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DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202 (303) 606-2300	
PLAINTIFFS: ALTERRA MOUNTAIN COMPANY; INTRAWEST OPERATIONS GROUP HOLDINGS, LLC; INTRAWEST OPERATIONS GROUP LLP; INTRAWEST ULC; STEAMBOAT SKI & RESORT CORPORATION; INTRAWEST/WINTER PARK OPERATIONS CORPORATION; SOLITUDE MOUNTAIN SKI AREA LLC; DEER VALLEY RESORT COMPANY, LLC; SUGARBUSH MOUNTAIN RESORT INC.; THE STRATTON CORPORATION; CRYSTAL MOUNTAIN, INC.; SNOWSHOE MOUNTAIN, INC.; SNOW SUMMIT, LLC; SQUAW VALLEY RESORT, LLC; ALPINE MEADOWS SKI RESORT, LLC; MAMMOTH MOUNTAIN SKI AREA, LLC; BLUE MOUNTAIN RESORTS GP INC.; BLUE MOUNTAIN RESORT LIMITED PARTNERSHIP; MONT TREMBLANT RESORTS AND COMPANY, LIMITED PARTNERSHIP; MONT TREMBLANT RESORT INC.; 4023480 CANADA INC.; 2910942 CANADA INC.; ST. BERNARD AND COMPANY LIMITED PARTNERSHIP; JOHANNESEN-DESLAURIERS LIMITED PARTNERSHIP; CHATEAU M.T. INC.; 3116808 CANADA INC.; CDAE ACQUISITIONS CORPORATION; CDAE ACQUISITIONS LIMITED PARTNERSHIP; 8885630 CANADA INC.; CANADIAN MOUNTAIN HOLIDAYS GP INC.; CANADIAN MOUNTAIN HOLIDAYS LIMITED PARTNERSHIP; 682523 ALBERTA LTD.; AND BUGABOO HELICOPTER SKIING 1992 INC. v. **DEFENDANT:** LEXINGTON INSURANCE COMPANY	**▲COURT USE ONLY▲**
Attorneys for Plaintiffs: Christopher R. Mosley (#24440) Brooke Yates (#38283) Allison R. Burke (#54916) Sherman & Howard L.L.C. 633 Seventeenth Street, Suite 3000 Denver, Colorado 80202 Telephone: (303) 297-2900 Facsimile: (303) 298-0940	Case No. Courtroom/Division:

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COMPLAINT AND JURY DEMAND	

Plaintiffs Alterra Mountain Company ("Alterra"), Intrawest Operations Group Holdings, LLC, Intrawest Operations Group LLP, and Intrawest ULC, Steamboat Ski & Resort Corporation, Intrawest/Winter Park Operations Corporation, Solitude Mountain Ski Area LLC, Deer Valley Resort Company, LLC, Sugarbush Mountain Resort Inc., The Stratton Corporation, Crystal Mountain, Inc., Snowshoe Mountain, Inc., Snow Summit, LLC, Squaw Valley Resort, LLC, Alpine Meadows Ski Resort, LLC, Mammoth Mountain Ski Area, LLC, Blue Mountain Resorts GP Inc., Blue Mountain Resort Limited Partnership, Mont Tremblant Resorts and Company, Limited Partnership, Mont Tremblant Resort Inc., 4023480 Canada Inc., 2910942 Canada Inc., St. Bernard and Company Limited Partnership, Johannesen-Deslauriers Limited Partnership, Chateau M.T. Inc., 3116808 Canada Inc., CDAE Acquisitions Corporation, CDAE Acquisitions Limited Partnership, 8885630 Canada Inc., Canadian Mountain Holidays GP Inc., Canadian Mountain Holidays Limited Partnership, 682523 Alberta Ltd., and Bugaboo Helicopter Skiing 1992 Inc. (collectively, "Plaintiffs"), through their attorneys, Sherman & Howard L.L.C., state and allege as follows for their Complaint and Jury Demand:

NATURE OF THE ACTION

1. This action arises out of Defendant Lexington Insurance Company's ("Lexington") failure to provide insurance coverage for covered losses caused by the novel SARS-CoV-2 coronavirus, the Pandemic spawned by the virus, and the resulting orders by state and local governments. The virus, the Pandemic, and the orders all required Plaintiffs to close their ski resorts for specified periods of time. Ultimately, the actual or suspected presence of the virus on Plaintiffs' premises and the orders by state and local governments related to the Pandemic caused Plaintiffs to suffer physical loss and damage to their properties and have interrupted their businesses – precisely the types of losses Lexington promised to cover in its policy. Indeed, Lexington previously paid two nearly identical claims, albeit smaller claims, under nearly identical policies and policy language. But Lexington has denied coverage for Plaintiffs' current claim, not because of any legitimate coverage defense, but because it does not want to pay a large claim with funds Lexington otherwise would keep and add to its substantial bottom line.

2. Plaintiffs own and/or operate ski resorts in the United States and Canada.

3. SARS-CoV-2 is the virus which causes the infectious disease COVID-19. In today's parlance, SARS-CoV-2 is known as the "coronavirus" or "novel coronavirus."

4. Plaintiffs' operations throughout the United States and Canada – through no fault of their own – were curtailed, suspended, and threatened by the novel coronavirus and its presence and/or suspected presence at Plaintiffs' facilities.

5. To protect their businesses in the event that they suddenly had to suspend operations for reasons outside of their control or to prevent further property damage, Plaintiffs, through their parent company, Alterra, negotiated and purchased business interruption insurance coverage from Lexington.

6. Lexington's policy is a broad "all-risk" policy which includes a wide variety of coverages to protect Alterra and each ski resort including, but not limited to, "time element" coverages such as business interruption, extra expense, civil authority and loss of attraction coverage.

7. In March 2020, Plaintiffs were forced to suspend their business operations at the various ski resorts, and for most resorts the suspension ultimately extended for the remainder of the ski season, due to the orders issued by state and local governments in response to COVID-19. Plaintiffs' operations remained impaired throughout the remainder of 2020 and 2021.

8. During that same time, Plaintiffs' ski resorts were infected by the SARS-CoV-2 virus as evidenced by various employees who tested positive for COVID-19 and by patrons and others who visited the ski resorts. Thus, the virus was physically present at, and intruded upon, the premises of each ski resort. The presence of the virus also impaired Plaintiffs' operations.

9. Plaintiffs submitted timely claims to Lexington seeking the coverage Lexington promised under its policy, including coverage under the business interruption, extra expense, civil authority and loss of attraction coverage parts.

10. Prior to the COVID-19 Pandemic, Plaintiffs Blue Mountain Resort and Canadian Mountain Holidays submitted claims for viral outbreaks at their resorts. Those claims were functionally identical to Plaintiffs' current claims as they involved facility shutdowns caused by the presence of a virus. Lexington and a sister AIG company affirmatively acknowledged coverage for both claims under certain of the "time element" coverages set forth in those policies. As such, Lexington and its sister company paid both claims in the amount of approximately $200,000. In doing so, Lexington acknowledged coverage for claims arising out of viral outbreaks. And by paying those claims, Lexington created a reasonable expectation in Plaintiffs that Lexington would continue to provide coverage for viral outbreaks, such as the SARS-CoV-2 outbreak, since the terms of the Lexington policy at issue here are identical in all material respects to the terms of the policy under which Lexington paid the prior virus claim.

