurance contribution, holiday pay or other payments pertaining to wages) of all employees other than those whose remuneration is treated as salaries in the Insured's books of account.” (*Id.*, §7.74, *Wages*)

B. Extra Expense

33. Under the “Extra Expense” coverage, Zurich is required to pay for “the reasonable and necessary Extra Expenses incurred by the Insured, during the Period of Liability, to resume and continue as nearly as practicable the Insured’s normal business activities that otherwise would

be necessarily suspended, due to direct physical loss of or damage caused by a Covered Cause of Loss to Property of the type insurable under this policy at a Location.” (*Id.*, §4.02.03, *Extra Expense*)

C. **Leasehold Interest**

34. Under the “Leasehold Interest” coverage, Zurich is required to pay for “the actual Leasehold Interest loss incurred by the Insured (as lessee) resulting from direct physical loss of or damage caused by a Covered Cause of Loss to a building (or structure) which is leased and not owned by the Insured.” (*Id.*, §4.02.04, *Leasehold Interest*)

35. The “Leasehold Interest” coverage applies if Otis is required by a lease agreement to continue to pay rent on a property that becomes partially or wholly untenable or unusable, or if the lease is cancelled pursuant to the terms of the lease or by operation of law. (*Id.*, §4.02.04.01-03, *Leasehold Interest*)

2. **Special Coverages**

36. Additional Special Coverages applying to Otis’ losses and expenses include, by way of example and not limited to, the following:

A. **Civil or Military Authority**

37. Under the Civil or Military Authority coverage, Zurich is required to pay for “the actual Time Element loss sustained by the Insured ... resulting from the necessary Suspension of the Insured’s business activities at an Insured Location if the Suspension is caused by order of civil or military authority that prohibits access to the Location. That order must result from a civil authority’s response to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured’s Location as stated in the Declarations.” (*Id.*, §5.02.03, *Civil or Military Authority*)

38. The distance stated in the Declarations is 5 miles. (*Id.*, §II, *Declarations*)

B. Contingent Time Element

39. Under the Contingent Time Element coverage, Zurich is required to pay for “the actual Time Element loss as provided by the Policy, sustained by the Insured during the Period of Liability directly resulting from the necessary Suspension of the Insured’s business activities at an Insured Location if the Suspension results from direct physical loss of or damage caused by a Covered Cause of Loss to Property (of the type insurable under this Policy) at Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties located worldwide....” (*Id.*, §5.02.05, *Contingent Time Element*)

40. The Direct Dependent and Indirect Dependent Time Element Locations include suppliers, manufacturers, service providers and customers, among other entities. (*Id.*, §§ 7.16 and 7.28, *Definitions*). (*Id.*, §7.04, *Definitions* and §2.03.09 *Policy Limits of Liability*)

C. Protection and Preservation of Property

41. Under the Protection and Preservation of Property coverage, Zurich is required to pay for the “reasonable and necessary costs incurred for actions to temporarily protect or preserve Covered Property; provided such actions are necessary due to actual or imminent physical loss or damage due to a Covered Cause of Loss to such Covered Property” (*Id.*, §5.02.23, *Protection and Preservation of Property*)

D. Financial Interest of the First Named Insured

42. Under the Financial Interest of the First Named Insured coverage, Zurich is required to pay for the “First Named Insured’s [Otis’] financial loss resulting from direct physical loss of or damage caused by a Covered Cause of Loss to property (of the type insurable under this Policy) in a Prohibited Jurisdiction.” (*Id.*, §5.02.35, *Financial Interest of the First Named Insured*)

43. The All Risk Policy defines “Prohibited Jurisdiction” as “[a]ny country or political subdivision, outside the United States of America, its territories and possessions, in which by that country's or political subdivision's insurance laws and regulations, the Company is not allowed to insure risks. (*Id.*, §7.52, *Prohibited Jurisdiction*)

II. The FoS and Local Policies and the Global All-Risk Policy’s Difference in Conditions/Difference in Limits Coverage

44. The Global All-Risk Policy aims to provide seamless, worldwide insurance coverage to Otis for loss or damage incurred around the world, including in Otis’ global business regions of North America, South America, Europe, the Middle East and Asia Pacific. The Global All-Risk Policy defines “the Policies” as “[t]his Policy, local policy(ies); and the FoS (Freedom of Services) policy(ies), collectively under an International Insurance Program.”

45. As an integral part of the worldwide insurance coverage provided to Otis under the Global All-Risk Policy, Zurich and certain of its affiliates and related companies issued a Freedom of Services (FoS) Policy No. 108653460 and various local policies to Otis and/or its subsidiaries applicable to locations and operations countries outside of the United States (the “FoS and Local Policies”). A list of the FoS and Local Policies is attached as Exhibit B.

46. The Global All-Risk Policy defines “International Insurance Program” as “[a] program arrangement that is a compilation of different policies, which all have one common goal: to cover the Insured as agreed to in this Policy.” (*Id.*, §7.29, *International Insurance Program*)

47. The Global All-Risk Policy includes Difference in Conditions coverage with respect to loss or damage in the countries to which the FoS and Local Policies are applicable. (*Id.*, §5.02.34, *Difference in Conditions/Difference in Limits*)

48. Under the Difference in Conditions coverage, the Global All-Risk Policy provides coverage for such loss or damage in the event coverage is not provided under the FoS and/or Local

Policies due to a difference in terms, but is available under the Global All-Risk Policy. (*Id.*, §5.02.34, *Difference in Conditions/Difference in Limits*)

III. SARS-CoV-2 and COVID-19

49. In January 2020, during the term of the Global All-Risk Policy, an outbreak of COVID-19 was first identified in Wuhan, Hubei Province, China. COVID-19 spread throughout Asia, and subsequently outbreaks of the virus occurred in Europe, North America, Latin America, and the rest of the world.

50. The rapid spread of COVID-19 is due in part to the highly transmissible character of SARS-CoV-2. For example, as of March 1, 2020, there were 42,198 confirmed COVID-19 cases across the globe. That number increased to 747,899 confirmed cases in April and 2,421,669 cases in May. As of August 11, 2021, there were 205,453,000 total reported infections globally and COVID-19 infections continue to rise in at least 98 countries.³

51. According to the Centers for Disease Control and Prevention (“CDC”), “everyone is at risk of contracting COVID-19.”⁴ According to the CDC and World Health Organization (the “WHO”), a person may become infected by: (1) coming into close contact with a person who has COVID-19; (2) being exposed to respiratory droplets when an infected person talks, sneezes, or coughs; and/or (3) touching surfaces or objects that have SARS-CoV-2 on them, and then, touching his or her mouth, eyes, or nose.⁵

52. Although these virus-containing droplets are very small, they are still physical objects that can travel into and through indoor airspace and attach and adhere to physical property

³ See <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/>

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>

⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>; <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>

surfaces, thereby causing physical loss of and damage to property. Once introduced into one's premises, SARS-CoV-2 remains active on inert physical surfaces, and is emitted into and lingers in the air through droplets, aerosols, and fomites, rendering the premises unusable for their ordinary and intended purposes.

53. SARS-CoV-2 is conveyed from infected people to solid surfaces on the property, into the air and HVAC system, causing damage and alteration to the property and the air from safe and breathable to unsafe and dangerous, and are capable of surviving on the surfaces for an extended, significant period of time.

