

JOHN J. SCURA III, ESQ. (ATTORNEY ID 0227711993) SCURA, WIGFIELD, HEYER, STEVENS & CAMMAROTA, LLP 1599 HAMBURG TURNPIKE WAYNE, NJ 07470 Tel: (973) 696-8391 Fax: (973) 696-8571 Attorneys for Plaintiff	
DM RESTAURANT VENTURES I, LLC d/b/a THE FOX & FALCON <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> HARTFORD UNDERWRITERS INSURANCE COMPANY, JOHN DOES 1-100, AND ABC CORP. 1-100 (fictitious names). <p style="text-align: center;">Defendants.</p>	SUPERIOR COURT OF NEW JERSEY- LAW DIVISION- ESSEX COUNTY Docket No.: ESX- <p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;">-AND-</p> <p style="text-align: center;">JURY DEMAND</p>

DM Restaurant Ventures I, LLC d/b/a The Fox & Falcon by and through its undersigned counsel by way of Complaint against defendant, Hartford Underwriters Insurance Company hereby states as follows:

THE PARTIES

1. DM Restaurant Ventures I, LLC d/b/a The Fox & Falcon (the “Plaintiff”) is a limited liability corporation authorized to conduct business in the state of New Jersey that operates a bar and restaurant located at 19 Valley Street, South Orange, NJ 07079. Plaintiff is a “bar & grill” style restaurant whose success depends on the general public’s ability to enter its premises to purchase and consume food and beverages offered at its restaurant facility.

2. Hartford Underwriters Insurance Company (the “Defendant”) is an insurance company with its principal place of business at One Hartford Plaza, Hartford, CT 06155 that

conducts business in the state of New Jersey. At all relevant times, Plaintiff maintained the “all loss” insurance policy (the “Policy”) issued by Defendant.

3. Defendants JOHN DOES 1-100 and ABC CORP. 1-100 are fictitious names for the unidentified persons or entities who participated in the action which give rise to this litigation and/or aided and abetted the Defendants and are presently unknown to Plaintiffs pending further investigation and discovery.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the matters alleged herein.

5. Venue is proper in this Court because the acts and/or omissions complained of took place, in whole or in part, within the venue of this Court.

INTRODUCTION

6. The World Health Organization (“WHO”) labeled the COVID-19 virus (also referred to as the “Coronavirus”) as a pandemic on March 11, 2020.

7. The symptoms of COVID-19 vary from asymptomatic forms to fatal conditions of severe respiratory failure that requires ventilation and support in an intensive care unit (“ICU”). It is common for infected individuals with severe cases to develop Pneumonia along with symptoms of fever, cough, dyspnea, and trouble breathing.

8. There are no specific treatments for COVID-19 and no vaccine is currently available.

9. COVID-19 is usually transmitted from symptomatic people to others who are in direct contact with infected persons, or by contact with contaminated objects and surfaces.

10. It is also possible for COVID-19 to be transmitted from individuals that are asymptomatic. Individuals are encouraged by federal, state, and local officials and medical

personnel to avoid going to hospitals and other medical facilities unless they are experiencing a true emergency for fear of spreading the virus. Widespread testing is not currently available, and individuals infected with asymptomatic forms of COVID-19 often go undetected. This makes it challenging to stop the spread of the virus.

11. Currently, COVID-19 has infected more than one million citizens in the United States and has caused over 100,000 deaths. COVID-19 has led to over 12,000 deaths in New Jersey— making this state second only to New York in COVID-19 related deaths in the United States.

12. Because of the rapid spread of COVID-19, the Center for Disease Control (“CDC”) and Coronavirus Task Force put in place by the President of the United States implemented guidance to the American people to slow the spread of the COVID-19 pandemic on March 15, 2020. This guidance known as “30 Days to Slow the Spread” (the “Guidance”) advised American citizens as well as state and local governments to adopt strict social distancing measures, such as working from home, avoiding shopping trips and gatherings of more than 10 people, and staying away from bars, restaurants, and food courts.

13. Pursuant to the Guidance, many state and local governments around the country have issued orders of civil authority suspending or severely curtailing business operations of non-essential businesses that interact with the public and provide gathering places for the individuals because of those businesses inability to comply with social distancing measures. Almost all states within the United States have issued some sort of “stay-at-home” order and have ordered private non-essential businesses to close.

