

RETURN DATE: APRIL 12, 2022 : SUPERIOR COURT  
WINDSOR FASHIONS HOLDINGS, LLC : J.D. OF HARTFORD  
vs. : AT HARTFORD  
HARTFORD FIRE INSURANCE COMPANY : MARCH 14, 2022

### **COMPLAINT**

Plaintiff WINDSOR FASHIONS HOLDINGS, LLC (“WINDSOR ” or “Plaintiff”) brings Claims for Breach of Contract and Declaratory Relief against Defendant HARTFORD FIRE INSURANCE COMPANY (“Defendant” or “HARTFORD”), alleging as follows:

#### **ALLEGATIONS COMMON TO ALL COUNTS:**

##### **NATURE OF THE CASE**

1. This is an action for declaratory judgment and breach of contract arising out of the refusal of HARTFORD, a multi-billion dollar business, to live up to its promise to its policyholder, WINDSOR. HARTFORD promised to pay for, in exchange for premiums paid, physical loss of or physical damage to and related business interruption losses and expenses at approximately 223 covered locations in thirty-six states under an “all risk” insurance policy. A copy of the HARTFORD policy (Number 22 UUN BH9389) is attached hereto as **Exhibit A**, and is incorporated herein by reference.

2. WINDSOR owns and operates Windsor retail stores catering to younger women by offering trendy apparel and accessories, featuring special-occasion dresses, jeans, basics, shoes, and accessories.

3. This all changed in 2020 with the COVID-19 pandemic. The pandemic had an unprecedented and catastrophic effect on WINDSOR's property and business operations, causing millions of dollars in losses.

4. The havoc wrought by the pandemic is well-documented. According to the Centers for Disease Control ("CDC"), as of February 28, 2022, COVID-19 has infected more than seventy-eight million people and killed nearly 945,000 in the United States. The states where WINDSOR's properties are located have not been spared from this tragedy.

5. Beyond the human toll, the pandemic has had a devastating impact on the economies of the states where WINDSOR's properties are located, causing widespread physical losses, property damage and loss for many businesses, including WINDSOR's over retail locations. As a result of the pandemic, WINDSOR has been prevented from conducting normal business operations and deprived of the use of its business properties. Even when permitted to open, as a result of the spread of COVID-19, WINDSOR's properties required substantial physical alterations and other protective measures. Further, the presence of COVID-19 and SARS-CoV-2 within Windsor Covered Properties also caused direct physical loss of or damage to properties (or both) by transforming the properties from usable and safe into properties that are unsatisfactory and prohibited for use, uninhabitable, unfit for their intended function, and extremely dangerous and potentially deadly for humans.

6. SARS-CoV-2 and COVID-19 caused direct physical loss of or damage to properties (or both) throughout the locales where Windsor Covered Properties are based, including to Windsor locations and surrounding properties, by altering the physical conditions of the properties so that they were no longer safe or fit for occupancy or use, and/or permitted to be used. Specifically, SARS-CoV-2 attaches itself to surfaces and properties, thereby producing physical

change in the condition of the surfaces and properties—from safe and touchable to unsafe and deadly. SARS-CoV-2 and COVID-19 also physically alter and damage the air within buildings such that the air is no longer safe to breathe.

7. It is often the case that the source of a covered property insurance loss can ultimately be cleaned, removed, contained, or remediated, yet that does not mean that there was no “loss of or damage to” property in the first place. This was true for mold, odors, smoke, fumes, and asbestos fibers that triggered coverage in other cases and the same is true here. That is especially significant when it comes to business interruption losses, where even modest impacts to property lead to covered losses. There are plenty of cases in which a right to claim business interruption loss was found where nothing had to be done to fix the property damage, which cleared by natural action. The coronavirus can be disinfected or cleaned, but it still causes a distinct and demonstrable alteration to property. That is what has triggered coverage for WINDSOR’s significant losses here.

8. Because of the physical alterations of its properties, including the air, airspaces, and surfaces in its properties, which rendered the insured properties incapable of performing their essential functions, WINDSOR sustained direct physical loss of or damage to its property (or both). The disruption of normal business operations resulted in the severe and substantial losses more particularly described below.

9. As a direct cause from the COVID-19 pandemic and/or the closure orders, together with HARTFORD’s failure to live up to its obligations under the All Risk Policy, WINDSOR was forced to file this action. WINDSOR would not have had to file and incur the cost of this legal proceeding if HARTFORD had paid the loss and damage it was obligated to pay.

10. To date, WINDSOR has suffered millions of dollars in loss and damage, all of which remains unreimbursed by HARTFORD despite being covered under the terms of the policy purchased.

11. WINDSOR's purchase of this broad "all risk" coverage created a reasonable expectation that the coverage will apply if WINDSOR has a business interruption resulting from unforeseen and fortuitous events, such as the physical damage to and inability to use its properties or a forced government shutdown of its businesses as a result of a pandemic or other large-scale natural disaster. In particular, WINDSOR could not foresee the physical damage produced by the COVID-19 pandemic or the government orders shuttering its properties as a result of the physical damage produced by the COVID-19 pandemic. After faithfully paying a high premium for "all risk" coverage, business owner-insured WINDSOR, who was forced to close its properties from these unprecedented events, had a reasonable expectation that its "all risk" business interruption insurance would apply and protect it. WINDSOR had such expectations and sought coverage from HARTFORD for the losses.

12. Despite the coverage provided and the expectations of WINDSOR, who paid a significant premium for it, HARTFORD denied claims submitted by businesses for "all risk" coverage during the COVID-19 pandemic. In violation of state law, HARTFORD denied coverage without conducting an investigation or considering supporting evidence. Through its conduct, HARTFORD wrongfully breached its obligations under the All Risk Policy and left WINDSOR without the insurance benefits it paid for, relied upon, and desperately needed during the business closures and interruptions and to remediate its ongoing property damage.

13. The insurance industry has repeatedly and falsely warned courts and the media that COVID-19-related claims will bankrupt insurers and force them to raise premiums and restrict

coverages – but they have reaped enormous profits by denying covered claims and have continued to raise premiums despite refusing to uphold their coverage obligations.

14. WINDSOR seeks a declaration that the presence, statistically certain presence, or suspected presence of the SARS-CoV-2 virions in or on WINDSOR's property and the ubiquitous presence of the virions throughout the locales and states where WINDSOR's covered properties are located, causes direct physical loss of or direct physical damage to property within the meaning of those phrases as used in the All Risk Policy sufficient to trigger coverage under the All Risk Policy, including under the coverages for Business Interruption, Extra Expense, and various Additional Coverages.

15. WINDSOR also seeks a declaration that various orders issued by governmental officials on account of the presence of persons infected with and/or suffering from COVID-19 and the presence of SARS-CoV-2 in places of business and gathering prevented WINDSOR from accessing and using its insured properties to conduct its ordinary business activities and deprived WINDSOR of its property and the functionality of its property, thereby constituting "physical loss of or damage" to property within the meaning of that phrase as used in the All Risk Policy sufficient to trigger coverage in favor of WINDSOR under the All Risk Policy, including under the coverages for Business Interruption, Extra Expense, and various Additional Coverages.

16. WINDSOR also seeks monetary damages for HARTFORD's breach of its obligations under the All Risk Policy as declared by the Court and to pay WINDSOR's losses in full including, without limitation, loss mitigation expenses.

## **PARTIES**

17. Plaintiff, WINDSOR HOLDINGS, INC. is a Delaware corporation headquartered in Santa Fe Springs, California. Originally founded in 1937, WINDSOR has owned and operated women’s fashion retail stores under the trade name “Windsor” for over 80 years. As of March 2020, there were 223 Windsor retail locations operating across thirty-six states. WINDSOR employed approximately 1,000 full-time equivalent employees, and another approximately 270 individuals were employed at corporate and e-commerce locations. Windsor retail stores were located in thirty-six states, each location insured under the commercial property policy issued by Defendant (“Covered Property”). The All Risk Policy includes a list of the covered Windsor retail properties at Form PC 00 02 01 18 T, pp. 6-257.<sup>1</sup>

18. Defendant, HARTFORD FIRE INSURANCE COMPANY is a Connecticut corporation with its principal place of business at 1 Hartford Plaza, Hartford, Connecticut 06155, and is a citizen of Connecticut.