54. Evidence suggests that SARS-CoV-2 may remain viable for hours to days on physical property surfaces made from a variety of materials, including, materials used by Otis throughout its facilities.⁶ SARS-CoV-2 can remain virulent on stainless steel and plastic for two to three days, on cardboard for up to twenty-four hours, and in aerosols for up to three hours.⁷ In addition, the CDC confirmed that SARS-CoV-2 was identified on surfaces of the *Diamond Princess* cruise ship *a full 17 days* after the cabins were vacated.⁸

55. Without the availability of and widespread inoculation from a vaccine, efforts to control the pandemic have relied on measures designed to reduce human-to-human and surface-to-human exposure, as well as exposure through indoor airspace.

56. As the world reacted to the pandemic, merely the threat, or suspected presence of the virus in indoor locations lead to the inability of businesses (including Otis') to operate in accordance with their normal and intended purpose, as reflected in guidance and advice provided by various public health authorities and in various orders of civil authorities.

⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

⁷ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>

⁸ See <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>

IV. Orders of Civil Authorities in Response to Threat of COVID-19 Outbreak

57. On January 30, 2020, with the outbreak spreading outside of China and impacting many countries including the United States, the WHO declared the COVID-19 outbreak a Public Health Emergency of International Concern. On March 11, 2020, the WHO officially declared the COVID-19 outbreak a worldwide pandemic.

58. Since that time, numerous countries and locations around the globe, including countries and localities in North America, South America, Europe, the Middle East and Asia Pacific where Otis maintains operations and conducts business in retail facilities, and countries and localities where Otis' suppliers and customers and critical members of Otis' supply chain maintain operations and conduct business, have issued orders and public health guidance and advices in response to the threat of SARS-CoV-2 and COVID-19.

1. State and Local Government Responses in North America

59. On January 31, 2020, the US Department of Health and Human Services declared that a public health emergency existed nationwide because of confirmed cases of COVID-19 in the United States.

60. Beginning in March 2020, US states and Canadian provinces and local governments issued orders, and US and Canadian public health authorities issued guidance and advices, suspending and/or impacting the operations of commercial businesses, including in states and localities where Otis' facilities and operations, and those of its suppliers and customers, are located. These orders were in effect to varying degrees, including in states and localities where Otis facilities are located and in which Otis conducts business (collectively, the "Closure Orders"). The Closure Orders have been issued in response to the widespread physical loss of and damage to property caused by the threat and suspected ubiquitous presence of SARS-CoV-2 and/or COVID-19.

61. Included in many of the Closure Orders are declarations that SARS-CoV-2 and/or COVID-19 causes and has caused or imminently threatens physical loss of or damage to property. For example, as early as March 16, 2020, the City of New York issued an order stating, “the virus physically is causing property loss and damage.” On March 19, 2020, the City of Los Angeles issued an order noting that, “the COVID-19 virus ... is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.”

62. On March 20, 2020, Illinois Governor Jay Robert Pritzker issued an order requiring closure of non-essential due to COVID-19 that recognized the “propensity [of SARS-CoV-2] to physically impact surfaces and personal property.”

63. On March 10, 2020, the Washington Governor Jay Inslee issued a proclamation stating, “the worldwide outbreak of COVID-19 and the resulting epidemic in Washington State ... remains a public disaster affecting ... property.” On April 6, 2020, the governor of Colorado issued an order stating that “COVID-19 ... physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time.” On April 20, 2020, the order of the Indiana governor recognized that COVID-19 has the “propensity to physically impact surfaces and personal property.”

64. On March 16, 2020, the New Orleans Mayor Latoya Cantrell issued a proclamation stating “there is reason to believe that COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances.”

65. On March 22, 2020, Louisiana Governor John Bel Edwards issued a proclamation stating “measures relating to closure of certain business and to limit the operations of non-essential

businesses are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and because of physical contamination of property due to its ability to attach to surfaces for prolonged periods of time.”

66. Other state, county and city officials have issued similar Closure Orders throughout the United States referencing physical property loss or damage or imminently threatened physical property loss or damage from SARS-CoV-2 and/or COVID-19.

67. Critical suppliers, customers and participants in Otis’ supply chain, were forced to close their facilities and premises or curtail their operations and activities to comply with the Closure Orders, thereby also negatively impacting Otis’ business operations.

2. Global Responses

68. Outside of North America, many other countries and territories issued their own closure orders, and public health guidance and advices, which include numerous restrictions on citizens and businesses in the form of curfews, limitations on in-person gatherings, occupancy restrictions, complete or partial shutdowns of businesses, and in some cases, strict in-home quarantines and lock-downs (collectively, the “International Closure Orders”). The International Closure Orders have been issued in response to the widespread closure and loss of use of property caused by the threat of SARS-CoV-2 and/or COVID-19.

69. These International Closure Orders have caused a necessary suspension of Otis’ business facilities and/or business activities and has prohibited access to Otis locations in various countries, including those located in China, India, Italy, Spain, France, the United Kingdom, Brazil, and Australia.

70. For example, on March 9, 2020, the government of Italy imposed a national quarantine that restricted the movement of the population except for necessity, work, and health circumstances, in response to the COVID-19 outbreak. On March 11, 2020, the government of

Italy expanded the order to include all commercial and retail businesses, except those providing essential services.

71. The governments of Spain, France, Germany, the United Kingdom and India issued similar orders on March 14, March 15, March 17, March 23 and March 24, respectively. Collectively, these orders and other orders and guidance and advices from public health authorities in Europe resulted in the closure of Otis facilities in Europe.

72. These International Closure Orders have remained in effect to varying degrees across the globe, including in countries and territories where Otis' facilities and those of its suppliers and customers are located.

73. Many of the International Closure Orders forced numerous neighboring businesses within a five-mile radius of Otis' facilities to cease or significantly curtail their operations.

74. As a business that significantly relies on the regular shipment of materials and supplies to and from and the presence of employees and customers at its facilities and facilities outside North America, Otis has been and continues to be negatively impacted by the International Closure Orders.

75. Critical suppliers and customers and participants in Otis' supply chain, were forced to close their facilities and premises or curtail their operations and activities in order to comply with the International Closure Orders, thereby also severely impacting Otis' operations. In addition, Otis suffered loss of income due to SARS-CoV-2 and/or COVID-19 impacts to many direct and indirect customers of Otis.

76. Courts analyzing claims for SARS-CoV-2 and/or COVID-19 losses under similar "all risk" policies have recognized that where, as here, an insured is "forbidden by government decree from accessing and putting their property to use for the income-generating purposes for

which the property was insured” the loss resulting therefrom “is unambiguously a ‘direct physical loss,’ and the Policies afford coverage.” *North State Deli, LLC v. Cincinnati Ins. Co.*, No. 2020 WL 6281507 (N.C. Super. Oct. 9, 2020) (Order Granting Plaintiffs’ Rule 56 Motion for Summary Judgment, at 6). *See also Henderson Road Restaurant Systems, Inc. v. Zurich Am. Ins. Co.*, No. 20-cv-1230, 2021 WL 168422, at *11 (N.D. Ohio January 19, 2021) (holding restaurant owners “experienced a loss of their real property” resulting from civil authority orders) (emphasis in original); *Perry Street Brewing Co., LLC v. Mutual of Enumclaw Ins. Co.*, No. 20-2-02212-32, 2020 WL 7258116 at *3 (Wash. Sup. Ct., Nov. 23, 2020) (finding that the policyholder “established that [its] claimed loss falls within the grant of coverage of the [‘all risk’ policy] as a matter of law, because as a result of the proclamations and orders issued by Governor Inslee, [the policyholder] suffered direct physical loss of its property at premises”); *Timothy A. Ungarean, DMD v. CNA*, No. GD-20-006544, slip op. at 5, 12-14 (Pa. Comm. Pleas Mar. 22, 2021) (applying Pennsylvania law) (holding policyholder was entitled to Business Income insurance due to Civil Authority orders, under a clause triggered by “direct physical loss of or damage to property,” and rejecting the rulings requiring a “physical alteration” of property as disregarding the difference between “loss of” and “damage to”); *MacMiles, LLC d/b/a Grant Street Tavern v. Erie Ins. Exch.*, No. GD-20-7753 (Pa. Comm. Pleas May 25, 2021) (applying Pennsylvania law) (granting policyholder’s summary judgment motion for coverage for COVID-19 losses finding “direct physical loss of or damage to” property).