14. New Jersey is one of such states that has issued orders of civil authority. Governor Phil Murphy declared a state of emergency and a public health emergency on March 9, 2020. On

March 16, 2020, the Governor ordered the closure of all gyms, movie theaters, bars, and casinos. Pursuant to the policy, restaurants are limited to take-out and delivery orders only. On March 21, 2020, Governor Murphy issued a “stay at home” order mandating New Jersey residents to stay at home except for necessary travel and mandated that all non-essential businesses close until further notice (the orders set forth in this paragraph are hereinafter referred to as the “Closure Order”).

15. County and municipal governments reinforced the Governor’s Closure Order. Essex County officials reinforced the Closure Order on March 13, 2020 by closing all public facilities and by encouraging citizens to follow the Guidelines. The City of South Orange declared a state of emergency and enforced the shutdown of all non-essential businesses.

16. COVID-19 has heavily infected the immediate area of the Plaintiff’s restaurant facility as Essex County has over 15,000 confirmed cases and over 1,400 deaths have been suffered within the county. South Orange, the town in which Plaintiff conducts business, has almost 100 confirmed COVID-19 cases and has suffered 4 deaths.

17. The result of the Closure Order has been catastrophic for most non-essential businesses, especially bars, restaurants and other foodservice businesses that have been forced to close, furlough employees, and endure a sudden shutdown of cash flow. The closure order has also resulted in a cut off of supply to plaintiff from dependent vendors, businesses and properties.

18. Plaintiff is one of such non-essential businesses who has been adversely affected by the Closure Order. Because of the Closure Order, Plaintiff has been unable to resume normal operations and cannot use its restaurant facility for its intended use. This has caused plaintiff to close, furlough employees, and endure a sudden shutdown of cash flow.

19. Plaintiff’s success is largely based on the general public’s ability to enter its premises to purchase and consume food and beverages offered at its restaurant facility. Moreover,

Plaintiff is a “bar & grill” styled restaurant that derives a significant portion of its income from the sale of alcoholic beverages. Therefore, the Closure Order has had an especially negative effect on Plaintiff because it is impossible sell alcoholic beverages to bar patrons within its restaurant facility without violating the Closure Order.

20. Because of the foregoing, Plaintiff has and will incur substantial losses and expenses during its suspension of operations and period of restoration following the end of the Closure Order.

21. Most businesses such as Plaintiff insure against catastrophic events like the COVID-19 pandemic through all-risk commercial property insurance policies. These policies promise to indemnify the policyholder for actual business losses incurred when business operations are involuntarily suspended, interrupted, curtailed, when access to the premises is prohibited because of direct physical loss or damage to the property, or by a civil authority order that restricts or prohibits access to the property. This coverage is commonly known as “business interruption coverage” and is standard in most all-risk commercial property insurance policies.

22. Plaintiff maintains such a policy with Defendant. Plaintiff purchased the Policy on October 7, 2019 and the coverage period is from November 21, 2019 to November 21, 2020.

23. The Policy is all-risk and all losses are covered unless they are specifically excluded.

24. Defendant has denied its obligation to pay for losses suffered by Plaintiff as a result of the Closure Order issued to stop the spread of COVID-19. These losses are covered by the Policy in the Business Income, Extra Expense, Civil Authority, Extended Business Income, and Limited Fungi, Bacteria, and Virus coverage sections.

25. This action seeks a declaratory judgment that affirms that losses suffered by Plaintiff resulting from the COVID-19 pandemic and the corresponding Closure Order to stop the spread of the pandemic is covered by the Policy, has caused substantial losses as well as physical property loss and damage to Plaintiff's insured property, and finds that Defendant must indemnify the losses suffered by Plaintiff.

26. This action further seeks to bring a claim for breach of contract against Defendant for its failure to uphold its contractual obligations under the Policy to indemnify Plaintiff for their covered losses.

THE POLICY

27. The Policy is currently in full effect, providing business interruption coverage between the period of November 21, 2019 through November 21, 2020.