19. HARTFORD is, and at all relevant times herein has been, engaged in the business of selling property insurance policies, other insurance policies, and other products and services to, among others, companies like WINDSOR.

## **FACTUAL BACKGROUND**

### **THE COVID-19 GLOBAL PANDEMIC**

20. In December 2019, during the term of the All Risk Policy, an outbreak of illness known as COVID-19 caused by a novel coronavirus formally known as SARS-CoV-2 was first

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<sup>1</sup> Because the All Risk Policy includes a virus exclusion applicable to property in New York, Plaintiff is not seeking any relief from Defendant for its COVID-19-related losses sustained at Windsor retail stores located in that state.

identified in Wuhan, Hubei Province, China. In an unprecedented event that has not occurred in more than a century, a pandemic of global proportions then ensued, with the illness and virus quickly spreading to Europe and then to the United States.

21. In 2020, COVID-19 decimated the economies of the states where Plaintiff's restaurants are located, including Plaintiff's business operations.

22. COVID-19 is highly transmissible and spreads rapidly. For example, as of March 1, 2020 there were 87,137 confirmed COVID-19 cases across the globe.<sup>2</sup> That number increased to over 800,000 confirmed cases in April and over 3,000,000 cases in May.<sup>3</sup> According to the Centers for Disease Control and Prevention ("CDC"), to date, COVID-19 has infected more than seventy-eight million people and killed nearly 950,000 in the United States.

23. At the pandemic's peak, over 4,000 Americans were perishing per day from COVID-19.<sup>4</sup> A substantial number of Americans are still dying daily, with surges of cases and new and ever more contagious variants of the Coronavirus occurring throughout the U.S.<sup>5</sup> COVID-19 is now the third-leading cause of death in this country, surpassed only by heart disease and cancer.<sup>6</sup>

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2 See <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200301-sitrep-41-covid-19.pdf>.

3 See <https://graphics.reuters.com/CHINA-HEALTH-MAP/0100B59S39E/index.html>.

4 Eugene Garcia, Lisa Marie Pane and Thalia Beaty, *U.S. tops 4,000 daily deaths from coronavirus for 1st time*, AP NEWS, Jan. 8, 2021, <https://apnews.com/article/us-coronavirus-death-4000-daily-16c1f136921c7e98ec83289942322ee4> (last visited May 25, 2021).

5 [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailytrendsdeaths](https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendsdeaths) (last visited May 25, 2021); Johns Hopkins Medicine, *Coronavirus Second Wave? Why Cases Increase*, updated Nov. 17, 2020, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus> (last visited May 25, 2021).

6 Gary Stix & Youyou Zhou, *COVID-19 Is Now the Third Leading Cause of Death in the U.S.*, SCI. AM. (Oct. 8, 2020), <https://www.scientificamerican.com/article/covid-19-is-now-the-third-leading-cause-of-death-in-the-u-s1/> (last visited June 3, 2021).

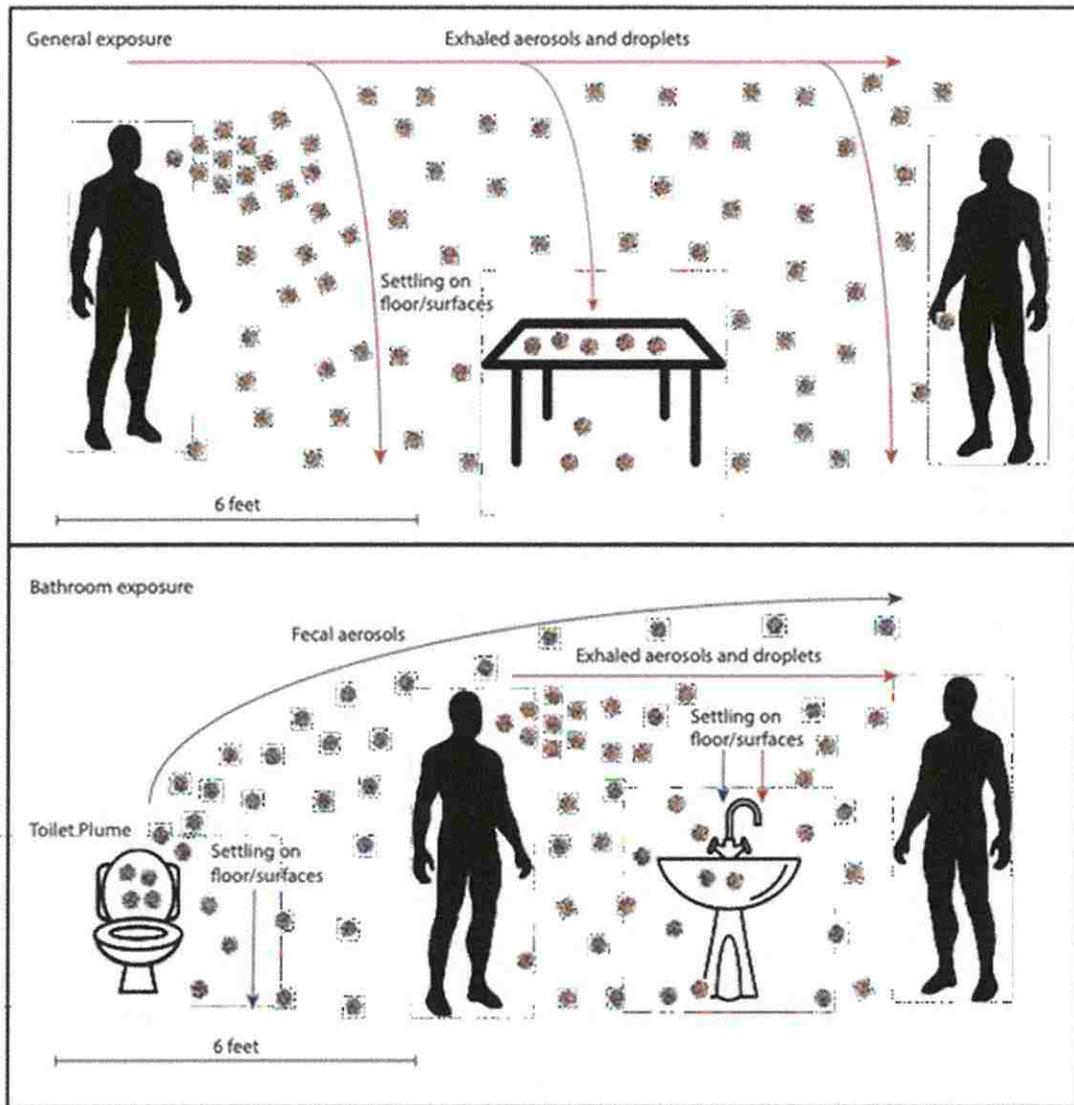
24. COVID-19 can be transmitted in several ways, including via human-to-human contact, airborne viral particles, particularly within enclosed properties like the insured locations, and touching surfaces or objects that have SARS-CoV-2 virions on them.

25. COVID-19 spreads easily from person to person and person to surface or object. Research has revealed that COVID-19 primarily is spread by small, physical droplets expelled from the nose or mouth when an infected person talks, yells, sings, coughs, or sneezes. A person who sneezes can release a cloud of SARS-CoV-2-containing droplets that can span as far as 23 to 27 feet. The CDC has stated that SARS-CoV-2 is most likely to spread when people are within six feet of each other, but has also recognized that SARS-CoV-2 may spread from an infected person who is more than six feet away or who has left a given space. Further, according to the CDC, longer exposure time likely increases exposure risk to COVID-19.

26. Infected people shed copious amounts of SARS-CoV-2 into the air and surfaces around them by several different mechanisms, as illustrated in the below figure.<sup>7</sup> SARS-CoV-2 damages the air and surfaces of a property.

