

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

VERA BRADLEY, INC.

Plaintiff,

vs.

AFFILIATED FM INSURANCE
COMPANY,

Defendant.

C.A. No. _____

ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff Vera Bradley, Inc. (hereinafter “Plaintiff” or “Vera Bradley”) files this Complaint for damages and declaratory judgment against Defendant Affiliated FM Insurance Company (“AFM”), alleging the following:

I. INTRODUCTION

1. This action for breach of contract, declaratory judgment, and bad faith arises out of AFM’s failure to comply with its obligations and provide coverage for Vera Bradley’s claims under an “all risk” insurance policy it sold to Vera Bradley (the “Policy”).

2. Vera Bradley operates retail stores across the United States, at which it sells luggage, handbags, accessories, apparel, home goods, and other items (“stores,” “locations,” or “properties”).

3. Because Vera Bradley products are particularly known for their colors and textures, its physical, “brick and mortar” stores provide an important sensory component to the shopping experience that online shopping cannot replicate.

4. The Policy provides business interruption coverage for business income and other related losses caused by “direct physical loss or damage.” Due to COVID-19, Vera Bradley

properties have suffered “direct physical loss or damage,” under the plain and ordinary meaning of that term. COVID-19 caused Vera Bradley to suffer “direct physical loss or damage” because it impaired the use of Vera Bradley properties, making them unusable in the way they had been used before the COVID-19 pandemic.

5. Instead of being able to sell its products to customers in stores, where customers could see, touch, and try products, Vera Bradley was forced to close stores or limit occupancy for a considerable period of time.

6. These losses are direct—Vera Bradley does not ask AFM for reimbursement after someone obtained a judgment against Vera Bradley for getting sick following a visit to one of their stores. That might be an indirect loss. Rather, Vera Bradley is asking its insurer to pay for the loss of business income occasioned directly by being unable to use its properties.

7. These losses were physical—Vera Bradley was unable to use its properties for a significant length of time, and, when access was restored, were unable to use them in the same manner in which they were previously used and for the purpose for which they were designed. The properties lost at least part of their functionality and most of their ability to generate revenue. The presence of disease and possibility of its spread prevented the use of the spaces in their normal way in no less than a crumbling and open roof from the aftermath of a tornado would make the interior space of a business usable. Moreover, the SARS-CoV-2 virus that causes COVID-19 is physical—it can be seen (albeit with a microscope), measured, counted, and destroyed; it replicates itself and destroys other cells and organisms. Importantly, it can exist for days in the air and on surfaces, and it can be transferred from the air and surfaces into human bodies. The presence of the virus on the property is a *physical* presence, and it is a damaging one.

8. These losses are physical losses. They are the loss of functionality of the spaces for the purpose of generating business income. The losses are the diminishment of the physical space in the building. What normally were freely accessible stores that could welcome customers to browse Vera Bradley products could, even after the closure orders were eased, only welcome a few customers at a time or otherwise risk serious illness or even death.

9. These losses constitute physical damage. Physical agents of disease were present in and around Vera Bradley stores, impairing their function for their ordinary and intended uses, forcing their closure, and requiring steps to be taken to physically restore the facilities to a usable state.

10. Insurers around the country are now asking federal and state judges to interpret the words “direct physical loss or damage,” but those words need no interpretation. What insurers want is for courts to *change* the meaning of those terms—instead of 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.

11. Despite the fact that Vera Bradley entered into an insurance contract with AFM to protect itself from “all risks,” including risks of business interruption and related losses due to physical loss or damage to property, AFM has reneged on its obligations. Upon information and belief, AFM relied on inapplicable exclusions and its own internal procedures to limit or effectively deny Vera Bradley the recovery to which it is entitled. Vera Bradley has paid its premiums in full and has relied on the insurance policy for which it bargained as a shield against unforeseen loss or damage and resulting loss of income. Yet instead of following through on its end of the bargain, AFM has failed to honor its duties under the Policy.

II. THE PARTIES

12. Vera Bradley, Inc. is a corporation organized under the laws of the State of Indiana with a principal place of business at 12420 Stonebridge Road, Roanoke, Indiana 46783.

13. AFM is incorporated under the laws of Rhode Island with a principal place of business at 270 Central Avenue, Johnston, Rhode Island 02919.

