

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
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CASE NO.: 2021-02974
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

CRESCENT HOTELS & RESORTS, LLC;
CRESCENT HOTEL MANAGEMENT
SERVICES, LLC; CITRUS NORTH
HOSPITALITY, LLC; SKYSONG
HOSPITALITY VENTURE, LLC; 200
MARINA BOULEVARD, BERKELEY, LLC;
15th & L INVESTORS, LLC; AWH
ORLANDO PROPERTY, LLC; BAY POINT
MASTER TENANT, LLC; L-O DEERFIELD
OPERATING, LLC; L-O NEW ORLEANS
OPERATING, LLC; L-O BEDFORD
OPERATING, LLC; SCMD TOWER 2, LLC;
SC BALTIMORE HOTEL, LLC; McSAM
BALTIMORE HOTEL, LLC; SKY HARBOR
SOUTHFIELD; LLC; SILVERWEST-1
CLAYTON, LLC; SCNJ HOTEL, LLC;
TITAN JOURNAL CENTER HOTEL, LLC;
SBHC PRIVATE EQUITY IV, LLC;
GOLDEN SEAHORSE, LLC, KAR HOTEL
OWNER, LLC; SYRACUSE COMMUNITY
HOTEL RESTORATION CO. 1, LLC;
COLUMBUS OSU HOTEL, LLC; OKC
HOTEL VENTURES, LLC; CAPE
CAROLYN, LLC; ELPZO R.I. LIMITED
PARTNERSHIP; JACKSON-
SHAW / STONE CREEK HOTEL 3, LP;
JACKSON-SHAW / STONE CREEK
HOTEL, LP; JACKSON-SHAW / STONE
CREEK HOTEL 2, LP; LCP-BV FAIRFAX
HOTEL, LLC; and LCP FAIRFAX TIC, LLC,

Plaintiffs,

vs.

ZURICH AMERICAN INSURANCE CO.;
and INTERSTATE FIRE & CASUALTY
CO.,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Crescent Hotels & Resorts, LLC, Crescent Hotel Management Services, LLC; Citrus North Hospitality, LLC; SkySong Hospitality Venture, LLC; 200 Marina Boulevard, Berkeley, LLC; 15th & L Investors, LLC; AWH Orlando Property, LLC; Bay Point Master Tenant, LLC; L-O Deerfield Operating, LLC; L-O New Orleans Operating, LLC; L-O Bedford Operating, LLC; SCMD Tower 2, LLC; SC Baltimore Hotel, LLC; McSam Baltimore Hotel, LLC; Sky Harbor Southfield; LLC; Silverwest-1 Clayton, LLC; SCNJ Hotel, LLC; Titan Journal Center Hotel, LLC; SBHC Private Equity IV, LLC; Golden Seahorse, LLC; KAR Hotel Owner, LLC; Syracuse Community Hotel Restoration Co. 1, LLC; Columbus OSU Hotel, LLC; OKC Hotel Ventures, LLC; Cape Carolyn, LLC; Elpizo R.L. Limited Partnership; Jackson-Shaw / Stone Creek Hotel 3, LP; Jackson-Shaw / Stone Creek Hotel, LP; Jackson-Shaw / Stone Creek Hotel 2, LP; LCP-BV Fairfax Hotel, LLC; and LCP Fairfax TIC, LLC (collectively, "Crescent") complain of Defendants Zurich American Insurance Company ("Zurich") and Interstate Fire & Casualty Company ("Interstate") (collectively, the "Insurers"), and allege as follows:

NATURE OF THE ACTION

1. Crescent Hotels & Resorts, LLC, and Crescent Hotel Management Services, LLC, form part of a leading hotel management company that provides management services to the 29 hotels that are parties to this lawsuit (collectively, the "hotels"). These hotels are located throughout the country and include the Marriott Fairfax at Fair Oaks, which is less than five miles from this Courthouse.
2. Beginning in March 2020, the hotels were forced to suspend substantial business activities, and their use and functionality was substantially impaired, because of the SARS-CoV-

2 virus, COVID-19 (the disease the virus causes), the resulting actions and orders of government authorities, and the need to mitigate loss and damage. Specifically, starting in March 2020, Crescent was forced, wholly or partly, to close certain hotels and suspend or reduce operations of many on-site restaurants, bars, banquet halls, conference rooms, spas, and other hotel amenities. As a result of these closures and suspensions, Crescent has suffered, and continues to suffer, substantial financial losses totaling tens of millions of dollars.

3. Additionally, as a result of SARS-CoV-2, COVID-19, and the resulting civil authority orders and actions, nearby attractions and properties that attract business to the hotels (collectively, the "Attraction Properties"), as well as Crescent's customers and suppliers, have been forced to suspend and/or had their use and functionality substantially impaired, further exacerbating and compounding Crescent's substantial financial losses.

4. As explained below, Crescent bought a \$500,000,000 commercial property and business interruption insurance program from the Insurers for the May 31, 2019, to May 31, 2020, policy period. Crescent's insurance program provides broad "all-risk" coverage for losses arising from, among other things, communicable diseases, property damage and business interruption losses, extra expenses, and time element losses—such as closures related to civil authority orders and losses resulting from physical loss of or damage to Attraction Properties and the properties of Crescent's customers and suppliers.

5. As the name suggests, "all-risk" commercial property policies cover all risks of any kind or description, unless specifically excluded. Unlike "enumerated perils" property policies, which cover only specified causes of loss, all-risk property insurance covers even unprecedented and unanticipated risks of loss, thereby providing insureds with comfort that all possible risks of loss are covered, unless specifically excluded.

6. Given the breadth of its coverage and the express promises the Insurers made in their policies, Crescent naturally turned to the Insurers for coverage for the financial losses suffered as a result of SARS-CoV-2, COVID-19, the resulting actions and orders of civil authorities, and the need to mitigate losses. However, rather than honor their duties under their policies and the law, the Insurers wrongfully withheld the policy benefits to which Crescent is entitled.

7. Put simply, there is no merit to the Insurers' refusal to honor their contractual promises to the Insureds. In selling "all-risk" insurance to Crescent, the Insurers promised to provide broad coverage for financial losses unless an exclusion conspicuously, plainly, and clearly applies to coverage. Pursuant to Virginia insurance law, as well as authority from states throughout the country, the presence of SARS-CoV-2 in a building's airspace and on or around property results in direct physical loss of or damage to property. It causes a distinct, demonstrable, physical alteration to property, and poses an imminent and severe risk to human health. Thus, Crescent's financial losses attributable to the presence of SARS-CoV-2 fall squarely within the coverage afforded by the policies it bought from the Insurers.

8. In addition, the threat of SARS-CoV-2 and the associated actions and orders of civil authorities substantially impaired the insured properties, the Attraction Properties, and the properties of Crescent's customers and suppliers, rendering them incapable of fulfilling their intended function. This impairment also resulted in "direct physical loss of or damage to property" under Virginia law as well as authority from states throughout the country.

9. Furthermore, even though the insurance industry has employed a standard-form "virus" exclusion since 2006 (the "Virus Exclusion") and has known of the risk of pandemics for years, Crescent's policies contain no such exclusion. This omission speaks volumes and shows

that the Insurers, contrary to the positions they have taken in response to Crescent's claim, fully understood and expected that their policies would afford coverage for losses resulting from viruses.

10. By this lawsuit, Crescent seeks damages to compensate it for the Insurers' contractual breaches and bad faith conduct. Crescent also seeks declaratory relief under Virginia Code § 8.01-184 confirming that it is entitled coverage for its losses under the policies sold by the Insurers.

JURISDICTION AND VENUE

11. Pursuant to Virginia Code § 17.1-513, this Court has original jurisdiction over this action because it is a civil action at law with more than \$100 at issue.

12. Pursuant to Virginia Code § 8.01-328.1, this Court has personal jurisdiction over the Insurers because, among other reasons, the Insurers transacted business in this Commonwealth and contracted to insure any person, property, or risk located within this Commonwealth at the time of contracting.

13. Pursuant to Virginia Code, § 8.01-261, venue is proper in this Court because the moving or aggrieved party resides and regularly or systematically conducts affairs or business activity in this County.

14. Jurisdiction and venue are further proper in this Court pursuant to the contracts between the parties. Both policies state, "Any disputes arising hereunder will be exclusively subject to the jurisdiction of a court of competent jurisdiction within the USA."

15. In addition, the Service of Suit Clause in the Interstate Policy provides that, "In the event of our failure to pay any amount claimed to be due under this Policy, we agree to submit to the jurisdiction of any court of competent jurisdiction within the United States in which a suit for those amounts may be brought."

THE PARTIES

16. Crescent Hotels & Resorts, LLC, is a limited liability company that provides services at the properties owned by the other plaintiffs, as described below. Crescent Hotels & Resorts, LLC is organized under the laws of Delaware, and has its principal place of business at 10306 Eaton Place #430 in Fairfax, Virginia.

17. Crescent Hotel Management Services, LLC, is a limited liability company that provides services at the properties owned by the other plaintiffs, as described below. Crescent Hotel Management Services, LLC is organized under the laws of the Commonwealth of Virginia, and has its principal place of business at 10306 Eaton Place #430 in Fairfax, Virginia.

18. Citrus North Hospitality, LLC, is a limited liability company that owns The Westin Huntsville, located at 6800 Governors West NW in Huntsville, Alabama. Citrus North Hospitality, LLC, also owns the property known as the Element Huntsville hotel, located at 6810 Governors West NW in Huntsville, Alabama.

19. SkySong Hospitality Venture, LLC, is a limited liability company that owns the property known as the Element Scottsdale at SkySong hotel, located at 1345 North Scottsdale Road in Scottsdale, Arizona.

