

RETURN DATE: 11/24/2020	)	SUPERIOR COURT
	)	
KAIAFFA, LLC, CHIP'S TRUMBULL, LLC, CHIP'S	)	
WETHERSFIELD, LLC, CHIP'S SOUTHBURY,	)	
LLC, CHIP'S SOUTHLINGTON, LLC, DGA, LLC	)	J.D. OF HARTFORD
AND 525 TUNXIS HILL CUT-OFF, LLC	)	
	)	AT HARTFORD
Plaintiffs	)	
	)	
v.	)	
	)	
TWIN CITY FIRE INSURANCE COMPANY	)	
AND THE HARTFORD FINANCIAL SERVICES	)	
GROUP, INC., D/B/A THE HARTFORD	)	
	)	
Defendants	)	NOVEMBER 4, 2020

**COMPLAINT**

Plaintiffs, KAIAFFA, LLC, Chip's Trumbull, LLC, Chip's Wethersfield, LLC, Chip's Southbury, LLC, Chip's Southington, LLC, DGA, LLC, and 525 Tunxis Hill Cut-Off, LLC ("Plaintiffs"), bring this action against Defendants, Twin City Fire Insurance Company and The Hartford Financial Services Group, Inc. d/b/a The Hartford ("Defendants"). In support thereof Plaintiffs state and allege the following:

**I. INTRODUCTION**

This case concerns whether Plaintiffs' business income losses and extra expenses incurred in response to the on-going COVID-19 pandemic are covered under the Defendants' all-risk Business Owner's Policy. As more specifically pled herein, Plaintiffs allege that the Defendants agreed to pay for the actual loss of Business Income and Extra Expense that the Plaintiffs sustained due to the necessary suspension of operations at their full-service restaurants and that the

suspension was caused by direct physical loss of use at the covered properties. Defendants have breached the contract, the implied covenant of good faith and fair dealing and violated CUIPA/CUTPA by wrongfully denying Plaintiffs' claims for their losses.

**II. NATURE OF THE ACTION**

1. This action arises out of Defendants' failure to provide insurance coverage for the losses sustained and expenses incurred by Plaintiffs due to the necessary suspension of full-service restaurant operations caused by the ongoing disaster, Coronavirus (COVID-19) Pandemic.

2. For many years, Plaintiffs have operated full-service restaurants in Southbury, Trumbull, Southington, Wethersfield, Orange, and Fairfield, Connecticut. Since March 2020, Plaintiffs have suspended or limited routine operations. Plaintiffs anticipate that suspension or limitation of routine operations will continue.

3. To protect their businesses in the event that they suddenly had to suspend routine operations for reasons outside of their control, or in order to prevent property damage, Plaintiffs purchased insurance coverage from Defendants, including property coverage, as set forth in Defendants' Special Property Coverage Form.

4. Defendants' coverage form provides "Business Income" coverage, which promises to pay for actual loss due to the necessary suspension of operations

caused by, among other things, direct physical loss of, or physical damage to Covered Property.

5. Defendants' coverage form, under section titled, "Duties in the Event of Loss", requires in the event of a loss that the policyholder take all reasonable steps to protect the Covered Property from damage, and keep a record of the expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.

6. The Plaintiffs plead both in the alternative or cumulatively, because of the Pandemic or the associated government orders, or both, Plaintiffs were forced to suspend or reduce operations at their full-service restaurants. Plaintiffs were also forced to suspend or reduce operations because of the ensuing orders issued by civil authorities in the State of Connecticut.

7. The Defendants have refused to pay the Plaintiffs under their Business Income, Extra Expense, Civil Authority and Sue and Labor coverages for losses suffered. In particular, Defendants have refused to appropriately investigate and nevertheless denied claims submitted by Plaintiffs under its Policy.

**III. THE PARTIES**

8. KAIAFFA, LLC is a Connecticut corporation, with its principal place of business in Orange, Connecticut.

9. Chip's Trumbull, LLC is a Connecticut Corporation with a principal place of business in Trumbull, CT.

10. Chip's Wethersfield, LLC is a Connecticut Corporation with a principal place of business in Wethersfield, Connecticut.