14. AFM is authorized to do business and issue insurance policies in every state where Vera Bradley has a “described location” in the Policy.

III. JURISDICTION

15. This Court has jurisdiction pursuant to the provisions of Rhode Island Superior Court Rules of Civil Procedure 57 and R.I.G.L. § 9-30-2.

16. This matter is subject to the jurisdiction of this Court, as Defendant is a resident of the State of Rhode Island and does business in the State of Rhode Island.

17. This Court has personal jurisdiction over Defendant because Defendant does business within the State of Rhode Island.

18. Venue is proper in this county as the Defendant was, at all relevant times, a resident of Providence County, in the State of Rhode Island.

IV. FACTUAL BACKGROUND

19. Prior to the COVID pandemic, Vera Bradley operated more than 150 retail stores throughout the United States.

20. All of these stores were affected, to varying degrees, by closures caused by the presence of COVID-19 in the stores and in the communities in which they are located.

A. AFM Sold a Comprehensive “All Risk” Property Policy to Vera Bradley

21. AFM sold Vera Bradley an insurance policy that provides coverage against “ALL RISK OF PHYSICAL LOSS OR DAMAGE except as [] excluded” elsewhere in the policy. *See* AFM Policy No. ES026, attached as Exhibit A (“Policy”).

22. The Policy describes 187 store locations within its schedule of covered locations. *See* Policy, Declarations at 13–16.

23. The effective term of the Policy was July 1, 2019, through July 1, 2020.

24. Under its “Communicable Disease—Property Damage” coverage, if Communicable Disease is present at a described location, and access to that property is “limited, restricted, or prohibited” due to a governmental order or “[a] decision of an Officer of the Insured” because of the presence of a communicable disease, the Policy covers the costs of “clean up, removal or disposal” of the communicable disease, as well as public relations and reputational management costs. All Risk Coverage Form at 7.

25. The Policy also provides coverage to the stores for Business Interruption loss “as a direct result of physical loss or damage of the type insured.” *Id.* at 19.

26. The “Business Interruption Coverage” provides coverage for losses of gross earnings or gross profits sustained as a direct result of physical loss or damage to the stores, as well as extra expense incurred to “[t]emporarily continue as close to normal the conduct of the Insured’s business.” *Id.* at 20–22.

27. The Policy also includes “Business Interruption Coverage Extensions” that further expanded the Business Interruption loss coverage.

28. One such coverage extension relates to losses for an “Attraction Property.” It covers “the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from physical loss or damage of the type insured to property of the type insured

that attracts business to a **described location**¹ and is within one (1) statute mile of the **described location.**” *Id.* at 24 (emphasis in Policy).

29. Store 139 is located within the Walt Disney World resort complex in Orlando, Florida, which is an Attraction Property.

30. Another coverage extension, entitled “Civil or Military Authority,” covers losses “incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a **location** provided such order is the result of direct physical loss or damage of the type insured at a **location** or within five (5) statute miles of it.” *Id.* (emphasis in Policy).

31. A third business interruption coverage extension, entitled “Communicable Disease—Business Interruption,” covers losses incurred due to the “presence of communicable disease” at a described location when access to that location is “limited, restricted, or prohibited” by order of a governmental authority “regulating such presence of **communicable disease**” or a “decision of an Officer of the Insured as a result of such presence of **communicable disease.**” *Id.* at 25 (emphasis in Policy).

32. “Ingress/Egress” coverage applies to Business Interruption loss incurred due to the “necessary interruption of the Insured’s business when ingress to or egress from a described location(s) is physically prevented, either partially or totally, as a direct result of physical loss or damage of the type insured to property of the type insured whether or not at a described location.” *Id.* at 27.

33. Under the “Protection and Preservation of Property” coverage extension, the Policy extends coverage to “reasonable action for the temporary protection and preservation of property”

¹ Bolded terms in the body of the Complaint indicate terms defined in the Policy.

when such action is “necessary to prevent immediately impending insured physical loss or damage to such insured property.” *Id.* at 30.