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<sup>7</sup> WINDSOR already has engaged a virologist expert, Dr. Angela Rasmussen, Ph.D., who at the appropriate phase of this litigation will substantiate and elaborate on SARS-CoV-2 and the physical damage it causes to property. Dr. Rasmussen is an affiliate of the Georgetown Center for Global Health Science and Security and a research scientist III (Associate Professor equivalent) at the Vaccine and Infectious Disease Organization-International Vaccine Centre (VIDO-InterVac), as well as an adjunct professor in the department of biochemistry, microbiology, and immunology at the University of Saskatchewan.



27. SARS-CoV-2 is exhaled in respiratory particles through normal breathing, as well as coughing, speaking, singing, shouting, or exerted breathing, into the air by persons with COVID-19, including symptomatic and asymptomatic persons, where it persists in respiratory aerosols and droplets. Aerosols can remain suspended in the air for prolonged periods of time, where they can travel distances greater than 6 feet and eventually settle on surfaces to become fomites (infectious objects). Infectious aerosols can accumulate in enclosed spaces and present a significant infection risk in a manner that is dependent on concentration, not distance. Notably,

without adequate ventilation and air filtration, the transformation of indoor air by people in an enclosed space for a long period of time presents a substantial infection hazard that cannot be mitigated solely with masks and distancing, resulting in damage to the property.

28. In addition to damage to the property via transformation of the indoor air, SARS-CoV-2 can be deposited on surfaces either through direct contact with respiratory secretions or saliva of an infected person (transfer by hand or tissue) or by settling of particles from the air.

29. Inhalation of infectious aerosols is a major mode of SARS-CoV-2 transmission, providing a clear mechanism for SARS-CoV-2 in the air to damage property. Although fomite transmission is thought to be uncommon, it is still a viable mode of transmission along with the more dominant modes of transmission by direct contact and inhalation of infectious SARS-CoV-2, and risk of fomite transmission is dependent on prevalence in the community, virus shedding, environmental features such as heat or humidity, mitigation efforts such as masks, distancing, or ventilation, rate of deposition of virus particles onto surfaces, frequency of exposure to those surfaces, and achieving minimum infectious dose.

30. All three modes of transmission have been demonstrated in multiple experimental models. Exhaled respiratory particles and fecal bioaerosols present a significant transmission risk even after they have settled and are no longer suspended in the air, and disturbances can resuspend them in the air.

31. Thus, SARS-CoV-2 causes property damage by rendering property unsafe and unfit for habitation and use, by transforming both the shared air breathed by the property's occupants and the physical surfaces of the property itself.

32. The presence of infected people on the property ensure that infectious SARS-CoV-2 will inevitably be shed into the air and onto surfaces, damaging the property by rendering it unsafe for occupation and use without extreme mitigation measures.

33. Making matters worse, pre-symptomatic and asymptomatic individuals can also transmit COVID-19.<sup>8</sup> Over 40% of all infections occur from people without any symptoms.<sup>9</sup> Thus, even individuals who appear healthy and present no identifiable symptoms of the disease have and continue to spread the virus by breathing, speaking, or touching objects and surfaces. These activities deposit SARS-CoV-2 virions in the air and on surfaces rendering the air and surfaces changed from their previous condition. According to the World Health Organization (the “WHO”), the incubation period for COVID-19, i.e., the time between exposure to SARS-CoV-2 and symptom onset, can be up to 14 days. Other studies suggest that the period may be up to 21 days.

34. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have become carriers. In addition, studies from the CDC and others estimate that between 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic” carriers). Pre-symptomatic and asymptomatic carriers are likely unaware that they are spreading SARS-CoV-2 by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that the majority of transmission is

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<sup>8</sup> See <https://www.nature.com/articles/s41591-020-0869-5>.

<sup>9</sup> See *id.*; <https://www.nbcnews.com/health/healthnews/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>.

attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

35. Although these virus-containing droplets are very small, they are still physical, tangible objects that can travel and attach to other surfaces, “such as tables, doorknobs, and handrails,” and cause harm, loss, and damage, and physically alter the property and/or the integrity of the property. Viruses, themselves, are microscopic and made up of genetic material surrounded by a protein shell<sup>10</sup>, but they are capable of being observed and can attach themselves to other things they encounter. When droplets and viruses contact objects, they alter those objects, although not in way perceptible by the naked human eye. These virus-containing droplets physically exist ubiquitously in the communities and buildings in which Windsor Covered Properties operate.

36. According to the CDC and the WHO, a person may become infected by touching these surfaces or objects that have SARS-CoV-2 on them, and then touching his or her mouth, eyes, or nose. When an uninfected person touches a surface containing SARS-CoV-2, the uninfected person may transmit COVID-19 to another person, by touching and infecting a second surface, which is subsequently touched by that other person. The CDC has thus recommended certain physical and structural remedial measures for businesses to put into place in order to limit transmission and continued surface alteration.

37. Numerous scientific studies have reported that SARS-CoV-2 can survive and persist within the air and on surfaces and buildings after infected persons are present at a given location. Studies have found that SARS-CoV-2 remains active and dangerous in the air in

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<sup>10</sup> See <https://rockedu.rockefeller.edu/component/what-are-viruses-made-of/>.

properties and on common surfaces, including plastic, stainless steel, glass, wood, cloth, ceramics, rubber, and even money.<sup>11</sup> All of these materials are widely present at Plaintiff's Covered Property and subject to touch by the multitudes of people visiting Plaintiff's premises daily. A retail store reliant on customers to frequent the premises to touch, try on, and purchase clothing, shoes, and accessories, such as in Windsor Covered Properties, is particularly vulnerable to this danger.

38. Generally enclosed spaces where large numbers of people gather in close proximity for social and business purposes, including highly trafficked indoor premises like Windsor Covered Properties, are reportedly particularly susceptible to circumstances favorable to the spread of SARS-CoV-2 virions. An article published in April 2020 analyzed a case study of three families (families A, B, and C) who had eaten at an air-conditioned restaurant in Guangzhou, China.<sup>12</sup> One member of family A, patient A1, had recently traveled from Wuhan, China. On January 24, 2020, that family member ate at a restaurant with families A, B, and C. By February 5, 2020, 4 members of family A, 3 members of family B, and 2 members of family C had become ill with COVID-19. The only known source for those affected persons in families B and C was patient A1 at the restaurant. Moreover, a study detected SARS-CoV-2 inside the heating and ventilation ("HVAC") system connected to hospital rooms of sick patients. The study found SARS-CoV-2 in ceiling vent

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11 *See, e.g.*, [https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4659470/>; *See* <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>; <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html>.

12 *See* [https://wwwnc.cdc.gov/eid/article/26/7/20-0764\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article).

openings, vent exhaust filters, and ducts located as much as 56 meters (over 183 feet) from the rooms of the sick patients.<sup>13</sup>

39. Additionally, the CDC has stated that “there is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away” and infected people who entered the space shortly after the person with COVID-19 had left.<sup>14</sup> A published systematic review of airborne transmission of SARS-CoV-2 corroborated the CDC’s concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and physically reduce potential spread of SARS-CoV-2 in properties like the insured locations.<sup>15</sup>

40. The CDC has recommended “ventilation interventions” to help reduce exposure to the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such as with high-efficiency particulate air (“HEPA”) fan/filtration systems).<sup>16</sup> These and other remedial measures must be implemented, at high cost and extra expense, to reduce the amount of the SARS-CoV-2 present in a given space and to make property safe for its intended use. These remedial

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13 Karolina Nissen, et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, 10 NATURE SCI. REPORTS 19589 (Nov. 11, 2020), <https://doi.org/10.1038/s41598-020-76442-2> (last visited May 25, 2021).

14 CDC, *How COVID-19 Spreads* (last updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited May 25, 2021).

15 Zahra Noorimotlagh, et al., *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 ENV’T RSCH. 110612, 1-6 (Feb. 2021), [https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss\\_sd\\_all](https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all) (last visited May 25, 2021).