11. Chip's Southbury, LLC is a Connecticut Corporation with a principal place of business in Southbury, Connecticut.

12. Chip's Southington, LLC is a Connecticut Corporation with a principal place of business in Southington, Connecticut.

13. DGA, LLC is a Connecticut Corporation with a principal place of business in Orange, Connecticut.

14. 525 Tunxis Hill Cut-Off, LLC is a Connecticut Corporation with a principal place of business in Fairfield, Connecticut.

15. Twin City Fire Insurance Company is, and at all times relevant hereto has been, an insurance company writing policies and doing business in the State of Connecticut, capable of suing and being sued in the courts of this State. Twin City Fire Insurance Company is a corporation organized, incorporated and existing under the laws of the State of Indiana, with its principal place of business at One Hartford Plaza, Hartford, CT 06115.

16. Twin City Fire Insurance Company is a wholly owned subsidiary of Hartford Fire Insurance Company d/b/a The Hartford which is itself a wholly owned subsidiary of The Hartford Financial Services Group, Inc.

17. Hartford Fire Insurance Company, d/b/a The Hartford is a corporation organized, incorporated and existing under the laws of the State of

Connecticut, with its principal place of business at One Hartford Plaza, Hartford, CT 06115.

18. Hartford Fire Insurance Company, d/b/a The Hartford performs services for Twin City Fire Insurance Company including marketing, underwriting and claims handling. Policy No. 31 SBA AA 9385 SB issued to KAIAFFA, LLC, Chip's Trumbull, LLC, Chip's Wethersfield, LLC, Chip's Southbury, LLC, Chip's Southington, LLC is printed on forms copyrighted by The Hartford. Policy No. 31 SBA AB 5399 SB issued to DGA, LLC, is printed on forms copyrighted by The Hartford. The Producer Compensation Notice in each policy, printed with The Hartford logo states: "You can review and obtain information on The Hartford's producer compensation practices at [www.thehartford.com](http://www.thehartford.com) or at 1-800-592-5717". The "Insurance Policy Billing Information" form in each policy states: "Thank you for selecting The Hartford for your business insurance needs". The denial letter dated March 27, 2020 to KAIAFFA, LLC, Chip's Trumbull, LLC, Chip's Wethersfield, LLC, Chip's Southbury, LLC, and Chip's Southington, LLC is printed on The Hartford letterhead and states, in part: "If you believe there are additional facts Hartford should consider, please let us know, and we will reopen your claim." The denial letter also states: "Hartford specifically reserves its right to modify or supplement this review of coverage...." The denial letter dated March 27, 2020, is signed by Patrick Olson, Claims Representative and lists his email address as [Patrick.olson@thehartford.com](mailto:Patrick.olson@thehartford.com).

19. The denial letter dated August 21, 2020 to DGA, LLC is printed on The Hartford letterhead and states, in part: “If you believe there are additional facts Hartford should consider, please let us know and we will reopen your claim”. The denial letter also states: “The foregoing should not be construed as a waiver of any of Hartford’s rights and defenses under your policy number, and Hartford specifically reserves its right to modify or supplement this review of coverage based upon any additional information which it may obtain and/or any other grounds which may appear”. The denial letter dated August 21, 2020 is signed by Patricia Kilcoyne, Claim Representative and lists her email address at [Patricial.kilcoyne@thehartford.com](mailto:Patricial.kilcoyne@thehartford.com).

20. The denial letter dated April 28, 2020 to George Chatzopoulos concerning 525 Tunxis Hill Cut-Off, LLC’s notice of loss is printed on The Hartford letterhead and states, in part: “If you believe there are additional facts Hartford should consider, please let us know, and we will reopen your claim.” The denial letter also states: “The foregoing should not be construed as a waiver of any of Hartford’s rights and defenses under your policy number, and Hartford specifically reserves its right to modify or supplement this review of coverage based on any additional information which it may obtain and/or any other grounds which may appear.” The denial letter dated April 28, 2020 is signed by Richard Davis, Claims Representative and lists his email address as [Richard.davis@thehartford.com](mailto:Richard.davis@thehartford.com).

21. The denial letters were issued without investigation.

#### IV. FACTUAL BACKGROUND

##### The Insurance Policy

22. In return for the payment of a premium, Defendants issued Policy No. 31 SBA AA9385 SB to certain of the Plaintiffs for a policy period of January 1, 2020 to January 1, 2021. Policy No. 31 SBA AA9385 SB is attached hereto and incorporated by reference as *Exhibit 1* (the “KAIAFFA Policy”) (pages have been Bates numbered for the convenience of the Court).

