

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATION  
PROVIDENCE, S.C.  
SUPERIOR COURT**

STANTON CARPET CORP.

Plaintiff,

v.

AFFILIATED FM INSURANCE  
COMPANY,

Defendant.

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, Stanton Carpet Corp. (hereinafter “Stanton” or “Plaintiff”) brings this Civil Action Complaint, alleging against Defendant, Affiliated FM Insurance Company (hereinafter “Affiliated FM” or “Defendant”), and avers as follows:

**I. NATURE OF THE CASE**

1. This is a civil action for damages arising from Plaintiff’s contract of insurance with the Defendant.

2. Plaintiff owns and operates a carpet manufacturing, importing and wholesale business headquartered in Long Island, New York with a distribution center in Calhoun, Georgia.

3. In light of the Coronavirus global pandemic and state and local orders mandating that all non-essential in-store businesses must shut down, and the suffering of physical harm and impact and damages occurring both within Plaintiff’s business premises and/or within the immediate area surrounding and outside their business premises, Plaintiffs were forced to significantly reduce the operations of its business, resulting in significant financial losses.

4. Specifically, the “Shelter in Place” orders and related suspension/limitation of access entered by the state and local governments of New York and Georgia, coupled with the

presence of the Coronavirus in and about the premises of Plaintiff's businesses and the nearby and adjoining property, resulted in a significant negative economic impact on Plaintiff's business operations.

5. Before the COVID-19 pandemic hit, Plaintiff bought one of the broadest business interruption insurance policies available in the market from Defendant to protect itself against the risk of business interruption losses resulting from natural disasters and other perils. AFM's all risk "ProVision" insurance policy ostensibly insures Plaintiff against "ALL RISKS OF PHYSICAL LOSS OR DAMAGE," except those specifically excluded. (See Policy Declaration, attached hereto as Exhibit 1 and referred to hereinafter as the "Policy."). The Policy also guarantees coverage for "Business Interruption loss" resulting from physical loss or damage, as well as coverage for extra expenses that Stanton incurs to mitigate business interruption losses.

6. Unlike business interruption policies sold by other insurance companies, the AFM Policy does not exclude coverage for business interruption losses resulting from a virus or pandemic, even though the insurance industry developed exclusions designed to limit exposure to communicable diseases nearly two decades ago in the wake of the 2003 SARS epidemic.

7. Plaintiff's insurance policy provides coverage for all non-excluded business losses, including Business Income that would have otherwise been earned, and thus provides coverage here.

8. In the wake of the COVID-19 pandemic, some reinsurers and insurers have added specific COVID-19 exclusions to their policies to clearly and unmistakably exclude coverage for risks arising out of the COVID-19 pandemic, but the AFM policy has no such exclusions.

9. Notwithstanding the extremely broad coverage provided by the AFM policy, and the lack of a virus exclusion applicable to business interruption losses, AFM denied coverage for Stanton's insurance claim for two reasons. First, AFM took the wrongful position that there was no evidence of the presence of the coronavirus in Plaintiff's covered property, and even to the extent there was, the presence of such in the premises and the surrounding community cannot cause physical loss or damage to property. Second, AFM also denied coverage based on its wrongful determination that a contamination exclusion in the Policy bars coverage, even though AFM's contamination exclusion on its face does not apply to business interruption losses.

10. AFM's coverage denial cannot be reconciled with AFM's separate promise in the Policy to provide coverage for losses resulting from communicable disease, which confirms that a virus can cause physical loss or damage to property.

11. Moreover, AFM denied coverage for Stanton's losses without conducting a proper investigation of those losses, in keeping with AFM's corporate strategy of issuing blanket coverage denials for COVID-19 related business interruption claims without conducting proper claims investigations. To make matters worse, AFM made misrepresentations about the scope of the contamination exclusion in its coverage denial letters, in violation of Rhode Island law.

12. Defendant's refusal to provide coverage for the losses sustained by Plaintiff constitutes a breach of contract and bad faith. Furthermore, Plaintiff is entitled to declaratory relief that it is covered for all business losses that have been incurred in an amount estimated to be greater than \$150,000.00.