20. 200 Marina Boulevard, Berkeley, LLC, is a limited liability company that owns the property known as the DoubleTree by Hilton Hotel Berkeley Marina, located at 200 Marina Boulevard in Berkeley, California.

21. 15th & L Investors, LLC, is a limited liability company that owns the property known as the Residence Inn by Marriott Sacramento Downtown by Capitol Park, located at 1121 15th Street in Sacramento, California.

22. AWH Orlando Property, LLC, is a limited liability company that owns the property known as the DoubleTree by Hilton Hotel Orlando at SeaWorld, located at 10100 International Drive in Orlando, Florida.
23. Bay Point Master Tenant, LLC, is a limited liability company that owns the property known as the Sheraton Panama City Beach Golf & Spa Resort, located at 4114 Jan Cooley Drive in Panama City Beach, Florida.
24. L-O Deerfield Operating, LLC, is a limited liability company that owns the property known as the Embassy Suites by Hilton Chicago North Shore Deerfield hotel, located at 1445 Lake Cook Road in Deerfield, Illinois.
25. L-O New Orleans Operating, LLC, is a limited liability company that owns property known as the The Royal St. Charles Hotel, located at 135 St. Charles Avenue in New Orleans, Louisiana.
26. L-O Bedford Operating, LLC, is a limited liability company that owns the property known as the DoubleTree by Hilton Hotel Boston – Bedford Glen, located at 44 Middlesex Turnpike in Bedford, Massachusetts.
27. SCMD Tower 2, LLC, is a limited liability company that owns the property known as the Crowne Plaza Baltimore – Inner Harbor, located at 105 West Fayette Street in Baltimore, Maryland.
28. SC Baltimore Hotel, LLC, is a limited liability company that owns the property known as the Baltimore Marriott Inner Harbor at Camden Yards hotel, located at 110 South Eutaw Street in Baltimore, Maryland.

29. McSam Baltimore Hotel, LLC, is a limited liability company that owns the property known as the Radisson Hotel Baltimore Downtown – Inner Harbor, located at 101 West Fayette Street in Baltimore, Maryland.
30. Sky Harbor Southfield, LLC, is a limited liability company that owns the property known as the Detroit Marriott Southfield hotel, located at 27033 Northwestern Highway in Southfield, Michigan.
31. Silverwest-I Clayton, LLC, is a limited liability company that owns the property known as Le Méridien St. Louis Clayton hotel, located at 7730 Bonhomme Avenue in St. Louis, Missouri.
32. SCNJ Hotel, LLC, is a limited liability company that owns the property known as the Crowne Plaza Englewood hotel, located at 401 South Van Brunt Street in Englewood, New Jersey.
33. Titan Journal Center Hotel, LLC, is a limited liability company that owns the property known as the Courtyard by Marriott Albuquerque hotel, located at 5151 Journal Center Boulevard NE in Albuquerque, New Mexico.
34. SBHC Private Equity IV, LLC, is a limited liability company that owns the property known as the Hilton Garden Inn Stony Brook, located at 1 Circle Road in Stony Brook, New York.
35. Golden Seahorse, LLC, is a limited liability company that owns the property known as the Holiday Inn Manhattan – Financial District, located at 99 Washington Street in New York City, New York.

36. KAR Hotel Owner, LLC, is a limited liability company that owns the property known as the New York LaGuardia Airport Marriott, located at 102-05 Ditmars Boulevard in East Elmhurst, Queens, New York.
37. Syracuse Community Hotel Restoration Company 1, LLC, is a limited liability company that owns the property known as the Marriott Syracuse Downtown, located at 100 East Onondaga Street in Syracuse, New York.
38. Columbus OSU Hotel, LLC, is a limited liability company that owns the property known as the Homewood Suites by Hilton Columbus/OSU, OH, located at 1576 Lane Avenue in Columbus, Ohio.
39. OKC Hotel Ventures, LLC, is a limited liability company that owns the property known as the Sheraton Oklahoma City Downtown Hotel, located at 1 North Broadway Avenue in Oklahoma City, Oklahoma.
40. Cape Carolyn, LLC, is a limited liability company that owns the property known as the Embassy Suites by Hilton Philadelphia Valley Forge, located at 888 Chesterbrook Boulevard in Wayne, Pennsylvania.
41. Elpizo R.I. Limited is a limited partnership that owns the property known as the Hawthorn Suites by Wyndham Philadelphia Airport, located at 4630 Island Avenue in Philadelphia, Pennsylvania.
42. Jackson-Shaw / Stone Creek Hotel 3, LP, is a limited partnership that owns the property known as the Courtyard by Marriott Dallas Plano/The Colony hotel, located at 5917 Stone Creek Drive in The Colony, Texas.

43. Jackson-Shaw / Stone Creek Hotel, LP, is a limited partnership that owns the property known as the Fairfield Inn & Suites by Marriott Dallas Plano/The Colony hotel, located at 5909 Stone Creek Drive in The Colony, Texas.

44. Jackson-Shaw / Stone Creek Hotel 2, LP, is a limited partnership that owns the property known as the Residence Inn Dallas Plano/The Colony, located at 6600 Cascades Court in The Colony, Texas.

45. LCP-BV Fairfax Hotel, LLC, is a limited liability company that owns the property known as the Fairfax Marriott at Fair Oaks hotel, located at 11787 Lee Jackson Memorial Highway in Fairfax, Virginia.

46. LCP Fairfax TIC, LLC, is a limited liability company that owns the property known as the Fairfax Marriott at Fair Oaks hotel, located at 11787 Lee Jackson Memorial Highway in Fairfax, Virginia.

47. Crescent is informed and believes, and on that basis alleges, that Zurich is a corporation organized and existing under the laws of the State of New York and with headquarters in Schaumburg, Illinois. Crescent is also informed and believes, and on that basis alleges, that Zurich is owned by Zurich Holding Company of America and that its ultimate parent is Zurich Insurance Group Ltd.

48. Zurich and the other members of the Zurich Insurance Group Ltd. brand hold themselves out to the public as the Zurich Insurance Group. They maintain a worldwide website at <https://www.zurich.com>. The Zurich Insurance Group makes various statements and representations on its website on behalf of its member companies, including Zurich.

49. According to the Zurich Insurance Group website, the Zurich Insurance Group "is a leading multi-line insurer that serves its customers in global and local markets. With about

55,000 employees, it provides a wide range of property and casualty, and life insurance products and services in more than 215 countries and territories.”¹

50. On its website, the Zurich Insurance Group proclaims:

Our heritage is about helping customers understand and protect themselves from risk. Since 1872 we have been applying our expertise and experience so that our customers can have the very best protection for the things they value. This is our mission and the timeless idea behind our brand. It is also the authentic truth that has been and always will be at the heart of the Zurich brand.²

51. Since the outbreak of the COVID-19 pandemic, the Zurich Insurance Group has made wide-ranging representations. The following are some of the many representations and promises that the Zurich Insurance Group has made, and still makes as of the filing of this lawsuit:

- “As a society, we are facing unprecedented challenges that are immediate and will have long-lasting implications. At Zurich, responding to these challenges goes to the heart of our purpose as a business, and our promise to customers.”³
- “The spread of Coronavirus (Covid-19) is unprecedented and we understand this is an incredibly difficult time for families and businesses. We are here to help customers and businesses who are affected by the impact of Covid-19 in these challenging times.”⁴
- “Customers buy insurance for times like these. They want to know that there is a strong financial institution backing them up when they are in need.”⁵
- “Our customers need us now more than ever. It’s a challenging time for everyone, everywhere, both personally and professionally. How we in the

¹ <https://www.zurich.com/en/about-us/a-global-insurer>.

² <https://www.zurich.com/en/about-us/a-global-insurer/our-brand>.

³ <https://www.zurich.com/services/coronavirus-support>.

⁴ <https://www.zurich.com/-/media/project/zurich/dotcom/services/docs/coronavirus-support/homeworking-during-covid-19.pdf>.

⁵ Jack Howell, CEO, Zurich Asia Pacific, <https://insuranceasianews.com/zurichs-jack-howell-on-ma-covid-19-and-wfh/>.

insurance sector react in a crisis can make all the difference for the people we work with, especially the customers who trust and depend on us.”⁶

- “David Henderson, chief human resources officer at Zurich, says that employers’ duty of care is vital to the success of the social contract and that companies who protect their workforce – physically, mentally, financially – will be applauded in the post-Covid-19 era. He calls this a ‘moment of truth’ for all businesses.”⁷

52. Crescent is informed and believes, and on that basis alleges, that Interstate is a corporation organized and existing under the laws of the State of Illinois with headquarters in Illinois. Crescent also is informed and believes, and on that basis alleges, that Interstate is part of the Allianz Group of Insurance Companies. Allianz SE is the ultimate parent of Interstate and the other insurance companies that are part of the Allianz Group of Insurance Companies (for convenience, and as the Allianz Companies do, Interstate and the other Allianz companies collectively are referred to as “Allianz.”). Allianz maintains a worldwide website at <https://www.allianz.com/en.html>. Allianz makes various statements and representations on its website on behalf of its member companies, including Interstate.

53. According to the Allianz website, Allianz “offers a wide range of insurance and fund products to over 100 million customers in more than 70 countries” and is “one of the leading insurers, in both property and casualty and life and health.”⁸

54. Allianz states on its website:

Since 1890, all around the globe, we at Allianz have been working hard to secure people’s lives and to give courage to our customers for what’s ahead.

We are actuaries, advisors and service agents; engineers, lawyers, and technology experts; we are daughters and sons, mothers and fathers, accountants, investors and entrepreneurs- and together we are shaping our industry.