11. Rather than honor its coverage promise and remain consistent with its prior practice of paying virus-related claims, Lexington denied coverage for the current claim and refused to pay Plaintiffs for their losses. Upon information and belief, the only reason Lexington handled Plaintiffs' current claim differently from how it handled the prior two claims was solely on the ground that the current claim is much larger than the prior claims – totaling more than

$200 million. Lexington's policy contains no exclusion precluding coverage for a claim on the ground that the claim is a large claim. But Lexington has de facto inserted that condition. And, upon information belief, Lexington did so to bolster its own bottom line with the significant sums it should be paying Plaintiffs for their losses.

PARTIES, JURISDICTION, AND VENUE

12. Plaintiff Alterra Mountain Company is, and was at all relevant times, a Delaware corporation with its principal place of business in Denver, Colorado.

13. Plaintiffs Intrawest Operations Group Holdings, LLC, Intrawest Operations Group LLP, and Intrawest ULC ("Intrawest") are a series of holding companies that both previously and currently own Alterra companies. Intrawest is a wholly-owned subsidiary of Alterra.

14. Plaintiff Steamboat Ski & Resort Corporation ("Steamboat") is a Delaware corporation with its principal place of business in Steamboat Springs, Colorado. Steamboat owns and operates Steamboat Ski Resort.

15. Plaintiff Intrawest/Winter Park Operations Corporation ("Winter Park") is a Delaware corporation with its principal place of business in Winter Park, Colorado. Winter Park owns portions of and/or operates Winter Park Resort.

16. Plaintiff Solitude Mountain Ski Area LLC ("Solitude Mountain") is a Utah limited liability company with its principal place of business in Solitude, Utah. Solitude Mountain owns and operates Solitude Mountain Resort.

17. Plaintiff Deer Valley Resort Company, LLC ("Deer Valley") is a Utah limited liability company with its principal place of business in Park City, Utah. Deer Valley owns and operates Deer Valley Resort.

18. Plaintiff Sugarbush Mountain Resort Inc. ("Sugarbush") is a Delaware corporation with its principal place of business in Warren, Vermont. Sugarbush owns and operates Sugarbush Resort.

19. Plaintiff The Stratton Corporation ("Stratton") is a Vermont corporation with its principal place of business in Stratton Mountain, Vermont. Stratton owns and operates Stratton Mountain Resort.

20. Plaintiff Crystal Mountain, Inc. ("Crystal Mountain") is a Washington corporation with its principal place of business in Enumclaw, Washington. Crystal Mountain owns and operates Crystal Mountain Resort.

21. Plaintiff Snowshoe Mountain, Inc. ("Snowshoe") is a West Virginia corporation with its principal place of business in Snowshoe, West Virginia. Snowshoe Mountain owns and operates Snowshoe Mountain Resort.

22. Plaintiff Snow Summit, LLC is a California limited liability corporation with its principal place of business in Big Bear Lake, California. Snow Summit owns and operates Snow Summit Ski Area ("Snow Summit") and Big Bear Mountain Resort ("Big Bear").

23. Plaintiff Squaw Valley Resort, LLC ("Squaw Valley") is a Delaware limited liability corporation with its principal place of business in Olympic Valley, California. Squaw Valley owns and operates Squaw Valley Resort.

24. Plaintiff Alpine Meadows Ski Resort, LLC ("Alpine Meadows") is a Delaware limited liability company with its principal place of business in Alpine Meadows, California. Alpine Meadows owns and operates Alpine Meadows.

25. Plaintiff Mammoth Mountain Ski Area, LLC ("Mammoth Mountain") is a Delaware limited liability company with its principal place of business in Mammoth Lakes, California. Mammoth Mountain owns and operates Mammoth Mountain Ski Area.

26. Plaintiffs Blue Mountain Resorts GP Inc., Blue Mountain Resort Limited Partnership, Mont Tremblant Resorts and Company, Limited Partnership, Mont Tremblant Resort Inc., 4023480 Canada Inc., 2910942 Canada Inc., St. Bernard and Company Limited Partnership, Johannesen-Deslauriers Limited Partnership, Chateau M.T. Inc., 3116808 Canada Inc., CDAE Acquisitions Corporation, CDAE Acquisitions Limited Partnership, 8885630 Canada Inc., Canadian Mountain Holidays GP Inc., Canadian Mountain Holidays Limited Partnership, 682523 Alberta Ltd., and Bugaboo Helicopter Skiing 1992 Inc. (collectively, the "Canadian Entities") are Canadian legal entities that own and operate Blue Mountain Resort in The Blue Mountains, Ontario, Mont Tremblant Resort in Mont Tremblant, Quebec, and Canadian Mountain Holidays in Banff, Canada.

27. Upon information and belief, Defendant Lexington Insurance Company ("Lexington") is a Delaware corporation with its principal place of business in Boston, Massachusetts. Lexington is authorized to do business and doing business in the State of Colorado. Lexington is an affiliate of American International Group ("AIG").

28. At all relevant times, Lexington was conducting the business of insurance in Colorado, by insuring the real property and business operations of Plaintiffs.

29. This Court has personal jurisdiction over Lexington pursuant to C.R.S. § 13-1-124(1)(a), (b), and (d), and it has subject matter jurisdiction over the claims asserted herein.

30. Venue is appropriate in this Court pursuant to C.R.C.P. 98(c).

THE POLICY

31. Lexington sold Plaintiffs a Global Property Insurance Master Policy from Lexington, Policy No. 25032627 (the "Policy").

32. The Policy is an "all-risk" policy which covers all risks of loss except risks that are expressly and specifically excluded.

33. The Policy does not identify Pandemics, shutdown orders or the presence of a virus as excluded risks of loss. Therefore, the Policy covers these risks of loss.

34. Lexington charged Plaintiffs millions of dollars in premiums for the broad all-risk coverage the Policy provided.

35. Each Plaintiff is an insured under the Policy.

36. The Policy protects Plaintiffs "against all risk of direct physical loss or damage to property described herein."

37. The Policy does not define the terms "direct physical loss" or "damage to property."

38. The Policy provides a broad array of "time element" coverages which are standard in commercial property policies such as the Policy. These include business interruption, extra expense and civil authority coverage.

39. The Policy also provides Loss of Attraction coverage which is designed specifically to protect Plaintiffs from losses arising at their respective resorts from any "infectious or contagious disease" and where a public authority (such as a local, state or provincial government or agency) closes a resort in whole or in part because of the existence or threat of a "hazardous condition" such as the presence of the COVID-19 virus.

Business Interruption

40. The Policy provides coverage for "Business Interruption."

41. The Policy contains two insuring agreements for Business Interruption, one for Gross Earnings and one for Loss of Profits.

