

**12-Person Jury**

FILED  
6/23/2020 5:02 PM  
ROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2020L006709

**IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS  
LAW DIVISION**

**CADILLAC FUNDING ASSOCIATES, )  
LLC )**

**Plaintiff, )**

**vs. )**

**ZURICH AMERICAN INSURANCE )  
COMPANY, )**

**Defendants. )**

**CASE NO.: 2020L006709**

**JURY DEMANDED**

**COMPLAINT AT LAW**

NOW COMES Plaintiff Cadillac Funding Associates, LLC (“Plaintiff”), by its undersigned attorneys, and for its Complaint against Defendant Zurich American Insurance Company (“Defendant”), alleges and states the following:

**NATURE OF THE CAUSE OF ACTION**

1. This is a lawsuit arising out of Defendant denying Plaintiff coverage for its losses under the Business Interruption, Extra Expense, Contingent Time Element, Extended Period Liability, Cancellation of Bookings, and Interruption by Civil Authority and Military Authority provisions of its property insurance policies. These losses have resulted, and continue to result from or have been caused by, and continue to be caused by, the: (a) SARS-CoV-2 virus causing physical loss or damage to Plaintiff’s property and property of third parties such as suppliers and patron facilities; (b) the governments’ stay-at-home orders, including, without limitation, the State of Michigan’s stay-at-home orders; (c) the Michigan governor’s order shutting down hotels and also shutting down restaurants and bars’ on-premises businesses; (d) the Center for Disease Control’s

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(“CDC”) recommendation on travel restrictions; and/or (e) President Trump’s travel restrictions. Plaintiff is suing for breach of contract.

**PARTIES**

2. Plaintiff is a Delaware limited liability company with its principal place of business in Cleveland, Ohio. Plaintiff is successor in interest to Cadillac Hotel Holdings, LLC. Plaintiff owns The Westin Book Cadillac Hotel in Detroit, Michigan, with this hotel operating several restaurants and bars, but only one of the restaurants and bars is covered by the applicable policies (“Hotel”).
3. Defendant is an Illinois corporation with its principal place of business in Schaumburg, Illinois. Defendant is an insurance company.

**JURISDICTION AND VENUE**

4. This Court has personal jurisdiction over Defendant as it is domiciled in Illinois, did business in Illinois as it relates to the issues in this case, entered into a contract in Illinois that is at issue in this case, and generally does business in Illinois.
5. This Court has subject matter jurisdiction under Article VI, Section 9, of the Illinois Constitution. In addition, the Illinois Supreme Court does not have original, exclusive jurisdiction over this case.
6. Venue is proper in this Court under 735 ILCS 5/2-101(1) because Defendant is domiciled in Cook County and under 735 ILCS 5/2-101(2) because Cook County is the county in which the transaction or some part of the transaction occurred out of which this case arose. Defendant denied, either expressly or as a matter of law, Plaintiff’s claim for insurance coverage from its business location in Cook County.

**GENERAL ALLEGATIONS**

**A. CORONAVIRUS AND COVID-19**

7. COVID-19 is caused by the SARS-CoV-2 virus and is a disease that can result in serious illness or death.
8. As of the filing of this lawsuit, the State of Michigan has in excess of 51,000 confirmed cases of COVID-19 and in excess of 4,800 deaths as a result of COVID-19.
9. The vast majority of medical literature and studies on the issue have confirmed that coronaviruses can exist on paper, wood, and glass for up to 4-5 days. *E.g., Persistence of Coronavirus on Inanimate Surfaces and Their Inactivation with Biological Agents*, The Journal of Hospital Infection, March 2020, Volume 104, Issue 3, Pages 246-251. This SARS-CoV-2 virus strain can, in all probability, exist on multiple surfaces beyond 4-5 days.
10. In the science and medical community, it is widely held that the SARS-CoV-2 virus can exist on inanimate surfaces. For example, the website WebMD states that the SARS-CoV-2 virus can exist on wood, including furniture, for four days and on glass, including windows and drinking glasses, for five days.
11. The insurance industry recognizes that viruses can cause physical loss of or physical damage to property. In the Insurance Service Office, Inc.'s ("ISO") July 6, 2006 Circular regarding an ISO endorsement (CP 01 40 07 06) for exclusion of viruses, ISO stated:

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, milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

Defendant chose not to use this ISO drafted and approved exclusion, or any other expressly stated and applicable alternative policy language, to eliminate coverage for loss or damage caused by viruses or bacteria in Plaintiff's insurance policies.