## **II. JURISDICTION**

13. This Court has subject matter jurisdiction over this action pursuant to Rhode Island statute, § 8-2-14.

14. This Court has personal jurisdiction over Defendant. At all relevant times Defendant has engaged in substantial business activities in the State of Rhode Island. At all relevant times Defendant transacted, solicited, and conducted business in Rhode Island through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Rhode Island.

15. Venue is proper in this district pursuant to Rhode Island statute § 9-4-3 because Defendant is a corporation headquartered in Rhode Island and has substantial, systematic, and continuous contacts in Rhode Island.

### **III. PARTIES**

16. At all relevant times, Plaintiff is a corporation authorized to do business and doing business in the State of New York, County of Nassau. Plaintiff is, and has been the owner, operator, manager, and/or controls Stanton with a principal place of business at 100 Sunnyside Blvd Extension, Suite 100, Woodbury, NY 11797.

17. Defendant, Affiliated FM is an insurance carrier that provides business interruption insurance to Plaintiffs. Affiliated FM is headquartered at 270 Central Avenue, Johnston, RI 02919-4949. Affiliated FM is a citizen of Rhode Island.

18. At all relevant times, Affiliated FM Insurance Company is a corporation doing business in the County of Providence, State of Rhode Island, subscribing to Policy Number IA488 issued to the Plaintiff for the period of March 15, 2020 to March 15, 2021. *See* Exhibit 1.

19. The Policy for Plaintiff is currently in full effect, includes coverage for, among other things, business personal property, business income, and business interruption.

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

##### **A. Insurance Coverage**

20. On or about March 18, 2020, Defendant entered into a contract of insurance with the Plaintiff, whereby Plaintiff agreed to make payments to Defendant in exchange for in exchange for Defendant's promise to indemnify the Plaintiff for losses including, but not limited to, business income losses at the following locations:

100 Sunny Side Extension Suite 100, Woodbury, NY 11797  
300 Union Grove Rd SE, Calhoun, GA 30701  
(the "Covered Properties").

21. The Covered Properties are insured under a policy issued by the Defendant with policy number believed to be IA488 (hereinafter "Policy").

22. The Policy is currently in full effect, providing, among other things, business interruption coverage for gross earnings, gross profits, rental income, extra expense, and other coverages between the period of March 18, 2020 to March 18, 2021.

23. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of "Civil or Military Authority."

24. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Covered Properties are specifically prohibited by order of civil authority.

25. The Policy is an all-risk policy, insofar as it provides that covered perils under the policy means physical loss or physical damage unless the loss is specifically excluded or limited in the Policy.

26. An all-risk policy is one that protects against catastrophic events, such as COVID-19. COVID-19, a pandemic currently being experienced on a global scale, has resulted in the

widespread, omnipresent and persistent presence of COVID-19 in and around Plaintiff's Covered Properties and adjacent properties.

27. Plaintiff's all-risk policy includes coverage for business interruption, which is standard in most all-risk commercial property insurance policies, along with coverage for extended expenses.

28. Plaintiff purchased the aforementioned Policy expecting to be insured against losses, including, but not limited to, business income losses at its Covered Properties.

29. Plaintiff purchased, among other coverages, business interruption coverage for closure by order of Civil or Military Authority.

30. Based upon information and belief, the Policy provided by Defendant included language that is essentially standardized language adopted from and/or developed by the ISO ("Insurance Service Office"). The ISO, founded in 1971, provides a broad range of services to the property and casualty insurance industry. In addition to form policies, ISO collects and manages databases containing large amounts of statistical, actuarial, underwriting, and claims information, fraud-identification tools, and other technical services. ISO describes itself as follows: "ISO provides advisory services and information to many insurance companies. ... ISO develops and publishes policy language that many insurance companies use as the basis for their products." ISO General Questions, Verisk, <https://www.verisk.com/insurance/about/faq/> (last visited October 26, 2020); *see also* Insurance Services Office (ISO), Verisk, <https://www.verisk.com/insurance/brands/iso/> (last visited October 26, 2020).

31. The language in the Policy is language that is "adhesionary" in that Plaintiff was not a participant in negotiating or drafting its content and provisions.

32. Plaintiff possessed no leverage or bargaining power to alter or negotiate the terms of the Policy, and more particularly, Plaintiff had no ability to alter, change or modify standardized language derived from the ISO format.