42. "Business Interruption – Gross Earnings" covers "[l]oss due to the necessary interruption of business conducted by the Insured, including all interdependencies between or among companies owned or operated by the Insured resulting from physical loss insured herein and occurring during the term of this policy to real and/or personal property described in Clause 7.A."

43. "Business Interruption – Gross Earnings" is "adjusted on the basis of the actual loss sustained by the Insured, consisting of the net profit which is prevented from being earned including ordinary payroll and payroll; and all charges and other expenses (including soft costs) to the extent that these must necessarily continue during the interruption of business, but only to the extent to which such charges and expenses would have been incurred had no loss occurred."

44. "Business Interruption – Loss of Profits" covers "[l]oss of gross profit as hereinafter defined, resulting from interruption of or interference with the business, and caused by physical loss to real or personal property as described in Clause 7.A of this policy during the term of the policy."

Extra Expense

45. The Policy provides coverage for "Extra Expense."

46. The Extra Expense insuring agreement provides that Lexington will cover "Extra Expense incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following physical loss or damage insured herein and occurring during the term of this policy to real and/or personal property as described in Clause 7.A."

47. "Extra Expense" is defined as "the excess (if any) of the total costs necessarily and reasonably chargeable to the operation of the Insured's business, over and above the total cost that would normally have been incurred to conduct the business had no loss or damage occurred, including soft costs."

Loss of Attraction

48. The Policy includes a coverage extension for "Loss of Attraction."

49. The Loss of Attraction coverage applies "to insure loss as insured hereunder when there is an interruption or interference with the business of the Insured as a consequence of: a) Infection or contagious disease manifested by any person while on the premises of the Insured; . . . . Closing of the whole or part of the premises of the Insured by order of a public authority consequent upon the existence or threat of hazardous conditions either actual or suspected at the premises of the Insured."

Interruption by Civil or Military Authority

50. The Policy provides coverage for "Interruption by Civil or Military Authority."

51. The "Interruption by Civil or Military Authority" coverage insures "loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6, ingress to or egress from real or personal property is impaired."

52. The Interruption by Civil or Military Authority coverage section does not require "physical loss" or "damage."

Ingress/Egress

53. The Policy provides coverage for "Ingress/Egress."

54. The "Ingress/Egress" coverage insures "loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6, ingress to or egress from real or personal property is impaired."

55. The Ingress/Egress coverage section does not require "physical loss" or "damage."

THE CANADIAN POLICY

56. In addition to the Policy, Alterra and the Canadian Entities obtained property insurance from AIG Insurance Company of Canada, Policy No. 4473013 (the "Canadian Policy").

57. Alterra and the Canadian Entities submitted notices of losses to AIG Insurance Company of Canada for losses caused by the Pandemic and COVID-19 under the Canadian Policy.

58. AIG Insurance Company of Canada denied Alterra's and the Canadian Entities' claims.

59. The Canadian Entities are insured under the Policy.

60. The Canadian Entities are entitled to coverage for the losses under the terms and conditions of the Policy.

THE COVID-19 PANDEMIC

61. SARS-CoV-2 is a highly contagious virus that has rapidly spread and continues to spread across the United States which causes the COVID-19 disease. It is a physical substance, human pathogen, and can exist outside the human body in viral fluid particles. According to the Centers for Disease Control and Prevention ("CDC"), everyone is at risk of getting COVID-19.

62. COVID-19 can spread in numerous ways, including "community spread," meaning that some people who have been infected cannot know how or where they were exposed to the virus. Public health authorities, including the CDC, have reported significant ongoing community spread of the virus – which includes community spread in all 50 states.

63. COVID-19 infections are spread through droplets of different sizes that can be deposited on surfaces or objects.

64. Specifically, the CDC reported the SARS-CoV-2 virus can survive on physical surfaces and remain capable of being transmitted. Accordingly, a person can be become infected with COVID-19 if he or she touches a surface or object (like a table, floor, wall, furniture, desk, countertop, touch screen or chair) that has the virus on it, and the person then touches his or her own mouth, nose, or eyes.

65. Additionally, the SARS-CoV-2 virus can become airborne for periods of time. Specifically, the New England Journal of Medicine published a scientific report finding that experimentally-produced aerosols containing the virus remained infectious in tissue-culture assays, with only a slight reduction in infectivity during a three-hour period of observation.

66. Furthermore, COVID-19 can be transmitted by way of human contact with surfaces and items of physical property.

67. Specifically, because the SARS-CoV-2 virus is a physical substance, it lives on and is otherwise active on inert physical surfaces. Indeed, the SARS-CoV-2 virus can survive on surfaces for days or even weeks.[1]

68. Accordingly, the presence of the SARS-CoV-2 virus renders physical property unsafe, unusable and highly dangerous to human exposed to the virus.

69. COVID-19 has also been transmitted by human-to-human contact and interaction within premises.

70. COVID-19 has also been transmitted by way of human contact with airborne COVID-19 particles.

71. Consequently, the presence of any SARS-CoV-2 virus particles renders items of physical property and premises unsafe and highly dangerous to humans.

72. The presence of any SARS-CoV-2 virus particles on physical property impairs its value, usefulness, or normal function and renders such property highly dangerous to humans.

73. The presence of any SARS-CoV-2 virus particles causes direct physical harm, direct physical damage, and direct physical loss to property.

74. The presence of people infected with or carrying the SARS-CoV-2 virus renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property.

75. The presence of people infected with or carrying the SARS-CoV-2 virus at premises renders the premises, including property located at that premises, unsafe resulting in direct physical loss to the premises and property.

76. The incubation period for COVID-19 is approximately 14 days. Current evidence shows that the first death from COVID-19 occurred as early as February 6, 2020 – weeks earlier

[1] *See* Centers for Disease Control and Prevention, *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, Apr. 5, 2021, https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html.

than previously reported, suggesting that COVID-19 has been circulating in the United States for far longer than originally assumed.

77. Along those lines, after the onset of COVID-19, customers, employees, and other visitors to Plaintiffs' ski resorts were infected with the SARS-CoV-2 virus and thereby infected the insured properties with the virus, thus rendering the physical property in the properties unsafe and unusable.

78. The CDC stated that it is necessary for businesses to clean and disinfect all surfaces, prioritizing the most frequently touched surfaces, to reduce the spread of disease.

79. COVID-19 has been declared a pandemic by the World Health Organization.

80. The COVID-19 Pandemic is a public health crisis that has profoundly impacted the United States and Canada, including the public's ability to patronize business establishments such as Plaintiffs' ski resorts.

81. To that end, the COVID-19 Pandemic has caused civil authorities throughout both countries to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiffs' businesses (the "Closure Orders").

82. Plaintiffs' premises and operations were impacted by the actual or suspected presence of the SARS-CoV-2 virus since the beginning of the Pandemic.

83. Through Plaintiffs' substantial efforts to comply with public health guidelines, Plaintiffs' ski resorts are now safe for patrons to visit.

PANDEMIC EXCLUSIONS AND THE FORESEEABILITY OF A GLOBAL PANDEMIC

84. Although the COVID-19 Pandemic has had a profound global impact, such an outbreak was foreseeable, which means that such coverage was integral to Plaintiffs' bargained-for exchange.