34. Finally, under the “Supply Chain” coverage, the Policy extends Business Interruption coverage and many of the Business Interruption Coverage Extensions to losses resulting from physical loss or damage at the premises of “direct suppliers, direct customers, or direct contract service providers to the Insured,” as well as physical loss or damage at the premises of any “direct or indirect supplier, customer or contract service provider” of any of the direct supplier, customers or contract service providers. *Id.* at 30.

35. The Policy provides up to \$350,000,000 in coverage for property damage per occurrence, subject to various sub-limits for different types of loss or damage described in the policy.

36. In exchange for AFM’s agreement to provide coverage for Vera Bradley’s risk of loss, Vera Bradley paid AFM substantial premiums for the Policy. Vera Bradley has tendered its loss to AFM and has met all other obligations required under the Policy.

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

37. COVID-19, or coronavirus, is a deadly communicable disease caused by the SARS-CoV-2 virus.²

38. To date, COVID-19 has infected nearly 364 million people and has killed over 5.6 million people worldwide.³

² World Health Organization, *Coronavirus Disease (COVID-19)*, https://www.who.int/health-topics/coronavirus#tab=tab_1 (last viewed Jan. 27, 2022).

³ See Johns Hopkins Univ. of Med. Coronavirus Resource Center, <https://coronavirus.jhu.edu/map.html> (last viewed Jan. 27, 2022).

39. To date, COVID-19 has infected over 75 million people in the United States, resulting in over 900,000 confirmed deaths.⁴

40. In January 2020, both the World Health Organization (“WHO”) and the U.S. Centers for Disease Control (“CDC”) declared COVID-19 a public health emergency.

41. In March 2020, the WHO declared that the COVID-19 outbreak was a global pandemic.⁵

42. The time from infection with the virus to the development of symptoms can be up to fourteen days, with infectiousness beginning two to three days before symptom onset, peaking one day before symptom onset, and continuing for up to eight days after onset.⁶

43. Consequently, infected but pre-symptomatic persons may be contagious and unknowingly transmit the disease to others.

44. According to the CDC, “COVID-19 spreads when an infected person breathes out droplets and very small particles that contain the virus. These droplets and particles can be breathed in by other people or land on their eyes, noses, or mouth. In some circumstances, they may contaminate surfaces they touch. People who are closer than 6 feet from the infected person are most likely to get infected.”⁷

⁴ *Id.* (As of Jan. 27, 2022, there were 72,991,867 documented total infections in the U.S. and 876,747 documented deaths attributable to COVID-19.)

⁵ D. Cucinotta & M. Vanelli, *WHO Declares COVID-19 a Pandemic*, 91 *Acta Biomed* 1:157–60 (Mar. 19, 2020), doi: 10.23750/abm.v91i1.9397.

⁶ CDC, *What we know about quarantine and isolation*, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine-isolation-background.html> (last accessed Jan. 27, 2022).

⁷ CDC, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed Jan. 27, 2022).

45. COVID-19 is mainly spread through breathing in air that contains the virus, through an infected person coughing or exhaling virus particles that land on another’s face, and through a person picking up the virus on the hands and then touching the face.⁸

46. Studies have found that the coronavirus can persist on surfaces like metal, glass, or plastic for up to nine days.⁹

47. These studies concluded that because coronaviruses can remain viable on inanimate surfaces for days, COVID-19 could potentially be spread indirectly—through contact with infected surfaces.¹⁰

48. Thus, individuals may become infected with COVID-19 through direct contact from an infected person, or through indirect contact with surfaces or objects contacted by an infected person, whether the infected person in either scenario is symptomatic or not.

C. Civil Authorities Issued Closure Orders Because of COVID-19 and Related Physical Loss or Damage to Property

49. In an effort to slow the spread of COVID-19, and as a consequence of physical damage caused by COVID-19, federal, state, and local governments imposed unprecedented civil orders across the country. These measures included the restriction of travel to the United States, the requirement that residents stay at home unless performing “essential activities,” limitation on access to certain facilities and businesses, and the temporary closure of many of those same facilities and businesses.

⁸ *Id.*

⁹ G. Kampf, et al., *Persistence of coronaviruses on inanimate surfaces and their deactivation with biocidal agents*, 104 *J. Hospital Infection* 3:246–51 (Mar. 2020).