77. Other courts have found that deprivation of use of property for its intended purposes qualifies as “loss” within the meaning of an all-risk property insurance policy especially where the policy does not contain any definition of the terms “physical,” “loss” or “damage.”

78. Many other courts, including courts in Illinois, have denied insurance companies' dispositive motions concerning policyholders' claims for SARS-CoV-2 and/or COVID-19 losses, citing issues of fact as to whether physical loss of or damage to property occurred. *E.g.*, *JDS Construction Group, LLC et al. v. Continental Casualty Company*, Case No. 2020 CH 5678 (Ill Cir. Ct. Cook Cty. Aug. 12, 2021).

79. For fifty years, a strong majority of courts interpreting property and business income insurance policies had concluded that physical loss of or damage to property includes physical conditions that cause property to be simply too unsafe to inhabit or use. As but one example, in *Hughes v. Potomac Insurance Co.*, 18 Cal. Rptr. 650, 655 (Cal. Ct. App. 1962), the court found the policyholder's home, which became perched on the edge of a cliff after a sudden landslide caused a large chunk of the ground surrounding their property to fall into a creek (depriving the home of lateral support and stability), was damaged because it became unsafe to live in and thus useless to the owners.

80. Likewise, in the liability insurance context, the California Supreme Court ruled that an absolute pollution exclusion did not apply to injuries from fumes from application of pesticide in *MacKinnon v. Truck Insurance Exchange*, 73 P.3d 1205 (Cal. 2003), and in the property insurance context, a California federal court had held the pollution exclusion did not bar coverage for losses sustained after health officials closed a policyholder's restaurant because its well water tested positive for E. coli contamination in *Cooper v. Travelers Indemnity Co. of Illinois*, No. C-01-2400-VRW, 2002 WL 32775680 (N.D. Cal. Nov. 4, 2002), *aff'd*, 113 Fed. Appx. 198 (9th Cir. 2004).

81. Similarly, in *Murray v. State Farm Fire & Casualty Co.*, 509 S.E.2d 1 (W. Va. 1998), the policyholder sought coverage for the complete loss of its home after continued

occupancy was rendered dangerous by the presence of falling rocks under a policy providing coverage for “direct physical loss to the property.” The court rejected the insurance companies’ argument that, while their policies were obligated to cover actual physical damage from falling rocks, they did not “cover any losses occasioned by the potential damage that could be caused by future rockfalls,” because “[d]irect physical loss’ provisions require only that a covered property be injured, not destroyed. Direct physical loss also may exist in the absence of structural damage to the insured property.” Moreover, “[l]osses covered by the policy, including those rendering the insured property unusable or uninhabitable, may exist in the absence of structural damage to the insured property.”

82. Prior to 2006, based on judicial opinions in numerous civil actions across the United States, insurance companies were aware that covered property damage and resulting business income loss and extra expenses could be caused by an array of noxious and untenable conditions impacting property, including the following:

- a. Infusion of a factory with radioactive dust and radon gas;⁹
- b. The presence of carbon monoxide, mold, mildew, asbestos, or lead in buildings;¹⁰

⁹ *Am. Alliance Ins. Co. v. Keleket X-Ray Corp.*, 248 F.2d 920, 925 (6th Cir. 1957) (finding, where the policyholder manufactured instruments used in measuring radioactivity, and its operations were interrupted by an incident that caused radioactive dust and radon gas to infuse the factory, this was Property Damage supporting a claim for Business Income).

¹⁰ *Yale Univ. v. CIGNA Ins. Co.*, 224 F. Supp. 2d 402, 413 (D. Conn. 2002) (finding while the subject presence of asbestos and lead in buildings did not constitute “physical loss of or damage to property,” contamination by such materials could, citing “the substantial body of case law” “in which a variety of contaminating conditions have been held to constitute ‘physical loss or damage to property’”); *Bd. of Educ. v. Int’l Ins. Co.*, 720 N.E.2d 622, 625-26 (Ill. App. Ct. 1999) (citing liability insurance coverage cases finding that incorporation of asbestos into buildings caused “property damage,” defined under liability policies to be “physical injury to or destruction of tangible property,” and finding that, for purposes of summary judgment, the policyholder had established that the asbestos fiber contamination constituted Property Damage); *Sentinel Mgmt. Co. v. Aetna Cas. & Sur. Co.*, 615 N.W.2d 819, 825-26 (Minn. 2000) (considering asbestos contamination of carpeting and other surfaces in apartment building and holding (1) “even though ‘asbestos contamination does not result in tangible injury to the physical structure of the building, a building’s function may be seriously impaired or destroyed and the property rendered useless by the presence of contaminants,’ thereby satisfying the definition of direct physical loss”; and (2) “[a] principal function of any living space [is] to provide a safe environment for the occupants” and “[i]f rental property is contaminated by asbestos fibers and presents a health hazard to the tenants, its function is seriously impaired”); *Prudential Prop. & Cas. Ins. Co. v. Lillard-Roberts*, No. CV-01-1362-ST, 2002 WL 31495830, at *8-9 (D. Or. June 18, 2002) (concluding that mold damage to house

- c. The occurrence of vibrations that cause equipment to shut down without being damaged;¹¹
- d. The malicious addition of chemicals to a sewage plant that destroy a bacteria colony;¹²
- e. The contamination of a well or contamination of a home with *E. coli* bacteria;¹³
- f. The spread of dust, soot, and smoke through a law firm as a result of 9/11;¹⁴
- g. The fumigation of otherwise undamaged food beans with a substance not acceptable to customers in the United States market;¹⁵

which caused policyholder to abandon house and personal property could constitute “distinct and demonstrable” damage, sufficient to constitute “direct” and “physical” loss, and citing *W. Fire Ins. Co. v. First Presbyterian Church*, 437 P.2d 52 (Colo. 1968) and *Matzner v. Seaco Ins. Co.*, 1998 Mass. Super. LEXIS 407, 1998 WL 566658 (Mass. Super. Ct. Aug. 26, 1998) for the proposition that inability to inhabit a building may constitute “direct, physical loss”; *Columbiaknit, Inc. v. Affiliated FM Ins. Co.*, No. 98-434-HU, 1999 WL 619100, at *7-*8 (D. Or. Aug. 4, 1999) (finding that policyholder could bear its burden to demonstrate that clothes impregnated with mold or mildew suffered “direct physical loss or damage” if it established “at trial a class of garments which has increased microbial counts and that will, as a result, develop either an odor or mold or mildew”).

¹¹ *Cyclops Corp. v. Home Ins. Co.*, 352 F. Supp. 931, 937 (W.D. Pa. 1973) (finding policyholder entitled to coverage for loss of Business Income where vibration of motor, without apparent damage, caused it to be shut down).