16 CDC, *Ventilation in Buildings* (last updated Feb. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2> (last visited May 25, 2021).

measures demonstrate direct physical loss of or damage to interior spaces like the insured locations even where no virus is present.

41. The proposition advanced by the insurance industry that an indoor space containing the infectious SARS-CoV-2 virions can be made safe and fit for its functional and intended use even though the virions remain in the air and circulating throughout indoor environments either affixed to property or in an aerosol capacity because the virions can be removed by routine surface cleaning is false.

42. A number of studies have also demonstrated that SARS-CoV-2 is “much more resilient to cleaning than other respiratory viruses so tested.”<sup>17</sup> The measures that must be taken to remove the Coronavirus from property are significant and far beyond ordinary or routine cleaning.

43. Efficacy of disinfecting agents for viruses is based on a number of factors, including the initial amount of virus present, contact time with the disinfecting agent, dilution, temperature, and pH, among many others. Detergent surfactants are not recommended as single agents, but rather in conjunction with complex disinfectant solutions.<sup>18</sup>

44. Additionally, it can be challenging to determine accurately the efficacy of disinfecting 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.<sup>19</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

45. In order to be effective, cleaning and disinfecting 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.<sup>20</sup> Studies of coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.<sup>21</sup>

46. When considering disinfection, the safety of products and procedures must be considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials, flammability, and potential for allergen exposure.<sup>22</sup>

47. Moreover, the aerosolized SARS-CoV-2 particles and virions cannot be eliminated by routine cleaning. Cleaning surfaces in an indoor space will not remove the aerosolized SARS-CoV-2 particles and virions from the air that people can inhale and develop COVID-19 – no more than cleaning friable asbestos particles that have landed on a surface will remove the friable asbestos particles suspended in the air that people can inhale.

48. Given the ubiquity and pervasiveness of SARS-CoV-2, no amount of cleaning or ventilation intervention will prevent a person infected and contagious with the virus from entering an indoor space like the covered properties and exhaling millions of additional particles and virions into the air, further: (a) filling the air with the aerosolized SARS-CoV-2 virions that can be inhaled, sometimes with deadly consequences; and (b) depositing SARS-CoV-2 particles and virions on surfaces, physically altering and transforming those surfaces into disease-transmitting fomites.

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<sup>20</sup> *Id.*

<sup>21</sup> Joon Young Song, et al., *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 May 25, 2021).

<sup>22</sup> *Id.*

49. Even as vaccines to protect against COVID-19 have recently become more available, distribution remains uneven in the United States. Effective control of the disease's spread since the pandemic began has necessarily relied on measures designed to reduce human-to-human and surface-to-human exposure. Similarly, the governmental orders closing or severely limiting use of non-essential business premises like Windsor Covered Properties are one of the most common modes of preventing transmission of the disease because, among other things, the orders reduce the size and frequency of social gatherings and the physical use of properties.

#### **COVID-19 AND SARS-CoV-2 CAUSE DIRECT PHYSICAL LOSS AND DAMAGE**

50. Virologists, scientists, and researchers all have confirmed that SARS-CoV-2 remains viable and is active on physical surfaces after deposited on property as in the air. The persistent presence of the deadly, viable SARS-CoV-2 on surfaces and in the air damages buildings and properties rendering them damaged, lost, unsafe, unfit, and uninhabitable for normal occupancy or use.

51. Specifically, the scientific community has confirmed that SARS-CoV-2 and COVID-19 alter the conditions of properties and buildings such that the premises are physically damaged and no longer safe and habitable for normal use. In this regard, SARS-CoV-2 and COVID-19 cause direct physical loss of or damage to buildings and properties (or both).

52. This direct physical loss of or damage to property (or both) results because SARS-CoV-2 has a corporeal existence and is contained in respiratory droplets. Once expelled from infected individuals, these droplets land on, attach, and adhere to surfaces and objects and physically changes these once safe surfaces to "fomites." Fomites are objects, previously safe to touch, that now serve as a vehicle and mechanism for transmissions of an infectious agent. Fomites

are the result of SARS-CoV-2 physically changing air and property, making it unsafe. This physical alteration and change makes physical contact with those previously safe indoor spaces and inert surfaces (*e.g.*, walls, handrails, desks) unsafe and potentially deadly. This represents a physical change in the affected enclosed space, surface or object, causing severe property loss and damage. Affected properties are unusable, dangerous, and unsafe until the COVID-19-related conditions are fully rectified.

53. Accordingly, COVID-19 and SARS-CoV-2 cause direct physical loss of or damage to property (or both) by, among other things, destroying, distorting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended functions, dangerous, and unsafe.

54. Fomites, droplets, droplet nuclei, and aerosols containing SARS-CoV-2 are not theoretical, informational, or incorporeal, but rather are dangerous physical objects that have a tangible existence. Their presence within an insured property causes direct physical loss of or damage to property (or both) by necessitating remedial measures that include without limitation repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, removal of fomites by certified technicians, and other measures. The presence of COVID-19 and SARS-CoV-2 within an insured property also causes direct physical loss of or damage to properties (or both) by transforming property from usable and safe into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

55. The presence of SARS-CoV-2 on property similarly creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the property by touching a doorknob, table,

or handrail, will carry those droplets on their hands and deposit them elsewhere in the property, causing additional damage and loss. Property impacted by SARS-CoV-2 is just as dangerous as property impacted by fire or fumes or vapors (if not more), and all such damaged property is equally incapable of producing revenues. Like the impact of fire, smoke, or noxious fumes, the impact of potentially fatal COVID-19 constitutes direct physical loss of or damage to property (or both).

56. The direct physical loss of or direct physical damage to property (or both) described in this section has occurred at WINDSOR's insured locations, leading to losses covered by the All Risk Policy. WINDSOR had to take action to secure and preserve its properties and its business operations. To the extent that the All Risk Policy requires structural alteration to establish "physical damage," which WINDSOR disputes, such alteration has occurred and rendered the insured properties incapable of performing their essential functions. WINDSOR's losses are ongoing and are likely to increase substantially given the length and ultimate severity of the outbreak, repeated closures of Windsor Covered Properties, and the government response. Moreover, to the extent that the All Risk Policy requires a permanent loss of property to establish "physical loss," which WINDSOR disputes, such permanent loss has occurred.

### **REACTIONS AT THE NATIONAL, STATE, AND LOCAL LEVELS**

57. Federal and state governments tried to slow the spread of COVID-19 and protect people, property, and businesses. Unprecedented directives were issued, requiring certain businesses to close and requiring residents to remain in their homes unless performing "essential" activities. Examples of such orders in the states in which Windsor Covered Properties were located is set forth below.

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

59. Beginning in early March 2020, U.S. state and local governments issued orders suspending or severely curtailing the operations of all “non-essential” or “high risk” businesses in response to the virus and/or risks created by virus. This included properties such as those owned and operated by WINDSOR.

60. On or about March 2020, states, counties, and cities where WINDSOR’s covered properties are located declared states of emergency to help prepare for broader spread of COVID-19.

61. On or about March 2020, states, counties, and cities where WINDSOR’s covered properties are located issued orders requiring businesses to operate their properties and conduct their operations on those premises so as to reduce their customer occupancy by a significant percentage.

62. In Maryland, Governor Larry Hogan issued an Order on March 12, 2020, which prohibited “large gatherings and events” and closed “senior centers.” On March 16, Governor Hogan amended the March 12 Order to include the closure of “bars, restaurants, fitness centers and theaters,” which included Windsor Covered Properties in Maryland.

63. In Order 20-03-19-01 on March 16, 2020, Governor Hogan indicated that the government must control occupancy and use of buildings and premises for safety reasons. In that Order, all restaurants, bars, and “other similar establishments that sell food or beverages for consumption on premises” were closed. Only takeout and delivery were allowed. In Order 20-03-23-01, Governor Hogan expanded the closures to include “non-essential businesses.” That is,

buildings that were not a part of the critical infrastructure sectors identified by the US Department of Homeland Security Cybersecurity and Infrastructure Security Agency (“CISA”).