28. Plaintiff has paid all premiums to Defendant to date in exchange for coverage provided by the Policy.

29. Plaintiff did not participate in drafting or negotiating the Policy with Defendant.

30. It is well-settled law that any ambiguous language in the Policy is to be interpreted against the drafter.

31. The Additional Coverage form of the Policy provides coverage for Business Income, Extra Expense, Civil Authority, and Extended Business Income.

Business Income

32. The Policy provides coverage for Business Income in the Additional Coverage form as follows:

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or physical damage to property at the "scheduled premises",

including personal property in the open (or in a vehicle) within 1,000 feet of the “scheduled premises”, caused by or resulting from a Covered Cause of Loss.

33. The Additional Coverage states that it will cover loss of business income “within 12 consecutive months after the date of direct physical loss or physical damage.”

34. Business income is defined in the Additional Coverage as:

- (a) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or physical damage had occurred; and
- (b) Continuing normal operating expenses incurred, including payroll.

35. Suspension is defined in the Additional Coverage as:

- (a) The partial slowdown or complete cessation of your business activities; or
- (b) That part or all of the “scheduled premises” is rendered untenable as a result of a Covered Cause of Loss if coverage for Business Income applies to the policy.

36. Plaintiff has been forced to suspend its operations within the meaning of the Policy because of the Closure Order to prevent the spread of COVID-19 and has suffered a substantial loss of business income.

37. Because of said suspension, Plaintiff has suffered substantial loss as well as direct physical loss or physical damage of property because Plaintiff is unable to use its property for its intended use.

38. Applicable case law holds that the loss of use of property that has not been physically altered constitutes “physical loss or damage” for purposes of first-party property insurance, such as that contained in the Policy.

39. As drafter of the Policy, if Defendant had wished to exclude from coverage “physical loss or damage” to property that has not been physically altered, it could have used explicit language stating such a definition of “physical loss or damage”. It did not do so.

40. Because loss resulting from the “physical loss or damage” to property that has not been physically altered is not excluded from the Policy, loss of business income from said loss is covered.

Extra Expense

41. The Policy provides coverage for Extra Expense in the Additional Coverage form as follows:

We will pay reasonable and necessary Extra Expense you incur during the “period of restoration” that you would not have incurred if there had been no direct physical loss or physical damage to property at the "scheduled premises", including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from a Covered Cause of Loss.

42. The Additional Coverage form of the Policy defines Extra Expense as expenses incurred:

(a) To avoid or minimize the suspension of business and to continue “operations”:

(i) At the “scheduled premises”; or

(ii) At replacement premises or at temporary locations, including:

(aa) Relocation expenses; and

(bb) Cost to equip and operate the replacement or temporary location, other than those costs necessary to repair or to replace damaged stock and equipment.

(b) To minimize the suspension of business if you cannot continue “operations”.

43. The Extra Expense provision does not exclude recovery due to other losses covered by the Policy if the policy holder claims coverage under the Extra Expense provision. Therefore,

Plaintiff can recover losses under other provisions of the Policy in addition to the Extra Expense provision.

44. Plaintiff has been forced to suspend its operations and is unable to use its restaurant facility for its intended use.

45. Because of Plaintiff's sudden loss of cashflow, Plaintiff has and will continue to incur substantial expenses in minimizing the effects of its suspension due to the Closure Order.

Civil Authority

46. The Policy provides coverage for acts of Civil Authority in the Additional Coverage form as follows:

(1) This insurance is extended to apply to the actual loss of Business Income you sustain when access to your "scheduled premises" is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your "scheduled premises".

(2) The coverage for Business Income will begin 72 hours after the order of a civil authority and coverage will end at the earlier of:

(a) When access is permitted to your "scheduled premises";

or

(b) 30 consecutive days after the order of the civil authority.

47. The Civil Authority provision is an independent basis for business interruption coverage. That is, it can be triggered even when the standard business interruption coverage is not.

48. Moreover, the Civil Authority provision does not exclude recovery due to other losses covered by the Policy if the policy holder claims coverage under the Civil Authority provision. Therefore, Plaintiff can recover losses under other provisions of the Policy in addition to the Civil Authority provision.

49. The New Jersey Governor's Closure Order mandating the shutdown of all non-essential businesses and limiting restaurants to take-out and delivery orders only is an act of civil authority as defined by the Policy.