¹⁰ Muhammad Z. Akram, *Inanimate surfaces as potential source of 2019-nCoV spread and their disinfection with biocidal agents*, 31 *Virusdisease* 2:94–96 (Jun. 2020); *see also* Montse Marques and Jose. L. Domingo, *Contamination of inert surfaces by SARS-CoV-2: Persistence, stability and infectivity. A review*, *Envt’l Res.* 193:110559 (Feb. 2021) (discussing that due to the stability of the SARS-CoV-2 virus on inanimate surfaces, “potential fomite transmission could persist for hours to days in indoor environments”).

50. The “shelter in place” or civil closure orders typically required businesses deemed “non-essential” to close their doors and stop all in person work and services.

51. However, even “essential” businesses were severely impacted by such orders.

52. Even after businesses were allowed to reopen, they were typically only allowed to do so in a limited capacity.

53. The civil closure orders remained in effect for varying lengths of time throughout the country, from somewhat less than two months in states like Alabama to several months in states like Virginia.

54. Vera Bradley stores are highly dependent on foot traffic and in-person customer engagement for its retail business, and its business as a whole relies not only on customers, but on vendors, suppliers, and contractors—all of whom were affected by civil closure orders.

55. The mandated closures and other restrictions had a profound impact on Vera Bradley’s business while they were in effect.

D. Most Vera Bradley Stores Closed Due to COVID-19

56. More than one-hundred fifty (150) Vera Bradley stores closed due to COVID-19 during the period covered by the Policy.

57. Five additional stores delayed opening due to the pandemic.

58. The stores that closed did so on March 18, 2020, at the direction of executives within the Vera Bradley organization, who acted in response to spread of the pandemic throughout the country, the presence of coronavirus—and its attendant danger to employees and customers—at Vera Bradley properties, and closure orders issued by civil authorities in the relevant jurisdictions.

59. The Vera Bradley stores remained closed for a period ranging from several weeks to many months in order to comply with the COVID-19 civil closure orders in effect at each particular location.

60. In addition to notifying AFM of its losses across the country due to COVID-19 and the scope and impact of civil orders more broadly, Vera Bradley specifically notified AFM of the nature, timing, and estimated amount of its losses at its location within Walt Disney World in Orlando, Florida, an Attraction Property.

61. In preparation for and to permit stores to reopen and operate safely for both employees and customers, Vera Bradley expended substantial funds to obtain signage, sanitizer, and thermometers, to stock gloves and disinfecting supplies, and to install physical barriers in order to limit possible viral transmission between and among customers and employees in its stores.

E. Losses Due to COVID-19 Triggered Coverage Under the AFM Policy

62. The Policy covers Vera Bradley’s properties “against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded. . . .” Policy, All Risk Coverage Form at 1 (emphasis in Policy).

63. The policy expressly covers as a designated location each of the Vera Bradley stores that were closed due to the presence of COVID-19, the response undertaken by Vera Bradley executives, and the relevant civil authorities.

64. AFM drafted the AFM Policy.

65. Pursuant to the “Communicable Disease—Property Damage” additional coverage, the Policy expressly covers, among other things, “the reasonable and necessary costs incurred . . . for the: (a) Cleanup, removal and disposal of . . . communicable disease from insured property.”

Id. at 6.

66. Because the Policy expressly covers the “cleanup, removal and disposal of . . . communicable disease” as part of a Policy covering “All Risks” of “physical loss or damage,” the Policy explicitly recognizes that communicable disease physically damages property.

67. Because the Policy specifically covers remediation of the damage caused by communicable disease, the physical damage to property caused by communicable disease is “physical damage of the type insured” under the Policy.

1. COVID-19 Triggered Coverage Under the “All Risks” Policy

68. The existence and actual presence of COVID-19 on Vera Bradley properties triggered coverage under the Policy.

69. In addition, the existence and presence of COVID-19 on property located within five miles of Vera Bradley properties triggered coverage under the Policy.

70. The existence and presence of COVID-19 on property located within one mile of the Vera Bradley store within Walt Disney World, an Attraction Property, triggered coverage under the Policy.

71. The existence and presence of COVID-19 on the properties of direct suppliers, customers and contract service providers of Vera Bradley, as well as the direct and indirect suppliers customers and contract service providers of Vera Bradley’s own suppliers, customers, and contract service providers, also triggered coverage under the Policy.