¹² *Azalea, Ltd. v. Am. States Ins. Co.*, 656 So. 2d 600, 602 (Fla. Dist. Ct. App. 1995) (finding that where policyholder operated a mobile home park at which vandals damaged the sewage treatment plant by adding chemicals that destroyed a bacteria colony necessary for the plant to operate, this amounted to “direct damage to the structure”).

¹³ *Cooper v. Travelers Indem. Co.*, No. C-01-2400, 2002 WL 32775680, at *5 (N.D. Cal. Nov. 4, 2002) (finding policyholder could make claim for Business Income and Extra Expense loss from contamination of well with *E. coli* bacteria); see also *Motorists Mut. Ins. Co. v. Hardinger*, 131 F. App’x 823, 827 (3d Cir. 2005) (considering an infestation of a home with *E. coli* bacteria, the court held that there was “a genuine issue of fact whether the functionality of the [policyholder’s] property was nearly eliminated or destroyed, or whether their property was made useless or uninhabitable,” and thus reversed the lower court’s ruling in favor of the insurance company).

¹⁴ *Schlamm Stone & Dolan, LLP v. Seneca Ins. Co.*, No. 603009/2002, 2005 WL 600021, at *3-5 (N.Y. Super. Ct. Mar. 16, 2005) (finding that dust, soot, smoke, and debris in the premises of a law firm after September 11, 2001 affected its operations for the balance of the month of September, that this was physical loss or damage for purposes of Business Income coverage regardless of whether the law firm sought recovery for this Property Damage: “the presence of noxious particles, both in the air and on surfaces of the plaintiff’s premises, would constitute property damage under the terms of the policy”).

¹⁵ *Blaine Richards & Co. v. Marine Indem. Ins. Co.*, 635 F.2d 1051, 1055-56 (2d Cir. 1980) (finding that policyholder would have coverage for beans, which had been fumigated with a substance not acceptable in the United States, noting “[t]he fact that the beans were not marketable in this state suggests that they were damaged in an important respect,” and holding that policyholder could recover for both (1) beans found to be contaminated and (2) beans not contaminated but not accepted by customers).

- h. The production of “off-tasting” soda that had not been rendered unfit for human consumption;¹⁶
- i. The impact of odor in a house from an illegal methamphetamine lab;¹⁷
- j. Exposures of meat, corn, cardboard food containers and other products to health-threatening organisms, ammonia, smoke and pesticides;¹⁸ and
- k. Infestation of a house with brown recluse spiders.¹⁹

83. As these and similar examples demonstrate, insurance companies have long been aware that an event like the presence or suspected presence of the SARS-CoV-2 virus in a building

¹⁶ *Pepsico, Inc. v. Winterthur Int’l Am. Ins. Co.*, 806 N.Y.S.2d 709, 711 (N.Y. App. Div. 2005) (finding that “off tasting” soft drink had suffered physical damage: “It is sufficient under the circumstances of this case involving the unmerchantability of beverage products that the product’s function and value have been seriously impaired, such that the product cannot be sold. Neither the fact that the product was not rendered unfit for human consumption nor the fact that the product’s unmerchantability may have gone undetected initially, mean that a physical event did not occur for which injury or damage resulted.”).

¹⁷ *Farmers Ins. Co. v. Trutanich*, 858 P.2d 1332, 1335 (Or. Ct. App. 1993) (rejecting the insurance company’s argument the cost of removing odor caused by methamphetamine lab was not a “direct physical loss,” stating “[t]here is evidence that the house was physically damaged by the odor that persisted in it,” “the odor produced by the methamphetamine lab had infiltrated the house,” and “[t]he cost of removing that odor was a direct rectification of the problem”); *Largent v. State Farm Fire & Cas. Co.*, 842 P.2d 445, 446 (Or. Ct. App. 1992) (considering application of exclusion where insurance company had conceded that odor damage to a house from an illegal methamphetamine lab was direct physical loss or damage).

¹⁸ *Pillsbury Co. v. Underwriters at Lloyd’s, London*, 705 F. Supp. 1396, 1401 (D. Minn. 1989) (holding, where the policyholder experienced difficulties in destroying organisms in its creamed corn, which it was unable to solve, forcing it to destroy all cans of such corn, that the underprocessing of the cream-style corn was a loss covered by the policy; i.e., that the creamed corn had suffered physical loss or damage); *Henri’s Food Prods. Co. v. Home Ins. Co.*, 474 F. Supp. 889, 892 (E.D. Wis. 1979) (holding, where policyholder’s salad dressings were seized by the government after they were contaminated by vaporized agricultural chemicals stored in the same warehouse which had become vaporized during storage, policyholder “incurred a loss since its products were injured”); *Gen. Mills, Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 152 (Minn. Ct. App. 2001) (finding where a subcontractor treated the policyholder’s stored oats with a pesticide that, although chemically identical to an approved pesticide, this amounted to physical loss or damage to property, because: “[the policyholder] was unable to sell its products or use the contaminated oats, because of legal regulations. The business of manufacturing food products requires conforming to the appropriate FDA regulations. Whether or not the oats could be safely consumed, they legally could not be used in [the policyholder’s] business”).

¹⁹ *Cook v. Allstate Ins. Co.*, No. 48D02-0611-PL-01156, slip op. at 6-8 (Ind. Super. Ct. Nov. 30, 2007) (finding that infestation of house with Brown Recluse Spiders constituted “sudden and accidental direct physical loss” to the house: “The Court also finds that the undisputed evidence demonstrates a ‘sudden and accidental direct physical loss’ as a matter of law.... Case law demonstrates that a physical condition that renders property unsuitable for its intended use constitutes a ‘direct physical loss’ even where some utility remains and, in the case of a building, structural integrity remains.... Brown Recluse Spiders living, breeding and hunting on and within surfaces of the Home are a physical condition that renders the Home unsuitable for its intended use. The undisputed evidence is that the Brown Recluse Spiders make it unsafe for [the policyholder] and his very young children to live in the home and also that [the policyholder] had not been able to sell the Home, even at a loss.”).

or area that makes property too dangerous to use as it was designed to be used, causes direct physical loss of or damage to that property. Like other temporary and permanent physical conditions that make property too dangerous to use, the presence or suspected presence of a dangerous virus on property or in property elsewhere in the community, or governmental orders rendering property unusable due to related safety concerns, constitutes “direct physical loss of or damage.”

3. Impacts of Threat and Presence and/or Suspected Presence of SARS-CoV-2 and/or COVID-19 And Civil Authority Orders on Otis’ Operations

84. The actual, threatened and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and/or COVID-19, which caused the facilities and premises of Otis and its customers and suppliers to be physically altered and unusable and unfit for regular business activities, and the orders of national, state and/or local civil authorities and guidance and advice of public health authorities in these regions in response to the widespread physical loss of and damage to property caused by the threat of SARS-CoV-2 and/or COVID-19, caused Otis and its customers and suppliers to close or significantly curtail operations at many facilities and other facilities in those regions.

85. Consequently, Otis has lost business income and incurred substantial additional expenses to physically alter its workspaces including through expenditures on additional equipment and personnel and provide protective gear to protect employees from the spread of SARS-CoV-2 and/or COVID-19.

V. Otis’ Losses Are A Covered Cause Of Loss And Constitute “Physical Loss Of or Damage” Under the Global All-Risk Policy

86. The scientific community has confirmed that SAR-CoV-2 and/or COVID-19 alter the conditions of properties and buildings such that the premises are physically damaged and no longer safe and habitable for normal use.

