

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

ATLANTIC SPECIALTY INSURANCE  
COMPANY,

Plaintiff,

v.

FLG PRODUCTIONS, LLC and JAX  
MEDIA, LLC,

Defendants.

Civil Action File No.: CV421-331

**ATLANTIC SPECIALTY INSURANCE COMPANY’S COMPLAINT FOR  
DECLARATORY RELIEF**

Now comes Plaintiff, Atlantic Specialty Insurance Company (“ASIC”) for its Complaint for Declaratory Judgment against FLG Productions, LLC (“FLG”) and Jax Media, LLC (“Jax Media”) (collectively “Defendants”) and alleges and seeks relief as follows:

**I. NATURE OF ACTION**

1. Pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202, Plaintiff Atlantic Specialty Insurance Company (“ASIC”) brings this action for Declaratory Judgment against its named insureds, FLG and Jax Media.

2. This matter arises out of Defendants’ claim for production interruption losses, pursuant to a motion picture/television producers portfolio policy that ASIC issued to Defendants for the Insured Production, “Florida Girls Season Two” (the “ASIC Policy”).

3. Defendants seek coverage pursuant to the ASIC Policy for losses reportedly caused by the interruption in the production of Florida Girls Season Two due to the outbreak of SARS-COV2 (“COVID-19”).

4. The ASIC Policy affords Extra Expense coverage sustained “due to the interruption, postponement or cancellation of an ‘Insured Production’” from a Covered Cause of Loss during the Term of Coverage. A true and correct copy of the ASIC Policy is attached hereto as Exhibit A.

5. The ASIC Policy includes an “Imminent Peril” extension for Extra Expense coverage, “defined as certain, immediate and impending danger of such probability and severity to persons or property that it would be unreasonable or unconscionable to ignore.”

6. The ASIC Policy also includes an “Ingress and Egress” extension for Extra Expense coverage, which amends the Covered Cause of Loss definition for Extra Expense coverage to include “ingress to or egress from Covered Property due to direct physical loss or damage to property within 3 miles of the Covered Property except as excluded herein.”

7. The ASIC Policy likewise includes a “Civil Authority” extension for Extra Expense coverage, which affords coverage for the actual and necessary loss sustained by an Insured as Extra Expense due to the interruption, postponement, or cancellation of an “Insured Production,” if the interruption, postponement or cancellation is directly caused by action of Civil Authority during the Term of Coverage, and the Civil Authority prohibits access to facilities or results from the withdrawal of a permit allowing for the use of the facilities, in connection with the “Insured Production.”

8. The coverage afforded by the ASIC Policy is subject to certain conditions precedent, including, as relevant here, the Insureds’ duty to take all reasonable steps to reduce and prevent the loss, cooperate with ASIC in its investigation of the Claim, report the Claim to ASIC as soon practicable, and as soon as practicable, give ASIC a description of the loss involved and how, when and where the loss occurred.

9. ASIC seeks a judicial declaration that Defendants are not entitled to coverage for their production interruption losses under the ASIC Policy due, in part, to Defendants' breach of conditions precedent, including the failure to cooperate with ASIC in the handling of Defendants' claim and failure to, as soon as practicable, give ASIC a description of the loss involved and how, when and where the loss occurred.

10. ASIC likewise seeks a judicial declaration that Defendants' production interruption losses reportedly caused by COVID-19 are not covered pursuant to Extra Expense Coverage, including the Imminent Peril, Ingress and Egress, and Civil Authority Extra Expense extensions.

## **II. PARTIES**

11. ASIC is incorporated under the laws of the State of New York and has its principal place of business in the State of Minnesota.

12. Defendant Jax Media, LLC is a limited liability company incorporated under the laws of the State of Delaware and has its principal place of business in the State of New York.

13. Fred Anthony "Tony" Hernandez is the sole member of Jax Media, LLC and is domiciled in and a citizen of the State of New York.

14. Upon information and belief, Defendant FLG Productions, LLC is a limited liability company incorporated under the laws of the State of Delaware and has its principal place of business in New York.

15. Jax Media, LLC is the sole member of FLG Productions, LLC. As set forth above, Jax Media, LLC is a limited liability company incorporated under the laws of the State of Delaware with its principal place of business in the State of New York. The sole member of Jax Media, LLC is Fred Anthony "Tony" Hernandez, who is domiciled in and a citizen of the State of New York.

### III. JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

17. An actual justiciable controversy exists between and among ASIC and Defendants within the meaning of 28 U.S.C. § 2201 and 28 U.S.C. § 2202 regarding whether ASIC has a duty to provide coverage for Defendants' alleged losses.

18. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and the suit is between citizens of different states.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to this claim occurred in this judicial district, including the filming and production of Florida Girls Season 2, that FLG has an office in this judicial district, and that the production application lists the location as Savannah, Georgia.