**B. STATE AND FEDERAL GOVERNMENT ORDERS**

12. On January 20, 2020, the Center for Disease Control confirmed the first SARS-CoV-2 virus case in the United States. *First Case of 2019 Novel Coronavirus in the United State*, NEJM.org, January 31, 2020.

13. On or about January 31, 2020, President Trump signed the Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus. This Proclamation states: "The entry into the United States, as immigrants or nonimmigrants, of all aliens who were physically present within the People's Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, during the 14-day period preceding their entry or attempted entry into the United States is hereby suspended and limited subject to section 2 of this proclamation."

14. On or about March 10, 2020, Governor Whitmer of the State of Michigan issued Executive Order 2020-4. A copy of Executive Order 2020-4 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-521576--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521576--,00.html). This Order declared a state of emergency for the State of Michigan.

15. On or about March 11, 2020, the World Health Organization declared that the outbreak of COVID-19 is a pandemic.

16. Also, on or about March 11, 2020, President Trump imposed a travel ban barring travel from the Schengen zone of Europe to the U.S. in order to slow the spread of the SARS-CoV-2 virus and COVID-19.

17. On or about March 21, 2020, Governor Whitmer executed Executive Order 2020-20 that closed restaurants and bars for on-premises consumption beginning on March 22, 2020 through April 13, 2020. A copy of Executive Order 2020-20 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522576--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522576--,00.html).

18. On or about March 23, 2020, Governor Whitmer signed Executive Order 2020-21 that was a stay-at-home order for the State of Michigan that began on March 24, 2020 and continued through April 13, 2020. A copy of Executive Order 2020-21 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522626--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html). This Executive Order did not deem hotel workers as critical infrastructure workers.

19. In fact, Executive Order 2020-21 refers to the Cybersecurity and Infrastructure Security Agency's Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response in defining critical infrastructure workers. A copy of the memorandum is attached as **Exhibit A**. This memorandum limits the engagement of hotel workers to circumstances in which "hotels are used for COVID-19 mitigation and containment measures." The Hotel has not been used for COVID-19 mitigation or containment measures.

20. On or about April 1, 2020, Governor Whitmer issued Executive Order 2020-33, which declared a state of emergency and a state of disaster in the State of Michigan. A copy of Executive Order 2020-33 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-524025--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-524025--,00.html).

21. In addition, on or about April 9, 2020, Governor Whitmer signed Executive Order 2020-42 that extended the stay-at-home order from April 9, 2020 through April 30, 2020. A copy of Executive Order 2020-42 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525182--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525182--,00.html).

22. Governor Whitmer also issued Executive Order 2020-43 that continued the closure of restaurants and bars for on-premises consumption through April 30, 2020. A copy of the order is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525927--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525927--,00.html).

23. Governor Whitmer issued Executive Order 2020-68 that re-declared that the state of emergency and state of disaster in the State of Michigan remained effective through May 28, 2020. A copy of Executive Order 2020-68 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-527716--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-527716--,00.html).

24. Executive Order 2020-68 states that the coronavirus can survive on surfaces for days.

25. In addition, Governor Whitmer signed Executive Order 2020-69 that continued the closure of restaurants and bars for on-premises consumption through May 28, 2020. A copy of Executive Order 2020-69 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-527830--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-527830--,00.html).

26. On or about May 1, 2020, Governor Whitmer also executed Executive Order 2020-70 that continued the stay-at-home order through May 15, 2020. A copy of Executive Order 2020-70 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-527847--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-527847--,00.html).

27. On or about May 7, 2020, Governor Whitmer then executed Executive Order 2020-77 that continued the stay-at-home order until May 28, 2020. A copy of Executive Order 2020-77 is located at the following link [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-528460--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-528460--,00.html).

28. On or about May 22, 2020, Governor Whitmer extended the stay-at-home Order until June 12, 2020.

29. Executive Order 2020-20, Executive Order 2020-21, Executive Order 2020-42, Executive Order 2020-43, Executive 2020-69, Executive Order 2020-70, Executive Order 2020-77, and the May 22, 2020 Continuation of the stay-at-home Order shall be referred to as “Civil Authority Orders.”