72. COVID-19 caused physical loss and/or physical damage to property, including Vera Bradley’s properties. Vera Bradley’s properties were impaired, as were many properties within and without a file-mile radius of those properties.

73. The loss of functionality is no less physical than the impact of a property losing its roof to a tornado or hurricane. Where once a property could carry and display goods, the property

with a missing or crumbling roof cannot operate; where once a property could protect patrons from the elements, it can no longer do so; where once customers could shop safely, they can no longer do so without risk of injury. This is physical loss and/or physical damage, as it is with the loss of function at Vera Bradley stores caused by COVID-19.

74. COVID-19 has also caused Vera Bradley to experience covered business interruption losses and related costs and expenses.

75. After sustaining losses covered by the Policy, Vera Bradley submitted claims pursuant to the requirements of the Policy. Nonetheless, AFM has denied and limited coverage for Vera Bradley's claim by contending that COVID-19 does not constitute physical loss or damage and that various exclusions apply to bar Vera Bradley's claims. AFM has done so in bad faith, based on an apparent systemic company practice designed to minimize payments for covered COVID-19 claims.

2. Multiple Coverages are Triggered under the "All Risks" Policy

76. In addition to triggering the Policy's "all risks" coverages, Vera Bradley's claims also trigger multiple "Additional Coverages" and "Coverage Extensions" provided under the Policy including but not limited to the following.

i. COVID-19 Triggered the Policy's Communicable Disease—Property Damage and Communicable Disease—Business Interruption Coverages

77. The actual presence of COVID-19 at Vera Bradley properties and their surrounding communities caused authorized governmental agencies to issue orders regulating communicable disease, which limited or prohibited access to Vera Bradley properties. The actual presence of COVID-19 at Vera Bradley properties and their surrounding communities also prompted decisions by Vera Bradley executives to limit or prohibit access to Vera Bradley properties in order to mitigate the spread of COVID-19 and protect both the designated properties and the customers

and employees who would otherwise enter them. These orders and decisions interrupted the normal course of business at those properties, leading to substantial business interruption losses.

78. The business interruption losses sustained by Vera Bradley as a result of such civil authority orders and or company executive decisions triggered coverage under the Policy's Communicable Disease— Business Interruption coverage.

79. Vera Bradley thus sustained losses due to limitations, restrictions, or prohibitions on access caused by the actual presence of COVID-19 at Vera Bradley locations.

80. Vera Bradley also incurred expenses to clean and remove the presence of COVID-19 on its properties as well as costs relating to managing the reputation of the company with its customers, suppliers and other business partners.

81. AFM is liable under the Policy for these losses under the Policy's Communicable Disease—Property Damage and Communicable Disease—Business Interruption coverages.

ii. COVID-19 Triggered the Policy's Business Interruption Coverage

82. The Policy affords coverage for Vera Bradley Business Interruption losses, subject to the Policy's terms and conditions.

83. COVID-19 caused Vera Bradley to suffer business interruption losses as a direct result of physical loss and damage of the type insured under the Policy.

84. The losses triggered coverage under the Policy's Business Interruption provisions including, without limitation, coverage for Gross Earnings loss, Gross Profits loss, and Rental Income Loss.

iii. COVID-19 Triggered the Policy's Extra Expense Coverage

85. COVID-19 caused Vera Bradley to incur reasonable and necessary expenses to continue, as close to normal as possible, the conduct of Vera Bradley's business. Such expenses

are beyond those that would have normally been incurred in conducting the business absent the presence of COVID-19.

86. The expenses incurred by Vera Bradley as a result of the physical loss and damage caused by COVID-19 triggered coverage under the Policy's Extra Expense coverage.

iv. COVID-19 Triggered the Policy's Attraction Property Coverage

87. COVID-19 also caused physical loss and damage to property of the type insured within one mile of designated Vera Bradley locations that attracts business to them, such as Walt Disney World.

88. Vera Bradley has sustained, and will continue to sustain, a loss of business income directly resulting from that physical loss and damage to nearby property that attracts business to Vera Bradley stores. This loss is covered under the Policy's Attraction Property coverage.