### IV. THE CLAIM

20. On information and belief, Jax Media is a motion picture and video production company known for producing long-running series such as *Broad City*, *Difficult People*, *Younger* and *Inside Amy Schumer*.

21. On information and belief, FLG is a motion picture and video production company that produced Florida Girls Season 1 and started the pre-production of Florida Girls Season 2.

22. On information and belief and in accordance with FLG's application for insurance (the "Production Application"), Florida Girls Season 2 was an American sitcom that followed four women who resided in a Florida trailer park. Production and filming for Florida Girls Season 2

was scheduled to take place in Savannah, Georgia. A true and correct copy of the Production Application is attached as Exhibit B.

23. On information and belief, Florida Girls Season 1 premiered on July 10, 2019, on the television network, Pop, and Pop renewed the series as Florida Girls 2 for a second season, on October 3, 2019.

24. On information and belief, pre-production of Florida Girls Season 2 was scheduled to begin in January 2020.

25. On information and belief, filming of Florida Girls Season 2 was scheduled to begin in the spring of 2020 in Savannah, Georgia; however, on or about March 3, 2020, Pop cancelled Florida Girls Season 2. *See* Exh. B, Production Application.

26. On or about March 14, 2020, the State of Georgia issued an Executive Order declaring a Public Health State of Emergency in Georgia. A true and correct copy of the State of Georgia Executive Order is attached hereto as Exhibit C.

27. On or about March 19, 2020, the City of Savannah, Georgia issued a “Declaration of Local Emergency” which, as relevant here, ordered the closure of bars, nightclubs, gyms and fitness centers, live performance venues, etc., and reduced restaurant capacity by 50 percent. A true and correct copy of the City of Savannah Declaration of Local Emergency Order is attached hereto as Exhibit D.

28. On or about March 23, 2020, the State of Georgia issued an Executive Order, which ordered “that no business, establishment, corporation, non-profit corporation, or organization shall allow more than ten (10) persons to be gathered at a single location if such gathering requires persons to stand or to be seated within six (6) feet of any other persons.” A true and correct copy of the State of Georgia Executive Order is attached hereto as Exhibit E.

29. On or about March 30, 2020, Defendants submitted a notice of claim to ASIC with a date of loss of March 13, 2020, for Florida Girls Season 2 (the “Notice of Claim”), and the Notice of Claim does not mention any Declaration of Local Emergency or Executive Order.<sup>1</sup>

30. In the Notice of Claim, Defendants reported a “[p]ause in production due to COVID-19. Shutdowns were an effort to mitigate future losses due to the potential for cast and key crew members to become ill. We do not yet have a return date. Production shoots in Georgia.” A true and correct copy of Defendants’ Notice of Claim is attached hereto as Exhibit F.

31. The Notice of Claim does not refer to production interruption due to Civil Authority, Direct Physical Loss to Covered Property, or inability to access Covered Property due to direct physical loss or damage to property within three miles.

32. The Notice of Claim does not disclose that Pop cancelled Florida Girls Season 2 on or about March 3, 2020, nearly two weeks prior to the City of Savannah’s March 19, 2020 “Declaration of Local Emergency.” *See* Exh. F.

33. The original email submitting a Notice of Claim to ASIC does not contain a policy number and was submitted only on behalf of Jax Media. *See* Exh. F.

34. Jax Media submitted other COVID-related claims under the ASIC Policy and other policies issued to FLG and other entities related to Jax Media and the insured contact, John Nemeth, which resulted in a number of emails between ASIC, John Nemeth, and FLG’s brokers at Hub and at Reiff & Associates, in ASIC’s attempt to determine which insured was seeking coverage for the reported interruption in Florida Girls Season 2 and under what policy. True and correct copies of several emails from July 9 to July 17, 2020, are attached hereto as Exhibit G.

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<sup>1</sup> The original claim indicated a date of loss of March 17, 2020. This date was later changed by Defendants to March 13, 2020. *See* Exhibit F, Notice of Claim.

35. In July 2020, Defendants identified the ASIC Policy under which Defendants sought coverage for the reported interruption in the production of Florida Girls Season 2.

36. Once Defendants identified the ASIC Policy under which they sought coverage, and FLG as the Insured, on July 17, 2020, ASIC requested additional information from Defendants regarding the claimed losses. A true and correct copy of the July 17, 2020, Email is attached hereto as Exhibit H.

37. In the July 17, 2020, email to Mr. Nemeth, ASIC asked Mr. Nemeth for clarification regarding “[w]hat specifically happened on that date that affected production? Since then, have any cast, crew, locations and/or equipment been held?” ASIC also asked Nemeth in the email if there was “a spreadsheet/ledger of what is being claimed? If so, please provide.” *See* Exh. H.