87. Otis' losses in the United States include but are not limited to lost production, extra expenses relating to production, and increased Personal Protective Equipment ("PPE") and equipment costs at Otis manufacturing facilities; lost revenue with respect to Otis service operations; and lost revenue with respect to new equipment, modernization, maintenance and/or maintenance and service operations, all of which are the result of Covered Causes of Loss under the Global All-Risk Policy.

88. The actual, threatened and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and/or COVID-19 and/or the series of related orders issued by national and/or state and local civil authorities and guidance and advices from public health authorities in these regions, which have caused and continue to cause physical loss of or damage to Otis' property and third-party property, are Covered Causes of Loss under the Global All-Risk Policy.

89. Otis has sustained and will continue to sustain loss of business income (including payment of payroll expenses, lease payments and expenses to reduce its lost business income) as a result of physical loss of or damage to its facilities and those of third-parties caused by the actual, threatened and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and/or COVID-19 and/or the series of related orders issued by national and/or state and local civil authorities and guidance and advices from public health authorities in these regions. Otis is entitled under the Global All-Risk Policy to Gross Earnings and Gross Profits coverage in connection with such loss at its facilities in these regions.

90. Otis has incurred and continues to incur substantial extra expenses in order as best as possible to resume and continue its normal business activities, including expenses related to physical alterations to its facilities, heightened safety measures and restrictions to address the

actual, threatened and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and COVID-19. Otis incurred and continues to incur these expenses as a result of physical loss of or damage to its facilities caused by the actual, threatened and/or suspected presence in these regions of SARS-CoV-2 and/or COVID-19 and/or the series of related orders issued by national and/or state and local civil authorities and guidance and advices from public health authorities in these regions. Otis is entitled to Extra Expense coverage under the Global All-Risk Policy for this extra expense.

91. Otis has sustained and will continue to sustain loss in the form of rental payments required by lease agreements in connection with properties that incurred physical loss of or damage to property caused by the threat and presence and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and/or COVID-19 and/or the series of orders issued by national and/or state and local civil authorities and guidance and advices from public health authorities in these regions, which has rendered the facilities wholly or partially untenable. Otis is entitled to Leasehold Interest coverage under the Global All-Risk Policy for this loss.

92. Otis has sustained and will continue to sustain loss of business income and incur extra expense because of the orders of national, state and/or local civil authorities and guidance and advices from public health authorities in North America, South America, Europe, the Middle East and Asia Pacific that limited or prohibited access to Otis' facilities. These civil authority orders and public health guidance and advices were the direct result of covered physical loss of or damage to property caused by the actual, threatened and/or suspected presence of SARS-CoV-2 and/or COVID-19 – within five miles of Otis' facilities. Otis is entitled to Civil Authority coverage under the Global All-Risk Policy for this loss of business income and extra expense.

93. Otis has sustained and will continue to sustain loss of business income and incur extra expense resulting from the inability of its suppliers to supply their goods and services and customers' inability to accept Otis' goods and services because of physical loss of or damage to their facilities caused by the actual, threatened and/or suspected presence in North America, South America, Europe, the Middle East and Asia Pacific of SARS-CoV-2 and/or COVID-19 and/or the series of related orders issued by national and/or state and local civil authorities and guidance and advices from public health authorities in these regions.

94. Otis has sustained and will continue to sustain loss of business income due to reasonable and necessary costs for actions to temporarily protect or preserve Otis' insured property, which are necessary due to actual or imminent physical loss or damage due to a Covered Cause of Loss under the Global All-Risk Policy.

95. The Global All-Risk Policy has a Limit of Liability of \$750,000,000 for the total of all coverages combined, regardless of the number of Locations involved, for a single Occurrence.

96. Loss and damage covered under the Difference in Conditions coverage in the All-Risk Policy is stated to be subject to a \$10 million coverage sublimit per occurrence. Read in conjunction with the other provisions of the Policy, the stated sublimit for Difference in Conditions is ambiguous and therefore such coverage is not subject to an enforceable sublimit.

97. Alternatively, Otis' losses in each non-U.S. country or jurisdiction is a separate occurrence under the Policy as to which, at a minimum, a separate \$10 million of coverage is available.

98. At a minimum, the policy is ambiguous as to the number of occurrences when dealing with Difference in Conditions coverage with respect to multiple foreign locations and

multiple national governmental orders issued by different national governmental authorities arising out of different circumstances.

99. With respect to one or more of the FoS and/or Local Policies, the Difference in Conditions coverage under the All-Risk Policy is triggered with respect to business income losses and extra expenses.

VI. SARS-CoV-2 and/or COVID-19 Are Covered Causes of Loss that are Not Excluded by the Policy

1. The Contamination Exclusion Does Not Apply to SARS-CoV-2 or COVID-19

100. Zurich has the burden of proving the application of an exclusion to Otis' losses and expenses, and any ambiguity in an exclusion or other term or provision purporting to limit or eliminate coverage must be construed against Zurich.

101. The Global All-Risk Policy contains an Exclusion 3.03.01.01, for "Contamination, and any cost due to Contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy." (Ex. A, §3.03.01.01, *Contamination Exclusion*) The Global All-Risk Policy at Section 7.09, defines "Contamination" as "[a]ny condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew." (*Id.*, §7.09, *Contamination Definition*)

102. An endorsement to the Global All-Risk Policy amends the "Contamination" exclusion, however, by narrowing its scope, *including by eliminating "virus" and "disease causing or illness causing agent" from those matters that are excluded by its terms.*

103. In the Endorsement titled "Amendatory Endorsement – Louisiana", Exclusion 3.03.01.01, the "Contamination" exclusion is "deleted in its entirety and replaced by the following:

“3.03.01.01. Contamination or asbestos, and any cost due to Contamination or asbestos including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.” (*Id.*, §3.03.01.01, *Amendatory Endorsement – Louisiana, EDGE-219-C*)

104. In the same Endorsement, the definition of “Contamination” in Section VII of the Global All-Risk Policy including the references to “virus” and “disease or illness causing agent” are “deleted” and “replaced” by the following: “Contamination (Contaminated) - Any condition of property due to the actual presence of any Contaminant(s).” (*Id.*, §3.03.01.01, *Amendatory Endorsement – Louisiana, EDGE-219-C*)

105. In the same Endorsement, the definition of “Contaminant(s)” is “deleted” from Section VII of the Policy and “replaced” with a definition containing no reference to “virus” or to “disease causing or illness causing agent”: “Contaminant(s) - Any solid, liquid, gaseous, thermal or other irritant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), other hazardous substances, Fungus or Spores.” (*Id.*, §3.03.01.01, *Amendatory Endorsement – Louisiana, EDGE-219-C*)

106. The Endorsement revises the definition of “Contamination” for all purposes under the Global All-Risk Policy and is not limited in its application to property located or losses occurring in the State of Louisiana. The Zurich Global All-Risk Policy expressly provides that the *titles* of any policy *endorsements* are for *reference purposes only* and *do not affect the substance* of the endorsement: “The titles of the various paragraphs and endorsements are solely for reference and shall not in any way affect the provisions to which they relate.” (*Id.*, §6.21, *Titles*)

107. In fact -- consistent with the conclusion that the title of the Endorsement does not change the scope of its application, which is to all properties -- subsequent to the emergence of COVID-19, Zurich sought and received regulatory approval from authorities in Louisiana to revise

The Amendatory Endorsement – Louisiana to add the following language: “THIS ENDORSEMENT ONLY APPLIES TO LOCATIONS IN LOUISIANA.”²⁰ This geographically-limiting language is absent in The Amendatory Endorsement – Louisiana contained in the Zurich American All-Risk Policy.