⁶ <https://www.zurichna.com/knowledge/articles/2020/06/covid-19s-business-impact-6-ideas-for-insurance-brokers>.

⁷ <https://www.zurich.com/en/knowledge/topics/workforce-protection/building-a-better-social-contract>.

⁸ <https://www.allianz.com/en/about-us/who-we-are/at-a-glance.html>.

Because we know how important it is to have a fair partner at your side who provides solid and sustainable solutions, we strive to do it right- with passion, every day.⁹

55. Allianz urges, "Take out property insurance with us and you'll gain access of over 200 expert risk consultants around the globe." And it promises that "[i]n the event of a claim we'll use our local claims-handling to make sure you receive a fast and decisive solution."¹⁰

56. Allianz also states as follows on its website:

We help, no matter what! In the face of the Covid-19 pandemic, we stand united across the world to help our customers. We help. We inspire. We reassure. We are Allianz Partners.¹¹

57. Allianz also states:

United against the coronavirus: Allianz: A Friend in Need

Allianz, as a company well-aware of its responsibilities, has always strived to support customers and communities in the best possible ways. The current situation is no different. "Our motto, 'We secure your future', is more important today than it has ever been," says Allianz CEO Oliver Bäte.

[and]

Thousands of the group's employees across the world are working tirelessly to ensure Allianz is there for its customers when they need them most. . . .

The crisis is a stark reminder that unexpected events await us at every turn. As an insurer, Allianz is in the business of protecting customers from unforeseen problems, across geographies and business lines.

Securing your future – today, tomorrow and beyond.¹²

⁹ <https://www.allianz.com/en/about-us/strategy-values/our-purpose.html>.

¹⁰ https://www.agcs.allianz.com/solutions/property-insurance.html#tabpar_8053_0Tab.

¹¹ https://www.allianz-partners.com/en_US/press-and-media/coronavirus.html.

¹² https://www.allianz.com/en/press/news/commitment/community/200427_united-against-

58. Unfortunately for the Insureds, neither Zurich nor Interstate has lived up to its promises, instead stranding their "friend[s] in need" in their "moment[s] of truth," each breaking the specific promises it made under the policy it sold to Crescent.

THE POLICIES

59. For the period May 31, 2019, to May 31, 2020, Crescent bought a pair of commercial property and business interruption policies with total policy limits of \$500,000,000 per Occurrence to protect Crescent against the possibility of direct physical loss of or damage to property and various forms of business and financial losses at the hotels (the "Policies"). The Policies provide broad "all-risk" coverage—that is, coverage against all risks of damage and loss except those conspicuously, plainly, clearly, and expressly excluded.

60. Crescent's insurance program is based on a policy form created by Zurich, called the "The Zurich Edge Policy." That form and Zurich's endorsements comprise Policy No. ERP1150909-1 (the "Zurich Policy"). A true and correct copy of at least the relevant portions the Zurich Policy is attached as Exhibit A and incorporated herein by reference.

61. Zurich introduced its "Edge" policies in 2008. When it did so, it stated:

"We listened to our customers and developed a policy that meets their needs," said Mario Vitale, CEO of Zurich's Global Corporate in North America (GCiNA) business unit. "This new policy gives them higher limits, broader coverage and greater flexibility. The Zurich Edge dramatically enhances our ability to serve customers in this important line of business and offers significant advantages for global property programs and global property fronting arrangements.

"In addition to being globally compliant, the policy also has the advantage of being offered by Zurich, which is often recognized for offering one of the broadest and most diverse portfolios of products and services in the world," Vitale said. "The Zurich Edge policy is clearly written with all limits, sub-limits and other critical

[coronavirus-Allianz-a-friend-in-need.html](#).

coverage issues incorporated within the policy declarations and is supported by Zurich's global network of risk engineering and claims professionals."¹³

62. Interstate adopted the Zurich Edge Policy form, renaming it the "Crescent Hotels & Resorts Policy Form" for use in the policy it sold Crescent. That form and Interstate's endorsements comprise Policy No. RTX20037219 (the "Interstate Policy"). A true and correct copy of at least the relevant portions of the Interstate Policy is attached as Exhibit B and incorporated herein by reference.

The Zurich Policy

63. The Zurich Policy provides \$450,000,000 in business interruption insurance coverage with sublimits for various perils. These limits and sublimits apply for each Occurrence, unless otherwise specified in the Zurich Policy.

64. The Zurich Policy insures Crescent Hotels & Resorts' "interest in buildings (or structures)" and "Personal Property" as well as property within its "care custody and control," and for which it "has agreed in writing prior to any loss or damage to provide coverage." Zurich Policy ¶¶ 3.01.01-03. The Zurich Policy also includes as "Insureds" any "other legal entity in which [Crescent Hotels and Resorts] has . . . responsibility to insure on behalf of . . ." *Id.*, Endorsement, EDGE-219-C (01/18)

65. Per the agreements between Crescent Hotels & Resorts, LLC, Crescent Hotel Management Services, LLC, and the other plaintiffs in this lawsuit, Crescent Hotels & Resorts, LLC, and Crescent Hotel Management Services, LLC, had interests in the property owned by the other plaintiffs during the policy period; exercised care, custody, and control over those properties during the policy period; and promised in writing to provide insurance coverage to the

¹³http://www.zurichservices.com/zus/zna_config.nsf/pages/9123da88864cd81485257433006ed7101OpenDocument&Click=.

other plaintiffs for the policy period and before suffering the losses that are the basis of this lawsuit. Therefore, the Insurers owe all plaintiffs the coverage promised in the Zurich Policy.

66. The Zurich Policy "[i]nsures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property" *Id.* ¶ 1.01. The term "direct physical loss of or damage . . . to . . . property" is not defined in the Zurich Policy. A **Covered Cause of Loss** is defined as "[a]ll risks of direct physical loss of or damage from any cause unless excluded." *Id.* ¶ 7.11.

Time Element Coverages

67. The Zurich Policy has a separate section providing Crescent with "Time Element" insurance. Its "Loss Insured" provision states in relevant part:

The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at an Insured Location. The **Suspension** must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at the Location, or as provided in Off Premises Storage for Property Under Construction Coverages.

The Company will also pay for the actual Time Element loss sustained by the Insured, during the Period of Liability at other Insured Locations. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at the other Insured Locations. Such other Location must depend on the continuation of business activities at the Location that sustained direct physical loss or damage caused by a **Covered Cause of Loss**.

Id. ¶ 4.01.01.

68. The Zurich Policy defines "Suspension" as "[t]he slowdown or cessation of the Insured's business activities" *Id.* ¶ 7.56.01.

69. The Zurich Policy's "Time Element" section also insures "Extra Expense," obligating Zurich 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.

70. The Zurich Policy also provides Crescent with "Special Coverages & Described Causes of Loss." *See id.* § V.

71. The "Special Coverages" include "Civil or Military Authority" coverage for losses

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 [five miles] of the Insured's Location

Id. ¶ 5.02.03.

72. The "Special Coverages" include insurance for "Contingent Time Element" losses. The Zurich Policy:

covers 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 . . . at Direct Dependent Time Element Locations . . . and Attractions Properties

Id. ¶ 5.02.05.

73. "Direct Dependent Time Element Locations" are defined as "[a]ny Location of a direct: customer [or] supplier" *Id.* ¶ 7.116.01. "Attraction Properties" are defined as those properties "within [one mile] of an Insured Location that attracts customers to the Insured's business." *Id.* ¶ 7.04

74. The "Special Coverages" include "Ingress/Egress" coverage for losses that Crescent suffers when

ingress or egress to [an] Insured Location by [its] suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damaged caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by [Crescent] or insured under this Policy and located within [5 miles] of the Insured Location

Id. ¶ 5.02.15.

75. The "Special Coverages" include insurance for "Protection and Preservation of Property." The Policies state that they cover

[t]he 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; and [t]he Gross Earnings loss or Gross Profit loss sustained by the Insured for a period of time not to exceed [48 hours] prior to and after the Insured first taking reasonable action for the temporary protection and preservation of Covered Property.

Id. ¶¶ 5.02.23.01 & 5.02.23.02.

76. The Zurich Policy also includes coverage for "Interruption by Communicable Disease," providing:

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 order of an authorized governmental agency enforcing any law or ordinance regulating communicable diseases 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.

Id., Endt. 13.

77. The Zurich Policy provides a range of other coverages for losses, which also may apply.

78. None of Crescent's losses are conspicuously, plainly, and clearly excluded by the Zurich Policy.

The "Contamination Endorsement"

79. The Zurich Policy also states, in part:

This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.

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.

Id. ¶¶ 3.03.01 & 3.03.01.01.

80. The Policies' standard form defines **Contamination (Contaminated)** as:

Any 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 (emphasis added).

81. However, Zurich changed this provision by endorsement to delete "virus, disease causing or illness causing agent" from the definition and thus from what the Policies excluded. Specifically, in an endorsement prominently stating that it "CHANGES THE POLICY," Zurich changed the definition of **Contamination (Contaminated)** to:

Any condition of property due to the actual presence of any **Contaminant(s)**.

Id., Endorsement, EDGE-219-C (01/18) ¶ 11 (the "Contamination Endorsement"). The endorsement defined **Contaminants** as:

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., Endorsement, EDGE-219-C (01/18) ¶ 12. Therefore, while the **Contamination (Contaminated)** exclusion in the policy form originally included "virus, disease causing or illness causing agent," Zurich intentionally amended the Policies to remove viruses and disease-causing or illness-causing agents from the scope of the exclusion. On information and belief, Zurich recently modified the Contamination Endorsement in subsequently issued policies, purporting to limit its applicability to only properties in Louisiana.