30. Other states throughout the country, including those states surrounding Michigan, also have issued stay-at-home orders preventing people from traveling to Detroit, Michigan. For example, Ohio issued several Stay-at-Home Orders, including, without limitation, the March 23, 2020 Stay-at-Home Order. A copy of the March 23, 2020 Stay-at-Home Order is located at the following link <https://jfs.ohio.gov/ocomm/pdf/Directors-Order-Stay-at-Home.pdf>. In addition, an April 2, 2020 Order amended the March 23, 2020 Order to continue the stay-at-home requirement. A copy of the April 2, 2020 order is located at the following link <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-At-Home-Order-Amended-04-02-20.pdf>.

31. Further, on or about March 20, 2020, Governor Pritzker of the State of Illinois signed Executive Order 2020-10, which is a Stay-At-Home Order that ordered all individuals living in the State of Illinois to stay at home except as expressly allowed by the order. A copy of Executive Order 2020-10 is located at the following link <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx>.

32. The CDC recommends that people stay at home as much as possible which includes limiting travel for only essential purposes. A link to the CDC’s recommendations on travel is located at the following link <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>.

**C. PLAINTIFF'S INSURANCE POLICIES WITH DEFENDANT**

33. Defendant issued Plaintiff an insurance policy, Policy No. PPR 3700638-17. A copy of the Declaration pages for the Insurance Policy is attached as **Exhibit B**. A full copy of the policy is not attached as it is too lengthy to append as an exhibit. Defendant has a full copy of the Insurance Policy containing the terms, conditions, and exclusions it drafted and issued.

34. The policy period for Policy No. PPR 3700638-17 is April 1, 2019 through April 1, 2020. Plaintiff has coverage under another insurance policy from Defendant for the period April 1, 2020 through April 1, 2021.<sup>1</sup> Policy No. PPR 3700638-17 and the April 1, 2020-April 1, 2021 policy will be collectively referred to as the "Insurance Policies."

35. The Named Insured provision of the Declaration of the Insurance Policies states:

Marriott International, Inc. and any subsidiary, associated or allied company, corporation, firm, organization, and Marriott International, Inc.'s interest in any partnership or joint venture in which Marriott International, Inc. has management control or ownership as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the 'Insured', including legal representatives.

Further, at the option of Marriot International, Inc., the interests of third-party franchisees and licensees as respects franchised hotel locations shall also be covered under this policy subject to the terms and conditions specified herein.

36. Plaintiff is an Insured under the Insurance Policies based on the Named Insured provision.

37. The relevant policy limits under the Insurance Policies are: (a) \$1,500,000,000 as the "maximum limit of liability in a single OCCURRENCE regardless of the number of Locations or coverages involved"; (b) \$200,000,000 for Contingent Time Element; and (d) \$200,000,000 for Extra Expense; and (c) \$2,500,000 for "Cancellation of Bookings; but not to exceed \$2,500,000

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<sup>1</sup> However, this insurance policy is not available to Plaintiff at the time of filing this Complaint and the full policy agreement is in the possession of Defendant. Plaintiff believes and therefore alleges that the April 1, 2020-April 1, 2021 policy will have the same or substantially the same relevant coverage provisions and applicable language as Policy No. PPR 3700638-17.



in the Aggregate during any policy year excess of \$2,500,000 per Occurrence and Annual Aggregate as outlined in PARTICIPATION PAGE, **CANCELLATION OF BOOKINGS PARTICIPATION 7.C.**”

38. The relevant time limits for **CANCELLATION OF BOOKINGS** and **EXTENDED PERIOD OF LIABILITY** are 365 days. The relevant time period for **CIVIL OR MILITARY AUTHORITY** and **ORDINARY PAYROLL** is 90 days.

39. Paragraph 5. of **Declarations – Section A** defines **INSURED LOCATION** as follows:

A. The coverages under this Policy apply to an Insured Location in the policy Territory unless otherwise provided.

Insured location is a location:

- 1) listed on a schedule on file with this Company.
- 2) covered as a Miscellaneous Unnamed Location. Any locations of the Insured which do not appear on the schedule on file with this Company shall be considered a Miscellaneous Unnamed Location.
- 3) covered under the terms and conditions of the Automatic Coverage or Errors and Omissions provisions.