85. In 2003, the SARS virus that caused an epidemic was actually a "coronavirus" that is similar to COVID-19. That virus was labeled as SARS-CoV-1 and is the predecessor to the SARS-CoV-2 virus.

86. Insurers like Lexington have been warned about, and have been aware of for years, the potential impact of pandemics. Since the SARS outbreak in 2003, publicly-available reports to insurers have discussed the risks and likelihood of pandemics and what insurers should do in light of these risks.

87. Publications addressing the risk of a pandemic to insurers continued to be published even up to the start of the current Pandemic. For example, a March 2018 article on the 100th anniversary of the 1918 Spanish Flu pandemic noted: "Even with today's technology, a

modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet."[2]

88. In addition to publications informing insurers regarding the risks of a pandemic, insurers like Lexington have been aware that courts have held for several decades that the presence of a hazardous substance on property – including the airspace within buildings – constitutes property damage within the meaning of property insurance policies. Courts also have held that the closure of property due to imminent risk of physical loss or damage constitutes direct physical loss of property. Insurers, like Lexington, are aware of these decisions as they have been parties to all of the lawsuits giving rise to these decisions.

89. The Insurance Services Office ("ISO"), an organization that provides policy writing services to insurers, also has recognized for years that a virus can constitute physical damage to property.

90. To that end, the ISO created a standard virus exclusion in 2006 which is, and has been, widely used by many insurance companies.

91. At the time it created the standard virus exclusion, the ISO announced the exclusion was intended to exclude coverage for loss "due to disease-causing agents such as viruses and bacteria."[3]

92. The ISO created a circular discussing the virus exclusion which was provided to state insurance regulators and others interested in understanding the purpose behind the circular. In that circular, the ISO recognized – on behalf of the insurance industry – that the virus-related losses cause property damage which, in general, would be covered by a commercial property policy absent the exclusion:

> 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

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[2] *What the 1918 Flu Pandemic Can Teach Today's Insurers*, Mar. 29, 2018, https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/.

[3] *Id.*

> on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

93. Lexington and other insurers have had the opportunity to incorporate the ISO exclusion into their respective commercial property insurance policies where those insurers made the underwriting decision to exclude coverage for virus-related losses, such as those caused by the SARS-CoV-1 and SARS-CoV-2 viruses. Similarly, Lexington and the other insurers have had the same opportunity not to include the virus exclusion where those insurers made the underwriting decision to cover losses stemming from a viral outbreak.

94. Many insurers have, in fact, incorporated the virus exclusion in their policies. Those insurers chose not to cover virus-related claims. Many courts across the country have upheld denial of COVID-19 business interruption claims on the ground that the policies at issue included a virus exclusion.

95. Other insurers have, in fact, not included the virus exclusion in their policies. Those insurers chose to cover virus-related claims. Many courts across the country have denied motions to dismiss filed by insurers on the ground that the policies at issue did not include a virus exclusion.

96. Lexington chose not to include the ISO standard virus exclusion or any similar virus exclusion in the Policy.

97. As such, Lexington chose to cover virus-related claims.

98. Lexington confirmed its decision to cover virus-related claims by actually covering and paying for multiple prior virus-related losses as described next.

PLAINTIFFS' PRIOR VIRUS CLAIMS

Canadian Mountain Holidays' 2015 Norwalk Virus Claim

99. In 2015, Lexington provided coverage for business interruption losses sustained by Canadian Mountain Holidays as a result of a Norwalk virus outbreak.

100. The claim was assigned Claim No. 9771654640US, and was paid out under Lexington Policy No. 025031567 (the "2015 Policy").

101. The 2015 Policy was the predecessor of the Policy. The Policy is a renewal of the 2015 Policy.

102. The 2015 Policy contains language that is materially identical to the language of the Policy including:

a. The same Loss or Damage insured provision as that set forth in the Policy;

b. The same Business Interruption-Gross Earnings provision as that set forth in the Policy;

c. The same Business Interruption-Loss of Profits provision as that set forth in the Policy;

d. The same Extra Expense provision as that set forth in the Policy;

e. The same Interruption by Civil or Military Authority provision as that set forth in the Policy; and

f. The same Loss of Attraction provision as that set forth in the Policy.

103. Lexington acknowledged coverage for this claim under the 2015 Policy's business interruption and extra expense coverages, paying $171,808.72 for business interruption and $24,314.17 for extra expense, for a combined total of $196,122.89. Lexington applied the 2015 Policy's $100,000 deductible to arrive at a total payout of $96,122.89.

104. In finding coverage for this virus claim, Lexington acknowledged the Norwalk virus did not cause any structural damage to Canadian Mountain Holiday's buildings. Mr. Paul Gilbert, the adjuster principally responsible for handling this claim for Lexington, stated that Canadian Mountain Holidays' cleanup costs should be "considered extra expense rather than physical damage (since there was none) . . . ." At no time did Lexington ever assert during its handling of the Canadian Mountain Holiday claim that losses arising from a viral outbreak did not result in physical loss or damage and, hence, were not covered by its policy. Rather, Lexington took precisely the opposition position and paid the claim.

Blue Mountain Resort 2018 Norovirus Outbreak Claim

105. In 2018, Lexington, or an AIG affiliate, covered a second claim for business interruption losses at Blue Mountain Resort incurred as a result of a Norovirus outbreak.

106. The claim was assigned Claim No. 2437097443CA, and was paid out under a substantially similar Canadian policy, Policy No. 4473013 (the "2018 AIG Canada Policy").

107. AIG paid the Blue Mountain Resort virus claim.

108. The business interruption and extra expense coverage provisions of the 2018 AIG Canada Policy were substantially similar to the business interruption and extra expense provisions of the Policy and the 2015 Policy. For example:

a. The "Perils Insured" provision contains the same "direct physical loss or damage" language as that found in the "Loss or Damage Insured" provision of the Policy;

b. The 2018 AIG Canada Policy provides "Gross Profits" coverage with coverage substantially similar to the Business Interruption-Gross Earnings and Business Interruption-Loss of Profits coverage provided by Policy; and

c. The 2018 AIG Canada Policy provides Extra Expense coverage which is substantially similar to that provided by the Policy.

109. AIG acknowledged coverage for Blue Mountain Resort's business interruption losses and clean-up expenses. Mr. Jim Flanagan, AIG Property Claims Analyst, expressly acknowledged coverage for Blue Mountain Resort's "business loss in the amount of $29,671."

110. Neither Mr. Flanagan nor anyone else at AIG ever asserted the Norovirus did not result in direct physical loss or was subject to any exclusion. Rather, Mr. Flanagan and AIG acknowledged that the Norovirus *did* cause direct physical loss to Blue Mountain Resort's business sufficient to trigger coverage under the 2018 AIG Canada Policy's business interruption and extra expense coverage parts.

111. Combined with AIG's payment of the Canadian Mountain Holiday virus claim, Lexington and AIG established a consistent pattern of paying virus claims even in the absence of structural damage – a pattern which held until Lexington was faced with a substantially larger virus claim.