64. On March 30, 2020, Governor Hogan issued Order 20-03-30-01 stating the basis for continued enforcement of the government shutdown orders and announcing that “all persons” living in Maryland were ordered to stay at home, with the exception of the participation in “Essential Activities” or employment with businesses that fall within the CISA categories above. Orders suspending such use of property and business continued to be executed for several months, eventually allowing modified re-openings of businesses with reduced capacities. *See, e.g.*, Maryland Governor Order 20-05-13-01.

65. Virginia enacted orders similar to Maryland which closed restaurants and bars, limited gatherings and identified both essential and non-essential businesses. On March 24, 2020, Executive Order 53 closed all K-12 schools, and noted that all brick and mortar retail businesses which were “non-essential” could no longer operate with more than 10 patrons at any one time. Further, business operations offering non-retail services, like office buildings, were encouraged to use “teleworking.” Executive Order 55 went further, as a stay-at-home order was put in place. Such restrictions were enforced over the next several months.

66. On or about March 1, 2020, the State of Florida Department of Health issued a Declaration of Public Health Emergency due to COVID-19.

67. Florida Governor Ron DeSantis issued Executive Order No. 20-83 dated March 24, 2020, directing the State Surgeon General and State Health Officer to issue a public health advisory against all social or recreational gatherings of ten or more people.

68. On or about April 1, 2020, Governor Ron DeSantis issued Executive Order No. 20-91, ordering all persons in Florida to limit their movements outside of their home to only those necessary to obtain, provide or conduct essential activities.

69. On March 14, 2020, Georgia Governor Brian Kemp declared a public health state of emergency due to COVID-19.

70. On April 2, 2020, Governor Kemp ordered all persons in Georgia to stay at home except when engaging in certain essential activities, prohibited the operation of businesses that were not life sustaining, and prohibited gatherings of ten or more people.

71. On March 20, 2020, Illinois Governor Pritzker issued a stay-at-home order requiring closure of non-essential activities due to COVID-19.

72. On March 6, 2020, the Governor of the State of Indiana, Eric Holcomb, declared a state of emergency due to COVID-19.

73. On March 23, 2020, Indiana Governor Holcomb ordered all individuals in Indiana to stay at home unless undertaking essential businesses or operations.

74. On March 17, 2020, Kentucky Governor Andrew Beshear and the Kentucky Cabinet for Health and Family Services, Department of Public Health, issued an order closing “all public-facing businesses that encourage public congregation” and an order dated March 19, 2020 prohibiting all mass gatherings.

75. On March 10, 2020, Charles D. Baker, the Governor of the Commonwealth of Massachusetts, issued Executive Order No. 591 and declared a state of emergency in Massachusetts to help the state prepare for broader spread of COVID-19.

76. On March 15, 2020, Governor Baker issued an emergency order limiting gatherings to 25 people throughout the state.

77. On March 23, 2020, Governor Baker issued an order temporarily closing all business and organizations that do not provide COVID-19 essential services and prohibited gatherings of more than ten (10) people.

78. On March 31, 2020, April 28, 2020 and May 15, 2020, Governor Baker entered Orders No. 21, 30 and 32, respectively, extending the closure of non-essential businesses in Massachusetts.

79. On March 10, 2020, the Governor of Michigan, Gretchen Whitmer, declared a state of emergency in Michigan due to COVID-19.

80. On March 23, 2020, Governor Whitmer ordered residents of Michigan to stay at home unless engaging in essential activities.

81. On March 27, 2020, North Carolina Governor Roy Cooper issued Executive Order No. 121, ordering all individuals currently in the State of North Carolina to stay at home, their place of residence, or current place of abode except for certain essential activities and prohibiting the operation of businesses that were not life sustaining.

82. On March 9, 2020, the Governor of Ohio, Mike DeWine, declared a state of emergency due to COVID-19.

83. On March 22, 2020, the Ohio Department of Health issued a Director's Order, ordering all individuals within the State of Ohio to stay at home except for certain essential activities and prohibiting gatherings of more than ten people and operation of businesses that are not essential.

84. On March 19, 2020, Pennsylvania Governor Tom Wolf issued an executive order prohibiting all operation of businesses that are not life sustaining and declared that all life

sustaining businesses that remain open must follow social distancing practices and other mitigation measures.

85. On March 23, 2020, Governor Wolf and Secretary of Health Dr. Rachel Levine issued “Stay at Home” orders to Allegheny, Bucks, Chester, Delaware, Monroe, Montgomery, and Philadelphia counties to help mitigate the spread of COVID-19.

86. On April 1, 2020, Governor Wolf and Secretary of Health Dr. Rachel Levine announced that all 67 of Pennsylvania’s counties would be under the “Stay at Home” order.

87. On April 5, 2020, the Secretary of the Department of Health issued an Order requiring building safety measures, which mandated these buildings, “clean, and disinfect high-touch areas routinely in accordance to CDC guidelines, in spaces that are accessible to customers, tenants, and other individuals.”

88. On March 9, 2020, the Governor of Rhode Island issued declared a disaster emergency due to COVID-19.

89. On March 28, 2020, Governor Raimondo issued Executive Order No. 20-13 requiring people to stay and work at home, to socially distance when necessary to venture out, limiting gatherings to no more than five people, and closing in-person dining at restaurants.

90. On March 13, 2020, the Governor of South Carolina, Henry McMaster, declared a state of emergency due to COVID-19.

91. On March 23, 2020, Governor McMaster prohibited gatherings of more than three people.

92. On March 15, 2020, in Tennessee, the Board of Health for Nashville and Davidson County adopted a Declaration of Public Health Emergency.

93. On March 23, 2020, the Metropolitan Chief Medical Director of Health ordered citizens of Nashville and Davidson County to shelter at home and prohibited gatherings of more than ten people.

94. On March 30, 2020, Tennessee Governor Bill Lee issued Executive Order No. 22, which ordered all persons in Tennessee to stay at home except when engaging in certain essential activities and prohibited the operation of businesses that were not life sustaining.

95. In Alabama, Governor Kay Ivey issued a Proclamation on March 13, 2020, declaring a state public health emergency exists in the State of Alabama. On March 19, 2020, State Health Officer Scott Harris issued an Order suspending public gatherings. This order was amended and expanded on March 202, 2020 to include the closure of “all restaurants, bars, breweries, or similar establishments” to on-premises consumption of food and drink. A Stay-at-Home Order was issued on April 3, 2020, limiting residents to “essential” activities.

96. On March 11, 2020, Asa Hutchinson, the Governor of Arkansas issued an Executive Order declaring an Emergency and Ordering the Arkansas Department of Health to take action to prevent the spread of COVID-19. On March 26, 2020, Governor Hutchinson issued an Amended Order limiting public gatherings to groups of ten. The restrictions were further limited by way of Executive Order issued on April 4, 2020 stating that “Bars, Clubs, and Restaurants shall remain closed for dine-in purposes and remain open for takeaway and delivery only. . . .”

97. Governor Douglas A. Ducey of the State of Arizona, declared a Public Health Emergency effective March 11, 2020. Governor Ducey issued a further Order on March 19, 2020 limiting restaurants to “close access to on-site dining until further notice” and allowing servicing via pick-up, delivery, and drive-thru. On March 30, he later issued an Executive Order entitled

“Stay Home, Stay Healthy, Stay Connected”, limiting Arizona residents’ activities to essential activities only.

98. On March 4, 2020, California Governor Gavin Newsom declared a state of emergency to help the state prepare for broader spread of COVID-19. On March 12, 2020, Governor Newsom announced that California public health officials issued an updated policy on gatherings to protect public health and slow the spread of COVID-19, including postponing or canceling public gatherings across the state and limiting nonessential gatherings. Further on March 15, 2020, issued a statewide order requiring restaurants to reduce their occupancy by fifty percent to create space between diners. On March 19, 2020, a statewide “Stay At Home” Order, requiring all California residents to stay home or at their place of residence.