40. Plaintiff’s Hotel is an Insured Location as defined above.

41. Paragraph 1. **PROPERTY INSURED** under **PROPERTY DAMAGE – SECTION B** states that the Insurance Policies insure Real Property and Personal Property, as those terms are defined in the Insurance Policies, located at an Insured Location.

42. Paragraph 3 **PERILS INSURED AGAINST** under **PROPERTY DAMAGE – SECTION B** states: “This Policy covers property, as described in this Policy, against all risks of direct physical loss or damage, except as hereinafter excluded, while located as described in this

Policy occurring during the policy period.” None of the exclusions apply to Plaintiff’s claims for insurance coverage under the Insurance Policies.

**1. BUSINESS INTERRUPTION**

43. Paragraph 1.A. **LOSS INSURED** under **TIME ELEMENT – SECTION C** states:

**A.** This Policy insures **TIME ELEMENT** loss, as provided in the **TIME ELEMENT COVERAGES**, directly resulting from direct physical loss or damage of the type insured by this Policy:

- 1) to property described elsewhere in this Policy and not otherwise excluded by this Policy or otherwise limited in the **TIME ELEMENT COVERAGES** below;
- 2) used by the Insured, or for which the Insured has contracted use;
- 3) located at an Insured Location; or
- 4) while in transit, as provided by this Policy; and
- 5) during the Periods of Liability described in this section.

44. Paragraph 1.C. states: “This Policy covers expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section of this Policy. The amount of such recoverable expenses will not exceed the amount by which the loss has been reduced.”

45. Paragraph 2.A. of **TIME ELEMENT – SECTION C** states:

**1. TIME ELEMENT COVERAGES**

**A. BUSINESS INTERRUPTION**

- 1) Measurement of Loss:
  - a) The recoverable **BUSINESS INTERRUPTION** loss is the Actual Loss Sustained by the Insured of the following during the **PERIOD OF LIABILITY**:
    - (i) Net Profit, before deducting income taxes, which is not earned as a direct result of the interruption of production or suspension of business operations or services; and

- (ii) Fixed Charges, including:
  - (a) administrative expenses, interest on fixed indebtedness, advertising, taxes other than income taxes, insurance;
  - (b) salaries or wages of officers and employees whose services must necessarily be continued or who are employed under contracts guaranteeing annual compensation;
  - (c) vacation, holiday and sick leave pay;
  - (d) expense of heat, light, and power, selling expenses of the plant and branch stores when chargeable to the plant; and
  - (e) any other item that contributes to the Insured's overhead expense as a whole,

all to the extent that these charges continue following the loss and would have been earned had no such interruption happened.

- (iii) ORDINARY PAYROLL, including taxes and charges dependent on the payment of wages:
  - a) only the extent that such payroll continues following the loss and would have been earned had no such interruption happened.

However, if an Insured reduces the daily loss payable under Ordinary Payroll, either by:

- a) providing gainful employment for, or
- b) paying less than the normal salary rate to,

all or part of its employees, the number of consecutive days of Ordinary Payroll may be extended. However, this provision will not increase the total liability of this Company beyond the amount it would have been liable for Ordinary Payroll costs without this provision. Ordinary Payroll does not cover any portion of salaries or wages included in Net Profit or Fixed Charges.

References and applications. The following term means:

“ORDINARY PAYROLL” is defined to be the entire payroll expense for all employees of the Insured except officers, executives, department managers, employees under contract, and other important employees as determined by the Insured.

- b) In determining the indemnity payable as the Actual Loss Sustained, the Company will consider the continuation of only those normal charges and expenses that would have been earned had no interruption of production or suspension of business operations or services occurred.
- c) \* \* \*
- d) There is recovery hereunder but only to the extent that the Insured is:
  - (i) wholly or partially prevented from producing goods or continuing business operations or services;
  - (ii) unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;
  - (iii) unable to continue such operations or services during the PERIOD OF LIABILITY; and
  - (iv) able to demonstrate a loss of sales for the operations, services or production prevented.

46. As a result of the SARS-CoV-2 virus, Plaintiff has sustained direct physical loss or damage of the type insured under the Insurance Policies: (a) to property (i.e., Real and Personal Property at the Hotel) described in the Insurance Policies and not otherwise excluded by the Insurance Policies or limited in the TIME ELEMENT COVERAGES; (b) that Plaintiff used; (c) is located at an Insured Location (i.e., the Hotel); and (d) occurred during the Periods of Liability. In fact, as a result of the SARS-CoV-2 virus and physical loss or damage to property, Plaintiff closed its Hotel on March 26 2020 and is tentatively scheduled to reopen on July 1, 2020.