CLOSURE ORDERS

Colorado Closure Orders

112. On March 10, 2020, Colorado Governor Jared Polis verbally declared a state of disaster emergency in Colorado due to the presence of COVID-19 within the State.

113. On March 11, 2020, Governor Polis memorialized this state of disaster emergency in Executive Order D 2020 003.

114. Executive Order D 2020 003 explained that Colorado law defines a "disaster" as "the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to . . . epidemic."

115. Executive Order D 2020 003 stated that "[t]he threat currently posed by COVID-19, a respiratory illness that can spread from person to person, constitutes a disaster for purposes of the [Colorado Disaster Emergency] Act."

116. Executive Order D 2020 003 stated that presumptive positive cases of COVID-19 had been confirmed in Colorado.

117. Executive Order D 2020 003 directed the Department of Labor and Employment to engage in emergency rulemaking to ensure that certain workers (including those in the

hospitality and food services industries present at ski resorts) received paid sick leave if they exhibited flu-like symptoms—regardless of whether testing confirmed they had COVID-19.

118. On March 13, 2020, the President of the United States declared a National Emergency due to COVID-19.

119. On March 14, 2020, Governor Polis issued Executive Order D 2020 004.

120. Executive Order D 2020 004 stated that "COVID-19 is a highly contagious viral disease that has spread throughout many of our communities," including counties where many of Colorado's premier ski resorts are located.

121. Executive Order D 2020 004 required the closure of all downhill ski resorts in the State of Colorado from March 15 to March 22, 2020.

122. Winter Park and Steamboat suspended operations and closed their ski resorts on March 15, 2020.

123. On March 16, 2020, following Executive Order D 2020 003, the Executive Director of the Colorado Department of Public Health and Environment ("CDPHE") issued Public Health Order 20-22.

124. Public Health Order 20-22 was implemented to stop the spread of COVID-19.

125. In Public Health Order 20-22, the Executive Director of the CDPHE made the following findings:

- COVID-19 was first detected in Wuhan, China in late 2019;
- Since its detection, COVID-19 had spread to over 60 countries, including the United States;
- COVID-19 is a respiratory illness that is transmitted through person-to-person contact or by contact with surfaces contaminated with the virus;
- "A significant number of Coloradans are at risk of serious health complications, including death, from COVID-19;" and
- "Colorado is experiencing a rapid increase in COVID-19 transmission that threatens the health of residents and risks overwhelming the healthcare system in the State of Colorado."

126. As a result of these findings, Public Health Order 20-22 in part, "close[d] bars, restaurants, gyms, theaters, casinos, nonessential personal services facilities and horse track and off-track betting facilities to slow the spread of the COVID-19 virus."

127. Public Health Order 20-22 was issued pursuant to the CDPHE's authority to "exercise such physical control over property and the persons of the people within this state as the department may find necessary for the protection of public health."

128. On March 18, 2020, Governor Polis issued Executive Order D 2020 006, amending Executive Order D 2020 004.

129. Executive Order D 2020 006 stated that "[d]ue to the continued spread of the virus in our mountain communities and the need to conserve health care resources as much as possible," all downhill ski resorts in Colorado were required to suspend operations for two additional weeks from March 23, 2020 to April 6, 2020.

130. On March 25, 2020, Governor Polis issued Executive Order D 2020 017.

131. Executive Order D 2020 017 stated that the number of confirmed COVID-19 cases in Colorado "continued to climb."

132. Executive Order D 2020 017 stated that Colorado had "evidence of community spread throughout the State."

133. Executive Order D 2020 017 stated that "[t]he actions we have undertaken to date are not yet doing enough to reduce the spread of the virus, and we must take additional action to minimize the duration of this epidemic and the disruption to our daily lives."

134. Executive Order D 2020 017 required Coloradans to stay at home, subject to certain exceptions.

135. Executive Order D 2020 017 likewise directed "all businesses other than those qualified as 'Critical Businesses' under Public Health Order 20-24 or any Public Health Order issued pursuant to this Executive Order, to close temporarily, except as necessary to engage in minimum basic operations needed to protect assets and maintain personnel functions, as of the effective date of this Executive Order."

136. Ski resorts were not designated as Critical Businesses.

137. On March 27, 2020, the Executive Director of the CDPHE issued its second updated Public Health Order 20-24 in response to the existence of hundreds of confirmed and presumptive cases of COVID-19 and related deaths across the State of Colorado.

138. Among other things, Public Health Order 20-24 imposed social distancing requirements on persons within the State of Colorado.

139. It also prohibited all public and private gatherings of people outside a residence with limited exceptions inapplicable to this case.

140. Public Health Order 20-24 stated, "[t]here is clear evidence that some individual who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings promote transmission of COVID-19."

141. Public Health Order 20-24 stated that "COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time."

142. By imposing social distancing requirements on all persons in the State of Colorado, and prohibiting gatherings outside a residence, Public Health Order 20-24 stated that it "helps reduce the property damage caused by COVID-19 and preserves the welfare of our residents by reducing the spread of the disease in our communities and our workplaces . . . ."

143. Indeed, the expressed intent of Public Health Order 20-24 "is to minimize contact between residents and to the greatest extent possible minimize the exposure of the public to contaminated public surfaces."

144. On April 1, 2020, Governor Polis issued Executive Order D 2020 024.

145. Like Public Health Order 20-24, Executive Order D 2020 024 stated that "COVID-19 is also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time."

146. Executive Order D 2020 034, issued by Governor Polis on April 8, 2020, again stated that COVID-19 physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time.

147. Accordingly, three executive orders governing the people and businesses in the State of Colorado (Executive Order D 2020 024, Executive Order D 2020 032, and Public Health Order 20-24), state that COVID-19 physically contributes to property loss, contamination, and damage.

148. On April 6, 2020, Governor Polis issued Executive Order D 2020 026.

149. Executive Order D 2020 026 amended Executive Orders D 2020 004 and D 2020 006 to extend the closure of all downhill ski resorts in Colorado.

150. Executive Order D 2020 026 stated that "[d]ue to the continued spread of the virus in our mountain communities and the need to conserve health care resources as much as possible," all downhill ski resorts in Colorado were required to suspend operations until April 30, 2020.

151. Winter Park and Steamboat were required to close their ski resorts as a result of the Closure Orders.

California Closure Orders

152. On March 4, 2020, California Governor Gavin Newsom issued a Proclamation of a State of Emergency in California due to the presence of COVID-19 within the State.

153. On March 19, Governor Newsom issued Executive Order N-33-20.

154. Executive Order N-33-20 states that "[t]o preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which [Governor Newsom] ordered the Department of Public Health to develop for the current statewide status of COVID-19."

155. The March 19, 2020 Order of the State Public Health Officer required "all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructures."

156. Snow Summit, Big Bear, Mammoth Mountain, Squaw Valley, and Alpine Meadows were required to close their ski resorts as a result of the Closure Orders.

Washington Closure Orders

157. On February 29, 2020, Washington Governor Jay Inslee issued Emergency Proclamation 20-05 proclaiming a State of Emergency in the State of Washington.