99. In Colorado, Governor Jared Polis issued an Executive Order on March 11, 2020, declaring a Disaster Emergency in the wake of COVID-19’s presence in Colorado. On March 16, 2020 and then updated on March 19, 2020 the Colorado Department of Public Health & Environment provided notice and guidance for citizens regarding emergency measures implemented in “bars, restaurants . . . in an effort to protect and preserve the public health”, including closing to on-premises consumption and encouraging walk-up, drive-through and delivery services. On April 11, 2020, Governor Polis issued an Executive Order ordering Coloradans to stay home and avoid participating in non-essential activities.

100. On March 10, 2020, Governor Ned Lamont of Connecticut issued a Declaration of Public Health and Civil Preparedness Emergencies in relation to COVID-19. On March 16, 2020, Govern Lamont stated that all bars and restaurants will only be available for takeout services. The Governor further announced that all gatherings of more than 50 people are banned. Governor Lamont issued a “Stay at Home” order on March 20, 2020.

101. Delaware Governor John C. Carney issued an order declaring a State of Emergency on March 12, 2020. On March, 16, 2020, the order was modified to stat that “all restaurants, bars and taverns shall only provide food and beverage service through take-out, drive through and off premises delivery. No indoor or outdoor seating for food or beverage service . . . is permitted.” On March 22, 2020 Governor Carney issued a Stay at Home order requiring all residents of Delaware to shelter in place and avoid non-essential activities.

102. 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.

103. On March 16, 2020, Governor Cuomo issued Emergency Executive Order No. 100, declaring a disaster emergency for the entire State of New York, stating in relevant part that the Order was given “because of the propensity of the virus to spread person to person and also because the *virus physically is causing property loss and damage.*” (emphasis added).

104. Likewise, on March 16, 2020, the Mayor of New York City, Bill de Blasio, issued Emergency Executive Order 100, in part “because the virus physically is causing property loss and damage” and requiring that all restaurants, bars and cafes close until further notice.

105. On March 20, 2020, Governor Cuomo issued Executive Order 202.8, which required non-essential businesses to close in-office personnel functions effective March 22, 2020 at 8:00 P.M. Also, on March 20, 2020, Governor Cuomo issued the “New York State on PAUSE” order, which was a 10-point policy: (i) requiring all non-essential businesses to close, effective March 22, 2020 at 8:00 P.M.; (ii) prohibiting non-essential gatherings of any size; and (iii) requiring social distancing when leaving the home to obtain essential services or items. This included restaurants, bars, and caterers, among other “non-essential” businesses. These orders required HK to close amenities in its hotels including bars, restaurants, conference and meeting

spaces, and gyms, and to regulate strictly the use of common areas. New York's stay-at-home order was effective on March 22, 2020 and was in place until May 15, 2020 per Executive Order 202.31.

106. In Hawai'i, Governor David Ige issued a Proclamation declaring an Emergency Period on March 4, 2020. That proclamation was updated on March 23, 2020 ordering the state to stay at home and prohibiting gatherings larger than 10 people. The order stated that restaurants could only provide food for consumption off-premises. On March 22, 2020, Mayor Kirk Caldwell issued an order for the City and County of Honolulu for residents to stay at home and work from home if possible, avoiding non-essential activities.

107. On March 12, 2020, Kansas Governor Laura Kelly proclaimed a State of Disaster Emergency. Then on March 28, 2020, Governor Kelly issued a stay-at-home order.

108. On March 13, 2020, Minnesota Governor Tim Walz issued an Emergency Executive Order declaring a State of Emergency. On March 16, 2020, Governor Walz further ordered that bars, restaurants, and places of public accommodation be temporarily closed. These types of businesses could remain open to utilize delivery, window, and walk-up services, so long as they use precautions to mitigate the transmission of COVID-19, including social distancing. Governor Walz issued Emergency Executive Order 20-20, requiring residents to stay at home and work at home if possible, on March 26, 2020.

109. In Missouri, the Director of the Department of Health and Senior Services, at the instruction of Governor Mike Parson, issue an Order imposing statewide limitations on public gatherings on March 21, 2020. This order included prohibiting dine-in food service at restaurants. Between March 23 and April 2, 2020, various regions in Missouri issued stay-at-home orders before Governor Parson issued a statewide stay-at-home order effective April 6, 2020.

110. On March 25, 2020, Govern Tate Reeves of Mississippi signed an Executive Order setting procedures in place to slow the spread of COVID-19. This included restricting dine-in services at restaurants and bars (unless the facility is able to reduce capacity to allow no more than 10 people to be gathered in a single space). Drive-thru, carryout, and delivery was “highly encouraged.” Further, on April 2, 2020, Govern Reeves issued Executive Order 1466, mandating a shelter-in-place statewide, prohibiting non-essential business operations.

111. Governor Pete Ricketts of Nebraska declared a State of Emergency regarding COVID-19 on March 13, 2020. On March 17, 2020, Governor Ricketts issued an Executive Order and the Nebraska Department of Health and Human Services issued a Directed Health Measure “DHM” requiring restaurants and bars in these areas to close their dining areas immediately and move to takeout service, delivery, and/or curbside service only. For bars and restaurants, the orders applied to patrons only, not to workers. By April 5, 2020, all areas of Nebraska were subject to a statewide DHM, limiting residents to participate in non-essential activities and businesses.

112. In New Hampshire, Governor Chris Sununu declared a State of Emergency regarding COVID-19 on March 13, 2020. Emergency Order 2, effective March 16, 2020, restricted restaurants to carry-out, delivery, pick-up, and drive-through methods only. Governor Sununu issued a Stay at Home Order on March 27, 2020, limiting residents to essential businesses and activities.

113. On March 9, 2020, New Jersey Governor Philip D. Murphy signed Executive Order No. 103, declaring a State of Emergency because of COVID-19. On March 16, 2020, Executive Order No. 104 was issued, permitting “[a]ll restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges . . . to operate their normal business hours, but are limited to offering only

food delivery and/or take-out services.” New Jersey’s Stay-at-Home Order was implemented on March 21, 2020 with the signing of Executive Order No. 107.

114. On March 11, 2020, Governor Michelle Lujan Grisham declared a State of Emergency for New Mexico. The New Mexico Department of Health issued a Public Health Order on March 23, 2020, prohibiting mass gatherings and limiting restaurants and breweries to carry-out and delivery services only. These orders were updated several times throughout March and early April, including an extension of the initial Public Health Order of the New Mexico Department of Health, limiting residents to non-essential activities.

115. Governor Steve Sisolak issued a Declaration of Emergency in the State of Nevada on March 12, 2020. Further, on March 17, 2020, Governor Sisolak directed all Nevadans to stay home and for all “non-essential businesses” to close to the public for 30 days. Restaurants were limited to drive-thru, take-out, or delivery only.

116. In Oklahoma, Governor Kevin Stitt signed Executive Order 2020-07, declaring a State of Emergency with regards to COVID-19. The fourth amended iteration of the Executive Order, signed on March 24, 2020, provides that restaurants and bars may provide pick-up, curbside, and delivery services only.

117. On March 8, 2020, Governor Kate Brown of Oregon declared a State of Emergency regarding COVID-19. Further, on March 16, 2020, Governor Brown announced an order to enhance social distancing measures, including restricting restaurants to carry-out only. On March 23, 2020, Governor Brown issued Executive Order No. 20-12, directing residents to stay at home to the maximum extent possible.

118. On March 25, 2020 South Dakota Governor Kristi Noem signed Executive Order 2020-08, mandating that any business that promotes public gatherings to close or modify, such as

implementing takeout, delivery, drive-through, curbside services, off-site services, or other models which do not involve individuals gathering in an enclosed place. Executive Order 2020-08 was rescinded on April 7, 2020, by Executive Order 2020-12, which placed further restrictions on public gatherings, schools, and businesses, suspending or modifying business practices which involve ten or more people gathering in an enclosed space where social distancing of at least six feet is not possible.