Therefore, Plaintiff has suffered Time Element losses, which are covered under the TIME ELEMENT COVERAGES of the Insurance Policies.

47. As a result of the SARS-CoV-2 virus and the physical loss or damage caused thereby, Plaintiff has been: (a) wholly or partially prevented from continuing business operations or services (i.e., operating its Hotel); (b) unable to make up lost production within a reasonable period of time; (c) unable to continue such operations or services (i.e., operating the Hotel) during the PERIOD OF LIABILITY; and (d) able to demonstrate a loss of sales for the operations or services prevented. Therefore, Plaintiff is entitled to coverage for its losses under the BUSINESS INTERRUPTION provision of the Insurance Policies.

**2. EXTRA EXPENSE**

48. Paragraph 2.B. under TIME ELEMENT – SECTION C states:

**B. EXTRA EXPENSE**

1) Measurement of Loss:

The recoverable EXTRA EXPENSE loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the PERIOD OF LIABILITY:

- a) Extra expenses to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and
- b) Extra costs of temporarily using property or facilities of the Insured or others,

less any value remaining at the end of the PERIOD OF LIABILITY for property obtained in connection with the above.

2) EXTRA EXPENSE Exclusions: As respects EXTRA EXPENSE, the following are also excluded:

- a) Any loss of income.
- b) Costs that normally would have been incurred in conducting the business during the same period had no direct physical loss or damage occurred.

c) Cost of permanent repair or replacement of property that has been damaged or destroyed.

d) Any expense recoverable elsewhere in this Policy.

3) References and Application. The following term(s) means:

a) Normal:

The condition that would have existed had no direct physical loss or damage occurred.

49. Plaintiff has incurred reasonable and necessary extra costs to temporarily continue as nearly normal as practicable the providing of hotel and restaurant/bar services at the Hotel. None of the EXTRA EXPENSE Exclusions apply. As a result, Plaintiff is entitled to coverage for its extra costs and expenses under the EXTRA EXPENSE provision of the Insurance Policies.

**3. CONTINGENT TIME ELEMENT**

50. Paragraph 3.B. of TIME ELEMENT – SECTION C states:

**3. TIME ELEMENT COVERAGE EXTENSIONS**

\* \* \*

**C. CONTINGENT TIME ELEMENT**

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY:

1) directly resulting from direct physical loss or damage of the type insured; and

2) to property of the type insured,

at any locations of suppliers or customers including builders risk locations and supplier or customer locations, which provide patrons to Insured locations located within the TERRITORY of this Policy.

The term 'supplier or customer' does not include any company supplying to or receiving from the Insured Location, as described elsewhere in this Policy, electricity, fuel, gas, water, steam, refrigeration, sewage or telecommunications.

Such locations are meant to include, but not be limited to the following types of facilities:

Supplier, Laundries, Food and Beverage and other various suppliers

Patron Facilities: Airports, Convention Centers, Civic Centers, Theme/Amusement Parks, Government Centers, Business Office Parks, Museums, Conference Centers, Sports Complexes, Stadiums, Exhibition Halls, Medical Centers/Hospitals, Schools/Universities, Marriott Management Services Client Location

51. Plaintiff suffered Actual Loss Sustained and EXTRA EXPENSE incurred during the PERIOD OF LIABILITY directly resulting from direct physical loss or damage of the type insured to property of the type insured at the locations of its suppliers or customers, including, without limitation, airports, conference centers, convention centers, civic centers, stadiums, and sports complexes. Therefore, Plaintiff is entitled to coverage for its losses and expenses under the CONTINGENT TIME ELEMENT coverage provision.

**4. EXTENDED PERIOD OF LIABILITY**

52. Paragraph 3.C. of TIME ELEMENT - SECTION C states:

**C. EXTENDED PERIOD OF LIABILITY**

Coverage described in TME ELEMENT COVERAGE – SECTION C including TIME ELEMENT COVERAGE and TIME ELEMENT EXTENSIONS is extended to cover the reduction in sales resulting from:

- 1) The interruption of business as covered by BUSINESS INTERRUPTION;
- 2) for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred; and

- 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included herein;

**EXTENDED PERIOD OF LIABILITY Exclusions:** As respects **EXTENDED PERIOD OF LIABILITY**, the **TIME ELEMENT EXCLUSIONS B** of this section does not apply and the following applies instead:

This Policy does not insure against any increase in loss due to fines or damages for breach of contract or for late or noncompletion of orders, or penalties of any nature.