158. On March 16, 2020, Governor Inslee issued Emergency Proclamation 20-13.

159. Emergency Proclamation 20-13 mandated the immediate closure of all dine-in restaurants, bars, entertainment, and recreational facilities, as well as all public venues in which people congregate for social or recreational purposes through March 31, 2020.

160. Proclamation 20-13 stated that "the worldwide COVID-19 pandemic and its progression in Washington State continues to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property or the public peace."

161. On March 23, 2020, Governor Inslee issued Proclamation 20-25.

162. Proclamation 20-25 ordered all individuals to stay home. Unless pursuing an essential activity, individuals were required to remain in their homes for two weeks. Proclamation 20-25 banned all gatherings for social, spiritual, and recreational purposes, and closed all non-essential businesses.

163. On April 2, 2020, Governor Inslee issued Proclamation 20-25.1, which extended the "Stay Home Stay Healthy" Proclamation 20-25 order for a month.

164. Crystal Mountain was required to close its ski resort as a result of the Closure Orders.

West Virginia Closure Orders

165. On March 16, 2020, West Virginia Governor Jim Justice issued a Proclamation declaring a State of Emergency in West Virginia.

166. On March 17, 2020, Governor Justice ordered the closure of all restaurants and bars.

167. On March 18, 2020, Governor Justice issued Executive Order 3-20 ordering the closure of all recreation centers.

168. Executive Order 3-20 states that a "large-scale threat exists throughout the state because of COVID-19 where people tend to congregate such as fitness centers, gymnasiums, recreation centers, and similar businesses or entities where the public tends to congregate for recreation, sport, or similar leisure activities, and it is in the interest of public health that such gatherings be limited to the extent reasonably possible."

169. On March 23, 2020, Governor Justice issued Executive Order 9-20, effective indefinitely, ordering a general stay-at-home order for all individuals in the State of West Virginia and the cessation of all non-essential business operations.

170. Executive Order 9-20 required all individuals within the State of West Virginia to stay at home or at their place of residence unless performing an essential activity.

171. Snowshoe Mountain was required to close its ski resort as a result of the Closure Orders.

Utah Closure Orders

172. On March 6, 2020, former Utah Governor Gary Herbert declared a state of emergency.

173. On March 17, 2020, Governor Herbert issued a statewide public health order limiting restaurant and bar operations and prohibiting gatherings of more than ten individuals through April 1, 2020.

174. On March 26, 2020, Summit County – home to Deer Valley Resort – issued a stay-at home order for all individuals living within the County, effective from March 27, 2020 through May 1, 2020.

175. Solitude Mountain and Deer Valley were required to close their ski resorts as a result of the Closure Orders.

Vermont Closure Orders

176. On March 16, 2020, Vermont Governor Phil Scott issued Addendum 2 to Executive Order 01-20.

177. Addendum 2 to Executive Order 01-20 prohibited gatherings of more than 50 people or 50% occupancy of a facility and prohibited all on-premises consumption of food and drink.

178. On March 20, 2020, Governor Scott issued Addendum 4 to Executive Order 01-20.

179. Addendum 4 to Executive Order 01-20 prohibited gatherings of more than 10 people.

180. On March 24, 2020, Governor Scott issued Addendum 6 to Executive Order 01-20.

181. Addendum 6 to Executive Order 01-20 required all businesses and not-for-profit entities in Vermont to suspend in-person business operations, effective March 25, 2020.

182. Stratton Mountain and Sugarbush Resort were required to close their ski resorts as a result of the Closure Orders.

Canada Closure Orders

183. On March 15, 2020, a Quebec Minister of Health and Social Services Public Health Order required the closure of recreational and entertainment facilities, including ski resorts.

184. On March 17, 2020, an Alberta Public Health Order prohibited all attendance at public recreational facilities.

185. On March 27, 2020, Alberta Public Health Order 07-2020 required closure of all non-essential businesses.

186. On March 23, 2020, an Ontario Emergency Order required the closure of all non-essential businesses.

187. The Canadian Entities were required to close Blue Mountain Resort, Mont Tremblant, and Canadian Mountain Holidays as a result of the Closure Orders.

THE IMPACT OF COVID-19 AND THE CLOSURE ORDERS

188. The various Closure Orders issued by civil authorities across the United States explicitly acknowledge that the SARS-CoV-2 virus causes direct physical damage and loss to property.

189. For example:

a. The State of West Virginia, Executive Order No. 9-20, recognizes that "measures relating to closure of certain businesses and to limit the operations of non-essential businesses are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and ***because of physical contamination of property*** due to its ability to attach to surfaces for prolonged periods of time" (emphasis added);

b. The State of Colorado issued a Public Health Order that stated, "COVID-19…***physically contributes to property loss, contamination and damage***…" (emphasis added); and

c. The State of Washington issued Executive Order 20-25, stating that COVID-19 "remains a public disaster affecting life, health, ***property***" and has "impact[ed] people, ***property***, and infrastructure" (emphasis added).

190. Indeed, state and local governmental authorities and public health officials throughout the United States acknowledge that the SARS-CoV-2 virus causes direct physical loss and damage to property—and nationwide Closure Orders were issued in response to the rapid spread of the virus into properties such as Plaintiffs' ski resorts.

191. These Closure Orders constitute an "order of a public authority" and/or an "order or action of civil or military authority" under the Policy and required a suspension of Plaintiffs' businesses, resulting in trigger coverage under the Policy's Business Interruption, Extra Expense, Loss of Attraction, and Interruption by Civil or Military Authority coverage parts.

192. Plaintiffs' businesses did not and do not qualify as "essential businesses" and were required to cease or significantly reduce operations and/or the Orders prohibited access by patrons and prevented patrons from being able to visit the Plaintiffs' resorts.

193. The presence or suspected presence of the SARS-CoV-2 virus at Plaintiffs' ski resorts required Plaintiffs to close them entirely pursuant to the actions of civil authorities or to prevent the spread of COVID-19.

194. Furthermore, the Closure Orders prohibited access to and use of Plaintiffs' ski resorts in response to dangerous physical conditions resulting from the damage or continuation of the loss that caused the damage.

195. Civil authorities, both state and municipal, have issued and continue to issue authoritative orders governing Plaintiffs' businesses in response to the COVID-19 pandemic, which required Plaintiffs to cease and/or significantly reduce operations at their properties and which prohibited access to those properties.

196. Ultimately, based on the physical presence of the SARS-CoV-2 virus at Plaintiffs' properties and the Closure Orders issued by civil authorities, Plaintiffs' properties were at times rendered completely inoperable and their ski resorts were unusable in any form during those times.

LEXINGTON'S CONSCIOUS DECISION NOT TO EXCLUDE LOSS OF USE CLAIMS

197. Loss of use of property, despite whether it has been tangibly or visibly-altered, constitutes "physical loss or damage" for purposes of first-party property insurance.

198. As stated above, as the drafter of the Policy, if Lexington had wished to exclude loss of use of property that has not been physically-altered or deformed from the definition of "physical loss or damage," it could have used explicit language in the Policy for such a definition, but it did not do so.