The Interstate Policy

82. The Interstate Policy generally contains the same terms, provisions, and coverages as the Zurich Policy. As noted above, the core of the Interstate Policy is the Zurich Edge Policy Form.

83. The Interstate Policy, however, contains a "U.S. Market Follow-On Endorsement" that purports to "modify the Commercial Property Coverage to which it is attached." Interstate Policy, Endt. 1 (the "Follow-On Endorsement").

84. The Follow-On Endorsement provides that:

Notwithstanding any other term, condition, limit or exclusion contained in the Commercial Property Coverage that this Endorsement amends, the following sections 1 through 4, inclusive, shall apply in all circumstances.

85. Section 5 of the Follow-On Endorsement is labelled "Exclusions Clause" and includes the following preamble:

We will not pay for loss, damage, cost or expense caused directly or indirectly by any of the following sub-clauses A through I, inclusive, and any such loss, damage, or expense is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss, and the terms and conditions of coverage shall be limited or adjusted as may be provided for in the following sub-clauses A through I, inclusive...

86. Subpart B of Section 5 of the Follow-On Endorsement is labelled "Pollution Contamination Exclusion."

The release, migration, discharge, escape or dispersal of Contaminants. However, we will provide coverage for Contaminants, pursuant to the other terms, conditions and exclusions of the Policy, to the extent that the Policy affirmatively provides coverage for any loss, cost, damage or expense:

- (i) arising directly from the release, migration, discharge, escape or dispersal of Contaminants directly caused by or resulting from a peril not otherwise excluded under the Policy which resulted in a Covered Loss, or
- (ii) resulting in a Covered Loss caused by a peril not otherwise excluded under the Policy which arises directly from the release, migration, discharge, escape or dispersal of Contaminants, or
- (iii) arising directly from Contaminants as long as such affirmative coverage under the Policy is subject to a sublimit of liability, then we shall only provide coverage for loss, damage, cost or expense directly caused by such peril in proportion to the sublimit in the Policy.

87. The term "Contaminants" for the purposes of the Pollution Contamination Exclusion means:

materials that may be harmful to human health and include any impurity, pollutant, poison, toxin, pathogen or pathogenic organism, disease-causing or illness-causing agent, asbestos, dioxin, polychlorinated biphenyls, agricultural smoke, agricultural soot, vapor, fumes, acids, alkalis, bacteria, virus, and hazardous

substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, Toxic Substances Control Act, or as designated by the United States Environmental Protection Agency or any other local governmental agency. However, Contaminants do not include any form of fungus, including but not limited to, yeast, mold, mildew, rust, smut, mushroom, spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of any of the foregoing.

THE INSURERS' KNOWLEDGE OF PANDEMIC RISKS

88. The Insureds are informed and believe, and on that basis allege, that by the time the Insurers sold Crescent the Policies, they had known for over a decade that there were standard-form exclusions available in the insurance marketplace (such as the Virus Exclusion) that could exclude coverage for losses caused by viruses and pandemics and that other insurers had included such exclusions in policies they sold. In fact, that each Insurer had previously sold policies to other insureds that include such exclusions.

89. Allianz's own statements show its awareness of the risks that viruses in the modern world present. In its 2006 Annual Report, Allianz SE explained to its investors:

Climate change, nanotechnology and *viruses with the potential to cause a pandemic* are present-day risks to which a financial enterprise could be particularly susceptible. Detecting such risks at an early stage is not only a requirement for our risk management but is also part of our social responsibility for sustainable development.¹⁴

90. In its 2013 Annual Report, while discussing underwriting biometric risks, Allianz Group explained to its investors, "We measure these risks within our internal risk capital model by distinguishing between the different sub-components, whenever relevant or material: absolute level, trend, volatility around the best estimate assumptions and *pandemic risks*."¹⁵

91. Allianz and its affiliated companies made similar references to pandemic risks in institutional reports every year for 2014, 2015, 2016, 2017, 2018, and 2019 (the year SARS-CoV-19 was discovered in Wuhan, China).

¹⁴ https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/archive/2006_geschaeftsbericht_allianz_group_englisch.pdf (emphasis added) (last visited Feb. 24, 2021).

¹⁵ https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/ar2013/ar2013_allianzgroup.pdf (emphasis added) (last visited Feb. 24, 2021)

92. In addition, there were many publicly available reports about the risks of pandemics and what insurers should do in the months and years before the Insurers sold the Policies to Crescent. For example, one article noted in March 2018:

Even with today's technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.¹⁶

93. Other sources accessible to the Insurers also demonstrate the breadth of information available to the Insurers about the risk of pandemics. One insurance industry repository shows the "tip of the iceberg" about how much information was available before the Policies were issued. The Insurance Library Association of Boston, founded in 1887, describes itself as "the leading resource for and provider of literature, information services, and quality professional education for the insurance industry and related interests."¹⁷ The Association states on its website:

The past 20 years [have] seen the rise of a number of pandemics. *Slate* recently published an article on what has been learned about treating them in that time. We thought it might be apt for us to take a look back and see what the insurance industry has learned as well.¹⁸

The Association lists more than 20 articles, reports, and white papers available to insurers from since at least early 2007, long before the Insurers sold the Policies to Crescent.

94. The Insurers also have known for decades that their policies could be held to cover losses from the presence of a virus inside buildings or because a building could not be used

¹⁶ "What the 1918 Flu Pandemic Can Teach Today's Insurers," *AIR* (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

¹⁷ <http://insurancelibrary.org/about-us/>.

¹⁸ <http://insurancelibrary.org/pandemics-and-insurance/>.

for its intended purposes or function. As the Insurers have known for decades many courts have held that the presence of a hazardous substance in property, including the airspace inside buildings, constitutes property damage and that there may be "direct physical loss" to property even if the property is not structurally damaged. As the Insurers have known, or should have known, the many decisions include the following:

- *TRAVCO Insurance Co. v. Ward*, 715 F. Supp. 2d 699 (E.D. Va. 2010), *aff'd*, 504 F. App'x 251 (4th Cir. 2013): Under Virginia law, insured's residence sustained "direct physical loss" within meaning of homeowners' policy when it was rendered uninhabitable by toxic gases released by drywall manufactured in China, even though drywall was still intact.
- *American Guaranty & Liability Insurance Co. v. Ingram Micro, Inc.*, 2000 WL 726789, at *2 (D. Ariz. April 18, 2000) (when power outage rendered insured's computer systems inoperable, insured suffered "direct physical loss or damage" to property; "'physical damage' . . . includes loss of access, loss of use, and loss of functionality").
- *Wakefern Food Corp v. Liberty Mutual Fire Insurance Co.*, 968 A.2d 724, 727 (N.J. App. Div. 2009): Interruption of electrical power to the insureds' supermarkets covered because the term "physical damage" was ambiguous and the losses resulted from damage to the electrical grid, thereby rendering the store locations physically incapable of performing their intended function.
- *Gregory Packaging, Inc. v. Travelers Property Casualty Co.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014): Closure of facility because of accidentally released ammonia; while "structural alteration provides the most obvious sign of physical damage, . . . property can sustain physical loss or damage without experiencing structural alteration."
- *Port Authority v. Affiliated FM Insurance Co.*, 311 F.3d 226, 236 (3d Cir. 2002):
Property sustained a direct physical loss because it was rendered uninhabitable by

the presence of asbestos fibers.

- *Arbeter v. Cambridge Mutual Fire Insurance Co.*, 1996 WL 1250616, at *2 (Mass. Super. Ct. Mar. 15, 1996): presence of oil fumes in building constituted "physical loss" to building.
- *Essex Insurance Co. v. BloomSouth Flooring Corp.*, 562 F.2d 399, 406 (1st Cir. 2009): odor from carpet and adhesive "can constitute physical injury to property."
- *Farmers Insurance Co. v. Trutanich*, 123 Or. App. 6, 9-11 (1993): "[T]he odor produced by the methamphetamine lab had infiltrated the house. The cost of removing the odor is a direct physical loss."
- *Matzner v. Seacoast Insurance Co.*, 1998 WL 566658 (Mass. Super. Ct. Aug. 12, 1998): building with unsafe levels of carbon monoxide sustained direct physical loss.
- *Mellin v. Northern Security Insurance Co.*, 167 N.H. 544, 550-51 (2015): cat urine odor inside condominium constitutes direct physical loss; "a property policy insures 'physical loss changes to the insured property, but also changes that are perceived by a sense of smell' and 'may exist in the absence of structural damage to the insured property.'"
- *Oregon Shakespeare Festival Association v. Great American Insurance Co.*, 2016 WL 3267247, at *9 (D. Ore. June 7, 2016): "smoke infiltration in theatre caused direct property loss or damage by causing the property to be uninhabitable and unusable for its intended purpose."
- *Sentinel Management Co. v. Aetna Casualty & Surety Co.*, 1999 WL 540466, at *7 (Minn. Ct. App. July 27, 1999): "If rental property is contaminated by asbestos fibers and presents a health hazard to tenants, its function is seriously impaired."
- *Sentinel Management Co. v. New Hampshire Insurance Co.*, 563 N.W.2d 296,

300 (Minn. Ct. App. 1997): "Although asbestos contamination does not result in tangible injury to the physical structure of a building, a building's function may be seriously impaired or destroyed and the property rendered useless by the presence of contaminants. . . . Under these circumstances, we must conclude that contamination by asbestos may constitute a direct, physical loss to property under an all-risk insurance policy."

- *Western Fire Insurance Co. v. First Presbyterian Church*, 165 Colo. 34, 39-40 (1968): direct physical loss when gasoline contaminated church building making it dangerous to use.
- *Hughes v. Potomac Insurance Co.*, 199 Cal. App. 2d 239, 248-49 (1962): the insureds' house was left partially overhanging a cliff after landslide, but suffered no physical damage. The court rejected the insurer's argument that there was no "direct physical loss" because "[u]ntil such damage was repaired and the land beneath the building stabilized, the structure could scarcely be considered a 'dwelling building' in the sense that rational persons would be content to reside there."