38. On or about July 22, 2020, Mr. Nemeth replied to the July 17, 2020, Email and stated that the production of Florida Girls Season 2 was interrupted because “COVID-19 posed an imminent threat to cast and crew,” and Mr. Nemeth also advised ASIC that FLG had anticipated, in March 2020, that FLG would not be able to resume production during the foreseeable future. Defendants made the decision at that time to shut-down production for economic reasons. The July 22, 2020, Email does not refer to any acts of Civil Authority or direct physical loss or injury to property that caused the interruption of Florida Girls Season 2. A true and correct copy of the July 22, 2020, Email is attached as Exhibit I.

39. On July 29, 2020, ASIC replied to Mr. Nemeth seeking clarification and additional information regarding the cause of the reported production interruption of Florida Girls Season 2. A true and correct copy of the July 29, 2020, Email is attached hereto as Exhibit J.

40. Defendants did not respond to the July 29, 2020, Email.

41. On August 27, 2020, ASIC sent a follow-up email to Defendants regarding the cause of the reported loss and received no response. A true and correct copy of the August 27, 2020, Email is attached hereto as Exhibit K.

42. ASIC sent another follow-up email on September 22, 2020, seeking information regarding the cause of the reported loss. A true and correct copy of the September 22, 2020, Email is attached hereto as Exhibit L.

43. On September 23, 2020, ASIC received a response from Mr. Nemeth in which he wrote “[Jax Media and FLG] will return with further explanation to answer your last question – again, thank you for bearing with us.” A true and correct copy of the September 23, 2020, Email is attached hereto as Exhibit M.

44. ASIC did not receive further explanation from Defendants, as Defendants promised in the September 23, 2020, Email.

45. On October 21, 2020, ASIC sent another follow-up e-mail to Defendants requesting additional information regarding Defendants’ reported shut-down of the production of Florida Girls Season Two. A true and correct copy of the October 21, 2020, Email is attached hereto as Exhibit N.

46. On October 23, 2020, ASIC received a letter from Anamay Carmel, an attorney at Pasich LLP, on behalf of FLG Production “in response to [ASIC’s] questions regarding the claim that FLG submitted under the policy. . . .” A true and correct copy of the October 23, 2020, Letter is attached hereto as Exhibit O.

47. In the October 23, 2020, Letter, FLG’s attorney demanded coverage for its claim without providing additional information in response to ASIC’s questions regarding the cause of the interruption of the production of Florida Girls Season 2.

48. On November 11, 2020, ASIC responded to the October 23, 2020, Letter. A true and correct copy of the November 11, 2020, Letter is attached hereto as Exhibit P.

49. ASIC clarified that its inquiries into the facts surrounding FLG's claimed loss "[w]ere part of our proper and good-faith investigation into the scope and extent of potential coverage available under the above-referenced Policy, . . ." *See* Exh. P.

50. ASIC likewise explained in the November 11, 2020, Letter that "[w]hile many of the facts of COVID-19 are universal, how those facts affect each production are different, and can materially impact the extent to which coverage or coverages may be available under the Policy." *See* Exh. P.

51. ASIC reiterated that "additional information – which ASIC has repeatedly requested – is necessary before any final coverage determination can be made." *See* Exh. P.

52. The November 11, 2020, Letter also asked Defendants to provide the following information to assist in ASIC's investigation of the claim:

- a. What specifically happened on March 13, 2020, that resulted in the shut-down of production;
- b. If the shut-down of production was due to an action of Civil Authority;
- c. If the shut-down of production was due to an action of Civil Authority, which specific orders may have caused the shutdown of production;
- d. Clarification on Defendants' assertion that imminent peril coverage was triggered and to what extent any actual or necessary loss was sustained due to the immediate and impending danger to Covered Persons;
- e. The amount of alleged loss; and

- f. Information regarding the amount of alleged loss including any backup documentation that corresponds to those claimed losses.

*See* Exh. P.

53. On December 2, 2020, ASIC sent a follow-up email to the attorneys for FLG regarding the letter ASIC sent on November 11, 2020. A true and correct copy of the December 2, 2020, Email is attached hereto as Exhibit Q.

54. ASIC received no response to the November 11, 2020, Letter from the attorneys for FLG or from Defendants.

55. On January 7, 2021, ASIC sent a follow-up email to the attorneys for FLG regarding the November 11, 2020, Letter. A true and correct copy of the January 7, 2021, Email is attached hereto as Exhibit R.

56. ASIC received no response to the January 7, 2021, Letter from the attorneys for FLG.

57. On February 12, 2021, ASIC sent a follow-up email to the attorneys for FLG regarding the documentation ASIC had requested in the November 11, 2020, Letter. A true and correct copy of the February 12, 2021, Email is attached hereto as Exhibit S.

58. On March 2, 2021, attorneys for FLG sent a letter to ASIC in response to the November 11, 2020, letter. A true and correct copy of the March 2, 2021, Letter is attached hereto as Exhibit T.

59. In the March 2, 2021, Letter, the attorneys for FLG did not answer the questions posed by ASIC in the November 11, 2020, Letter.