33. Plaintiff purchased the Policy with an expectation that it was purchasing a policy that would provide coverage in the event of business interruption and extended expenses, such as that suffered by Plaintiff as a result of COVID-19.

34. At no time had Defendant, or its agents, notified Plaintiff that the coverage that Plaintiff had purchased pursuant to an all-risk policy that included business interruption coverage, contained exclusions and provisions that purportedly undermined the very purpose of the coverage: providing benefits in the occurrence of business interruption and incurring extended expenses.

35. The purported exclusions of the Policy that Defendant has or is expected to raise in defense of Plaintiff's claim under the Civil and Military Authority provision of the Policy are strained and contradictory to the provision of Civil and Military Authority coverage and violate public policy.

36. Furthermore, Defendant's expected application of exclusions to undermine Plaintiff's bargained-for coverage violates public policy of the State of Rhode Island as a contract of adhesion and is unenforceable against Plaintiff.

37. Access to Plaintiff's Covered Properties was prohibited by orders of civil authority, and the Policy provides for coverage for actual loss of business sustained and actual expenses incurred as a covered loss caused by the prohibitions of such orders in and around the area of Plaintiff's Covered Properties.

38. Plaintiff had a reasonable expectation that the Policy's business interruption coverage applied where a civil authority forced closure, thereby barring access to the business, due to an issue of public safety within and in the immediate areas surrounding the Covered Properties.

39. The Policy does not exclude the losses suffered by Plaintiff and therefore the Policy does provide coverage for those losses.

40. In fact, the Policy provides coverage for business losses caused by the restriction or limitation of access to the Covered Properties as a result of orders issued by a governmental agency regulating the spread of communicable disease.

41. On June 4, 2020, Defendant denied Plaintiff's claim, based on 1) a finding that the coverage for "communicable disease" was not applicable based on a lack of evidence of the presence of COVID-19 at the Covered Premises and 2) the Policy's exclusion for "Contamination" precluded coverage. See June 4, 2020 denial letter, attached hereto as Exhibit 2.

42. As set forth in greater detail herein, Defendant's denial of Plaintiff's claim was issued in bad faith, part of a company-wide practice of issuing blanket denials for claims arising out of COVID-19 regardless of the underlying facts of the claim. See AFM Talking Points on the 2019 Novel Coronavirus and Law360 article, attached hereto as Exhibits "C" and "D" respectively.

43. Moreover, Defendant's denial on the basis of the Policy's definition of "Contamination" lacks merit, as the provision in question lists over a dozen different exclusions but notably does not exclude a pandemic among the list of contaminants.

44. Both the ambiguity of the term itself and the Defendant's notable decision to not include a pandemic among the excluded contaminants demonstrates that the Policy was not drafted, and the parties did not bargain for, an exclusion based on the circumstances of COVID-19 and the civil or military orders that were implemented as a result.



45. The Policy also does not define the terms “direct,” “physical,” “loss,” or “damage” within the relevant coverage provisions, rendering those terms ambiguous and requiring them to be construed in favor of the Policyholder.

46. Regardless, Plaintiff did suffer direct physical loss or damage within the definitions of the Policy as loss of use of property, as in this case, constitutes loss or damage, as does the presence of, or inherent risk of the existence of, the COVID-19 molecule within or immediately around the Covered Properties.

47. Plaintiff’s losses were also caused by the entry of Civil Authority Orders, particularly those by the States of New York and Georgia, to mitigate the spread of COVID-19.

48. Based on information and belief, the Defendant has accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown.

**B. The Coronavirus Pandemic**

49. The scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage.

50. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited May 29, 2020).

51. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.

52. On March 11, 2020, the World Health Organization (“WHO”) declared that the emerging threat from the novel coronavirus, which causes COVID-19, constituted a global pandemic.

53. The Center for Disease Control (“CDC”) and WHO have explained that COVID-19 spreads through physical droplets and particles released by an infected person through talking, sneezing, coughing, or even breathing. Evidence shows these particles and droplets are airborne, can travel more than six feet, and can remain suspended in the air for hours.

54. Research has also shown that the novel coronavirus is a physical substance that may live on hard surfaces for hours or days, rendering any surface exposed to an infected person potentially unsafe and dangerous for continued use.