95. Thus, the Insurers have known, or should have known, for decades that they could be obligated under the Policies to pay tens of millions of dollars to the Insureds for losses associated with viruses and pandemics.

96. Given the potential liability that insurers, including Zurich and Interstate, faced under their policies for losses from pandemics, shortly after the outbreak of SARS in 2003, the insurance industry drafted exclusions applicable to losses from viruses and bacteria. In 2006, the Insurance Services Office, the insurance industry's drafting organization, considered the need to draft an exclusion that would bar coverage for losses caused by a virus.¹⁹

¹⁹ "ISO is a non-profit trade association that provides rating, statistical, and actuarial policy forms and related drafting services to approximately 3,000 nationwide property or casualty

97. On July 6, 2006, ISO prepared a circular that included a standard exclusion of loss due to viruses and bacteria as part of its filing with state insurance regulators.²⁰ ISO recognized that viruses could cause property damage, stating:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property.²¹

98. ISO introduced a standard-form exclusion that it entitled "Exclusion Of Loss Due To Virus Or Bacteria" (form CP 01 40 07 06 and, in certain jurisdictions, form CP 01 75 07 06).

99. Thus, the Insurers have had a virus exclusion that has been approved for use throughout the United States available to them since 2006. Because they omitted this exclusion and any similar exclusion, their policies cannot be interpreted to read as they included such exclusions.

THE COVID-19 PANDEMIC AND ENSUING CIVIL AUTHORITY ORDERS

100. COVID-19 is a disease caused by a virus known as SARS-CoV-2. As the World Health Organization has stated:

Official names have been announced for the virus responsible for COVID-19 (previously known as "2019 novel coronavirus") and the disease it causes. The official names are:

Disease

coronavirus disease
(COVID-19)

insurers. Policy forms developed by ISO are approved by its constituent insurance carriers and then submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the starting point for their general liability policies." *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645, 671 n.13 (1995).

²⁰ See ISO Circular, "New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria," (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf> (attached as Exhibit C).

²¹ *Id.*

Virus

severe acute respiratory syndrome coronavirus 2
(SARS-CoV-2).²²

101. The World Health Organization also provided a straight-forward example of the distinction between a virus and a disease:

Viruses, and the diseases they cause, often have different names. For example, HIV is the virus that causes AIDS. People often know the name of a disease, such as measles, but not the name of the virus that causes it (rubeola).

There are different processes, and purposes, for naming viruses and diseases.²³

102. The first reported cases of COVID-19 in humans were diagnosed in December 2019 in Wuhan, China. Since then, SARS-CoV-2 and COVID-19 have spread throughout the world, prompting the World Health Organization to declare a global pandemic.

103. As of the filing of this Complaint, there have been nearly 112,000,000 confirmed cases of COVID-19 throughout the world, more than 2,486,000 of which have resulted in deaths.²⁴ There have been more than 28,300,000 confirmed cases of COVID-19 in the United States, more than 505,000 of which have resulted in deaths.²⁵ Moreover, due in part to the initial absence of available tests, it is believed that the true number of COVID-19 cases is significantly higher than the reported numbers might suggest.²⁶

²² [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

²³ *Id.*

²⁴ See <https://covid19.who.int/> (last accessed February 25, 2021).

²⁵ See <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed February 25, 2021).

²⁶ See <https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681>.

104. In March 2020, in response to the pandemic and the spread of SARS-CoV-2, civil authorities throughout the United States began issuing "stay home" and "shelter in place" orders, travel restrictions, quarantines, and other orders, including orders requiring the suspension of non-essential business operations and limiting the gatherings of individuals.

105. The orders were issued because of the physical presence of SARS-CoV-2 throughout the country, and specifically throughout the communities immediately surrounding Crescent's insured hotels, and the desire to avoid the spread of the virus and the disease that it causes, COVID-19. These civil authority actions were taken because of the highly-contagious nature of SARS-CoV-2 and how it physically alters tangible property—including airspace, furniture, surfaces, and other personal property in and around buildings located throughout the United States.

106. Several of these civil authority orders and actions substantially impaired Crescent's ability to operate its hotels and impaired access to the hotels. Other state and local civil authority orders and actions substantially impaired the functionality of the hotels by, among other things, restricting the use of hotel restaurants, lounges, and bars, limiting the number of guests allowed to congregate in conference rooms and banquet spaces, and precluding the use of hotel spas, gyms, beaches, pools, business centers, shuttle services, maid services, and other amenities.

107. Moreover, state and local civil authority orders and actions resulted in the shutdown or substantial curtailment of operations at nearby Attraction Properties that have historically attracted customers to Crescent's hotels. Many such Attraction Properties are located within one mile of Crescent's insured hotels.

108. Crescent's Alabama properties were, and continue to be, impacted by multiple civil authority orders and actions, including orders issued by Governor Kay Ivey and State Health Officer Scott Harris, MD, MPH on March 13, 2020, March 16, 2020, March 18, 2020, March 19, 2020, March 20, 2020, March 23, 2020, March 26, 2020, March 27, 2020, March 28, 2020, April 3, 2020, April 13, 2020, April 16, 2020, April 28, 2020, May 8, 2020, May 21, 2020, June 9, 2020, June 30, 2020, July 2, 2020, July 15, 2020, July 29, 2020, August 21, 2020, August 27, 2020, December 9, 2020, and January 21, 2021.

109. Crescent's Arizona property was, and continues to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Arizona Governor Douglas A. Ducey's March 11, 2020, Declaration of Emergency, Governor Ducey's Executive Orders 2020-08, 2020-09, 2020-11, 2020-12, 2020-13, 2020-17, 2020-18, 2020-21, 2020-23, 2020-24, 2020-25, 2020-30, 2020-33, 2020-34, 2020-36, 2020-37, 2020-38, 2020-40, 2020-42, 2020-43, 2020-45, 2020-46, 2020-47, 2020-52, and 2020-59.

110. Crescent's California properties were, and continue to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Executive Department State of California Executive Order Nos. N-25-20, N-28-20, N-29-20, N-33-20, N-35-20, N-65-20, N-66-20, N-69-20, and N-71-20; the March 16, 2020, guidance issued by the California Department of Public Health ("CDPH") titled "Coronavirus Disease 2019 (COVID-19) and Retail Food, Beverage, and Other Related Service Venues"; the March 19 and May 7, 2020, Orders of the State Public Health Officer issued by the CDPH; the May 12, 2020, guidance issued by the CDPH titled "COVID-19 Industry Guidance: Hotels and Lodging"; the May 19, 2020, update on the Official California State Government Website titled "County Variance;" the June 5, 2020, guidance issued by the CDPH titled "COVID-19 Industry Guidance: Hotels,

Lodging, and Short Term Rentals" and "COVID-19 Industry Guidance: Restaurants, Bars, and Wineries."

111. Crescent's Florida properties were, and continue to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Governor DeSantis' Executive Orders 20-51, 20-52, 20-68, 20-71, 20-80, 20-82, 20-83, 20-86, 20-87, 20-91, 20-92, 20-103, 20-111, 20-112, 20-114, 20-120, 20-123, 20-131, 20-139; 20-166; 20-192; and 20-316, Florida Division of Emergency Management Orders 20-001, 20-002, 20-003, 20-004, 20-005, 20-006; State of Florida Department of Business and Professional Regulations Emergency Order 2020-09.

112. Crescent's Illinois property was, and continues to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Illinois Governor JB Pritzker's March 9, 2020, April 1, 2020, and April 30, 2020, Gubernatorial Disaster Proclamations; Illinois Governor Pritzker's Executive Orders 2020-04, 2020-07, 2020-10, 2020-11, 2020-18, 2020-32, 2020-33, 2020-38, 2020-39, 2020-44, 2020-52, 2020-55, 2020-59, 2021-01, and 2021-04.

113. Crescent's Louisiana property was, and continues to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Louisiana Governor John Bel Edwards' March 11, 2020, Declaration of Emergency, Governor Edwards' Proclamation Nos. 25 JBE 2020, 29 JBE 2020, 30 JBE 2020, 32 JBE 2020, 33 JBE 2020, 41 JBE 2020, 52 JBE 2020, 74 JBE 2020, 75 JBE 2020, 83 JBE 2020, 84 JBE 2020, 85 JBE 2020, 86 JBE 2020, 88 JBE 2020, 89 JBE 2020, 97 JBE 2020, 101 JBE 2020, 110 JBE 2020, 117 JBE 2020, 118 JBE 2020, 134 JBE 2020, 143 JBE 2020, 168 JBE 2020, and 209 JBE 2020.

114. Crescent's Maryland properties were, and continue to be, impacted by multiple civil authority orders and actions, including orders issued by Governor Larry Hogan on March 5, 2020, March 12, 2020, March 16, 2020, March 19, 2020, March 24, 2020, March 30, 2020, April 24, 2020, May 6, 2020, May 13, 2020, May 27, 2020, May 29, 2020, June 10, 2020, July 1, 2020, July 29, 2020, August 3, 2020, September 1, 2020, September 18, 2020, September 28, 2020, October 16, 2020, November 10, 2020, November 17, 2020, and January 28, 2021.