50. COVID-19 has caused physical damage the immediate area of the Plaintiff's restaurant facility as Essex County has over 15,000 confirmed cases and has suffered over 1,400 deaths. South Orange, the town in which Plaintiff conducts business, has almost 100 confirmed COVID-19 cases and has suffered 4 deaths.

51. The Closure Order is a direct reaction to this physical damage and/or loss and restricts Plaintiff's full access to its restaurant facility. As such, Plaintiff has suffered direct physical damage and/or loss in the immediate area and/or on Plaintiff's premises due to the virus.

52. Moreover, Plaintiff has suffered direct physical damage and/or loss because Plaintiff is unable to use its premises for its intended use because of the Closure Order. Plaintiff cannot resume normal operations due to the Closure Order caused by physical damage in the immediate area and/or on Plaintiff's premises.

53. The Policy does not contain any exclusion which would allow Defendants to deny coverage for losses caused by COVID-19 and related actions of civil authorities taken in response to COVID-19. Therefore, Plaintiff's losses due to the Closure Order are covered.

Extended Business Income

54. The Policy provides coverage for Extended Business Income in the Additional Coverage form as follows:

If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and "operations" are resumed; and

(b) Ends on the earlier of:

(i) The date you could restore your "operations" with reasonable speed, to the condition that would have existed if no direct physical loss or damage occurred; or

(ii) 30 consecutive days after the date determined in (1)(a) above.

Loss of Business Income must be caused by direct physical loss or physical damage at the “scheduled premises” caused by or resulting from a Covered Cause of Loss.

(2) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; and

(b) That a part or all of the “scheduled premises” is rendered untenable as a result of a Covered Cause of Loss.

55. Plaintiff’s necessary suspension of its operations and loss of business income is a result of direct loss or physical damage and loss to property due to its inability to access its restaurant facility for its intended use as a result of the Closure Order.

56. Plaintiff has been unable to resume normal operations due to the Closure Order that is still in effect.

57. These losses are covered by the Policy.

58. The Extended Business Income provision does not exclude recovery due to other losses covered by the Policy if the policy holder claims coverage under the Extended Business Income provision. Therefore, Plaintiff can recover losses under other provisions of the Policy in addition to the Extended Business Income provision.

59. Therefore, Plaintiff is owed the full amount of coverage allowed under the Extended Business Income provision of the Policy.

Fungi, Bacteria or Virus Coverage

60. The Policy provides for Limited Fungi, Bacteria, or Virus Coverage.

61. The Policy excludes coverage for loss due to Fungi, Bacteria, or Virus as follows:

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

(1) Presence, growth, proliferation, spread or any activity of “fungi”, wet rot, dry rot, bacteria or virus.

(2) But if “fungi”, wet rot, dry rot, bacteria or virus results in a “specified cause of loss” to Covered Property, we will pay for the loss or damage caused by that “specified cause of loss”.

This exclusion does not apply:

- (1) When “fungi”, wet or dry rot, bacteria or virus results from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage – Limited Coverage for “fungi”, Wet Rot, Dry Rot, Bacteria and Virus with respect to loss or damage by a cause of loss other than fire or lightning.

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

62. The same form of the Policy provides that Limited Fungi, Bacteria, or Virus Coverage applies “if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence” and if said damage was caused by a “[a] ‘specified cause of loss’ other than fire or lightning.”

63. The same form of the Policy provides Fungi, Bacteria, or Virus coverage as follows:

We will pay for loss or damage by “fungi”, wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:

- (1) Direct physical loss or direct physical damage to Covered Property caused by “fungi”, wet rot, dry rot, bacteria or virus, including the cost of removal of the “fungi”, wet rot, dry rot, bacteria or virus;
- (2) The cost to tear out and replace any part of the building or other property as needed to gain access to the “fungi”, wet rot, dry rot, bacteria or virus; and
- (3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that “fungi”, wet rot, dry rot, bacteria or virus are present.

Unless a higher Limit of Insurance is shown in the Declarations for Limited “fungi”, Bacteria or Virus Coverage, the coverage described under this Limited Coverage is no more than the Limit of

Insurance stated in the Declarations for Building and Business Personal Property, but not greater than \$50,000.