55. Thus, the presence of the novel coronavirus causes a physical alteration of the insured property, rendering the insured property unsafe and unusable.

56. Research also shows that the novel coronavirus can be pulled into air circulation systems. This creates particular risks for a business that operates indoors. Indeed, the CDC has published a study concluding that an outbreak among diners at an air-conditioned restaurant was caused by “droplet transmission . . . prompted by air-conditioned ventilation.” The same concerns exist for Stanton, whose Covered Property is the corporate headquarters for a nationwide carpet manufacturer, importer, and wholesaler, that operates entirely indoors.

57. Thus, the physical presence of the novel coronavirus in the air at the Covered Properties renders the properties uninhabitable and/or unfit for its normal use.

58. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

59. The presence of the Coronavirus in the air and on surfaces makes businesses like the Plaintiff's and stores that sell carpet uninhabitable, unsafe, and unfit for their normal and intended uses – just as if ammonia, fumes, asbestos, a mold infestation or a salmonella outbreak were in the air or on surfaces of the premises. Nor could the Coronavirus be removed with routine cleaning. As a result, Plaintiff had to close or operate at a reduced capacity.

60. In response to the Coronavirus and COVID-19, businesses like the Plaintiff's and stores that sell carpet implemented safety plans and incurred significant related expenses, covered as Extra Expense under the Policy, to make them as safe as possible, to protect its employees and customers, to resume and continue operating as close to normal as possible and to ameliorate, as much as possible, the ongoing direct physical loss of or damage caused by the Coronavirus and COVID-19.

61. Despite complying with all required precautions, Plaintiff did not escape the spread of COVID-19, as a number of employees have reported that they contracted COVID-19 or been exposed to COVID-19.

62. A particular challenge with the novel coronavirus is that it is possible for a person to be infected with COVID-19 but be asymptomatic. Thus, seemingly healthy people unknowingly spread the virus via speaking, breathing, and touching objects.

63. While infected droplets and particles carrying COVID-19 may not be visible to the naked eye, they are physical objects which travel to other objects and cause harm. Habitable surfaces on which COVID-19 has been shown to survive include, but are not limited to, stainless steel, plastic, wood, paper, glass, ceramic, cardboard, and cloth

64. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

65. Courts in France have ruled that business interruption coverage applies where businesses lost revenue as a result of being forced to close their doors due to orders of civil authority in response to the COVID-19 Pandemic. See <https://www.insurancejournal.com/news/international/2020/05/22/569710.htm> (Last Visited October 25, 2020).

66. The determinations by courts in France, and potentially other countries, that coverage exists is consistent with public policy that in the presence of a worldwide Pandemic such as COVID-19, businesses that possess business interruption insurance coverage should recover their losses from the insurance carriers.

**C. The Coronavirus Cannot be Removed or Eliminated by Routine Cleaning.**

67. A number of studies have demonstrated that the Coronavirus is “much more resilient to cleaning than other respiratory viruses so tested.” *See, i.e.,* Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. OF MED. VIROLOGY 11, 2498-510 (June 2020), <https://doi.org/10.1002/jmv.26170> (last visited Mar. 21, 2021). The measures that must be taken to remove the Coronavirus from property are significant and far beyond ordinary or routine cleaning.

68. Efficacy of decontaminating agents for viruses is based on a number of factors, including the initial amount of virus present, contact time with the decontaminating agent, dilution, temperature, and pH, among many others. Detergent surfactants are not recommended as single agents, but rather in conjunction with complex disinfectant solutions. *Id.*

69. Additionally, it can be challenging to accurately determine the efficacy of decontaminating agents. The toxicity of an agent may inhibit the growth of cells used to determine

the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces. *Id.*

70. In order to be effective, cleaning and decontamination procedures require strict adherence to protocols not necessarily tested under “real life” or practical conditions, where treated surfaces or objects may not undergo even exposure or adequate contact time. *Id.* Studies of coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol. *See* Joon Young Song, Hee Jin Cheong, Min Joo Choi, Ji Ho Jeon, Seong Hee Kang, Eun Ju, Jeong, Jin Gu Yoon, Saem Na Lee, Sung Ran Kim, Ji Yun Noh, & Woo Joo Kim, *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome Coronavirus Infection*, 47 INFECTION & CHEMOTHERAPY 4, 252-5 (2015), <https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252> (last visited Mar. 21, 2021).