23. In return for the payment of a premium, Defendants issued Policy No. 31 SBA AB 5399 SB to DGA, LLC for the policy period July 1, 2019 to July 1, 2020. Policy No. 3.1 SBA AB5399 is attached hereto and incorporated by reference as *Exhibit 2* (the “DGA Policy”) (pages have been Bates stamped for the convenience of the Court).

24. In return for the payment of a premium, Defendants issued Policy No. 31SBAAA9386 to 525 Tunxis Hill Cut-Off, LLC for a policy period of January 1, 2020 to January 1, 2021. Policy No. 31SBAAA9386 is attached hereto and incorporated by reference as *Exhibit 3* (“Tunxis Hill Policy”) (pages have been Bates stamped for the convenience of the Court). The KAIAFFA Policy, the DGA Policy and the Tunxis Hill Policy are collectively referred to as “the Policies”.

25. Plaintiffs are the Named Insureds under the Policies, which remain in force.

26. Defendants are the effective and liable insurers of the Policies.

27. Plaintiffs have performed all of their obligations under the Policies including the payment of premiums and cooperation in Defendants' claims investigation and preservation of the property. The Covered Properties are the full-service restaurants located at 775 Main, Street, Southbury, Connecticut 06488, 51 Monroe Turnpike, Trumbull, Connecticut, 06611, 99 Executive Boulevard, Southington, Connecticut 06489, 1301 Silas Deane Highway, Wethersfield, Connecticut 06109, 325 Boston Post Road, Orange, Connecticut and 525 Tunxis Hill Road Cut-Off, Fairfield, Connecticut.

28. Sometimes property insurance is sold on a specific peril basis, where coverage is limited to risks of loss that are specifically listed (e.g., hurricane, earthquake, etc.). However, the Policies at issue in this case, like many property policies sold in the United States, are "all-risk" property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded. For example, under Plaintiffs' Policies, the risk of loss to property as a result of government action is covered.

29. Under the heading "Covered Causes of Loss", Defendants agreed to pay for direct physical loss unless the loss is excluded or limited in the Policies.

30. Defendants agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of their operations during the "period of restoration" caused by direct physical loss of or damage to property at the Covered Properties.

31. The Plaintiffs made physical repairs which are Extra Expenses as that phrase is used in the Policies.

32. The Policies define the Business Income that will be paid as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or physical damage has occurred” and also includes “continuing normal operating expenses incurred, including payroll”.

33. With respect to coverage for loss of Business Income due to a necessary suspension of operations, “suspension” means a “partial slowdown or complete cessation” of the business activities. Defendants agreed to pay for the loss of such Business Income during the entire “period of restoration” that begins on the date of the physical loss or damage and “occurs within 12 consecutive months after the date”.

34. Defendants also agreed to pay necessary Extra Expense that its insureds sustained during the “period of restoration” that the insured would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

35. “Extra Expense” includes expenses to avoid or minimize the suspension of business and continue operations.

36. The Defendants heavily marketed Policies as “broad coverage” that will “help keep the doors open for your small business”. However, an across the board decision was made by The Hartford to deny all COVID-19 claims.

37. Under the section titled “Duties in the Event of Loss”, the Policies require that in the event of a loss the policyholders take all reasonable steps to protect the Covered Property from further damage. This is commonly referred to as “Sue and Labor” coverage. In this instance, Plaintiffs were required to suspend operations and repair, including cleaning, and installing barriers to protect Covered Property.

38. Losses caused by the Pandemic and the related orders issued by state, and federal authorities triggered the Business Income, Extra Expense, Civil Authority and Sue and Labor provisions of the Policy.

39. This coverage for Business Income arising out of order by a Civil Authority provides that it begins “72 hours after the order of a civil authority” and ends “when access is permitted” or “30 consecutive days after the order of the civil authority”, whichever is first.

40. The Policies also have an “Extended Business Income” extension, which provides for Business Income loss coverage beginning on the date “operations are resumed” and ends on the earlier of the date operations could be restored to the pre-loss condition or 30 consecutive days after the date the operations are resumed.