115. Crescent's Massachusetts property was, and continues to be, impacted by a number of civil authority orders and actions, including, but not limited to, the following state-wide actions: Massachusetts Governor Charlie Baker's March 10, 2020, Declaration of Emergency, Governor Baker's executive orders of March 13, 2020, March 15, 2020, March 23, 2020, March 24, 2020, March 31, 2020, April 28, 2020, May 1, 2020, May 18, 2020, May 29, 2020, June 1, 2020, June 6, 2020, June 19, 2020, July 2, 2020, November 2, 2020, December 8, 2020, December 22, 2020; and Massachusetts Department of Health March 23, 2020, Stay at Home Advisory.

116. Crescent's Michigan property was, and continues to be, impacted by multiple civil authority orders and actions, including orders issued by Governor Gretchen Whitmer on March 16, 2020, March 23, 2020, April 9, 2020, April 13, 2020, April 24, 2020, and June 5, 2020, September 8, 2020, and September 29, 2020.

117. Crescent's Missouri property was, and continues to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Missouri Governor Michael Parson's Executive Orders 20-02, 20-04, 20-05, 20-06, 20-09, 20-10, 20-11, 20-12, 20-14, 20-16, and 20-19; and Missouri Department of Health and Senior Services April 3, 2020 Stay At Home Order.

118. Crescent's New Jersey property was, and continues to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: New Jersey Governor Philip Murphy's March 9, 2020, Declaration of Emergency, Governor Murphy's Executive Orders 102, 103, 104, 107, 108, 109, 110, 118, 119, 125, 131, 133, 137, 138, 140, 142, 143, 147, 148, 151, 152, 154, 156, 157, 159, 161, 162, 163, 173, 180, 183, 191, 200, 215, 219, and 222.

119. Crescent's New Mexico property was, and continues to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Governor Michelle Lujan Grisham's March 11, 2020, declaration of a state of emergency, and executive orders 2020-004, 2020-005, 2020-13, 2020-26, 2020-30, 2020-36, 2020-37, 2020-53, 2020-54, 2020-55, 2020-56, 2020-59, 2020-63, 2020-69, 2020-72, 2020-73, 2020-75, 2020-80, 2020-85, 2021-1, 2021-4, and 2021-6, as well as the stay-at-home order issued on March 23, 2020.

120. Crescent's New York properties were, and continue to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: New York Governor Andrew Cuomo's Executive Order No. 202 declaring a Disaster Emergency in the State of New York, Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.12, 202.13, 202.14, 202.16, 202.17, 202.18, 202.31, 202.32, 202.33, 202.34, 202.35, 202.36, 202.38, 202.39, 202.41, 202.43, 202.45, 202.46, 202.47, 202.48, 202.49, 202.50, 202.51, 202.52, and 202.53, and 205 placing quarantine restrictions on travelers arriving in New York.

121. Crescent's Ohio property was, and continues to be, impacted by multiple civil authority orders and actions, including state-wide orders issued by Governor Mike DeWine and Director of the Department of Health Amy Acton on March 15, 2020, March 17, 2020, March 21, 2020, March 22, 2020, April 2, 2020, April 30, 2020, May 14, 2020, September 23, 2020,

November 19, 2020, December 10, 2020, December 30, 2020, January 27, 2021, and February 11, 2021.

122. Crescent's Oklahoma property was, and continues to be, impacted by multiple civil authority orders and actions, including Oklahoma Governor J. Kevin Stitt's Executive Order 2020-07 (and its eight amendments), Executive Order 2020-20 (and its nine amendments, and Executive Order 2021-07.

123. Crescent's Pennsylvania Properties were, and continue to be, impacted by multiple civil authority orders and actions, including Governor Tom Wolf's and the Secretary of Health's orders of March 6, 2020, March 15, 2020, March 23, 2020, March 24, 2020, March 25, 2020, March 27, 2020, March 28, 2020, March 30, 2020, April 1, 2020, April 15, 2020, April 20, 2020, May 7, 2020, May 8, 2020, July 15, 2020, September 21, 2020, November 23, 2020, and December 10, 2020.

124. Crescent's Texas properties were, and continue to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: Executive Order by the Governor of the State of Texas Nos. GA-08, GA-14, GA-16, GA-18, GA-20, GA-21, GA-23, GA-26, GA-28, GA-29, GA-30, GA-31, and GA-32; the March 19, 2020, Declaration of a Public Health Disaster in the State of Texas; the May 5, 2020, June 3, 2020, recommended minimum standard health protocol outlined by the Texas Department of State Health Services.

125. Crescent's Virginia property was, and continues to be, impacted by multiple civil authority orders and actions, including the following state-wide actions: The March 17, 2020, March 20, 2020 (Amended), Order of the Governor and State Health Commissioner; Office of

the Governor Executive Order Nos. 53, 55, 61, 62, 63, 65, 67, and 72; including amendments; and the Forward Virginia, phase one, phase two, and phase three guidelines.²⁷

126. The Civil Authority Orders required the “suspension” of Crescent’s operations, as that term is defined in the Policies, at all the hotels described herein.

127. The Civil Authority Orders also prohibited access to these hotels. Indeed, the Civil Authority Orders restricted or prohibited many hotel guests, would-be guests, and other third parties from accessing or visiting Crescent’s above-referenced hotels and/or accessing or making use of certain amenities at the hotels.

128. Similarly, the real and immediate threat of SARS-CoV-2 and the resulting Civil Authority Orders caused the substantial impairment and loss of functionality of Attraction Properties near Crescent’s insured hotels, so that the Attraction Properties were unable to perform their intended functions. Many of these impacted Attraction Properties were located within one mile of Crescent’s insured hotels.

SARS-CoV-2 HAS CAUSED WIDESPREAD PHYSICAL LOSS OF AND DAMAGE TO PROPERTY THROUGHOUT THE COUNTRY

129. Though microscopic, SARS-CoV-2—like all viruses—is a physical substance. The virus is highly contagious and mobile. As explained by the World Health Organization:

Current evidence suggests that COVID-19 spreads between people through direct, indirect (through contaminated objects or surfaces), or close contact with infected people via mouth and nose secretions. These include saliva, respiratory secretions or secretion droplets. These are released from the mouth or nose when an infected person coughs, sneezes, speaks, or sings, for example. People who are in close contact (within 1 metre) with an infected person can catch COVID-19 when those infectious droplets get

²⁷ Collectively, the orders referenced in paragraphs 108 through 125 are referred to as the “Civil Authority Orders.”

into their mouth, nose, or eyes.

People with the virus in their noses and throats may leave infected droplets on objects and surfaces (called fomites) when they sneeze, cough on, or touch surfaces, such as tables, doorknobs, and handrails. Other people may become infected by touching these objects or surfaces, then touching their eyes, noses or mouths before cleaning their hands.

...

There have been reported outbreaks of COVID-19 in closed settings, such as restaurants, nightclubs, places of worship or places of work where people may be shouting, talking, or singing. In these outbreaks, aerosol transmission, particularly in these indoor locations where there are crowded and inadequately ventilated spaces where infected persons spend long periods of times with others, cannot be ruled out.²⁸

130. One way SARS-CoV-2 spreads is in the air. Air is a physical substance made up of oxygen, nitrogen, and other gases. When an infected person breathes, speaks, coughs, or sneezes, thousands of droplets carrying SARS-CoV-2 physically permeate the air around the person. Once airborne, many virus particles quickly fall and settle on surfaces and objects, where they transfer to other people who touch those surfaces. But many SARS-CoV-2 particles also remain airborne for a time sufficient to travel a considerable distance, filling indoor and outdoor spaces, and lingering in, attaching to, and spreading through heating, ventilation, and air conditioning ("HVAC") systems. Airborne SARS-CoV-2 can transmit from one person to others. One study examined a hospital's HVAC system and found SARS-CoV-2 particles throughout the system, including in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from infected patients' rooms.²⁹

²⁸ "Q&A: How is COVID-19 transmitted," World Health Organization (July 9, 2020), <https://www.who.int/news-room/q-a-detail/q-a-how-is-covid-19-transmitted>.

²⁹ See Nissen, et al., *Long-Distance Airborne Dispersal of SARS-CoV-2 in COVID-19 Wards*, at 7 (Oct. 20, 2020 version) (preprint), <https://www.researchsquare.com/article/rs-34643/v2>.

131. The Environmental Protection Agency ("EPA") has compiled several studies reflecting epidemiological evidence suggestive of SARS-CoV-2 transmission through aerosol.³⁰ Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.³¹ The purpose of these measures is to physically remediate the quality of the air by, among other things, diluting the concentration of virus particles or by trapping and removing them.

132. Aerosolized droplets exhaled by normal breathing can travel significant distances and stay suspended in the air for hours until gravity ultimately forces them to the nearest surface. Studies suggest that SARS-CoV-2 can remain contagious on some surfaces for at least 28 days.³²

133. People become infected by touching surfaces where SARS-CoV-2 is present, then touching their eyes, nose, or mouth. This is known as "fomite transmission." Scientists have identified indirect transmission via objects such as elevator buttons and restroom faucets in a shopping mall as an important possible cause of a "rapid spread" of the coronavirus.³³

³⁰ See U.S. Environmental Protection Agency, *Indoor Air and COVID-19 Key References and Publications*, <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications> (last visited Feb. 24, 2021).

³¹ See U.S. Environmental Protection Agency, *Indoor Air and Coronavirus (COVID-19)*, <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19> (last visited Feb. 24, 2021).

³² See, e.g., Sam Meredith, *Virus that causes Covid-19 can survive for 28 days on common surfaces, research says*, CNBC, (Oct. 12, 2020), <https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html>; Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles, & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 *VIROLOGY J.*, Art. No. 145 (2020), <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

³³ Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 *Emerging Infectious Diseases* 1343, 1345 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article.

134. Thus, SARS-CoV-2 causes physical damage and physical loss by, among other things, physically permeating, attaching to, binding to, corrupting, destroying, distorting, and altering property, and by rendering it unusable, unfit for its intended function, dangerous, and unsafe.