199. The controlling state law in Colorado regarding the interpretation of physical loss is the seminal Colorado Supreme Court case of *Western Fire Insurance Company v. First Presbyterian Church*, 437 P.2d 52 (Colo. 1968). In that case, the Colorado Supreme Court held the presence of a substance (such as gasoline or, as here, the SARS-CoV-2 virus) which renders a facility uninhabitable and highly dangerous is sufficient to constitute "direct physical loss" for purposes of a commercial property policy.

200. Lexington, as a major participant in the commercial property insurance industry in Colorado, knew the *First Presbyterian* decision. Indeed, knowledge of the controlling state law is a routine part of the business of Lexington and any insurer. Further, knowledge of controlling state law is part of an insurer's duty of good faith and fair dealing.

201. Notwithstanding its knowledge of the *First Presbyterian* decision, Lexington chose not to exclude loss of use of property that has not been physically-altered or deformed from the definition of "physical loss or damage." In doing so, Lexington again confirmed its intent to cover virus-related claims – as further evidenced by its payment of the Canadian Mountain Holidays claim.

202. Should the evidence establish Lexington was not aware of the *First Presbyterian* decision, such unawareness is a clear breach of Lexington's duty of good faith and fair dealing. Moreover, ignorance of the law is not an excuse for Lexington or any other insurer to avoid paying claims payable under the applicable state law.

203. The presence or suspected presence of the COVID-19 virus and the actions of civil authorities caused direct physical loss of or damage to Plaintiffs' resorts, by denying use of

and damaging the covered properties and by causing a necessary interruption of business – all as a result of the SARS-CoV-2 virus, making the properties unreasonably unsafe for patrons.

LEXINGTON'S CONSCIOUS DECISION NOT TO EXCLUDE VIRUS CLAIMS

204. As stated above, had Lexington, as the drafter of the Policy, wished to exclude from coverage losses resulting from a virus such as SARS-CoV-2, Lexington could have drafted a virus exclusion such as that promulgated by the ISO in 2006. But Lexington chose not to.

205. Lexington, as a major participant in the commercial property insurance industry, was aware of the standard virus exclusion the ISO drafted in 2006. Upon information and belief, Lexington insureds tendered claims to Lexington in connection with the SARS-CoV-1 outbreak in 2002 which led to the ISO's development and submission of the standard virus exclusion.

206. Thus, for nearly two decades, Lexington has been aware of the significant risk virus such as SARS-COV viruses poses to Lexington insureds and known how to exclude coverage for claims arising out of losses caused by such viruses if Lexington did not want to cover such losses.

207. Similarly, for nearly two decades, Lexington also knew how to cover such losses if it chose to include the risk of viral loss within the scope of its policies; to-wit, by maintaining the standard definition and interpretation of "direct physical loss" in its policy and by choosing not to include any virus exclusion in its policy.

208. Here, Lexington chose the latter path. That is, Lexington chose not to include any virus exclusion in its Policy and chose not to alter or amend the "direct physical loss" language in the Policy. In doing so, Lexington consciously chose to cover virus-related claims.

LEXINGTON'S CONSCIOUS DECISION TO COVER THE BLUE MOUNTAIN RESORT AND CANADIAN MOUNTAIN HOLIDAY CLAIMS AND IMPOSITION OF ITS DE FACTO "IT'S TOO BIG OF A CLAIM" EXCLUSION HERE

209. As stated above, Plaintiffs Blue Mountain Resorts and Canadian Mountain Holidays submitted claims to Lexington and its parent, AIG, arising out of losses those entities sustained from viral outbreaks – specifically, the Norwalk virus (Blue Mountain Resort) and Norovirus (Canadian Mountain Holidays).

210. As stated above, Lexington and AIG paid those claims under policies with identical, or substantially identical, terms as the Policy.

211. As stated above, Lexington affirmatively acknowledged Blue Mountain Resort's claim did not involve any tangible alteration to physically property and affirmatively acknowledged the absence of such tangible alteration of property posed no barrier to coverage under the policy's business interruption and extra expense coverages.

212. In paying these claims without reservation, Lexington and AIG acknowledged the Policy covers virus claims and created a reasonable expectation on the part of Plaintiffs that Lexington would pay future virus claims as well. Plaintiffs reasonably relied on that expectation in continuing to insure through Lexington and providing Lexington with millions of dollars in premium for the Policy.

213. The only difference between the Blue Mountain Resort and Canadian Mountain Holidays claims, on the one hand, and the current claims, on the other, is their size. Specifically, the Blue Mountain Resort and Canadian Mountain Holidays claims totaled approximately $200,000; the current claims total in excess of $200 million.

214. The Lexington Policy contains no exclusion or other provision which excludes coverage for an otherwise covered claim simply because the claim is large – and, more specifically, larger than the amount Lexington would prefer to pay to sustain its profit on the Policy.

PLAINTIFFS' NOTICES OF LOSS AND LEXINGTON'S COMPANY POLICY OF DENYING PANDEMIC-RELATED TIME ELEMENT CLAIMS

215. Pursuant to the terms of the Policy, Plaintiffs submitted notices of loss to Lexington for losses caused by the presence of SARS-CoV-2 virus, the Pandemic and the Closure Orders.

216. Lexington has denied coverage for Plaintiffs' losses.

217. Upon information and belief, Lexington has denied coverage systematically and categorically for all, or virtually all, of its insureds which have made time element claims to Lexington arising out of losses sustained due to the presence of the virus, the Pandemic and closure orders throughout the United States and Canada.

218. Upon information and belief, Lexington has denied coverage for all time element claims submitted to Lexington by all Lexington insureds.

219. Upon information and belief, Lexington has not paid any time element claim submitted to Lexington by any Lexington insured arising out of losses sustained due to the presence of the virus, the Pandemic and closure orders throughout the United States and Canada.

220. In denying coverage to Plaintiffs, Lexington conducted no investigation into Plaintiffs' claims, much less a reasonable investigation. To that end, Lexington failed to conduct an on-site investigation of the premises; made no effort to determine whether Plaintiffs' operations were suspended as a result of exposure or suspected exposure to SARS-CoV-2 virus or the Closure Orders; made no effort to evaluate the amount of damages Plaintiffs sustained; and made no effort to determine how the relevant law defined the phrase "direct physical loss."

221. By contrast, Lexington and AIG did conduct investigations into the Blue Mountain Resorts and Canadian Mountain Holiday claims. Those investigations led Lexington and AIG to pay those claims.

222. There are no provisions in the Policy limiting Lexington's obligation to investigate claims fairly and fully only to small claims.

223. Upon information and belief, Lexington conducted no investigation into the time element claims of any of its insureds which submitted claims to Lexington for losses sustained due to the presence of the virus, the Pandemic and closure orders throughout the United States and Canada. Rather, Lexington has categorically and systematically denied all claims as a matter of company policy – regardless of whether the provisions of its policies countenance coverage.

224. Despite numerous demands from Plaintiffs, Lexington has refused, and continues to refuse, to honor its obligations under the Policy.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

225. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

226. The Policy is a contract under which Alterra paid Lexington substantial premiums in exchange for Lexington's promise to pay Plaintiffs' claims for losses covered by the Policy.