60. On or about April 16, 2021, ASIC received a ledger in the form of an Excel spreadsheet related to the production of Florida Girls Season 2 (the “Ledger”). A condensed, redacted copy of relevant portions of the Ledger is attached hereto as Exhibit U.

61. The Ledger, entitled “ADDITIONAL COSTS DUE TO COVID SHUTDOWN,” includes a wide array of expenses, such as fringes, lodging, meals, hair products, “purchases,” bank fees, production insurance, taxis, parking, etc., and totals approximately \$3.2M.

62. On information and belief, these voluminous entries allegedly relate to *all* production and filming costs incurred for Florida Girls Season 2. *See* Exh. U.

63. The Ledger includes entries for costs incurred dating back to 2019, prior to the beginning of pre-production for Florida Girls Season 2 and before COVID-19. *See* Exh. U.

64. ASIC has been unable to ascertain, based on the Ledger entries, which necessary expenses, if any, Defendants have incurred to avoid or minimize Defendants’ reported suspension of the production of Florida Girls Season 2.

65. On or about May 21, 2021, ASIC’s counsel met and conferred by telephone with an attorney for FLG.

66. During the call, ASIC’s counsel attempted once again to explain what documentation ASIC needed to evaluate Defendants’ claim and identify what coverage under the ASIC Policy might be available for the reported interruption of the production of Florida Girls Season 2.

67. During the call, ASIC’s counsel informed the attorney for FLG that, through ASIC’s own research, ASIC had discovered that on March 3, 2020, Pop cancelled Florida Girls Season 2.

68. The attorney for FLG asserted, without ever providing any supporting documentation, that filming and production of Florida Girls Season 2 would have continued despite Pop's cancellation.

69. No supporting documentation has been provided to date to support this assertion, and thus, it remains unclear to ASIC whether Pop's cancellation of Florida Girls Season 2 was due to COVID-19 or another unrelated cause of loss.

70. On information and belief, production and filming of Florida Girls Season 2 has never resumed despite the gradual reopening of Georgia.

71. On May 26, 2021, attorneys for FLG sent an email to ASIC's counsel attaching Executive Orders and Civil Authority Orders from the states of California, New York, and Georgia. The email also attached Orders from the Cities of Los Angeles and Savannah. *See* Exhibits C, D and E; *see also* Exhibit V, Declarations of Emergency and Executive Orders from Georgia, California, New York, and Savannah, in addition to President Trump's Declaration of National Emergency and the World Health Organization's Opening Remarks.

72. Attorneys for FLG did not explain how the Orders, issued after Pop decided not to air Florida Girls Season 2, impacted the filming and production of Florida Girls Season 2. Exhibit W, articles from *Deadline* and *Variety*, dated March 4, 2020.

73. To date, despite ASIC's counsels' attempts to identify the Covered Cause of Loss, Defendants and attorneys for FLG have provided no other information relevant to the Defendants' claim.

74. Despite submitting a claim under the ASIC Policy, Defendants have failed to provide the requested documentation to support Defendants' reported loss and have failed to otherwise cooperate with ASIC.

75. Despite repeated requests from ASIC, Defendants and FLG's counsel have not identified which Ledger entries, if any, represent necessary expenses to minimize the reported production interruption in the production of Florida Girls Season 2 or to otherwise demonstrate that the reported production interruption was from a Covered Cause of Loss.

76. Defendants never informed ASIC that Florida Girls' Network, Pop, canceled Florida Girls' production prior to any local government issuing any order addressing COVID-19 concerns.

77. Although it is possible that Florida Girls Season 2 could have continued production after being cancelled by Pop, Defendants have not provided documentation to ASIC to support Defendants' assertion that Florida Girls Season 2 would have continued production without Pop's intent to air the second season.

78. On information and belief, Florida Girls Season 2 has not resumed production since the cancellation by Pop, despite the gradual lifting of restrictions from COVID across the United States.

79. ASIC continues to seek documentation supporting Defendants' contention that the expenses incurred were necessary to avoid or minimize the reported suspension of the production of Florida Girls Season 2 but has received no cooperation or supporting documentation from Defendants.

## **V. THE POLICY**

80. ASIC issued the ASIC Policy number MP01163-00 to Defendants, for the policy period of October 24, 2019, to October 24, 2020 (the "ASIC Policy"). The ASIC Policy provides for, as relevant here, Cast Coverage with a Limit of Liability of \$15 million for each loss; Props, Sets & Wardrobe Coverage with a Limit of Liability of \$2 million for each loss; Extra Expense

Coverage with a Limit of Liability of \$2 million for each loss; and Civil Authority Coverage with a Limit of \$500,000. Exh. A.

81. **Section IV, DEFINITIONS APPLICABLE TO ALL COVERAGES OF THIS POLICY states, in part:**

\* \* \*

g. “Insurable Production Cost” includes:

(1) All costs, including overhead, chargeable directly to an “Insured Production” or series of productions, including any amount of other overhead you declare at the time you declare an “Insured Production” or series of productions.