89. Vera Bradley has provided AFM with sufficient information to support its claim for its Attraction Property in Orlando, Florida.

v. COVID-19 Triggered the Policy's Civil Authority Coverage

90. The physical damage caused by the presence of COVID-19 at property located within five miles of covered properties has resulted directly in the issuance of orders and directives by state and other civil authorities prohibiting access to Vera Bradley properties.

91. Vera Bradley sustained business interruption losses because these closure orders from issued as a direct result of physical damage of the type insured at Vera Bradley locations or within five statute miles of Vera Bradley locations, have prohibited access to Vera Bradley properties.

92. As a result, the Policy's Civil Authority coverage has been triggered.

vi. COVID-19 Triggered the Policy's Ingress/Egress Coverage

93. As a direct result of COVID-19, and the physical loss and damage it caused, ingress to Vera Bradley's business has been totally or partially prevented.

94. The business interruption losses caused by the total or partial denial of access to Vera Bradley properties triggers coverage under the Policy's Ingress/Egress coverage.

vii. COVID-19 Triggered the Policy's Supply Chain Coverage

95. COVID-19 caused physical loss and damage of the type insured to property of the type insured at the premises of Vera Bradley's direct suppliers, direct customers, and direct contract service providers, as well as the direct and indirect suppliers, customers, and contract service providers of those suppliers, customers and contract service providers.

96. The loss of business income sustained by Vera Bradley as a result of these supply chain interruption(s) triggered coverage under the Policy's Supply Chain Business Interruption coverage extension.

3. No Exclusion in the Policy Impacts Coverage

97. No exclusion in the Policy applies to preclude or limit coverage for the actual presence of COVID-19 at or away from Vera Bradley properties, the physical loss and damage to Vera Bradley property, and/or the business interruption losses that resulted from the physical loss and damage to property.

98. To the extent that AFM contends any exclusion(s) apply, such contention is based on a misinterpretation of the Policy under controlling rules of interpretation and/or any such exclusion is unenforceable.

4. The Policy's Contamination Exclusion Does Not Apply

99. The Policy's "Communicable Disease—Property Damage" coverage provides coverage for, among other things, "the reasonable and necessary costs incurred...for the: (a)

Cleanup, removal and disposal of ... communicable disease from insured property.” *See* Exhibit A, All Risk Coverage Form at 7.

100. AFM has stated, in writing, that COVID-19 meets the definition of communicable disease under the Policy.

101. The Policy also contains an exclusion that purports to preclude coverage for “contamination.” *See id.* at 5.

102. The Policy defines “contamination” as, “any condition of property due to the actual or suspected 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. *See id.* at 42.

103. The Policy’s “contamination” exclusion does not exclude coverage for costs of cleanup and removal of “communicable disease” or business interruption loss caused by restricted or limited access to property because of “communicable disease,” both of which are expressly covered under the Communicable Disease–Property Damage and Communicable Disease–Business Interruption Coverages. *See id.* at 7 & 25.

104. The Policy’s “contamination” exclusion does not exclude coverage for immediate costs to protect or preserve insured property due impending physical loss or damage.

105. The Policy’s “contamination” exclusion does not exclude coverage for business interruption losses. The Policy has three types of exclusions: Group I, Group II, and Group III. The contamination exclusion is a Group III exclusion.

106. Group I exclusions specifically exclude coverage for business interruption losses caused by particular risk of loss, such as nuclear reaction, war, and rebellion. Group I exclusions

do so by stating specifically in its prefatory phrase that “This Policy excludes *loss or damage directly or indirectly caused by or resulting from any of the following . . .*.”

107. Group II and III exclusions, however, do not exclude business interruption losses. The prefatory language to those two groups of exclusion does not state explicitly or otherwise that they exclude “loss.” Instead, the two groups of exclusions exclude particular conditions of property, rather than seeking to exclude loss or damage arising from those conditions.

108. The contamination exclusion itself does not exclude losses from contamination, but, rather, the *costs* to remedy contamination and such as the costs of decontamination.

109. To the extent that AFM contends that the Policy’s “contamination” exclusion bars coverage for loss caused by “communicable disease,” such an interpretation would render the communicable disease exclusion illusory. At a minimum the contamination exclusion is ambiguous and therefore must be construed in favor of coverage.