119. On March 19, 2020, Governor Gregg Abbot of Texas issued Executive Order No. GA-08, restricting certain activities and “highly encouraging” the use of drive-thru, pickup, or delivery options for restaurants. By March 30, 2020, several counties and cities in Texas had issued stay-at-home orders and on March 31, 2020, Governor Abbott issued Executive Order No. 14, which he clarified at an April 2 press conference indeed was an order requiring all Texans to stay at home excepting essential activities.

120. In Washington, Governor Jay Inslee declared a State of Emergency on February 29, 2020, issuing a proclamation directing state agencies and departments to utilize state resources to do everything possible to assist affected communities. On March 16, 2020, Governor Inslee issued an emergency proclamation that limited large gatherings and closed all dine-in restaurants, bars, and entertainment and recreational facilities until at least March 31. On March 23, 2020, the governor issued a proclamation ordering individuals to stay at home unless pursuing essential activities.

121. Wisconsin Governor Tony Evers issued Emergency Order #5, declaring a health emergency in response to the coronavirus on March 17, 2020. In this order, all bars and restaurants were closed, but allowed to provide delivery and take out options. Further, on March 24, 2020, Governor Evers signed Executive Order #12, directing all citizens of Wisconsin to stay at home or

at their place of residence, except for specific outlined exceptions. All non-essential businesses and operations are required to stop.

122. Because of the danger posed by COVID-19 and its spread as described above, WINDSOR also determined that closure was necessary to slow the spread of COVID-19 as a result of infected persons on the property or from those who would enter the property. More specifically, WINDSOR identified some property locations where communicable disease was confirmed to be present on the premises, and numerous people who had been present on insured properties with confirmed cases or who had self-quarantined.

123. Other states, and county and city officials have issued similar orders throughout the United States referencing physical property loss or damage or imminent threatened physical property loss or damage from the virus.

124. A motivating factor behind these orders was to protect persons and property from direct physical loss of or direct physical damage to property (or both) caused by SARS-CoV-2 and COVID-19.

125. Given the number of infected individuals, it is a virtual certainty that infected individuals, both symptomatic and asymptomatic, were present in Windsor Covered Properties on a daily basis even prior to the issuance of the governmental orders and would have been present daily in Windsor Covered Properties in an ever-increasing number in the absence of the issuance of those orders.

126. Exhalation by these infected individuals when coughing, sneezing, talking, laughing, and even simply breathing created respiratory droplets and aerosolized particles containing the SARS-CoV-2 virus that were inhaled into the noses, mouths, and lungs of other

individuals and deposited on surfaces within Windsor Covered Properties where later contact by uninfected individuals undoubtedly resulted in transmission of SARS-CoV-2 to those individuals.

127. Each visit by an individual, whether symptomatic or asymptomatic, infected with SARS-CoV-2 resulted in either the actual or an imminent threat of deposition and transmission of the SARS-CoV-2 into the air and onto the surfaces within Windsor Covered Properties.

128. For the reasons described above, COVID-19 and the governmental orders caused a total or partial prohibition of access to Windsor Covered Properties as well as partial or total interruption of WINDSOR's business operations. The direct physical loss of or direct physical damage to property (or both) caused by COVID-19 and/or the orders and the further direct physical loss of or direct physical damage to property (or both) threatened by COVID-19 have combined to devastate WINDSOR's business operations.

### **WINDSOR SUFFERED AND CONTINUES TO SUFFER COVERED LOSSES**

129. The SARS-CoV-2 virus is a covered cause of loss, because it is a risk of physical loss or damage, and not otherwise excluded under the All Risk Policy.

130. The issuance of the above-referenced closure orders by state, county, and city officials is a covered cause of loss because it is a risk of direct physical loss or direct physical damage, and not otherwise excluded under the All Risk Policy.

131. Whether the SARS-CoV-2 virus and/or the above-referenced orders caused WINDSOR's losses and expenses, and in what sequence in each covered location, presents a factual question that is inappropriate for resolution at the motion to dismiss stage.

132. The SARS-CoV-2 virus and/or the above-referenced orders issued by state, county, and city officials have directly impacted Windsor Covered Properties, which do not qualify as

essential businesses. The damage and far-reaching restrictions and prohibitions on the activities that can be conducted at Windsor Covered Properties, and restoration efforts necessary to rid the premises of COVID-19, have been catastrophic for Windsor Covered Properties – interrupting their operations so pervasively as to effectively force them to close, thereby enduring a prolonged curtailment of earnings.

133. WINDSOR's operations were suspended to allow WINDSOR to repair the insured properties, including restoration efforts to rid the premises of and attempt to protect against further physical loss of and/or damage SARS-CoV-2. Until the premises could be repaired and restored and resulting government orders lifted, WINDSOR suffered a complete and permanent loss of use of its business premises and they were unfit for use for their intended purposes.

134. Ultimately, all POLICYHOLDER premises were closed on various dates in March, 2020, and remained closed through much of 2020 until WINDSOR began to open on a gradual basis through October 31, 2020. As of the end of October 2020, all Windsor Covered Properties had been reopened but were forced to operate at reduced hours and capacity. Since the reopening, some Windsor Covered Properties were again forced to close due to COVID-19.

135. As a result of the physical loss or damage and threatened or actual communicable disease, WINDSOR acted to mitigate the effects on its business in numerous ways.

136. Prior to business closures in March 2020, Windsor Covered Properties were frequented by thousands of individuals a day, including patrons, employees, vendors, and other individuals carrying SARS-CoV-2 and COVID-19. In addition to breathing SARS-CoV-2 and COVID-19 into the air, these individuals touched countless surfaces in Windsor Covered Properties, including sales counters, dressing rooms, stock rooms, bathrooms, tables, chairs, doors, tables, surfaces on the floors, and other common areas on the premises.

137. These individuals that frequent Windsor Covered Properties daily, ranging from patrons, to employees, to vendors, are carrying or otherwise exposed to SARS-CoV-2 and COVID-19 and would have been in contact with each other, as well as sales counters, dressing rooms, stock rooms, bathrooms, tables, chairs, doors, tables, surfaces on the floors, and other common areas on the premises.

138. Thus, WINDSOR has been forced to pay sanitization costs, covered under the All Risk Policy, to repair the physical damage caused by COVID-19. It became clear that WINDSOR's Covered Properties were (and continue to be) inoperable and unusable without the alterations necessary to protect the safety of its patrons, vendors, and employees. These sanitization costs also were necessary to comply with the emergency directives, laws, and/or ordinances promulgated by governmental authorities and the CDC, among others. None of these costs would have been incurred but for the impacts of the COVID-19 pandemic and the resulting closure orders.

139. In addition to sanitization costs, WINDSOR has incurred significant losses and extra expense in nearly all aspects of its business. Again, none of these expenses would have been incurred but for the impacts of the COVID-19 pandemic and the resulting closure orders.

140. Among other things, WINDSOR announced mitigation measures for in-store shoppers once certain states began to allow reopening of businesses and in-person shopping, posting on their website information regarding proactive measures being taken which led to an uptick in extra expenses related to PPE.

141. The above-referenced orders, issued as a direct result of the physical damage described above, have operated to prohibit access to Windsor Covered Properties and the immediate surrounding businesses, properties, and areas.

142. The SARS-CoV-2 virus and/or the above-referenced closure orders have also caused WINDSOR to suffer interruption of business operations resulting from WINDSOR taking reasonable and necessary action for the temporary protection and preservation of its Covered Properties, to prevent immediately impending insured physical loss or damage to its insured locations.

143. The SARS-CoV-2 virus and/or the above-referenced closure orders have further caused WINDSOR to suffer loss of earnings directly resulting from physical loss or damage to property at the premises of WINDSOR's suppliers, customers, and/or contract service providers.

#### **THE INSURANCE COVERAGE PURCHASED BY WINDSOR**

144. To protect itself in the event of property loss and business interruption, WINDSOR purchased an "all-risk" Special Multi-Flex Business Insurance Policy, number 22 UUN BH9389 effective for the period of April 30, 2020 to April 30, 2021, from HARTFORD. See **Exhibit A**.