64. Lastly, the same form of the Policy provides that:

If there is covered loss or damage to Covered Property, not caused by “fungi”, wet rot, dry rot, bacteria or virus, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that “fungi”, wet or dry rot, bacteria or virus causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

65. The Fungi, Bacteria, or Virus exclusion of the Policy only applies if loss due to Fungi, Bacteria, or Virus is not otherwise covered by the policy.

66. However, the Fungi, Bacteria, or Virus exclusion of the Policy does not apply to the extent that coverage is provided in the Additional Coverage in the Policy.

67. The exclusion also does not apply because the COVID-19 virus is not the sole source of direct physical loss or physical damage to Plaintiff’s covered property. Rather, the Plaintiff has suffered direct physical loss or physical damage to its covered premises due to its suspension of operations and inability to use its restaurant facility for its intended use because of the Closure Order.

68. Plaintiff’s losses are provided for in the Additional Coverage sections of the Policy. The additional coverage Plaintiff is entitled to is the Business Income, Extra Expense, Civil Authority, and Extended Business Income sections of the Policy.

69. Therefore, the Fungi, Bacteria, or Virus exclusion of the Policy does not apply, and Plaintiff is entitled to Limited Fungi, Bacteria or Virus coverage to the extent allowed by the Policy.

70. The Virus exclusion also does not reference the word Pandemic and does not exclude business interruption for a Pandemic. If Defendant wanted to exclude losses caused by Pandemic it should have used that language, but it did not.

71. Moreover, the Limited Fungi, Bacteria or Virus coverage of the policy does not exclude recovery due to other losses covered by the Policy if the policy holder claims coverage under the Limited Fungi, Bacteria or Virus coverage section. Therefore, by way of alternative relief Plaintiff can recover losses under other provisions of the Policy in addition to the Limited Fungi, Bacteria or Virus coverage provision.

Plaintiff's Claim

72. Plaintiff has submitted a claim to Defendant directly and then through counsel. Defendant send correspondence dated March 25, 2020 whereby Defendant acknowledged the claim but would not disclaim coverage. Defendant conducted absolutely no investigation, did not request documents and did not inspect the premises. Plaintiff continually wrote to Defendant on the claim. On May 28, 2020 Defendant sent an email denying the claim despite conducting not an iota of investigation.

73. Defendant has published on its website the following notice: "Most property insurance includes business interruption coverage, which often includes civil authority and dependent property coverage. This is generally designed to cover losses that result from direct physical loss or damage to property caused by hurricanes, fires, wind damage or theft and is not designed to apply in the case of a virus." <https://www.thehartford.com/coronavirus/businesses>

74. Defendant continues to deny any claims related to COVID-19 losses and there are multiple actions filed across the county based on Defendant's refusal to honor such claims.

75. Defendant's actions as set forth above constitute a breach as Defendant refuses to cover Plaintiff's claim as Defendant is contractually obligated to do. Consequently, Plaintiff is in danger of being unable to open its business back up and continue without Defendant covering its continuing losses which Plaintiff bargained for when it paid for the Policy.

COUNT ONE

(Declaratory Judgment enforcing Business Income Coverage)

76. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

77. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff's losses for claims covered by the Policy.

78. In the Policy, Defendant promised to pay for losses of business income sustained as a result of a cause of loss not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income sustained as a result of a suspension of business operations during the period of restoration.

79. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suspend operations and Plaintiff is no longer able to use its restaurant facility for its intended use. As a result, Plaintiff has suffered a loss of business income.

80. The suspension and losses caused therefrom triggered business income coverage under the Policy.

81. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

82. Defendant, without justification, has denied coverage for these losses and/or refuses to live up to its contractual obligations.

83. Plaintiff seeks a Declaratory Judgment that its Policy provides coverage for the losses of business income.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment:

- a. Declaring that the Policy provides coverage for Plaintiff's losses of business income;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT TWO

(Breach of Contract for Failure to Provide Business Income Coverage)

84. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

85. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

86. In the Policy, Defendant promised to pay for losses of business income sustained as a result of a cause of loss not excluded under the Policy. Specifically, Defendant promised to pay for losses of business income sustained as a result of a suspension of business operations during the period of restoration.

87. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suspend operations and Plaintiff is no longer able to use its restaurant facility for its intended use. As a result, Plaintiff has suffered a loss of business income.

88. The suspension and losses caused therefrom triggered business income coverage under the Policy.

89. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

90. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and refusing to live up to its contractual obligations.

91. As a result of Defendant's breach of the Policy, Plaintiff has suffered damages for which Defendant is liable.

WHEREFORE, Plaintiff requests that this Court enter Judgment:

- a. Granting Plaintiff compensatory damages for Defendant's breach of the Policy;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT THREE

(Declaratory Judgment enforcing Extra Expense Coverage)

92. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

93. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

94. In the Policy, Defendants promised to pay for Extra Expenses incurred by Plaintiff during the Period of Restoration that the Plaintiff would not have incurred if there had been no loss or damage to Plaintiff's premises. These Extra Expenses include expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

95. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suspend operations and Plaintiff is no longer able to use its restaurant facility for its intended use. As a result, Plaintiff has incurred Extra Expenses.

96. These expenses triggered Extra Expense coverage under the Policy.

97. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

98. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and refuses to live up to its contractual obligations.

99. Plaintiff seeks a Declaratory Judgment that its Policy provides coverage for Extra Expenses.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment:

- a. Declaring that the Policy provides coverage for Extra Expenses incurred by Plaintiff during its period of restoration;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT FOUR

(Breach of Contract for Failure to Provide Extra Expense Coverage)

100. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

101. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

102. In the Policy, Defendants promised to pay for Extra Expenses incurred by Plaintiff during the Period of Restoration that the Plaintiff would not have incurred if there had been no loss or damage to Plaintiff's premises. These Extra Expenses include expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

103. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suspend operations and Plaintiff is no longer able to use its restaurant facility for its intended use. As a result, Plaintiff has incurred Extra Expenses.

104. These expenses triggered Extra Expense coverage under the Policy.

105. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

106. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and refuses to live up to its contractual obligations.

107. As a result of Defendant's breach of the Policy, Plaintiff has suffered damages for which Defendant is liable.

WHEREFORE, Plaintiff requests that this Court enter Judgment:

- a. Granting Plaintiff compensatory damages for Defendant's breach of the Policy;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT FIVE

(Declaratory Judgment enforcing Civil Authority Coverage)

108. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

109. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

110. In the Policy, Defendants promised to pay for losses of business income sustained and extra expenses incurred when a civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

111. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suffer losses of business income and incur extra expenses.

112. These expenses triggered Civil Authority coverage under the Policy.

113. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

114. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and refuses to live up to its contractual obligations.

115. Plaintiff seeks a Declaratory Judgment that its Policy provides Civil Authority coverage.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment:

- a. Declaring that the Civil Authority provision of the Policy provides for loss of business income and extra expenses incurred by Plaintiff due to the Closure Order;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT SIX

(Breach of Contract for Failure to Provide Civil Authority Coverage)

116. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

117. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

118. In the Policy, Defendants promised to pay for losses of business income sustained and extra expenses incurred when a civil authority prohibits access to property near the insured premises, and the civil authority action is taken in response to dangerous physical conditions.

119. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suffer losses of business income and incur extra expenses.

120. These expenses triggered Civil Authority coverage under the Policy.

121. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

122. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and refuses to live up to its contractual obligations.

123. As a result of Defendant's breach of the Policy, Plaintiff has suffered damages for which Defendant is liable.

WHEREFORE, Plaintiff requests that this Court enter Judgment:

- a. Granting Plaintiff compensatory damages for Defendant's breach of the Policy;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT SEVEN

(Declaratory Judgment enforcing Extended Business Income Coverage)

124. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

125. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

126. In the Policy, Defendant promised to pay Extended Income for loss of business income sustained as a result of a necessary suspension of operations.

127. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suspend operations and Plaintiff is no longer able to use its restaurant facility for its intended use. As a result, Plaintiff has suffered a loss of business income.

128. The suspension and losses triggered Extended Income coverage under the Policy.

129. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

130. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and to live up to its contractual obligations.