This extension does not apply to **CANCELLATION OF BOOKINGS** and **DOWNZONING TIME ELEMENT** or if otherwise stipulated under the specific **TIME ELEMENT EXTENSION**,

Coverage under this Extension for the reduction in sales due to contract cancellation will include only those sales that would have been earned under the contract during the extended period of liability.

Coverage under this Extension does not apply for more than the number of consecutive days shown in the **LIMITS OF LIABILITY** clause of the **DECLARATIONS** section.

53. The time limit in the **DECLARATIONS** for **EXTENDED PERIOD OF LIABILITY** is 365 days.

54. Plaintiff will suffer reduction in sales resulting from the interruption of business for the additional length of time it would be required with the exercise of due diligence and dispatch to restore Plaintiff's business to the condition that would have existed had no loss occurred. None of the exclusions apply. Therefore, Plaintiff is entitled to coverage for its future losses under the **EXTENDED PERIOD OF LIABILITY** provision of the Insurance Policies.

#### **5. CANCELLATION OF BOOKINGS**

55. Paragraph 3.E. under **TIME ELEMENT – SECTION C** states:

#### **D. CANCELLATION OF BOOKINGS**



This policy is extended to cover the Actual Loss Sustained by the Insured during a Period of Liability resulting from:

- a. the cancellation of, and/or inability to accept bookings or reservations for accommodation, and/or interference with the business at any Insured Location; and/or
- b. the cancellation of, and/or inability to accept bookings or reservations, and/or interruption of, or interference with the business at any restaurant, spa, golf course, health club or other facility of the Insured at any Insured location

all as a direct result of:

- 1. \* \* \*
- 2. The:
  - a. outbreak of contagious and/or infectious disease as well as restrictive guidance or travel advisories placed on a region or area by Centers of Disease Control, World Health Organization, or comparable authority;
  - b. the outbreak of riot or civil commotion;
  - c. the occurrence of fire, or explosion, or windstorm or flood, or volcanic eruption

within a radius of 5 miles of an Insured Location to the extent such Time Element loss is not otherwise covered under this Policy such as under the Civil Authority or Military Authority, Ingress/Egress, or Contingent Time Element extensions;

\* \* \*

- 4. 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 an Insured Location to the extent such closure is not otherwise covered elsewhere under this Policy such as under Civil or Military Authority or Communicable Disease extensions.

\* \* \*

Reference and Application: The following term(s) mean when used in this coverage:

**Period of Liability:** The length of time for which loss may be claimed shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred and shall include the time required to make the premises conform to the order of a competent public authority, beginning with the interruption or interference with the business and ending not later than 365 days thereafter.

56. Plaintiff has suffered Actual Loss Sustained during the Period of Liability resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodation, and/or interference with the business at the Hotel as a direct result of the outbreak of the SARS-CoV-2 virus and COVID-19, which is an infectious disease, and restrictive guidance or travel advisories placed on the region by the CDC, the President of the United States, and/or states' stay-at-home orders.

57. In addition, Plaintiff has suffered Actual Loss Sustained during the Period of Liability resulting from the cancellation of, and/or inability, to accept bookings or reservations, and/or interruption of, or interference with the business of the Hotel's restaurant and bar as a direct result of the outbreak of the SARS-CoV-2 virus and COVID-19, which is an infectious disease, and restrictive guidance or travel advisories placed on the region by the CDC, the President of the United States, and/or states' stay-at-home orders. Therefore, Plaintiff is entitled to coverage for its losses under the CANCELLATION OF BOOKINGS provision.

**6. CIVIL AUTHORITY**

58. Paragraph 3.K. **INTERRUPTION BY CIVIL AUTHORITY AND MILITARY AUTHORITY** under **TIME ELEMENT – SECTION C** states: “This Policy is extended to insure loss sustained by the Insured during the period of time when, as a result of physical loss or

damage not otherwise excluded herein, to the kind of property not otherwise excluded herein and access to the property of the insured is impaired by order or action of civil or military authority.”