### **The COVID-19 Pandemic and the Covered Cause of Loss**

41. Coronavirus, SARS-CoV-2, is a highly contagious virus that has rapidly spread and continues to spread across the United States. It is a dangerous physical substance and can be present outside the human body for lengthy periods

of time in viral fluid particles. It causes disease, with various manifestations, called COVID-19. According to the CDC, everyone is at risk of getting COVID-19.

42. The World Health Organization recognized on January 25, 2020, that what would become known as COVID-19 is a “global threat to human health...” and specifically characterized COVID-19 as a Pandemic on March 11, 2020, stating: “Pandemic is not a word to use lightly or carelessly... And we have never before seen a pandemic that can be controlled, at the same time.”

43. The Center for Disease Control has stated:

A pandemic is a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide.

44. The COVID-19 Pandemic has caused more than 65,373 cases of COVID-19 and more than 4,569 deaths in Connecticut.

45. Since March 2020, Plaintiffs’ premises have been at imminent risk of suffering harm, including physical damage.

46. Plaintiffs have suspended and/or limited operations at the Covered Properties, in compliance with emergency orders, thereby incurring direct physical loss of use of the Covered Properties.

### **Insurable Risk**

47. The insurance industry has recognized that the risks associated with pandemics can constitute physical losses to the utilization of property and adversely impact the financial condition of businesses, since at least 2006.

48. Specifically, The Hartford recognized in 2006, the risk of pandemics to its property and casualty insurance claims noting in its Form 10-K submitted to the United States Securities and Exchange Commission as its official annual report that:

*“We are particularly vulnerable to losses from the incidence and severity of catastrophes, both natural and man-made, the occurrence of which may have a material adverse effect on our financial condition. . . .”* That section goes on to state: “Our property and casualty insurance operations expose us to claims arising out of catastrophes. Catastrophes can be caused by various unpredictable events, including...disease pandemic...” Most tellingly it goes on to specifically define “disease pandemics such as could arise from avian flu”.

The Hartford Financial Services Group, Inc., Annual Report (Form 10-K) (Feb. 16, 2007), p. 23. Last accessed Oct. 20, 2020:<http://d18rn0p25nwr6d.cloudfront.net/CIK-0000874766/d84d1773-c8b2-4a2a-94b3-c80feb623654.pdf>. Emphasis in original.

49. In 2019, despite an intervening pandemic the assessment of risk by The Hartford had not changed at all. In its most recent 10-K, under the heading “Insurance Industry and Product Related Risks,” The Hartford included almost verbatim language: “**We are vulnerable to losses from catastrophes, both natural and man-made...Catastrophes can be caused by various unpredictable natural events, including, among others...pandemics**”. The Hartford went on to note that “[t]he geographic distribution of our business subjects us to catastrophe exposure for events occurring in a number of areas, including, but not limited to: ...the spread of disease”. The Hartford Financial Services Group, Inc., Annual Report (Form 10-K) (February 19, 2020), p. 22. Last accessed Oct. 20, 2020:

<http://d18rn0p25nwr6d.cloudfront.net/CIK-0000874766/4bf6650d-8159-494e-815e-ee7336e7fa38.pdf>.

50. The 2019 10-K goes on to note that “[o]ur businesses also have exposure to global or nationally occurring pandemics caused by highly infectious and potentially fatal diseases spread through human, animal or plant populations”. The 10-K also states: “[T]he amount we charge for catastrophe exposure may be inadequate if the frequency or severity of catastrophe losses changes over time or if the models we use to estimate the exposure prove inadequate”. *Id.*, at 23.

51. The Hartford, in its 2019 10-K, goes on to call out pandemics, specifically, including their limited loss as estimate on the property and casualty lines<sup>1</sup>:

Pandemic The exposure to loss arising from widespread influenza or other pathogens or bacterial infections that create and aggregation of loss across the Company’s insurance or asset portfolios.

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The Company generally limits its estimate pre-tax loss from a single 250-year pandemic event to less than 18% of the aggregate projected total available capital at year end of the property and casualty and group benefits insurance subsidiaries. In evaluating these scenarios, the Company assesses the impact on group life, short-term disability, long-term disability and property & casualty claims. While ERM has a process to track and manage these limits, from time to time, the estimated loss for pandemics may fluctuate above or below these limits due to changes in modeled loss estimates, exposures, or statutory surplus. In addition, the Company assesses losses in the investment portfolio associated with market declines in the event of a widespread pandemic.

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<sup>1</sup> *Id.*, at 84.