135. First, when individuals carrying SARS-CoV-2 breathe, talk, cough, sneeze, yell, or cheer, they expel aerosolized droplet nuclei (i.e., droplets smaller than 5 μm) that remain airborne and, like toxic fumes, make the premises unsafe. This process alters the physical composition of air in and around buildings, rendering it dangerous to breathe. Scientists have likened the ubiquitous aerosolized droplets of the virus to smoke, present in the air long after the source of its dissemination has gone.³⁴ Just like invisible smoke in air *alters* the air, the presence of the SARS-CoV-2 virus *alters* the air and airspace in which it is found and the property on which it lands. This physical change constitutes physical loss and damage.

136. Second, respiratory droplets (i.e., droplets larger than 5-10 μm) expelled from infected individuals land on and adhere to surfaces and objects. In doing so, they physically change the property by becoming a part of its surface. This physical alteration makes physical contact with those previously safe, inert surfaces (e.g., handrails, doorknobs, bathroom fixtures) unsafe. When SARS-CoV-2 attaches or binds to surfaces and objects, it converts the surfaces and objects to active fomites, which constitutes physical loss and damage.

137. Both droplets and droplet nuclei containing SARS-CoV-2 cause damage to and the loss of HVAC systems by rendering them dangerous to use.

³⁴ See "Airborne Transmission of SARS-CoV-2," *Science* (Oct. 16, 2020), available at <https://science.sciencemag.org/content/370/6514/303.2>.

138. SARS-CoV-2 and the fomites, droplets, and droplet nuclei carrying it are dangerous physical substances that have a material, tangible existence.

139. The presence of SARS-CoV-2 on property causes physical loss and physical damage by requiring remedial measures to reduce or eliminate the presence of SARS-CoV-2, including extensive cleaning and disinfecting; installing, modifying, or replacing air filtration systems; remodeling and reconfiguring physical spaces; and other measures.

140. In addition, the presence of SARS-CoV-2 on or near a property creates a substantial risk and/or an imminent threat of further damage to that property or to nearby property. Individuals who come into contact with, for example, respiratory droplets on a doorknob or handrail at one location will carry those droplets on their hands and deposit them elsewhere, causing additional damage and loss.

141. Even frequent cleanings cannot be assumed to have eliminated SARS-CoV-2 from a premises, given its ability to spread easily and quickly as long as people are entering the premises during an outbreak at or near the premises. It is clear from the epidemiological trajectory of the outbreaks in the United States and other countries that even expensive new cleaning measures cannot completely eliminate viral presence once SARS-CoV-2 binds to and adheres to property.

142. And, similarly, although SARS-CoV-2 can be cleaned from surfaces when detected, this does not reduce the danger and renders it no different than mold, asbestos, mudslides, smoke, oil spills, or similar elements that cause property damage.

143. Places of public accommodation, like hotels, are especially susceptible to sustaining extensive direct physical loss or damage because of SARS-CoV-2. In conducting normal business, hundreds of people typically enter and use shared spaces, such as lobbies,

restaurants, bars, conference rooms, restrooms, and hallways, in just a few hours. Moreover, surfaces such as counters, bannisters, doorknobs, faucets, soap and towel dispensers, serving utensils, vending machines, ice machines, elevator buttons, restaurant and lobby furniture, and linens all present ways to spread SARS-CoV-2 and increase COVID-19 infections.

144. As a global pandemic, the presence of SARS-CoV-2 is, by definition, worldwide. By March 2020, SARS-CoV-2 was widespread throughout the United States.

145. Moreover, it is widely recognized that "confirmed" cases of COVID-19 do not tell the full story. It is well-recognized that many individuals infected with COVID-19 are asymptomatic and therefore do not get tested for the disease. Furthermore, the lack of widespread available testing, especially at the beginning of the pandemic, led to a further underreporting of COVID-19 cases.

146. Indeed, in March 2020, based on the spread patterns of SAR-CoV-2 and insidious nature of COVID-19, many state and local officials instructed residents to assume SARS-CoV-2 was everywhere and cautioned residents only to leave their homes for essential or life-sustaining purposes.

147. Thus, since March 2020, SARS-CoV-2 has been ubiquitous throughout the country, causing physical loss, damage, and destruction to airspace and other property, including property at Crescent's hotels and nearby Attraction Properties.

148. Indeed, Crescent is informed and believes, and on that basis alleges, that SARS-CoV-2 has been present at its hotels. Crescent is aware of reported cases of COVID-19 at several of its hotels—and, given the widespread nature of SARS-CoV-2 and COVID-19, it is safe to say that the virus has been present at all of Crescent's hotels. Crescent has taken reasonable and necessary steps and incurred considerable expense to eliminate SARS-CoV-2

from its hotels, prevent the virus from entering its hotels, and otherwise mitigate its losses—all as is expressly required in the Policies.

149. Crescent is also informed and believes, and on that basis alleges, that SARS-CoV-2 has been present at many Attraction Properties in the vicinity of Crescent's hotels. Indeed, Crescent is aware of reported cases of COVID-19 at several Attraction Properties within one mile of its hotels, and many of these cases resulted in Attraction Properties closing or curtailing operations for a period of time.

THE INSURERS' BREACHES AND BAD FAITH CONDUCT

150. Crescent has sustained covered Time Element and Extra Expense losses as defined in the Policies. These Time Element and Extra Expense losses were sustained because of the "necessary Suspension" of Crescent's business operations as a result of "direct physical loss of or damage to" insured premises, "Attraction Properties," and "Direct Dependent Time Element Locations." These Time Element losses were also caused by the Civil Authority Orders, which constitute "order(s) of civil or military authority that prohibit[] access," as that phrase is used in the Policies.

151. Many of Crescent's financial losses are insured under one or more "Special Coverages" in the Policies issued to Crescent. These losses were caused by the presence of SARS-CoV-2 on, in, or around property, the Civil Authority Orders, or both.

152. The Civil Authority Orders were issued in response to the presence of SARS-CoV-2 throughout the country, and specifically throughout the communities immediately surrounding Crescent's insured hotels, and to curb the spread of the virus and the disease that it causes, COVID-19. Indeed, given how SARS-CoV-2 lingers in the air and on surfaces and its manner of transmission, and the desire to "flatten the curve," Crescent's hotels could not perform

all their essential functions. In this regard, the imminent threat of SARS-CoV-2 and the resulting Civil Authority Orders substantially impaired the functionality of Crescent's hotels and other property by, among other things, preventing and/or impairing the ability of Crescent from utilizing its property for its intended purpose. In substantially impairing the functionality of Crescent's hotels and other property, the Civil Authority Orders caused "direct physical loss of or damage" to property as that phrase is used in the Policies.

153. Similarly, many nearby Attraction Properties and Direct Dependent Time Element Locations suffered "direct physical loss of or damage" to property as a result of the presence of SARS-CoV-2 at their properties, the Civil Authority Orders, or both. Again, on information and belief, SARS-CoV-2 was present on and in the vicinity of certain Attraction Properties and Direct Dependent Time Element Locations, rendering the properties unsafe and unusable, and causing direct physical loss or damage to property. Furthermore, given the nature of SARS-CoV-2 and how it causes loss and damage to property, these Attraction Properties and Direct Dependent Time Element Locations could not fulfil their essential function. As a result of the "direct physical loss of or damage" to nearby Attraction Properties and Direct Dependent Time Element Locations, Crescent sustained substantial financial losses covered under the Policies.

154. Although Crescent has sustained substantial losses falling squarely within the coverage afforded under the Policies, the Insurers have failed and refused to acknowledge coverage for Crescent's losses. The Insurers also have refused to acknowledge coverage for Extra Expenses and other costs covered under the Policies, including costs reasonably and necessarily incurred by Crescent to mitigate and prevent its losses.

155. As discussed above, Crescent is informed and believes, and on that basis alleges that the Insurers denied coverage, and continue to deny coverage, even though they have known

for decades that the presence of hazardous substances constitutes property damage. The Insurers have also known for decades that their policies could be held to cover losses from the presence of a hazardous substance, such as a virus inside buildings, or because a building could not be used for its intended purpose or function. As the Insurers have known for decades, many courts have held that the presence of a hazardous substance in property, including the airspace inside buildings, constitutes "direct physical loss of or damage" to property.

156. Before denying coverage, the Insurers were required under the governing legal principles and insurance industry custom and practice to conduct a thorough investigation of facts that might support Crescent's claims. Crescent is informed and believes, and on that basis alleges, that the Insurers did not conduct the required investigation before denying Crescent's claims. After a slanted and superficial investigation into Crescent's losses, the Insurers denied Crescent's claims, incorrectly asserting that Crescent's losses did not fall within the Policies' coverage. The Insurers took this position even though Crescent had established losses falling squarely within the Policies, and even though the Policies do not have any exclusions that apply as a bar to coverage.

157. The Insurers denied coverage even though they knew, or should have known, that by selling the Policies without a virus exclusion or pandemic exclusion, Crescent reasonably would understand and expect that the Policies covered losses associated with viruses. The Insurers knew that they should not deny coverage when the Policies had no such exclusion, when their insured reasonably would (and did) expect coverage for losses associated with viruses and pandemics, and when any ambiguity in the Policies would be resolved in favor of any reasonable interpretation held by Crescent.

158. By taking the positions and acting as alleged above, the Insurers have breached their contractual obligations and acted in bad faith. Their wrongful conduct as alleged herein has caused, and will continue to cause, significant damage to Crescent.

159. To the extent not waived or otherwise excused, Crescent has complied with all terms and conditions precedent in the Policies. Therefore, Crescent is entitled to all benefits of insurance provided by the Policies.