However, the following costs shall not be included in “Insurable Production Cost”:

- (a) Royalties, residuals, premiums paid for this insurance, interest on loans, and personal and real property taxes;
- (b) Story, scenario, music rights, and sound rights, except with respect to television series, specials, and pilots; and
- (c) “Continuity”, except when a period of suspension due to covered loss or damage exceeds ninety (90) days.

Nevertheless, you have the option to include these excluded costs at the time you declare an “Insured Production” or series of productions. In that case, such costs will be included in the “Insurable Production Cost”; and

(2) The amount of any loss or damage paid under this policy. This provision does not apply where premium is based on an episodic charge.

e. “Insured Production” means a production that has been declared and accepted by us and endorsed to this policy.

\* \* \*

82. The Policy’s coverage Grant for Section II, Coverage B. Extra Expense extension reads as follows:

## **SECTION II, COVERAGE B. EXTRA EXPENSES**

### **I. COVERAGE**

We will pay the actual and necessary loss you sustain as Extra Expense due to the interruption, postponement, or cancellation of an “Insured Production.” The interruption, postponement or cancellation must be from a Covered Cause of Loss during the Term of Coverage.

- a. Extra Expense, as used in this Coverage, means the following expenses you actually incur or plan to incur during the “Period of Restoration” that you would not have incurred had there been no direct physical loss or damage to Covered Property:
  - (1) Necessary additional “Insurable Production Cost” incurred to avoid or minimize the interruption, postponement, or cancellation of the “Insured Production”; and
  - (2) Necessary expenses incurred to the extent they reduce the amount of loss that otherwise would be payable under this Coverage.

Extra Expense does not include loss of earnings or profit.

- b. Covered Property, as used in this Coverage, means property used or intended to be used in connection with an “Insured Production”.

#### Property Not Covered

Covered Property does not include Negative film, video tape, tapes, cels, transparencies, positives, soundtracks, artwork, software, programs or any other form of media.

#### Covered Causes of Loss

Covered Causes of Loss means risks of direct physical loss or damage to Covered Property except those causes of loss listed in the Exclusions.

\* \* \*

#### VII. ADDITIONAL DEFINITION:

For the purposes of this Coverage, the following definition applies in addition to the definitions described in Part IV. of the Policy Conditions - Definitions Applicable To All Coverages of This Policy:

“Period of Restoration” means the period of time that:

- a. Begins with the date of direct physical loss or damage resulting from any Covered Cause of Loss; and
- b. Ends on the earlier of:
  - (1) The date when the property should be repaired, rebuilt or replaced with reasonable speed and similar quality and “Principal Photography” is resumed; or
  - (2) The date the “Insured Production” is abandoned.

The expiration date of this policy will not cut short the “Period of Restoration”.

83. The Policy's Extra Expenses extension of coverage for Imminent Peril reads as follows:

**IMMINENT PERIL**

Coverage is extended to Cast and Extra Expense to include "imminent peril", defined as certain, immediate and impending danger of such probability and severity to persons or property that it would be unreasonable or unconscionable to ignore.

Except as provided above, this extension does not negate the applicability of the basic terms and conditions of the Extra Expense Coverage in the event that an imminent peril results in damage to or destruction of property or facilities payable under this policy; or the Cast Coverage in the event that an imminent peril results in death, injury or sickness of a covered person, in which case a separate claim will result from the consequential loss as described above.

**Limit of Liability:**

The most we will pay for loss is \$500,000 per Occurrence and Aggregate.

**Deductible:**

We will not pay for loss in any one occurrence until the amount of the adjusted loss before applying the applicable limits of insurance exceeds the deductible amount of \$7500.

We will then pay the amount of the adjusted loss in excess of the deductible, up to the applicable limit of insurance.

84. The Policy's coverage grant for Ingress and Egress extension reads as follows:

**INGRESS AND EGRESS**

This endorsement modifies insurance provided under the following:

**DICE COVERAGE B. EXTRA EXPENSE**  
**MPTV COVERAGE B. EXTRA EXPENSE**  
**THEATRICAL COVERAGE D. EXTRA EXPENSE**

**I. COVERAGE, d.** Covered Causes of Loss, is extended to include ingress to or egress from Covered Property due to direct physical loss or damage to property within 3 miles of the Covered Property except as excluded herein.