71. With respect to carpet, studies have demonstrated that virus can survive on fabrics and be transferred to skin and other surfaces, “suggesting it is biologically plausible that . . . infectious diseases can be transmitted directly through contact with contaminated textiles.” Lucy Owen and Katie Laird, *The role of textiles as fomites in the healthcare environment: a review of the infection control risk*, 8 PEER J. LIFE AND ENV’T e9790, 1-35 (2020), <https://peerj.com/articles/9790/> (last visited Mar. 21, 2021). This demonstrates that Coronavirus and COVID-19, and the measures required to prevent their spread from surfaces and materials used by the Plaintiff, cause physical loss of or damage to property.

72. Moreover, the aerosolized Coronavirus particles and virions cannot be eliminated by routine cleaning. Cleaning surfaces in an indoor space will not remove the aerosolized Coronavirus particles from the air that people can inhale and become infected with the Coronavirus and develop COVID-19.

73. Given the ubiquity and pervasiveness of the Coronavirus, no amount of cleaning or ventilation intervention will prevent a person infected with the Coronavirus and contagious from entering an indoor space and exhaling millions of additional Coronavirus particles and virions into the air, further: (a) filling the air with the aerosolized Coronavirus that can be inhaled, sometimes with deadly consequences; and (b) depositing Coronavirus particles and virions on the surfaces, physically altering and transforming those surfaces into disease transmitting fomites.

**D. Civil Authority**

74. Plaintiff's Covered Properties are located in the County of Nassau, State of New York and the County of Gordon, State of Georgia, respectively, and sustained significant business losses as a result of the following orders of civil or military authority issued by the States of New York and Georgia (collectively "the Orders").

75. In response to the growing threat from the pandemic and high degree of contagiousness of COVID-19, the governments issued the Orders requiring the closure of all "non-essential business." Although some of the restrictions imposed by those orders expired, permitting Stanton to operate in a limited capacity, the rise of cases during the fall and winter has led the state of New York to reimpose restrictions as COVID-19 continues to spread at a record pace.

76. On March 7, 2020, New York Governor Andrew Cuomo declared a Disaster Emergency for the entire state of New York as a result of COVID-19.

77. On March 12, 2020, Governor Cuomo set restrictions on large gatherings.

78. On March 20, 2020, the State of New York issued a stay-at-home order that all non-essential workers must stay at home as a result of the COVID-19 pandemic. This order was subsequently extended through at least May 15, 2020.

79. As of March 22, 2020, Governor Cuomo ordered all “non-essential businesses” statewide to be closed.

80. The New York State ESD Guidance on Essential Businesses classified the New York Covered Property as a non-essential business and was therefore required to close its doors and cease operations for at least two months. See <https://esd.ny.gov/guidance-executive-order-2026> (Last Visited February 9, 2021).

81. On March 23, 2020, Georgia Governor Brian Kemp issued an executive order requiring that no business be permitted to allow more than ten persons to be gathered at a single location.

82. On April 2, 2020, Governor Kemp issued an executive order continuing the March 23 orders and further requiring all Georgia residents to shelter in place, only permitting residents to leave their home to perform the “Minimum Basic Operations” of a business.

83. Further, on April 10, 2020, former President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff:

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it’s something that we’ve already suggested, we’re talking to them. ***Business interruption insurance***, I’d like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I’d have business where I had it, I didn’t always have it, sometimes I had it, sometimes, I had a lot of different companies. ***But if I had it I’d expect to be paid***. You have people. I speak mostly to the restaurateurs, where they have a restaurant, they’ve been paying for 25, 30, 35 years, business interruption. They’ve never needed it. All of a sudden they need it. And I’m very

good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot of money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

[https://youtu.be/\\_cMeG5C9TjU](https://youtu.be/_cMeG5C9TjU) (last visited on May 29, 2020) (emphasis added).

84. The former President articulated a few core points:

- a. Business interruption is a common type of insurance for businesses.
- b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
- c. This pandemic should be covered unless there is a specific exclusion for pandemics.
- d. If insurers deny coverage, they would be acting in bad faith.

85. Plaintiff did not have the ability or right to ignore these Orders made by agents of civil authority, including the Governor of New York and the State of New York generally, as doing so would expose Plaintiff to fines and sanctions.