131. Plaintiff seeks a Declaratory Judgment that its Policy provides coverage for the losses of business income.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment:

- a. Declaring that the Policy provides Expended Income coverage for Plaintiff's losses of business income during its necessary suspension of operations;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT EIGHT

(Breach of Contract for Failure to Provide Extended Income Coverage)

132. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

133. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

134. In the Policy, Defendant promised to pay Extended Income for loss of business income sustained as a result of a necessary suspension of operations.

135. The Closure Order enacted to prevent the spread of COVID-19 has caused Plaintiff to suspend operations and Plaintiff is no longer able to use its restaurant facility for its intended use. As a result, Plaintiff has suffered a loss of business income.

136. The suspension and losses triggered Extended Income coverage under the Policy.

137. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

138. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and refuses to live up to its contractual obligations.

139. As a result of Defendant's breach of the Policy, Plaintiff has suffered damages for which Defendant is liable.

WHEREFORE, Plaintiff requests that this Court enter Judgment:

- a. Granting Plaintiff compensatory damages for Defendant's breach of the Policy;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT NINE

(Declaratory Judgment enforcing Fungi, Bacteria, and Virus Coverage)

140. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

141. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

142. In the Policy, Defendant promised to pay for loss of business income sustained as a result of a suspension of business operations due to fungi, bacteria, or virus to the extent that such losses are covered by the policy up to an amount of \$50,000. To the extent that Defendant contends that the damages caused to plaintiff are from a virus and that the other coverage provisions are excluded, Defendant is obligated to pay Plaintiff a minimum of \$50,000.

143. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

144. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and/or refuses to live up to its contractual obligations.

145. By way of alternative relief, Plaintiff seeks a Declaratory Judgment that Defendant is obligated to pay at least \$50,000 as provided in the Virus exclusion.

WHEREFORE, Plaintiff requests that this Court enter a Declaratory Judgment:

- a. Declaring that the Policy provides coverage of up to \$50,00 at a minimum;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- c. For such other further relief as the Court may deem just and equitable.

COUNT TEN

(Breach of Contract for Failure to Provide Fungi, Bacteria, or Virus Coverage)

146. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

147. Plaintiff's Policy is an insurance contract under which Defendant was paid premiums in exchange for promises to pay Plaintiff losses for claims covered by the Policy.

148. In the Policy, Defendant promised to pay for loss of business income sustained as a result of a suspension of business operations due to fungi, bacteria, or virus to the extent that such losses are covered by the policy up to \$50,000.

149. In the event the court finds that a Virus caused Plaintiff's losses, Plaintiff is entitled to at a minimum \$50,000.

150. Plaintiff has complied with all applicable provisions of the Policy, including payment of premiums.

151. Defendant, without justification, has refused performance under the Policy by denying coverage for these losses and refuses to live up to its contractual obligations.

152. By way of alternative relief, Plaintiff has suffered damages in at least the amount of \$50,000 for which Defendant is liable.

WHEREFORE, Plaintiff requests that this Court enter Judgment:

- a. Granting Plaintiff compensatory damages in the amount of \$50,000 for Defendant's breach of the Policy;
- b. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and

c. For such other further relief as the Court may deem just and equitable.

COUNT ELEVEN
(Regulatory Estoppel)

153. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

154. Back in 2006, the Insurance Services Office (“ISO”) and American Association of Insurance Services (“AAIS”) issued a circular and memorandum to the various state agencies, New Jersey included, that sought to include the virus exclusion as an endorsement but maintained that it was not to change its existing policies.

155. Upon information and belief, Defendant is a subscribing member of ISO and AAIS.

156. As presented, the New Jersey Department of Banking and Insurance (DOBI) would not readily have understood that the virus exclusion intended to eliminate all business interruption coverage for virus and pandemic related claims in the event of civil authority shutdowns. Rather than “clarify” the scope of coverage, the clause attempted to eliminate pandemic and virus-related claims without any suggestion by the insurance industry that the change in coverage was so sweeping or that rates should be reduced.