52. The 10-K reports reveal that The Hartford considers itself liable for loss or damage caused by a disease pandemic and that losses caused by a disease pandemic would not be excluded.

53. The imminent threat to the United States of the Pandemic was known at least as early as January 31, 2020, when President Donald J. Trump issued the Presidential “Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus”, which suspended the entry of non-citizens of the United States who had been physically present within China during the 14-day period preceding any attempted entry into the United States.<sup>2</sup>

### **The Connecticut Closure Orders**

54. On March 13, 2020, President Donald J. Trump issued a national state of emergency.

55. On March 16, 2020, President Donald J. Trump and White House Coronavirus Task Force issued new guidance which included that citizens “[a]void social gatherings in group of more than 10 people” to include “[a]void eating and drinking at bars, restaurants and food courts” and to “[a]void discretionary travel, shopping trips, and social visits”.

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<sup>2</sup> See: <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus/> (last accessed Oct. 20, 2020).

56. On March 10, 2020, Governor Lamont of the State of Connecticut, ordered a Declaration of Civil Preparedness and Public Emergencies.

57. On March 20, 2020, the State of Connecticut entered an order directing all residents in Connecticut to stay at home, imposing social distancing rules, limiting occupancy of buildings, and reiterating that any entity that does not employ individuals to perform essential worker functions as set forth in guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) shall adhere to limitations on social gatherings and social distancing set forth in the Order. The purpose of the Order was to mitigate and slow the spread of the COVID-19 Pandemic in the State.

58. Thereafter, Governor Lamont has continued to enter a series of Executive Orders.

59. For example, on March 26, 2020, the Governor of the State of Connecticut issued a civil authority order limiting social gatherings of more than 5 people.

60. On September 1, 2020, Governor Lamont extended Connecticut's State of Emergency in response to the COVID-19 Pandemic until February 9, 2021.

61. The Connecticut Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout Connecticut and are civil authority orders that contributed to causing the suspension of Plaintiff's routine operations.

62. As a response to the Pandemic, the Governor of Connecticut has issued these orders pursuant to the authority vested in him by the Connecticut Constitution and the laws of Connecticut.

63. Similarly, the Connecticut Department of Public Health, pursuant to its authority under Connecticut law, has issued directives and guidance related to the COVID-19 Pandemic commencing on March 16, 2020 and continuing to the present time.

64. The State of Connecticut is a civil authority contemplated by Defendant's Policy.

65. The Governor of the State of Connecticut and the State of Connecticut Public Health Department are civil authorities contemplated by Defendant's Policy.

66. The Pandemic has constituted a disaster.

**The Pandemic and Closure Orders Caused a Direct Physical Loss or  
Damage to the Plaintiffs' Property**

67. Loss of use of property constitutes "direct physical loss of or damage to Covered Property" for purposes of first-party property insurance.

68. As the drafters of the Policies, if Defendants had wished to exclude the loss of use of property that has not been physically altered, deformed or contaminated, it could have used explicit language stating such a definition, but it did not do so.

69. The Pandemic has caused “direct physical loss of or damage to Covered Property” under the Policies by causing the necessary suspension or limitation of operations during a period of restoration.

70. The State of Connecticut, through the Governor and Department of Public Health, has issued and continues to issue authoritative orders governing Connecticut citizens and businesses, including the Plaintiffs’ businesses, in response to the Pandemic, the effect of which has caused and continues to cause Plaintiffs to cease and/or significantly reduce operations at the premises described in the Policies and to incur Extra Expenses.

71. The Pandemic and the resulting suspension and limitation of operations has caused the Plaintiffs’ loss of Business Income and Extra Expense.

72. The Civil Authority Orders prohibited access to Plaintiffs’ Covered Properties, and the area immediately surrounding Covered Property, in response to dangerous physical conditions resulting from a Covered Cause of Loss.

**Plaintiffs Submitted Notices of Loss to Defendants and Were Wrongfully Denied Coverage**

73. Plaintiffs submitted notices of loss to Defendants under the Policies and the Defendants denied those claims by letters dated March 27, 2020, August 21, 2020 and April 28, 2020, respectively. The denial letter dated March 27, 2020 is attached here to and incorporated by reference as *Exhibit 4*. The denial letter dated August 21, 2020 is attached hereto and incorporated by reference as *Exhibit 5*. The

denial letter dated April 28, 2020, is attached hereto and incorporated by reference as *Exhibit 6*.