D. AFM’s Bad Faith Conduct

110. AFM is a subsidiary of FM Global and is under its control.

111. Upon information and belief, FM Global and AFM are engaged in a calculated scheme to deny COVID-19 related claims submitted by Vera Bradley and AFM’s other policyholders’ similar.

112. This systemic practice and procedure of denying coverage is captured in FM Global’s internal memo, entitled “Talking Points on the Novel 2019 Coronavirus.” *See* Exhibit B (“Talking Points”).

113. Upon information and belief, AFM has followed the scheme set forth in its parent company FM Global’s Talking Points.

114. FM Global's Talking Points incorrectly state that the Policy coverages for Civil or Military Authority and Contingent Time Element Extended do not apply because "[a] virus will typically not cause physical damage" and because "the presence of a communicable disease does not constitute physical damage and is not of the type insured against" *See id.*

115. The inclusion of only the Communicable Disease sublimits in FM Global's Talking Points causes AFM adjusters to request information tied only to the Communicable Disease sublimits and to represent to policyholders that this is the only coverage available under the Policy.

116. This is reflected in the repeated assertions made by the AFM adjuster's communications with Vera Bradley that the only potentially applicable coverages are the Communicable Disease coverages.

117. This is also reflected in the AFM adjuster's repeated communications with Vera Bradley that AFM's position is that "COVID-19 does not constitute physical loss or damage."

118. In the face of AFM's bad faith coverage position, the Policy explicitly acknowledges that the presence of communicable disease causes physical damage to property because it provides coverage for the resulting "cleanup, removal and disposal of communicable disease from insured property." Policy, All Risk Coverage Form at 7.

119. The FM Global Talking Points document is an effort to maneuver the investigation and decision on coverage to only the Communicable Disease sublimits.

120. The FM Global Talking Points instruct AFM adjusters to reach conclusions about coverage without considering the specific facts related to an insured's particular claim, and without considering the applicable law which controls the insurance policy's interpretation.

121. AFM's actions, including but not limited to, adherence to the Talking Points memo rather than conducting an individualized examination of Vera Bradley's particular claims, are in direct opposition to the accepted practices of good faith insurance claims handling.

122. AFM's actions in following the Talking Points instructions demonstrate an intentional and conscious disregard of Vera Bradley's rights under the Policy.

123. AFM intentionally placed arbitrary limits on the coverage under the Policy, and the intentional imposition of arbitrary limits on the Policy is unreasonable and done in bad faith.

124. AFM has not only intentionally failed to apply its own Policy language in good faith, but it has also intentionally conducted a pretextual investigation with a pre-determined outcome based on arbitrary guidance outlined in the Talking Points. AFM has additionally intentionally failed to consider the relevant, specific facts related to Vera Bradley's *entire claim* under the actual Policy language.

125. AFM has effectively denied the Vera Bradley's claim.

126. AFM knowingly or recklessly failed to conduct a reasonable investigation of Vera Bradley's claim prior to denying the claim and, therefore, denied Vera Bradley's claim knowing that such denial lacked any reasonable basis.

127. Consequently, Vera Bradley has suffered and continues to suffer substantial damages due to AFM's wrongful denial and bad faith conduct.

V. CLAIMS ALLEGED

COUNT I Declaratory Judgment

128. Vera Bradley hereby incorporates all of the allegations in Paragraphs 1–127, as if fully set forth herein.

129. Vera Bradley seeks the Court's declaration of the parties' rights and duties under the Policy, pursuant to Rhode Island Superior Court Rules of Civil Procedure 57 and R.I.G.L. § 9-30-2. A justiciable controversy exists between Vera Bradley and AFM regarding the availability of coverage under the Policy for Vera Bradley's claims.

130. Accordingly, Vera Bradley seeks a declaration from the Court that:

- a. The various coverage provisions identified herein are triggered by Vera Bradley's claims;
- b. No Policy exclusion applies to bar or limit coverage for Vera Bradley's claims; and
- c. The Policy covers Vera Bradley's claims.