108. Zurich's addition of the geographical limitation to post-COVID-19 versions of The Amendatory Endorsement – Louisiana indicates that no such geographical limitation previously applied, including in the version of the Amendatory Endorsement – Louisiana attached to the Zurich Global All-Risk Policy issued to Otis.

109. To hold otherwise would render the newly-inserted geographical limitation language meaningless, in violation of general principles of insurance contract construction, and this amended endorsement is not a part of the Zurich Global All-Risk Policy issued to Otis, nor can the language of the endorsement be amended and applied retroactively with respect to the Otis Policy.

110. The “Contamination” exclusion thus does not apply to or eliminate or reduce coverage for Otis’ losses and expenses as alleged herein resulting from SARS-CoV-2 and/or COVID-19.

111. In addition, courts generally have not allowed insurance companies to apply pollution or contamination exclusions beyond circumstances involving traditional industrial environmental pollution.

112. For instance, in *Am. States Ins. Co. v. Koloms*, 687 N.E.2d 72, 82 (Ill. 1997), the Supreme Court of Illinois ruled that “given the historical background of the absolute pollution

²⁰ See Exhibit C (Louisiana EDGE Endorsement Filing, the “Modified Louisiana Endorsement”) (submitted to Louisiana Department of Insurance on August 31, 2020; approved on September 8, 2020); see also Exhibit D (Modified Louisiana Endorsement).

exclusion and the drafters' continued use of environmental terms of art, [] the exclusion applies only to those injuries caused by traditional environmental pollution." The Supreme Court of Illinois held that the accidental release of carbon monoxide due to a broken furnace did not constitute the type of environmental pollution addressed or encompassed by the exclusion.

113. Similarly, in *Doerr v. Mobil Oil Corp.*, 774 So. 2d 119 (La. 2000), the Louisiana Supreme Court was presented with a dispute regarding the correct interpretation of the "Total/Absolute Pollution Exclusion," which previously had been submitted to and approved by state insurance departments, including the Louisiana Department of Insurance (LDI). The Exclusion barred coverage for "[a]ny loss, cost or expense arising out of ... pollutants" and defined "pollutants" as "solid liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste." *Id.* at 122. The Supreme Court ruled that "the proper interpretation of the total pollution exclusion ... is that the exclusion was designed to exclude coverage for environmental pollution only and not for all interactions with irritants or contaminants of any kind." *Id.* at 136.

114. In reaching its decision in *Doerr*, the Louisiana Supreme Court relied extensively on regulatory history and the position of the Louisiana Commissioner of Insurance that pollution exclusions "have been included in an extremely wide variety of forms" and are "inappropriate for many types of coverage," as well as the Commissioner's discovery of "a number of incidents where the standard pollution exclusions have been used to disavow coverage even though there was no underlying pollution incident which would justify use of the exclusion." *Id.*

115. In narrowly construing the "Total/Absolute Pollution Exclusion," the Louisiana Supreme Court also noted and relied on the Commissioner's statement that the LDI "will take such action as is necessary to assure that the integrity of the regulatory process is not undermined [and

that] [i]t is of critical importance that such exclusions are used in a manner which is consistent with their stated purpose.” *Id.* at 136.

116. The Louisiana Amendatory Endorsement to the Global All-Risk Policy, which expressly amends the “Contamination” exclusion in the Policy so it does not apply to “virus” or disease-causing agents, is consistent with this well-established law and public policy.

117. Nevertheless, Zurich has asserted that the Contamination exclusion in the Global All-Risk Policy it sold to Otis bars coverage for Otis’ claim relating to SARS-CoV-2 and/or COVID-19. Zurich’s interpretation of the “Contamination” exclusion to apply to SARS-CoV-2 and/or COVID-19 is contrary to and violates Illinois law and public policy and should be rejected.

2. Even Without Applying The Endorsement, The Contamination Exclusion Does Not Apply to SARS-CoV-2 or COVID-19

118. Even without applying the Endorsement to all of Otis’ insured locations (which is required), the “Contamination” exclusion included in the main body of the Global All-Risk Policy would not restrict coverage for Otis’ claim. The unamended version of the “Contamination” exclusion, which must be construed narrowly against Zurich, requires that Zurich establish the “*actual presence*” of a virus or disease or illness causing agent in an insured location (or other pertinent third-party location) for coverage to be restricted with respect to loss arising from the “inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.” (emphasis added)

119. Moreover, the “Contamination” exclusion by its express terms only applies to “cost” and not to business income losses suffered by Otis. The Global All-Risk Policy uses the terms “loss,” “damage” and “cost” to have distinct and different meanings in multiples sections of the Policy thereby confirming that each of these terms have distinct meanings from one another.

120. The “Contamination” exclusion does not eliminate coverage for losses at Otis locations rendered unsafe for use or occupation for their intended business purposes due to the mere threatened or suspected presence of a deadly virus or disease or illness causing agent at Otis’ insured locations or at third-party properties, including properties open to the public generally, or the threat or suspicion that such properties may be unfit for human occupancy or their regular and intended use due to the possible presence or spread of SARS-CoV-2 and/or COVID-19.

121. The “Contamination” exclusion likewise does not eliminate coverage for the impacts of resulting orders of civil authorities and guidance and advice from public health authorities that closed facilities and other properties or otherwise restricted access or ability to operate Otis locations for certain periods of time due to the suspected or threatened presence and/or risk of spread of SARS-CoV-2 and COVID-19.

122. Certain coverages in the Global All-Risk Policy apply to the “actual not suspected presence of ‘Contaminant(s).’” (*Id.*, §5.02.06 *Debris Removal*, §5.02.07 *Decontamination Costs*, §5.02.16 *Land And Water Contaminant Cleanup, Removal And Disposal*, and Communicable Disease Endorsement.)

123. Zurich thus was aware and acknowledged that the “suspected” presence of “Contaminant(s)” is a covered cause of loss under the Global All-Risk Policy, otherwise it would not have specifically and separately addressed the “suspected” presence of “Contaminant(s)” in connection with these coverages.

124. Zurich cannot assert an interpretation of the “Contamination” exclusion whereby the exclusion precludes coverage based on the “suspected” presence of “Contaminant(s),” when it was aware the “suspected” presence of “Contaminant(s)” is a covered cause of loss and when it

could have broadened the “Contamination” exclusion to apply to the “suspected” presence of “Contaminant(s),” but did not do so.

125. Zurich failed to include in the “Contamination” exclusion language broadening the scope of the exclusion to apply, for example, to the “actual or suspected” presence of contaminants, or the “alleged or threatened” release of contaminants, which was available in the insurance industry marketplace at the time it issued the Global All-Risk Policy.

126. For instance, the Global All-Risk Policy contains an Interruption by Communicable Disease (“ICD”) endorsement that states

The Company will pay for the actual Gross Earnings loss sustained by the Insured, as provided by this Policy, resulting from the necessary Suspension of the Insured's business activities at an Insured Location if the Suspension is caused by an order of an authorized governmental agency enforcing any law or ordinance regulating communicable disease and that such portions of the location are declared uninhabitable due to the threat of the spread of communicable disease, prohibiting access to those portions of the Location.