157. The New Jersey Supreme Court has held that the insurance industry is regulatorily estopped from enforcing such policy exclusions where misrepresentations are made to have the insurance commissioner approve policy exclusions or language. See Morton Int’l, Inc. v. Gen. Acc. Ins. Co. of Am., 134 N.J. 1, 30-31 (1993) (limiting the pollution exclusion after misrepresentations of the insurance industry to state regulators as to the enhanced pollution exclusion added to policies).

158. ISO submitted an ISO Circular, dated July 6, 2006, titled “New Endorsements Filed To Address Exclusion of Loss Due to Virus or Bacteria.” Among other things in the Circular, ISO stated in relevant part:

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent. In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms.

159. Separately, AAIS filed the following Memorandum:

Property policies have not been, nor were they intended to be, a source of recovery for loss, cost, or expense caused by disease-causing agents. With the possibility of a pandemic, there is concern that claims may result in reports to expand coverage to create recovery for loss where no coverage was originally intended ...This endorsement clarifies that loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress is excluded

160. The Insurance Industry misrepresented the facts to obtain approval for the virus and contamination exclusions setting forth that the virus exclusion only clarified existing policies when in fact they tried to sneak in an entirely new and broader exclusion.

161. The Department of Banking and Insurance relied upon this statement in approving the alleged clarification to policy language.

162. Critically, while the Insurance mentioned pandemic in their circular and memorandum in support of the exclusion, they did not include the word pandemic in their policy exclusions.

163. Upon information and belief, Hartford utilized or utilizes the services of both ISO and AAIS or at a minimum benefited from the misrepresentations to the Department of Banking and Insurance on the reasons for the exclusion language.

164. Based upon well settled New Jersey law, Defendant is regulatorily estopped from relying upon the virus exclusion.

WHEREFORE, Plaintiff requests that this Court enter Judgment:

- a. Finding that Defendant is regulatorily estopped from enforcing the alleged virus exclusion
- b. Granting Plaintiff compensatory damages for Defendant's breach of the Policy;
- c. Awarding Plaintiff's attorney's fees and costs incurred in bringing this action; and
- d. For such other further relief as the Court may deem just and equitable.

COUNT TWELVE

(Breach of Implied Covenant of Good Faith and Fair Dealing)

165. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs of the complaint as though fully set forth herein.

166. As an insurance company, Defendant is held to an implied covenant of good faith and fair dealing concerning its duties and obligations under the terms of the Policy with Plaintiff.

167. Defendant breached this covenant by its actions in failing to attempt to effectuate a prompt, fair, and equitable settlement of Plaintiff's claim where coverage was clear.

168. Defendant has failed to take one step to investigate the claim in over two months after acknowledging the claim. Defendant is under an affirmative obligation under well settled law to investigate and determine if coverage exists. Despite repeated attempts to obtain a decision in writing, Defendant has just blatantly ignored its obligations in the obvious hope that plaintiff will just let go of the claim.

169. As a direct and proximate result of the Defendant's actions/inactions and bad faith, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendant, for compensatory damages, punitive damages, attorney's fees, interest, costs and such other relief as this court deems equitable and just under the circumstances.

**Scura, Wigfield, Heyer, Stevens &
Cammarota LLP**
Attorneys for the Plaintiff

/s/ John J. Scura III, Esq.
John J. Scura III, Esq.

Dated: June 9, 2020

JURY DEMAND

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

**Scura, Wigfield, Heyer, Stevens &
Cammarota LLP**
Attorneys for the Plaintiff

/s/ John J. Scura III, Esq.
John J. Scura III, Esq.

Dated: June 9, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, John J. Scura III, Esq. is hereby designated as trial counsel herein.

**Scura, Wigfield, Heyer, Stevens &
Cammarota LLP**
Attorneys for the Plaintiff

/s/ John J. Scura III, Esq.
John J. Scura III, Esq.

Dated: June 9, 2020

RULE 4: 5-1 CERTIFICATION

Plaintiffs hereby certify that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding. Plaintiffs further certify that they have no knowledge of any contemplated action or arbitration proceeding which is contemplated regarding the subject matter of this action and that they are not aware of any other parties who should be joined in this action.

**Scura, Wigfield, Heyer, Stevens &
Cammarota LLP**
Attorneys for the Plaintiff

/s/ John J. Scura III, Esq.
John J. Scura III, Esq.

Dated: June 9, 2020