59. Plaintiff has sustained losses as a result of physical loss or damage to property (e.g., the Real Property and Personal Property of the Hotel) that is not excluded in the Insurance Policies. In addition, the Civil Authority Orders have impaired access to the Hotel. Accordingly, Plaintiff is entitled to coverage for its losses under the INTERRUPTION BY CIVIL AND MILITARY AUTHORITY provision.

60. Further, Plaintiff incurred costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in response to the Civil Authority Orders.

**D. PLAINTIFF'S CLAIM FOR COVERAGE**

61. The Hotel specifically hosted the Utah Jazz player who tested positive for COVID-19.

62. On March 26, 2020, Westin Operator, LLC, the manager of the Hotel, closed the Hotel as a result of the physical loss or damage caused by the SARS-CoV-2 virus, the CDC's travel recommendations, President Trump's travel orders, the Civil Authority Orders, and/or other states' stay-at-home orders. All bookings were cancelled and the Hotel, including the restaurant and bar, has been unable to accept future bookings or reservations.

63. As a result of the physical loss and damage to property caused by the SARS-CoV-2 virus, the coronavirus pandemic and directly resulting business interruption, the CDC's travel recommendations, President Trump's travel orders, the Civil Authority Orders, and/or states' stay-at-home orders, Plaintiff has sustained significant losses and expenses and will continue to do so.

64. On or about March 26, 2020, Plaintiff submitted a claim for coverage under the Insurance Policy.

65. It has been over 80 days since Plaintiff submitted its claim and Defendant has not responded with either an acceptance of the claim, a reservation of rights letter, or a denial.

**COUNT ONE**  
**(BREACH OF CONTRACT)**

66. Plaintiff hereby adopts and incorporates as if fully re-written herein all the allegations set forth in paragraphs 1 through 65 of this Complaint.

67. Plaintiff submitted a claim for coverage for the physical loss or damage, and resulting expenses, caused by the SARS-CoV-2 virus and the losses, damages and expenses caused by the CDC's travel recommendations, President Trump's travel orders, the Civil Authority Orders, and/or other states' stay-at-home orders under the **BUSINESS INTERRUPTION, EXTRA EXPENSE, CONTINGENT TIME ELEMENT, EXTENDED PERIOD OF LIABILITY, CANCELLATION OF BOOKINGS, INTERRUPTION BY CIVIL AUTHORITY AND MILITARY AUTHORITY**, and related provisions (collectively "Coverage Provisions") of the Insurance Policies.

68. Plaintiff is entitled to coverage for its losses, damages and expenses under the applicable Coverage Provisions.

69. Defendant has expressly denied or denied by operation of applicable law Plaintiff's claims for coverage under the Coverage Provisions for the physical loss or damage to property, and resulting expenses, caused by the SARS-CoV-2 virus and the losses and expenses caused by the CDC's travel recommendations, President Trump's travel orders, the Civil Authority Orders, and/or other states' stay-at-home orders.

70. Plaintiff is entitled to recover its incurred costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders, which are covered under the Insurance Policies.

71. Defendant has expressly denied or denied by operation of law Plaintiff's claim for costs, expenses, and losses to mitigate the spread of the SARS-CoV-2 virus in complying with the Civil Authority Orders.

72. Plaintiff has substantially performed all required conditions precedent under the Insurance Policies, such provisions have been waived by Defendant, or Defendant is estopped from asserting them.

73. By denying such coverage as outlined in the policies, Defendant has materially breached the Insurance Policies.

74. As a direct and proximate result of Defendant's breaches of the Insurance Policies, Plaintiff has been damaged in an aggregate amount in excess of \$50,000.00, the exact amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief against Defendant:

- a. An award of damages in an aggregate amount in excess of \$50,000.00, the exact amount to be proven at trial, to Plaintiff for Defendant's breaches of the Insurance Policies;
- b. An award against Defendant of pre- and post-judgment interest on any amounts awarded;
- c. An award of 12% penalty interest under MCLS § 500.2006(4) for Defendant's failure to timely pay Plaintiff on its claims;
- d. An award against Defendant and in favor of Plaintiff for its costs; and
- e. An award of such other or further equitable relief that this Court may deem just.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues and claims that are decided by a jury.

RESPECTFULLY SUBMITTED,

/s/ Peter J. Flowers

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Pro hac vice motion to be filed

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