85. The Policy's MPTV Producers Portfolio Policy Conditions reads as follows:

**MPTV PRODUCERS PORTFOLIO POLICY CONDITIONS**

\* \* \*

**f. Duties In The Event of Loss Or Damage**

In case of a loss or damage to which this insurance may apply, you must see that the following duties are performed:

- (1) Police Notification – Notify the police if a law may have been broken.
- (2) Minimize Loss or Damage – Take all reasonable steps to protect the property and Covered Persons from further damage and minimize the loss. Keep a record of your expenses in doing so for consideration in the settlement of the claim. This will not increase the limit of insurance.
- (3) Notice of Loss or Damage
  - a. Report as soon as practicable to us or our authorized representative any loss or damage which may become a claim under this policy. Include a description of the property or loss involved.
  - b. As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Proof of Loss – File with us, or our authorized representative, a detailed proof of loss signed and sworn to by you setting forth to the best of your knowledge and belief the facts of the loss and the amount thereof. You must do this within one hundred eighty (180) days after discovery of the loss or damage.
- (5) Cooperation
  - (a) Except at your own cost, make no voluntary payments, assume no obligations, and incur no expenses without our consent.
  - (b) Permit us to inspect the property and records proving the loss or damage.  
Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (c) Immediately send us copies of any demands, summons or legal papers received in connection with the claim or suit.
  - (d) Cooperate with us in the investigation or settlement of the claim.

86. The Policy's coverage grant for Section I. Cast Coverage reads as follows:

**I. COVERAGE**

We will pay the actual and necessary loss you sustain by reason of a Covered Person being prevented from commencing, continuing or completing an assigned duty or

role in an “Insured Production”. The loss must be caused by or result from a Covered Cause of Loss during the Term of Coverage.

- a. Covered Person, as used in this Coverage, means a person accepted by us for Cast Coverage and specifically named in an endorsement attached to this policy.

Covered Causes of Loss

Covered Causes of Loss means accidental injury, sickness or death to a Covered Person except those causes of loss listed in the Exclusions.

\* \* \*

### **III. LIMITS OF INSURANCE**

The most we will pay for loss in any one occurrence is the Limit of Insurance shown in the Declarations for Cast Coverage.

87. The Policy’s coverage grant for Civil Authority Coverage (Broad Form) reads as follows:

#### **CIVIL AUTHORITY COVERAGE (BROAD FORM)**

##### **I. COVERAGE**

- a. We will pay the actual and necessary loss you sustain as Extra Expense due to the interruption, postponement or cancellation of an “Insured Production”. But:
  - (1) The interruption, postponement or cancellation must be directly caused by action of Civil Authority during the “Term of Coverage”;
  - (2) The action of Civil Authority must prohibit access to facilities or result from the withdrawal of the permit allowing you to use facilities being used or to be used in connection with the “Insured Production”; and
  - (3) Civil Authority Coverage applies only to the interruption, postponement or cancellation of the “Insured Production” being filmed or taped in USA and Canada.

This Coverage will apply for a period of up to 3 consecutive days from the date of the action of Civil Authority. The expiration date of this policy will not cut short this period.

- b. Extra Expense, as used in this Coverage, means the following expenses you incur that you would not have incurred had there been no interruption, postponement or cancellation of the “Insured Production”:

- (1) Necessary additional “Costs” incurred to avoid or minimize the interruption, postponement or cancellation of the “Insured Production”; and
- (2) Necessary expenses incurred to the extent they reduce the amount of loss that otherwise would be payable under this Coverage.

Extra Expense does not include:

- (1) Loss of earnings or profit;
- (2) Expense to repair or replace property, including animals; or
- (3) Expense payable under any other Coverage of this policy.

### **FIRST CLAIM FOR RELIEF**

#### **(Declaratory Relief---ASIC Has No Coverage Obligation For Defendants’ Reported Production Interruption Losses, Because Defendants Have Not Satisfied the Conditions for Coverage Under the Policy.**

88. ASIC repeats, reiterates and realleges each and every allegation in the preceding paragraphs as if fully set forth herein.

89. The ASIC Policy includes certain conditions for coverage under the Policy. These conditions include certain specified duties that, in case of a loss or damage, Defendants must perform as conditions precedent to coverage under the ASIC Policy.

90. Among these duties, Defendants must report as soon as practicable to ASIC or its authorized representative any loss or damage which may become a claim under the ASIC Policy. The report must include a description of the property or loss involved.

91. Additionally, Defendants must give ASIC a description of how, when and where the loss or damage occurred and file with ASIC or its authorized representative a detailed proof of loss signed and sworn to by Defendants stating to the best of Defendants’ knowledge and belief the facts of the loss and the amount thereof, within one hundred eighty (180) days after discovery of the loss.

92. Defendants must likewise cooperate with ASIC in the investigation and settlement of any claim, and except at Defendants' own expense, must make no voluntary payments assume no obligations and incur no costs without ASIC's consent.

93. Defendants also have a duty to minimize loss or damage and to take all reasonable steps necessary to minimize Defendants' reported loss, in addition to keeping a record of Defendants' expenses for consideration in settlement of the claim.

94. Defendants' Notice of Claim, submitted on March 23, 2020, does not include a description of the property or loss and does not include a description of how, when and where the loss or damage occurred. To the contrary, the Notice of Loss includes a report of "[p]ause in production due to COVID-19. Shutdowns that were an effort to mitigate future losses due to the case and key crew members becoming ill. We do not have a return date. Production shoots in Georgia." Moreover, the original email submitting the notice of claim to ASIC does not contain a policy number and was not submitted on behalf of FLG.