This Policy also covers the reasonable and necessary costs incurred for the cleanup, removal and disposal of the actual not suspected presence of substance(s) causing the spread of such communicable disease and to restore the locations in a manner so as to satisfy such authorized governmental agency.

This Coverage will only apply when the period of time that access is prohibited exceeds a 24 hour Qualifying Period. If the Qualifying Period is exceeded, then this Policy will pay for the amount of loss in excess of the Policy Deductible, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

127. The language used in the ICD endorsement itself plainly reflects a distinction in the Policy between “actual” and “suspected” presence of contaminants or substances spreading communicable disease.

128. Zurich cannot assert an interpretation of the “Contamination” exclusion based on this broader exclusionary language when it could have included this language in the “Contamination” exclusion in the Global All-Risk Policy, but did not do so. At a minimum, the

“Contamination” exclusion is ambiguous on its face or as applied to Otis’ claim for coverage arising from SARS-CoV-2 and/or COVID-19 and must be strictly and narrowly construed against Zurich and in favor of Otis.

129. Certain exclusions in the Global All-Risk Policy other than the “Contamination” exclusion are subject to an “anti-concurrent causation” provision, such that the Global All-Risk Policy “excludes direct physical loss or damage directly or indirectly caused by or resulting from” the matter excluded, “regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.” (*Id.*, §3.03.03, *Exclusions*)

130. On information and belief, Zurich has issued policies to policyholders other than Otis providing Time Element coverages including “contamination” or “microorganism” exclusions that are subject to the same or similar “anti-concurrent causation” language.

131. The Zurich Global All-Risk Policy does not include “anti-concurrent causation” language with respect to the “Contamination” exclusion. Zurich cannot assert an interpretation of the “Contamination” exclusion based on the same or similar “anti-concurrent causation” provision when it could have applied this provision to the “Contamination” exclusion in the Global All-Risk Policy, but did not do so.

132. The series of orders issued by national, state and/or local civil authorities and guidance and advices issued by public health authorities in North America, South America, Europe, the Middle East and Asia Pacific concerning SARS-CoV-2 and COVID-19 are a separate, direct and proximate cause of Otis’ loss that is not barred by the “Contamination” exclusion. Even if the “Contamination” exclusion applied to Otis’ claim (which it does not), it therefore would not bar coverage for Otis’ loss and expenses arising from such orders and guidance and advices.

133. The ICD endorsement recognizes the threat of spread of communicable disease and the actual presence of “substance(s) causing the spread of such communicable disease” as Covered Causes of Loss. The ICD endorsement thus reflects a distinction in the Global All-Risk Policy coverage as it concerns communicable disease and substances causing spread of communicable disease as opposed to “virus” and “disease causing or illness causing agent(s)” as referenced in the “Contamination” exclusion. The presence of the ICD endorsement also is consistent with applying the Louisiana amendatory endorsement to all Otis insured locations and losses whether located in Louisiana or not. At a minimum, the ICD endorsement creates an ambiguity in the Zurich Global All-Risk Policy (both facially and as applied to Otis’ claim) with respect to the interpretation and application of the “Contamination” exclusion in relation to the ICD endorsement.

VII. The Global All-Risk Policy’s Differences in Conditions/Differences in Limits Provision Triggers Coverage For Otis’ Losses That Are Not Covered Under the Local Policies

134. By letter dated June 30, 2021, Zurich confirmed that Otis’ claim would be evaluated under the Global All-Risk Policy because its claim under the local policies had been denied. Moreover, the coverage of various local policies is different from and not as broad as the coverage provided under the Global All-Risk Policy, and therefore losses arising under local policies are covered under the Global All-Risk Policy under Difference in Conditions coverage and/or Financial Interest of the First Named Insured coverage.

135. Specifically, the local policy for Canada does not provide coverage for Otis’ losses in Canada due to SARS-CoV-2 and/or COVID-19 which include but are not limited to lost production, extra expenses relating to production, and increased PPE and equipment costs at Otis manufacturing facilities; and lost revenue with respect to new equipment, modernization, maintenance and/or service operations. As a result, these losses are all covered under the Global All-Risk Policy.

136. Similarly, the local policy for China does not provide coverage for Otis' losses in China due to SARS-CoV-2 and/or COVID-19, which include but are not limited to lost production and extra expenses relating to production at Otis manufacturing facilities; and extra expenses for PPE/equipment costs, which are all covered under the Global All-Risk Policy.

137. The local policy for India does not provide coverage for Otis' losses in India due to SARS-CoV-2 and/or COVID-19, which include but are not limited to lost production and extra expenses relating to production at Otis manufacturing facilities; extra expenses relating to Otis service operations; lost revenue with respect to new equipment, maintenance and/or service operations; and extra expenses for office/headquarter remote work and PPE/equipment costs, which are all covered under the Global All-Risk Policy.

138. The local policy for Japan does not provide coverage for Otis' losses in Japan due to SARS-CoV-2 and/or COVID-19, which include but are not limited to extra expenses relating to production at Otis manufacturing facilities; extra expenses for office/headquarter remote work and PPE/equipment costs; and lost revenue with respect to maintenance and/or service operations, which are all covered under the Global All-Risk Policy.

139. The local policy for Brazil does not provide coverage for Otis' losses in Brazil due to SARS-CoV-2 and/or COVID-19, which include but are not limited to extra expenses relating to production and increased PPE/equipment costs at Otis manufacturing facilities; extra expenses for office/headquarter PPE/equipment costs; and lost revenue with respect to new equipment, modernization, maintenance and/or service operations, which are all covered under the Global All-Risk Policy.

140. The local policy for United Kingdom does not provide coverage for Otis' losses in the United Kingdom due to SARS-CoV-2 and/or COVID-19, which include but are not limited to

extra expenses for office/headquarter remote work and PPE/equipment costs; and lost revenue with respect to maintenance and/or service operations, which are all covered under the Global All-Risk Policy.

141. The local policy for Australia does not provide coverage for Otis' losses in Australia due to SARS-CoV-2 and/or COVID-19, which include but are not limited to extra expenses for office/headquarter properties; and lost revenue with respect to new equipment, maintenance and/or service operations, which are all covered under the Global All-Risk Policy.

142. The local policy for Mexico does not provide coverage for Otis' losses in Mexico due to SARS-CoV-2 and/or COVID-19, which include but are not limited to office/headquarter PPE/equipment costs; and lost revenue with respect to new equipment, maintenance and/or service operations, which are all covered under the Global All-Risk Policy.

VIII. In the Event That Any of Otis' Losses Are Determined Not Covered Under the FoS Policy In Arbitration, These Losses are Covered Under the Global All-Risk Policy.

143. The FoS Policy provides coverage for Otis locations in various European jurisdictions, including but limited to France, Italy and Spain.

144. The FoS Policy applies as the local policy for Otis locations in Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Finland, Hungary, Ireland, Italy, Latvia, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, and Sweden. The FoS Policy applies on a Difference in Conditions/Difference in Limits basis for Otis locations in France, Germany, and Spain.

145. Otis is seeking coverage under the FoS Policy for its losses in arbitration, as required by the FoS Policy.

146. To the extent that any of Otis' losses are found in arbitration to not be covered under the FoS policy in the arbitration, these losses are covered under the Differences in Conditions

coverage and/or Financial Interest of First Named Insured coverage under the Global All-Risk Policy.

147. For instance, Otis's losses in Italy include but are not limited to extra expenses for office/headquarter remote work and lost revenue with respect to new equipment, modernization, maintenance and/or service. To the extent these losses are held not covered under the FoS Policy, they are covered under the Difference in Conditions coverage and/or Financial Interest of First Named Insured coverage under the Global All-Risk Policy.