86. However, Plaintiff's adherence to the requirements of these Orders and proclamations was in furtherance of the Orders' intent to protect the public and supportive of public policy to attempt to minimize the risk of spread of COVID-19.

**E. Impact on Stanton Carpet**

87. As a result of the Orders referenced herein, Plaintiff shut the doors to its Covered Properties on March 16, 2020 through at least May 15, 2020, causing an interruption to its business and resulting in a significant loss of business income.



88. Plaintiff's business is not a closed environment, and because people – staff, clients, delivery personnel, and others – constantly cycle in and out of the Covered Properties, there is an ever-present risk that the office is contaminated and/or would become or would continue to be contaminated.

89. Due to COVID-19, Plaintiff has suffered “direct physical loss of or damage” to its property. Among other things, COVID-19 made the Covered Properties unusable in the way that it had been used before COVID-19, rendered the Covered Properties substantially unusable and uninhabitable, intruded upon the properties, damaged the properties, prevented physical access to and use of the properties, and caused a suspension of business operations at the properties.

90. Instead of being able to operate a business, the locations were required to physically alter and drastically reduce operations and even close entirely. To do anything else would lead to the emergence or reemergence of COVID-19 at the locations. Given the widespread prevalence of COVID-19 in the States of New York and Georgia and the Counties of Nassau and Gordon, even limited use of the Covered Properties was not possible.

91. This loss is physical. Plaintiff was unable to use the interior space of the Covered Properties in the manner in which it had previously used those spaces. The high probability of illness and contamination prevents the full physical use of the Covered Properties.

92. The Policy provides coverage for all non-excluded business losses, including Business Income that would have otherwise been earned, and thus provides coverage here.

93. COVID-19 resulted in the suffering of physical harm and impact and damages occurring both within Plaintiff's Covered Properties and/or within the immediate area surrounding and outside the Covered Properties. This caused Plaintiff to significantly reduce the operations of Stanton Carpet.

94. Stanton derives most of its revenue through its corporate headquarters and manufacturing located at the Covered Properties. Plaintiff lost revenue and was closed as a result of the occurrence of the COVID-19 and the Orders.

95. This loss is “direct.” Plaintiff is not asking Defendant to reimburse it after someone obtained a judgment against Plaintiff for getting them sick. That might be an indirect loss. Plaintiff is asking Defendant to pay for its loss of business income occasioned directly by being unable to use the Covered Properties.

96. This loss is physical. Plaintiff is unable to use the interior spaces of the Covered Properties in the manner in which it had previously used those spaces. The probability of illness prevents the use of the space in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable.

97. This loss is a loss. It is the loss of functionality of the space for business purposes. It is the diminishment of the physical space in the buildings. What once could hold many now can safely hold only a few, or none at all.

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

99. As a result, Plaintiff is entitled to declaratory relief that its business is covered for all business losses that have been suffered and sustained, which losses are in an amount greater than \$150,000.00.

**F. CAUSES OF ACTION**

**COUNT 1  
DECLARATORY RELIEF**

100. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

101. The Rhode Island Uniform Declaratory Judgments Act (UDJA) grants broad jurisdiction to the Superior Court to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.” R.I.G.L. § 9-30-1.

102. In the contract context, the UDJA provides, in pertinent part, that “[a]ny person ... whose rights, status, or other legal relations are affected by a ... contract ... may have determined any question of construction or validity arising under the ... contract ... and obtain a declaration of rights, status, or other legal relations thereunder.” R.I.G.L. § 9-30-2; *Robinson v. Mayo*, 849 A.2d 351, 353 n.2 (R.I. 2004).

103. The DCJA permits a court to construe a contract either before or after there has been a breach thereof. R.I.G.L. § 9-30-3.

104. When confronted with a UDJA claim, the inquiry is whether the Superior Court has been presented with “an actual case or controversy.” *Key v. Brown Univ.*, 163 A.3d 1162, 1168 (R.I. 2017).

105. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy in that Plaintiff contends and, on information and belief, the Defendant disputes and denies that:

- a. The Orders constitute a prohibition of access to Plaintiff’s Covered Properties;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;

- c. The Policy's Exclusion of Contamination does not apply to the business losses incurred by Plaintiff here;
- d. The Orders trigger coverage;
- e. The Policy provides coverage to Plaintiff for any current and future civil authority closures of businesses in Nassau and Gordon Counties due to physical loss or damage directly or indirectly from the Coronavirus under the Military or Civil Authority coverage parameters;
- f. Under the circumstances of the COVID-19 pandemic and the entry of the Orders, Plaintiff had no choice but to comply with the Orders, and Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses;
- g. Defendant's denial of coverage for losses sustained that were caused by the entry of the Orders referenced, and Plaintiff's required compliance with the Orders, violates public policy;
- h. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Covered Properties; and
- i. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

106. Plaintiff seeks a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to the Covered Properties as Civil or Military Authority as defined in the Policy.

107. Plaintiff further seeks a Declaratory Judgment to affirm that the Orders trigger coverage.

108. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff for any current and future Civil or Military Authority closures due to physical loss or damage from the Coronavirus and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the Covered Property.

109. Plaintiff does not seek any determination of whether the Coronavirus is physically in or at the office, amount of damages, or any other remedy other than declaratory relief.

**PRAYER FOR RELIEF FOR COUNT 1**

WHEREFORE, Plaintiff requests a trial by jury and that the Court enter judgment in its favor as follows:

- 1) Declaring that under the Policy, AFM is obligated to reimburse Stanton for business interruption and extra expense losses arising as a direct result of the physical loss and damage caused by the presence of the novel coronavirus that causes COVID-19 at the Covered Properties;
- 2) Alternatively, declaring that under the Policy, AFM is obligated to reimburse Stanton for business interruption and extra expense losses arising as a result of the Orders issued because of the physical loss or damage caused within five (5) miles of the Covered Properties;
- 3) Declaring that the Orders constitute a prohibition of access to Plaintiff's Covered Properties;
- 4) Declaring that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy;
- 5) Declaring that the Orders trigger coverage under the Policy;
- 6) Declaring that the Policy provides coverage to Plaintiff for any current and future closures in New York and Georgia and/or Nassau and Gordon Counties due to any physical loss or damage directly or indirectly arising out of COVID-19 and/or pandemic circumstance under the Military or Civil Authority coverage parameters;
- 7) Declaring that the Policy's exclusions for contamination do not apply to the circumstances presented in this lawsuit and the kind and types of damages and losses suffered

by Plaintiff;

8) Declaring that under the circumstances of the COVID-19 pandemic and the entry of the Orders, Plaintiff had no choice but to comply with the Orders and Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses;

9) Declaring that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of non-essential businesses due to physical loss or damage directly or indirectly from COVID-19 under the Military or Civil Authority coverage parameters;

10) Declaring that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of businesses in New York and Georgia and/or Nassau and Gordon Counties due to physical loss or damage directly or indirectly from the Coronavirus under the Military or Civil Authority coverage parameters;

11) Declaring that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Covered Properties or the immediate area of the Plaintiff's Covered Properties; and

12) For such other relief as the Court may deem proper.

**COUNT 2**  
**BREACH OF CONTRACT**

110. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

111. The Policy is a valid and enforceable contract between Stanton and AFM.

112. Stanton has performed under the terms of the Policy, including paying significant premiums in exchange for the coverage afforded under the Policy.

113. Under the Policy, AFM promised to reimburse Plaintiff for losses arising from “all risks” of physical loss or damage, including business interruption and extra expense losses.

114. Stanton has suffered physical loss or damage at and around its Covered Properties due to the presence of COVID-19 and has also incurred business interruption loss and extra expense as a direct result of that physical loss or damage.

115. Stanton has also incurred losses due to the Orders issued because of COVID-19 related physical loss or damage with five (5) miles of the Covered Properties.

116. By refusing to reimburse Stanton, AFM has breached the promise it made to Stanton when it issued the Policy.

117. As a result of AFM’s breach, Stanton has suffered significant monetary damages, as well as damages resulting from AFM’s improper withholding of insurance benefits that are due and owing under the Policy, and attorney’s fees in this action.