COUNT II
Breach of Contract

131. Vera Bradley hereby incorporates all of the allegations in Paragraphs 1–127, as if fully set forth herein.

132. The Policy is a valid and enforceable contract between Vera Bradley and AFM.

133. In the Policy, AFM agreed to cover property at described Vera Bradley locations against all risks of physical loss or damage not otherwise excluded.

134. In the Policy, AFM agreed to cover Business Interruption losses, including extra expenses incurred, as provided in the Business Interruption Coverage, as a direct result of physical loss or damage of the type insured under the Policy, as well as additional coverage provided in the Policy's Business Interruption Coverage Extensions.

135. Vera Bradley sustained loss and damage due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority

orders prohibiting or limiting access to retail stores operated by Vera Bradley, including business interruption losses and extra expenses incurred in an effort to resume operations.

136. AFM has failed to comply with its obligations and has failed to compensate Vera Bradley for its claim.

137. Vera Bradley is entitled to coverage up to the Policy's \$350 million per occurrence limit of liability or up to applicable sublimits for particular categories of loss or damage.

138. Vera Bradley has complied with all applicable policy provisions, including paying premiums and providing timely notice of its claims.

139. Nonetheless, AFM refuses to pay for Vera Bradley's covered loss or damage in breach of the Policy.

140. Vera Bradley has suffered and continues to suffer damages as a result of AFM's breach(es) of the Policy.

141. Vera Bradley is entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT III
Breach of the Covenant of Good Faith and Fair Dealing

142. Vera Bradley hereby incorporates the allegations in Paragraphs 1–127, as if fully set forth herein.

143. AFM has denied Vera Bradley's claims for coverage under the Policy relating to its losses from COVID-19.

144. AFM's denial of Vera Bradley's claims lacks any reasonable basis.

145. AFM failed to conduct a reasonable investigation of Vera Bradley's claims under the Policy and, therefore, AFM's basis for its denial is unreasonable.

146. AFM employed a systematic “one-size fits all” approach to adjusting and denying coverage for all COVID-19 claims, including those asserted by Vera Bradley.

147. AFM knew or was actually or implicitly aware of the lack of any reasonable basis to deny coverage.

148. AFM acted with reckless disregard as to the unreasonableness of its denial.

149. AFM breached a duty of good faith and fair dealing by failing to reasonably investigate Vera Bradley’s claims and provide coverage.

150. AFM’s denial of coverage constitutes bad faith.

151. As a result of AFM’s bad faith, Vera Bradley suffered and continues to suffer damages.

152. Vera Bradley is entitled to an award of damages as a result of AFM’s bad faith in an amount to be determined at trial, including attorney’s fees, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT IV
Bad Faith – R.I.G.L. § 9-1-33

153. Vera Bradley hereby incorporates the allegations in Paragraphs 1–127, as if fully set forth herein.

154. The acts and omissions of AFM as alleged in this Complaint, and also as yet to be discovered in this matter, constitute bad faith under R.I.G.L. § 9-1-33.

155. Vera Bradley sustained damages due to the physical presence of COVID-19, the existence and continued threat of COVID-19, and the civil authority orders restricting and limiting the use of Vera Bradley’s properties due to COVID-19, but AFM has failed to comply with its obligation and failed to compensate Vera Bradley for its claims.

156. Vera Bradley is entitled to compensatory damages and punitive damages as a result of AFM's bad faith.

157. Vera Bradley has been required to retain the services of attorneys to commence this action and are further entitled to attorneys' fees and costs.

VI. PRAYER FOR RELIEF

WHEREFORE, Vera Bradley respectfully requests that the Court enter judgment in its favor and against AFM as follows:

- 1) A declaration from the Court that:
 - a. The various coverage provisions identified herein are triggered by Vera Bradley's claims;
 - b. No Policy exclusion applies to bar or limit coverage for Vera Bradley's claims; and
 - c. The Policy covers Vera Bradley's claims.
- 2) For special and consequential damages against AFM in an amount to be proved at trial, in excess of \$10,000;
- 3) Pre- and post-judgment interest, as provided by law;
- 4) An award of attorney's fees and costs of suit incurred; and
- 5) Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff respectfully requests a trial by jury on all issues so triable.

Date: February 25, 2022

Respectfully submitted,

/s/ Stephen M. Prignano

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