148. Similarly, to the extent that Otis' losses in Spain are held not covered under the FoS Policy in arbitration, these losses, including but not limited to lost production, extra expenses relating to production, and increased PPE and equipment costs at Otis manufacturing facilities, are covered under the Difference in Conditions coverage and/or Financial Interest of First Named Insured coverage under the Global All-Risk Policy.

149. Further, to the extent that Otis' losses in France are held not covered under the FoS Policy in arbitration, these losses, including but not limited to lost production, extra expenses for COVID PPE/equipment costs, lost revenue with respect to new equipment, modernization, maintenance and/or service operations at customer sites, are covered under the Difference in Conditions coverage and/or Financial Interest of First Named Insured coverage under the Global All-Risk Policy.

IX. Zurich's Improper Denial of Otis' Claim and Wrongful Conduct

150. In a letter dated December 14, 2020, Otis promptly notified Zurich of its claim for loss and expenses under the Global All-Risk Policy and "any and all other applicable policies, whether cited or not, including without limitation any local policies."

151. On December 30, 2020, Zurich agreed to extend the contractual suit limitations period in the Global All-Risk Policy and any and all local policies, including the FoS Policy, and allow until May 30, 2021 for Otis to initiate legal action against Zurich. On April 13, 2021, Zurich agreed to toll the suit limitation contained in the Global All-Risk Policy and all other applicable policies, including the FoS Policy and all local policies, from May 30, 2021 to August 30, 2021.

152. Based on the coverage terms and provisions of the Global All-Risk Policy, and the substantial premium paid by Otis to Zurich for Time Element coverage in the event of an interruption to its global business operations, Otis had a reasonable expectation that Zurich would provide coverage for its losses and expenses described herein.

153. Contrary to Otis' reasonable expectations for coverage, Zurich has failed to provide coverage for or make any payment with respect to Otis' loss and expenses.

154. In response to Otis' claim for insurance coverage, Zurich has asserted that "to the extent that Otis claims coverage because it (or someone else) sustained direct physical loss of or damage to property caused by the COVID-19 virus and/or government orders issued to address the spread or other activity of the virus, Zurich has determined there is no coverage under the policy based on such a claim."

155. Zurich additionally has taken the position that "[b]ecause Otis has failed to establish direct physical loss of or damage to property caused by a Covered Cause of Loss, there does not appear to be a possibility of coverage under Section IV (Time Element) and Section V (Special Coverages & Described Causes of Loss), including under the Civil or Military Authority coverage, regardless of any other Policy language applicable to Otis' claim."

156. On information and belief, Zurich's policy and practice has been consistently and repeatedly to deny coverage for claims, like those asserted by Otis, for Time Element coverage related to SARS-CoV-2 and/or COVID-19.

157. On information and belief, as of mid-August 2021, Zurich and its affiliates and related companies were engaged in approximately 177 legal proceedings in state and federal court across the US concerning Zurich's refusal to provide and denial of coverage for business interruption insurance for COVID-19.

158. To date, Zurich has failed to provide any coverage under the Global All-Risk Policy for Otis' COVID-19 losses.

159. Otis has substantially performed or otherwise satisfied all conditions precedent to bringing this action and obtaining coverage under the aforementioned coverage sections and pursuant to the All Risk Coverage, including the Global All-Risk Policy and applicable law, or alternatively, Otis has been excused from performance by Zurich's acts, representations, conduct, or omissions or by operation of law.

COUNT I

DECLARATORY JUDGMENT

160. Otis incorporates by reference the allegations contained in the above-stated paragraphs.

161. Otis asserts that Zurich is obligated under the Global All-Risk Policy, to pay up to the Limit of Liability for all Time Element loss and expenses incurred by Otis, including without limitation under coverages for Gross Earnings and Gross Profit, Ordinary Payroll, Extra Expense, Leasehold Interest, Civil or Military Authority, Contingent Time Element, Protection and Preservation of Property, Difference in Conditions, and Financial Interest of First Named Insured.

162. Zurich has failed to accept, acknowledge or provide coverage for or make any payment with respect to Otis' loss and expenses.

163. An actual and justiciable controversy exists between Otis on the one hand and Zurich on the other hand with respect to Zurich's stated interpretation of the scope and terms of its coverage and its failure to perform its obligations under the Global All Risk Policy.

164. A declaration of the parties' rights and obligations under the Global All-Risk Policy, will serve to resolve the dispute between them.

COUNT II

BREACH OF CONTRACT

165. Otis incorporates by reference the allegations contained in the above-stated paragraphs.

166. As set forth above, in return for premiums paid, Zurich sold Otis the Global All-Risk Policy, in which Zurich promised to pay for covered losses and expenses up to the applicable Limit of Liability for an Occurrence.

167. Otis promptly advised Zurich it sustained and is sustaining losses and expenses covered by the Global All Risk Policy.

168. Zurich has failed to accept, acknowledge or provide coverage for or make any payment with respect to Otis' losses and expenses.

169. Zurich's failure to provide coverage for Otis' losses and expenses constitutes a breach of the Global All Risk Policy.

170. As a direct and proximate result of Zurich's breach, Otis has been deprived of the benefits of insurance coverage for which it paid substantial premiums, and has suffered substantial damage.

WHEREFORE, Plaintiff prays that after due proceedings, that judgment be rendered herein, in favor of petitioner and against the defendant, and further demands judgment against Zurich as follows:

- (i) On the First Count, a judicial declaration by this Court that there has been and continues to be direct physical loss of or damage to Otis Insured Locations, and the facilities of Otis' Direct and Indirect Dependent Time Element Locations;
- (ii) Otis seeks a further declaration by this Court that Zurich is obligated under the Global All-Risk Policy to pay Otis up to the Limit of Liability for all loss and expenses arising out of SARS-CoV-2 and/or COVID-19 under coverages for Gross Earnings and Gross Profit, Ordinary Payroll, Extra Expense, Leasehold Interest, Civil or Military Authority, Contingent Time Element, Protection and Preservation of Property, and any and all other applicable coverages under the Global All-Risk Policy.
- (iii) Otis seeks a further declaration by this Court that Zurich is obligated to pay Difference in Conditions and/or Financial Interest of First Named Insured coverage up to the Limit of Liability, without application of any coverage sublimit, for all loss and expenses incurred in the countries to which the FoS and/or Local Policies are applicable that are not covered under the respective Local Policy but are covered under the Global All-Risk Policy.
- (iv) Otis seeks a further declaration by this Court that the "Contamination" exclusion does not apply to Otis' losses and it is against the public policy

of Illinois to enforce the "Contamination" exclusion in a manner that bars coverage for Otis' claim.

- (v) On the Second Count, Otis requests all actual and compensatory monetary damages in an amount to be proven at trial and all relief available at law for Zurich's breach of contract in denying coverage to Otis under the Global All-Risk Policy, and failing to pay any losses or expenses under the Global All-Risk Policy, in relation to any insured Location, including costs, expenses, pre-judgment and post-judgment interest, and reasonable attorneys' fees in this action.
- (vi) The award of such additional relief as the Court deems just and appropriate, including pre-judgment and post-judgment interest and attorneys' fees and costs to the fullest extent permitted by law.

DEMAND FOR JURY TRIAL

Otis demands a trial by jury of any issue triable of right by a jury in this case.

Dated: August 23, 2021

Respectfully submitted,

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