95. Defendants' subsequent correspondence to ASIC does not include any further description of the loss or any indication of how and where the claimed loss or damage had occurred, until April 16, 2021, when Defendants submitted the Ledger.

96. The Ledger includes a wide array of expenses dating back to 2019, prior to COVID-19 and pre-production for Florida Girls Season 2, such as fringes, lodging, meals, hair products, purchases, bank fees, production insurance, taxis, and parking.

97. Despite ASIC's numerous requests for supporting documentation identifying which entries in the Ledger are related to the claim and which entries represent expenses that were necessary to avoid or minimize the reported suspension of the production of Florida Girls Season 2, Defendants have not responded. Additionally, FLG did not disclose Pop's cancellation

of Florida Girls Season 2, and FLG has not provided the requested documentation supporting FLG's reports that filming and production of Florida Girls Season 2 would have continued despite Pop's cancellation.

98. ASIC is, therefore, entitled to a judicial declaration that ASIC's obligations under the ASIC Policy, if any, have been excused by Defendants' failure to comply with their duties and the conditions precedent set forth in the ASIC Policy.

**SECOND CLAIM FOR RELIEF  
(Declaratory Relief – ASIC Has No Coverage Obligation For Extra Expenses Defendants  
May Have Incurred Due To The Interruption, Postponement or Cancellation Of Florida  
Girls Season Two.)**

99. ASIC repeats, reiterates and reallages each and every allegation in the preceding paragraphs as if set forth fully herein.

100. The ASIC Policy covers Extra Expenses incurred due to the interruption, postponement or cancellation of Florida Girls Season 2, if the interruption, postponement or cancellation is from a Covered Cause of Loss during the Term of Coverage.

101. The ASIC Policy defines Covered Cause of Loss, as used for Extra Expense coverage, as “[r]isks of direct physical loss or damage to Covered Property except those causes of loss listed in the Exclusions.” Covered Property is defined as “[p]roperty used or intended to be used in connection with an ‘Insured Production.’”

102. Extra Expense is defined to mean expenses Defendants actually incurred during the “Period of Restoration” that Defendants would not have incurred had there been no direct physical loss or damage to Covered Property. “Period of Restoration” is defined to begin “[w]ith the date of direct physical loss or damage resulting from any Covered Cause of Loss.”

103. Pursuant to the Policy, Extra Expense does not include loss of earnings or profit.

104. Defendants have not provided proof of interruption, postponement or cancellation of Florida Girls Season 2 from any risk of direct physical loss or damage to Covered Property or any proof of a date on which any direct physical loss or damage began. The Ledger, entitled “ADDITIONAL COSTS DUE TO COVID SHUTDOWN,” submitted by Defendants on April 16, 2021, includes entries apparently associated with lost profits and earnings and items wholly unrelated to the production of Florida Girls Season 2 or COVID-19, which are not covered as an Extra Expense per the ASIC Policy’s definition.

105. Because Defendants have provided no documentation or proof of direct physical loss or damage to Covered Property, ASIC is entitled to a judicial declaration that Defendants’ claimed losses are not covered pursuant to Extra Expense coverage, as set forth in SECTION I (a) of COVERAGE B. EXTRA EXPENSE.

### **THIRD CLAIM FOR RELIEF**

#### **(Declaratory Relief – ASIC Has No Coverage Obligation For Defendants’ Claim Pursuant To The Extra Expense Extension For Imminent Peril Due To Any Interruption, Postponement or Cancellation Of Florida Girls Season Two.)**

106. ASIC repeats, reiterates and reallages each and every allegation in the preceding paragraphs as if set forth fully herein.

107. The ASIC Policy includes an Extra Expense extension that affords coverage for “imminent peril”, defined as certain, immediate and impending danger of such probability and severity to persons or property that would be unreasonable or unconscionable to ignore.

108. Based on information and belief, filming of Florida Girls Season 2 was set to begin in the spring of 2020, in Savannah, Georgia, and on or about March 2, 2020, Pop cancelled Florida Girls Season 2. However, per the Notice of Claim, Defendants reported a “[p]ause in production due to COVID-19. Shutdowns were an effort to mitigate future losses due to the potential for cast

and key crew members to become ill. We [Defendants] do not yet have a return date. Production shoots in Georgia.”

109. Defendants never disclosed Pop’s cancellation of Florida Girls Season 2, and despite ASIC’s request for documentation that production of Florida Girls Season 2 would have continued without Pop’s intent to air the second season, Defendants have not responded with any documentation to demonstrate that COVID-19, as opposed to Pop’s cancellation of Florida Girls Season 2, was the cause of the interruption in the production of Florida Girls Season 2.