145. Windsor Fashion Holdings, LLC is a Named Insured under the All Risk Policy.

146. In combination with the investigation HARTFORD performed (or had the opportunity to perform) into the risks associated with WINDSOR's operations, HARTFORD has (or should have had) unique insight into the risks faced by WINDSOR.

147. The All Risk Policy insures against all risks of loss of or damage to property and ensuing business interruption and extra expense, unless specifically excluded or limited in the All Risk Policy.

148. The All Risk Policy provides a limit of liability of \$47,982,043 in any one occurrence for Business Income and Extra Expense, with various sublimits and time limits. Claims are subject to a deductible, which is far exceeded by WINDSOR's losses claimed here.

149. The Business Income and Extra Expense coverages in the All Risk Policy are triggered by “direct physical loss of or direct physical damage to ... Covered Property . . . caused by or resulting from a Covered Cause of Loss.” *Id.*, Form PC 00 20 01 11 at 1 of 4. The word “or” separates the terms “loss of” and “damage to” to signify that the terms should be interpreted in the disjunctive.

150. Coverage may be triggered by “direct physical loss of” property.

151. Coverage may be triggered by “direct physical damage to” property.

152. The Policy defines a “Covered Cause of Loss” as “direct physical loss or direct physical damage that occurs during the Policy Period and in the Coverage Territory unless the loss or damage is excluded in the GENERAL EXCLUSIONS or the SPECIFIC EXCLUSIONS....” *Id.*, Form PC 10 10 01 11 at p. 1 of 8.

153. The Policy does not define the word “occurs.”

154. The Policy does not define the phrase “direct physical loss of or direct physical damage to.”

155. The Policy covers “the actual loss of Business Income you sustain and the actual, necessary and reasonable Extra Expense you incur due to the necessary interruption of your business operations during the Period of Restoration due to direct physical loss of or direct physical damage caused by or resulting from a Covered Cause of Loss to property at ‘Scheduled Premises’ where a limit of insurance is shown for Special Business Income.” *Id.*

156. The Policy defines “interruption” to mean “the slowdown or cessation of any part of your business activities or the partial or total untenability of the premises.” *Id.* at p. 2 of 4.

157. The Policy contains additional coverage for loss of Business Income and Extra Expense caused by action of a civil authority. *Id.*, Form PC 26 02 01 11, at p. 2 of 8.

158. The Policy contains additional coverage for loss of Business Income and Extra Expense caused by or resulting from a “Covered Cause of Loss to Dependent Properties.” Id. at 3 of 8.

159. The Policy defines “Dependent Properties,” in part, as “property at premises owned and operated by others that you depend on to ... [d]eliver materials or services to you, or to others on your account.” Id.

160. The Policy also contains additional coverage for Extended Income after operations are resumed. Id. at 4 of 8.

161. Except for property located in New York,<sup>23</sup> the All Risk Policy does not exclude or limit losses caused by viruses or by pandemics. In 2006, the Insurance Services Office (“ISO”), an insurance industry organization that develops standardized insurance policy programs and forms for use by insurers, including HARTFORD, drafted a form exclusion for losses “due to disease-causing agents such as viruses and bacteria.”

162. In presenting the exclusion to state insurance regulators around the country, ISO explained:

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. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. **Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria**, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. (Emphasis added.)

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<sup>23</sup> Policy Form PC 35 31 10 14.

163. HARTFORD decided to include a virus exclusion for WINDSOR Covered Property located in New York, but it did not include this exclusion in the All Risk Policy for any other Covered Property. In other words, HARTFORD specifically intended to provide the broad pandemic coverage, which WINDSOR seeks here, for any Covered Property outside of New York.

#### **WINDSOR'S CLAIM AND HARTFORD'S WRONGFUL DENIAL OF COVERAGE**

164. On or about March 16, 2020, WINDSOR submitted timely notice of its claim to HARTFORD.

165. On or about May 19, 2020, HARTFORD sent a letter to WINDSOR acknowledging that WINDSOR suffered a loss of business income due to closure of its stores to prevent the spread of COVID-19. HARTFORD conveyed, however, that it had reviewed WINDSOR's loss, and had also "determined that since COVID-19 did not cause property damage at your place of business or in the immediate area, [your] business income loss is not covered. Even if the virus did cause damage, it is excluded from the policy, and the limited coverage available for losses caused by virus does not apply to the facts of your loss."

#### **COUNT ONE: DECLARATORY JUDGMENT**

166. WINDSOR incorporates by reference each and every allegation set forth above.

167. Plaintiff seeks relief pursuant to Section 52-59 of the Connecticut General Statutes and section 17-55 of the Connecticut Practice Book because Plaintiff has a legal and equitable interest by reason of danger or loss of uncertainty as to the Plaintiff's rights or other jural relations, and there is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties.

168. WINDSOR asserts that HARTFORD is obligated under the All Risk Policy to pay up to the Limit of Liability for all loss and expenses incurred by WINDSOR including without limitation under coverages for Business Income, Extra Expense, Civil Authority, Dependent Properties, Extended Income coverage.

169. HARTFORD failed to accept, acknowledge or provide coverage for or make any payment with respect to WINDSOR's loss and expenses.

170. On information and belief, HARTFORD consistently and repeatedly has denied coverage for COVID-19 insurance claims similar to those being asserted by WINDSOR herein.

171. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties in that Plaintiff contends and Defendant disputes and denies that the All Risk Policy provides coverage to Plaintiff for any current and future lost business income, subject to the limit of liability, for the temporary suspension of Plaintiff's operations.

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

## **COUNT TWO: BREACH OF CONTRACT**

173. Plaintiff incorporates by reference each and every allegation set forth above.

174. As set forth above, in return for premiums paid, HARTFORD sold WINDSOR the All Risk Policy, in which HARTFORD promised to pay for covered losses and expenses up to the applicable Limit of Liability for an Occurrence.

175. WINDSOR promptly advised HARTFORD it sustained and is sustaining losses and expenses covered by the All Risk Policy.

176. HARTFORD has failed to accept, acknowledge or provide coverage for or make any payment with respect to WINDSOR's losses and expenses.

177. In its public filings in legal proceedings across the country, HARTFORD repeatedly have adopted positions contrary to those on which WINDSOR bases its claim. On information and belief, HARTFORD has denied coverage for COVID-19 insurance claims similar to those being asserted by WINDSOR herein.

178. HARTFORD's failure to provide coverage for WINDSOR's losses and expenses constitutes a breach of the All Risk Policy.

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

**WHEREFORE**, the Plaintiff WINDSOR seeks judgment as follows:

- 1) On Count One, judgment declaring that there has been and continues to be direct physical loss of or direct physical damage to WINDSOR's Covered Property;
- 2) WINDSOR seeks a further declaration by the Court that HARTFORD is obligated under the All Risk Policy to pay WINDSOR for all loss and expenses arising out of SARS-CoV-2, the COVID-19 pandemic, and consequential orders of Civil Authority;
- 3) On Count Two, WINDSOR requests all actual and compensatory monetary damages in an amount to be proven at trial and all relief available at law for HARTFORD's breach of contract in denying coverage to WINDSOR under the All Risk Policy, and failing to pay any losses or expenses under the All Risk Policy, in relation to any Covered Property, including costs, expenses, pre-judgment and post-judgment interest, and reasonable attorneys' fees in this action; and
- 4) Any such other and further relief as the Court deems proper, including pre-judgment and post-judgment interest and attorneys' fees and costs to the fullest extent permitted by law.

**THE PLAINTIFF  
WINDSOR FASHIONS HOLDINGS, LLC**

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RETURN DATE: APRIL 12, 2022 : SUPERIOR COURT  
WINDSOR FASHIONS HOLDINGS, LLC : J.D. OF HARTFORD  
vs. : AT HARTFORD  
HARTFORD FIRE INSURANCE COMPANY : MARCH 14, 2022

**STATEMENT OF AMOUNT IN DEMAND**

Declaratory relief in addition to monetary damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of interest and costs are sought herein.

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**PRACTICE BOOK SECTION 17-56 CERTIFICATE**

All persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interest of the plaintiff or defendant have been joined as parties to this action.

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