FIRST CAUSE OF ACTION

Breach of Contract against Zurich

160. Crescent realleges and incorporates by reference each allegation in paragraphs 1 through 159 above.

161. Crescent performed all obligations required of it under the Zurich Policy, except as otherwise excused.

162. Zurich breached its duties under the Zurich Policy that it issued to Crescent by, among other things:

- a. Failing and refusing to pay for Time Element and Special Coverage losses sustained as a result of SARS-CoV-2, COVID-19, and/or the Civil Authority Orders;
- b. Failing and refusing to pay for Contingent Time Element losses, such as Attraction Property and Direct Dependent Time Element Locations losses, sustained as a result of SARS-CoV-2, COVID-19, and/or the Civil Authority Orders;
- c. Failing and refusing to pay for Extra Expense incurred SARS-CoV-2, COVID-19, and/or the Civil Authority Orders;

- d. Refusing to pay for the amounts that Crescent reasonably spent to reduce its losses, even though the Zurich Policy requires Crescent to "mitigate" its losses and both the Zurich Policy and common law obligate Zurich to pay for amounts reasonably incurred in an effort to mitigate loss; and
- e. Otherwise acting as alleged above.

163. As a direct and proximate result of Zurich's contractual breaches, Crescent has sustained, and continues to sustain, substantial damages for which Zurich is liable, in amounts to be established at trial.

SECOND CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing against Zurich

164. Crescent realleges and incorporates by reference each allegation in paragraphs 1 through 159, and 161 through 163 above.

165. At all pertinent times, Zurich had a duty to act in good faith and deal fairly with Crescent as their insured, and Zurich was and is forbidden from doing anything that would destroy or injure Crescent's right to receive the full benefits of the contract. This duty extends to and informs all of Zurich's obligations under the Zurich Policy.

166. This duty of good faith and fair dealing includes affirmative duties to promptly, fairly, and honestly investigate and evaluate each claim, to reach valid coverage positions despite the insurance policy provisions, insurers' representations of the coverage provided in those policies, and the law, and to articulate the reasons for such positions.

167. Rather than comply with these duties, Zurich breached its duties of good faith and fair dealing by, among other things:

- a. failing to conduct a full and thorough investigation of Crescent's claims for insurance coverage and asserting grounds for denying coverage without conducting such investigation;
- b. wrongfully and unreasonably asserting grounds for denying coverage that it knew, or should have known, are not supported by, and in fact conflict with, the terms of the Zurich Policy, the law, and the facts;
- c. failing to fully inquire into the bases that might support coverage for Crescent's claims;
- d. failing to conduct an adequate investigation of the losses suffered by Crescent, and asserting grounds for disputing coverage based on their inadequate investigation;
- e. unreasonably failing and refusing to honor their promises and representations in the Zurich Policy it issued to Crescent;
- f. giving greater consideration to its own interests than it gave to Crescent's interests; and
- g. otherwise acting as alleged above.

168. Zurich knew there was no reasonable basis, or recklessly disregarded the lack of reasonable basis, for the foregoing acts and/or omissions.

169. In breach of the implied covenant of good faith and fair dealing, Zurich did the things and committed the acts alleged above for the purpose of consciously withholding from Crescent the rights and benefits to which it is and was entitled under the Zurich Policy.

170. Such actions are inconsistent with the reasonable expectations of Crescent, conflict with established industry custom and practice, conflict with legal requirements, conflict with the express terms of the Zurich Policy, and constitute bad faith.

171. As a direct and proximate result of these bad faith breaches, which are continuing as of the filing of this Complaint, Crescent has sustained, and will continue to sustain, significant damages for which Zurich is liable.

THIRD CAUSE OF ACTION

Breach of Contract against Interstate

172. Crescent realleges and incorporates by reference each allegation in paragraphs 1 through 159 above.

173. Crescent performed all obligations required of it under the Interstate Policy, except as otherwise excused.

174. Interstate breached its duties under the Interstate Policy that it issued to Crescent by, among other things:

- a. Failing and refusing to pay for Time Element and Special Coverage losses sustained as a result of SARS-CoV-2, COVID-19, and/or the Civil Authority Orders;
- b. Failing and refusing to pay for Contingent Time Element losses, such as Attraction Property and Direct Dependent Time Element Locations losses, sustained as a result of SARS-CoV-2, COVID-19, and/or the Civil Authority Orders;
- c. Failing and refusing to pay for Extra Expense incurred SARS-CoV-2, COVID-19, and/or the Civil Authority Orders;

- d. Refusing to pay for the amounts that Crescent reasonably spent to reduce its losses, even though the Interstate Policy requires Crescent to "mitigate" its losses and both the Interstate Policy and common law obligate Interstate to pay for amounts reasonably incurred in an effort to mitigate loss; and
- e. Otherwise acting as alleged above.

175. As a direct and proximate result of Interstate's contractual breaches, Crescent has sustained, and continues to sustain, substantial damages for which Interstate is liable, in amounts to be established at trial.

FOURTH CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing against Interstate

176. Crescent realleges and incorporates by reference each allegation in paragraphs 1 through 159, and 172 through 175 above.

177. At all pertinent times, Interstate had a duty to act in good faith and deal fairly with Crescent as their insured, and Interstate was and is forbidden from doing anything which will destroy or injure Crescent's right to receive the full benefits of the contract. This duty extends to and informs all of the Interstate's obligations under the Interstate Policy.

178. This duty of good faith and fair dealing includes affirmative duties to promptly, fairly, and honestly investigate and evaluate each claim, to reach valid coverage positions despite the insurance policy provisions, insurers' representations of the coverage provided in those policies, and the law, and to articulate the reasons for such positions.

179. Rather than comply with these duties, Interstate breached its duties of good faith and fair dealing by, among other things:

- a. failing to conduct a full and thorough investigation of Crescent's claims for insurance coverage and asserting grounds for denying coverage without conducting such investigation;
- b. wrongfully and unreasonably asserting grounds for denying coverage that it knew, or should have known, are not supported by, and in fact conflict with, the terms of the Interstate Policy, the law, and the facts;
- c. failing to fully inquire into the bases that might support coverage for Crescent's claims;
- d. failing to conduct an adequate investigation of the losses suffered by Crescent, and asserting grounds for disputing coverage based on their inadequate investigation;
- e. unreasonably failing and refusing to honor their promises and representations in the Interstate Policy it issued to Crescent;
- f. giving greater consideration to its own interests than it gave to Crescent's interests; and
- g. otherwise acting as alleged above.

180. Interstate knew there was no reasonable basis, or recklessly disregarded the lack of reasonable basis, for the foregoing acts and/or omissions.

181. In breach of the implied covenant of good faith and fair dealing, Interstate did the things and committed the acts alleged above for the purpose of consciously withholding from Crescent the rights and benefits to which it is and was entitled under the Interstate Policy.

182. Such actions conflict with the reasonable expectations of Crescent, conflict with established industry custom and practice, conflict with legal requirements, conflict with the express terms of the Interstate Policy, and constitute bad faith.

183. As a direct and proximate result of these bad faith breaches, which are continuing as of the filing of this Complaint, Crescent has sustained, and will continue to sustain, significant damages for which Interstate is liable.

FIFTH CAUSE OF ACTION

Declaratory Judgment

184. Crescent realleges and incorporates by reference each allegation in paragraphs 1 through 159 above.

185. Crescent contends that it is entitled to coverage under the Policies for its losses as described herein. Crescent is informed and believes, and on that basis alleges, that the Insurers dispute that Crescent is entitled to such coverage. Therefore, an actual and justiciable controversy exists between Crescent and the Insurers concerning the interpretation and construction of the Policies, and the rights and obligations of the parties thereto, with respect to Crescent's claims.

186. Pursuant to § 8.01-184, Crescent seeks a judicial declaration from this Court confirming that Crescent's contentions that:

- a. Each coverage position stated above is correct;
- b. No exclusion in the Policies bars or limits coverage, in whole or in part, for Crescent's losses; and
- c. That the Policies cover Crescent's losses.

187. A declaration is necessary at this time so that the parties' dispute may be resolved and that they may be aware of their prospective rights and duties.

PRAYER FOR RELIEF

WHEREFORE, Crescent prays for relief as follows:

1. For damages in an amount to be determined at trial, plus interest;
2. For attorneys' fees and costs of suit, in an amount to be determined at trial;
3. For declarations in accord with Crescent's contentions stated above; and
4. For such other, further, and/or different relief as may be deemed just and proper.


DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury in this action.

DATED: February 26, 2021

Respectfully Submitted,

By:


Arden B. Levy (VSB No. 82993)
ARDEN LEVY LAW PLLC
2121 Eisenhower Ave., Suite 200
Alexandria, VA 22314
T: (703) 519-6800
F: (703) 684-3620
alevy@ardenlevylaw.com

Michael S. Gehrt (*Pro Hac Vice* to be filed)
PASICH LLP
1230 Rosecrans Avenue, Suite 690
Manhattan Beach, CA 90266
Telephone: (424) 313-7860
Facsimile: (424) 313-7890
MGehrt@PasichLLP.com

Peter Halprin (*Pro Hac Vice* to be filed)
PASICH LLP
757 Third Avenue, 20th Floor
New York, NY 10017
Telephone: (212) 686-5000
Facsimile: (424) 313-7890
PHalprin@PasichLLP.com

Kirk Pasich (*Pro Hac Vice* to be filed)
Nathan M. Davis (*Pro Hac Vice* to be filed)
PASICH LLP
10880 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90024
Telephone: (424) 313-7860
Facsimile: (424) 313-7890
KPasich@PasichLLP.com
NDavis@PasichLLP.com

Attorneys for Plaintiffs