110. Because Defendants have not submitted any documentation or proof that interruption in the production of Florida Girls Season 2 was caused by “imminent peril,” and not merely caused by Pop’s decision to cancel Florida Girls Season 2, ASIC is entitled to a judicial declaration that Defendants’ claimed losses are not covered pursuant to Extra Expense extension that affords coverage for “imminent peril.” Further, The Ledger, entitled “ADDITIONAL COSTS DUE TO COVID SHUTDOWN,” submitted by Defendants on April 16, 2021, includes entries apparently associated with lost profits and earnings, which are not covered as an Extra Expense extension for “imminent peril.” *See* Exh. U.

#### **FOURTH CLAIM FOR RELIEF**

#### **(Declaratory Relief—ASIC Has No Coverage Obligation For Defendants’ Claim Pursuant To The Extra Expense Extension For Ingress and Egress From Covered Property Within Three Miles Of The Covered Property.)**

111. ASIC repeats, reiterates and reallages each and every allegation in the preceding paragraphs as if set forth fully herein.

112. The ASIC Policy covers Extra Expenses incurred due to the interruption, postponement or cancellation of Florida Girls Season 2, if the interruption, postponement or cancellation is from a Covered Cause of Loss during the Term of Coverage.

113. The ASIC Policy includes an Extra Expense extension that amends the definition of Covered Causes of Loss to include ingress to or egress from Covered Property due to direct physical loss or damage to property within three miles of the Covered Property except as otherwise excluded by the ASIC Policy.

114. Defendants have not provided any documentation or proof of interruption, postponement or cancellation of Florida Girls Season 2 from any obstruction in ingress or egress to Covered Property due to direct physical loss or damage to property within three miles of the Covered Property.

115. The Ledger, entitled “ADDITIONAL COSTS DUE TO COVID SHUTDOWN,” submitted by Defendants on April 16, 2021, includes entries apparently associated with lost profits and earnings, which are not covered as an Extra Expense extension for ingress and egress.

116. ASIC is, therefore, entitled to a judicial declaration that Defendants’ claimed losses are not covered pursuant to ASIC Policy’s Extra Expense extension for ingress or egress from Covered Property due to direct or physical loss or damage to property within three miles of the Covered Property.

#### **FIFTH CLAIM FOR RELIEF**

**(Declaratory Relief—ASIC Has No Coverage Obligation For Defendants’ Claim Pursuant To Civil Authority Coverage For Actual and Necessary Loss Sustained as Extra Expense Due To Interruption, Postponement or Cancellation Directly Caused By Action Of Civil Authority.)**

117. ASIC repeats, reiterates and reallages each and every allegation in the preceding paragraphs as if set forth fully herein.

118. The ASIC Policy covers Extra Expenses incurred due to the interruption, postponement or cancellation of Florida Girls Season 2, if the interruption, postponement or cancellation is directly caused by action of Civil Authority during the “Term of Coverage” and if the action of Civil Authority prohibits access to facilities or results from the “withdrawal of the

permit allowing you [Defendants] to use the facilities being used or to be sued in connection with the ‘Insured Production’”.

119. Civil Authority coverage applies for a period of up to three consecutive days from the date of the action of Civil Authority, and Extra Expense is defined to include those expenses that “you [Defendants] would not have incurred had there been no interruption, postponement or cancellation of the ‘Insured Production’” to “[a]void or minimize the interruption, postponement or cancellation of the ‘Insured Production’” and “[t]o the extent they reduce the amount of loss that otherwise would be payable under Civil Authority coverage”.

120. Extra Expense, as used within Civil Authority coverage, does not include loss of earnings or profits, expense to repair or replace property, or expense payable under any other coverage of the ASIC Policy.

121. Defendants have likewise not provided ASIC with any documentation or proof that any loss Defendants have incurred, including Ledger entries, were incurred to minimize the interruption of the Production of Florida Girls Season 2. Moreover, Defendants never disclosed Pop’s cancellation of Florida Girls Season 2, and despite ASIC’s request for documentation that production of Florida Girls Season 2 would have continued without Pop’s intent to air the second season, Defendants have not responded with any documentation to demonstrate that COVID-19, as opposed to Pop’s cancellation of Florida Girls Season 2, was the cause of the interruption in the production of Florida Girls Season 2.

122. ASIC is, therefore, entitled to a judicial declaration that Defendants’ claimed losses are not covered pursuant to the ASIC Policy’s Extra Expense extension for Civil Authority.

**VI. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Atlantic Specialty Insurance Company prays for relief as follows:

1. For a declaration that Plaintiff Atlantic Specialty Insurance Company is not obligated to pay Defendants' claims of production interruption expenses for Florida Girls 2, pursuant to the ASIC Policy.
2. For costs of suit, including reasonable attorneys' fees incurred herein; and
3. For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 19<sup>th</sup> day of November 2021.

FREEMAN MATHIS & GARY, LLP

*/s/ Matthew F. Boyer*

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