### **PRAYER FOR RELIEF FOR COUNT 2**

WHEREFORE, Plaintiff requests a trial by jury and that the Court enter judgment in its favor as follows:

- 1) Finding that AFM has breached its contractual obligation by refusing to reimburse Stanton for business interruption and extra expense losses arising as a direct result of the physical loss and damage caused by the presence of COVID-19 at the Covered Properties;
- 2) Finding that AFM has breached its contractual obligation by refusing to reimburse Stanton for business interruption and extra expenses losses arising as a result of the governmental shutdown orders issued because of the physical loss or damage caused within five (5) miles of Stanton’s Covered Property;
- 3) Awarding Stanton the damages it has incurred or will incur;

- 4) Awarding Stanton its attorneys' fees and litigation costs; and
- 5) Awarding Stanton such other and further different relief that this Court deems just and proper.

**COUNT 3**  
**BAD FAITH**

118. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

119. Throughout the handling of this claim, AFM has consistently ignored information Stanton has supplied in support of its claim, Stanton's coverage arguments, and even its own internal guidelines. The blatant disregard for Stanton's rights under the Policy constitutes bad faith.

120. For example, despite Stanton sending a thorough coverage letter to AFM on March 30, 2020 explaining why its losses were covered under the Policy, and subsequent conversations with AFM about the claim on April 2 and May 8, 2020, AFM sent a form letter back to Stanton that failed to address any of the additional information supplied in Stanton's letter or phone calls and that misrepresented pertinent provisions of the Policy.

121. In fact, despite acknowledging that an employee at the Covered Properties had been exposed to COVID-19, AFM somehow concluded that "no evidence has been provided that demonstrates ... COVID-19 was actually present at your location."

122. AFM also has misrepresented language in its insurance policy, such as the contamination exclusion in the Group III Exclusions of the Policy, to support its flawed argument that loss arising from a pandemic is excluded from the broad all risk coverage that AFM promised to provide. Despite AFM's position, there is no exclusion in the Policy that bars coverage for Business Interruption loss resulting from the spread of the novel coronavirus.



123. Although its policyholders, including Stanton, are facing substantial losses in the wake of the COVID-19 pandemic, upon information and belief AFM has been using the Talking Points Memo it drafted to guide its claims handling, without evaluating coverage based on the individualized facts of each policyholder and the law of the state that applies to the given policy. The Talking Points Memo states that its own recommendations (which are overbroad and incorrect in the first place) may not apply to every situation, yet AFM staunchly applied these guidelines that are not part of the Policy in a calculated attempt to break its promises to Stanton at a time when Stanton is struggling to keep its doors open.

124. Even worse, with respect to Stanton's claim, AFM has repeatedly ignored the facts relevant to Stanton's claim and simply denied the claim under the guise of form, blanket denials to escape its clear coverage obligations.

125. Moreover, AFM's wrongful coverage denial plainly disregards the law of Rhode Island where the Policy was issued, which does not require structural damage or physical alteration to property to establish physical damage or physical loss.

126. As demonstrated through its apparent reliance on the Talking Points Memo, as well as the protracted course of dealing between the parties, AFM knows that it has no reasonable basis for denying Stanton's claim and it has recklessly disregarded its policy obligations to its policyholder.

127. As a result of AFM's bad faith, Stanton has suffered and will continue to suffer damages, and was left with no option but to incur attorney's fees to vindicate its rights under the Policy.

128. Stanton is entitled to damages as a result of AFM's bad faith in an amount to be proven at trial, including any special, punitive, treble, consequential, exemplary, statutory, or other damages available as a result of AFM's bad faith, as well as its attorneys' fees and litigation costs.

**PRAYER FOR RELIEF FOR COUNT 3**

WHEREFORE, Plaintiff requests a trial by jury and that the Court enter judgment in its favor as follows:

- 1) Finding that AFM has repudiated its coverage obligations and refused to fulfill its obligations to Stanton in bad faith;
- 2) Awarding Stanton the damages it has incurred or will incur;
- 3) Awarding Stanton its attorneys' fees and litigation costs;
- 4) Awarding Stanton any special, punitive, treble, exemplary, consequential, statutory, or other damages available to Stanton as a result of AFM's bad faith; and
- 5) Awarding Stanton such other and further different relief that this Court deems just and proper.

**TRIAL BY JURY IS DEMANDED**

Plaintiff hereby demands trial by jury.

Respectfully submitted,

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**Dated: April 22, 2021**