227. Plaintiffs have complied with all applicable provisions of the Policy and/or those provisions have been waived by Lexington, but Lexington has vitiated its obligations toward Plaintiffs pursuant to the Policy's terms.

228. An actual case or controversy exists regarding Plaintiffs' rights and Lexington's obligations under the Policy to provide coverage for the losses Plaintiffs incurred as a result of the presence of the SARS-CoV-2 virus on Plaintiffs' premises, the COVID-19 Pandemic and the government-mandated closures of Plaintiffs' properties.

229. Pursuant to 13-51-101, *et seq.*, C.R.S. and C.R.C.P. 57, Plaintiffs seek a declaratory judgment from the Court declaring the following:

a. That Plaintiffs' losses incurred as a result of the presence of the SARS-CoV-2 virus on Plaintiffs' premises, the COVID-19 pandemic and the government-mandated closures of Plaintiffs' properties are insured losses under the Policy; and

b. Lexington is obligated to pay Plaintiffs for the full amount of the losses they have incurred in connection with the as a result of the presence of the SARS-CoV-2 virus on Plaintiffs' premises, the COVID-19 pandemic and the government-mandated closures of Plaintiffs' properties.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

230. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

231. The Policy is a valid and enforceable contract of insurance between Plaintiffs and Lexington.

232. Plaintiffs have sustained, and continue to sustain, losses covered by the Policy.

233. Based on Lexington's payment of the prior virus-related claims under identical or substantially similar policies and circumstances, Plaintiffs reasonably expected their claims for COVID-19 losses to be covered under the Policy.

234. Plaintiffs provided prompt notice of their losses to Lexington, and performed all obligations required of them under the Policy.

235. Lexington breached the Policy by denying coverage to Plaintiffs and failing to pay for the losses Plaintiffs sustained.

236. Plaintiffs have satisfied all conditions of, and performed all of its obligations under, the Policy.

237. As a direct and proximate result of Lexington's breaches of the Policy, Plaintiffs have been damaged, and continue to be damaged, in amount to be established at trial.

THIRD CLAIM FOR RELIEF
(Bad Faith Breach of Insurance Contract)

238. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

239. Under the Policy's implied covenant of good faith and fair dealing, Lexington covenanted that it would deal with Plaintiffs fairly and honestly, and do nothing to impair, hinder, on injure Plaintiffs' rights to benefits under the Policy.

240. Through the acts and omissions described herein, Lexington breached that covenant. Lexington's conduct fell below the applicable common law and industry standards of care, violated the duties of good faith and fair dealing, and constituted the tort of bad faith breach of insurance contract.

241. Lexington's acts and omissions were unreasonable and Lexington knew so, and/or Lexington acted with a reckless disregard for Plaintiffs' rights and interests.

242. Lexington's acts and omissions were committed in disregard of Plaintiffs' reasonable expectations as an insured under the Policy for the reasons set forth above.

243. Lexington breached its duty of good faith and fair dealing through the following unreasonable acts, among others:

a. Depriving Plaintiffs of the benefits and protections of the Policy;

b. Placing its own interests above those of Plaintiffs;

c. Failing to timely pay benefits owed under the Policy, particularly in light of Lexington's payment of the Canadian Mountain Holidays claim;

d. Misrepresenting facts concerning the Policy's coverage;

e. Failing to conduct a reasonable and impartial investigation of the loss based upon all available information;

f. Forcing Plaintiffs to bring a lawsuit to recover benefits owed and protections guaranteed under the Policy;

g. Violating the Unfair Claims Settlement Practices Act of Colorado; and

h. Other conduct to be revealed in discovery.

244. As a direct and proximate result of Lexington's bad faith breach of the Policy, Plaintiffs have suffered and are entitled to damages in amounts to be proved at trial.

FOURTH CLAIM FOR RELIEF

(Violation of C.R.S. § 10-3-1115 and Relief Under C.R.S. § 10-3-1116)

245. Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

246. Sections 10-3-1115(1) and (2), C.R.S., forbid insurers such as Lexington from unreasonably denying or delaying payment of a claim for benefits owed to or on behalf of a first-party claimant.

247. Plaintiffs are first-party claimants as that term is used under Section 10-3-1115(1)(A)(I), C.R.S.

248. Lexington is an entity engaged in the business of insurance.

249. Lexington delayed and/or denied payment of first-party benefits owed to Plaintiffs and did so without a reasonable basis within the meaning of Section 10-3-1115(2), C.R.S., for the reasons set forth above.

250. Section 10-3-1116(1), C.R.S., provides that a first-party claimant whose claim has been unreasonably denied or delayed by an insurer may bring an action to recover reasonable attorneys' fees and court costs and two times the covered benefit that was unreasonably delayed or denied.

251. As described herein, Lexington's acts and omissions violated Section 10-3-1115(2), C.R.S.

252. Plaintiffs therefore bring this claim to recover damages available under Section 10-3-1116, C.R.S., separate from and in addition to those remedies and damages available under any other applicable claims for relief.

WHEREFORE, Plaintiffs Alterra Mountain Company ("Alterra"), Intrawest Operations Group Holdings, LLC, Intrawest Operations Group LLP, and Intrawest ULC, Steamboat Ski & Resort Corporation, Intrawest/Winter Park Operations Corporation, Solitude Mountain Ski Area LLC, Deer Valley Resort Company, LLC, Sugarbush Mountain Resort Inc., The Stratton Corporation, Crystal Mountain, Inc., Snowshoe Mountain, Inc., Snow Summit, LLC, Squaw Valley Resort, LLC, Alpine Meadows Ski Resort, LLC, Mammoth Mountain Ski Area, LLC, Blue Mountain Resorts GP Inc., Blue Mountain Resort Limited Partnership, Mont Tremblant Resorts and Company, Limited Partnership, Mont Tremblant Resort Inc., 4023480 Canada Inc., 2910942 Canada Inc., St. Bernard and Company Limited Partnership, Johannesen-Deslauriers Limited Partnership, Chateau M.T. Inc., 3116808 Canada Inc., CDAE Acquisitions Corporation, CDAE Acquisitions Limited Partnership, 8885630 Canada Inc., Canadian Mountain Holidays GP Inc., Canadian Mountain Holidays Limited Partnership, 682523 Alberta Ltd., and Bugaboo Helicopter Skiing 1992 Inc. request that the Court enter judgment in their favor and against Defendant Lexington Insurance Company and award damages as follows:

a. For all benefits due under the Policy for covered losses;

b. For other compensatory economic damages in amounts to be proved at trial;

c. For two-times the covered benefit as permitted by Section 10-3-1116(1), C.R.S.;

d. For reasonable attorneys' fees, costs, and expenses incurred herein;

e. For all pre-judgment interest, post-judgment interest, moratory interest and all other interest available at law to the maximum amount provided by law;

f. For a declaratory judgment as set forth above; and

g. For such other and further relief as the law permits and this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated this 3rd day of September, 2021.

SHERMAN & HOWARD L.L.C.

/s/ Christopher R. Mosley

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