74. Upon information and belief, Defendants are using a form denial letter to deny coverage to all its insureds with policies similar to Plaintiffs' and is otherwise uniformly refusing to pay insureds under its standard policy for losses related to the Pandemic.

75. The section of the denial letters entitled, "Coverage Decision Details", appears to be a form-generated template. *See Exhibits 4, 5 and 6*.

76. The denial letters use such vague and generic phraseology as "[w]e note that your policy also contains the following potentially applicable exclusion".

77. As these are coverage letters, it is incumbent upon the insurer to take a position about whether the exclusion applies to the facts of this loss or not – not leave it to their insured to guess, while attempting to insulate themselves in any litigation that follows.

**Defendants and Other Insurers Have Declined to Exclude Pandemic Coverage Despite Knowledge of Risk**

78. The risks and losses created by pandemics have been well-known for many years. The 1918 influenza pandemic spread worldwide and caused an estimated 50,000,000 deaths, 675,000 in the United States. The 1957-1958 H2N2 pandemic caused an estimated 1,100,000 deaths, 116,000 in the United States. The 1968 H3N2 pandemic caused an estimated 1,000,000 deaths, and about 100,000

in the United States. The CDC estimated that the 2009-2018 H1N1 pandemic caused 274,304 hospitalizations and 12,469 deaths in the United States.

79. When the Defendants issued the Policies, they knew that pandemics were a risk of loss, could cause the suspension of operations on their insureds' covered properties and result in loss of business income and extra expense. Despite that knowledge, Defendants did not include an exclusion for loss or damage caused by a pandemic.

80. In the case at bar, the virus exclusion upon which Defendants rely is ambiguous in the context of losses caused by a pandemic and does not clearly and unambiguously exclude Plaintiffs' claim for loss of business income and extra expense.

## **V. LEGAL CLAIMS FOR RELIEF**

### **Count I – Breach of Contract**

81. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

82. The Plaintiffs plead the theories of coverage available to them in the alternative or cumulatively.

83. In order to protect their properties, businesses and income from losses, the Plaintiffs purchased the Policies sold by the Defendants.

84. The Policies are contracts under which Defendants were paid premiums in exchange for their promise to pay Plaintiffs' losses for claims covered by the Policies.

85. In the Special Property Coverage Form, Defendants agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of their operations during the "period of restoration".

86. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the Policies, for which Defendants agreed to pay for loss of Business Income during the "period of restoration" that begins at the time of direct loss.

87. "Business Income" means net income (net profit or loss before income taxes) that would have been earned or incurred and continuing normal operating expenses sustained, including payroll.

88. Plaintiffs' suspension of operations caused direct physical loss of use of Plaintiffs' Covered Property and resulting in loss of Business Income.

89. Plaintiffs have complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendants, or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policies' clear and unambiguous terms.

90. By denying coverage for any Business Income losses incurred by Plaintiffs, Defendants have breached their coverage obligations under the Policies.

91. In the Policies, Defendants agreed to pay necessary Extra Expense that its insureds incurred during the "period of restoration" that the insureds would not have sustained if there had been no direct loss to property caused by or resulting from a Covered Cause of Loss.

92. “Extra Expense” includes expenses to avoid or minimize the suspension of business and continue operations.

93. Due to a Covered Cause of Loss, Plaintiffs have incurred Extra Expense at Covered Property. Plaintiffs have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

94. By denying coverage for Extra Expense incurred by Plaintiffs, Defendants have breached their coverage obligations under the Policies.

95. In the Policies, Defendants agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property.

96. In suspending or limiting operations, and making repairs including the cleaning and erecting of barriers, Plaintiffs have incurred expenses in connection with reasonable steps to repair and protect Covered Property.

97. Plaintiffs have complied with all applicable provisions of the Policies and/or those provisions have been waived by Defendants, or Defendants are estopped from asserting them, and yet, Defendants have abrogated insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

98. By denying coverage for any such Sue and Labor expenses incurred by Plaintiffs, Defendants have breached their coverage obligations under the Policies.

99. As a result of Defendants' breaches of the Policies, Plaintiffs have sustained substantial damages for which the Defendants are liable, in an amount to be established at trial.

**COUNT II – Breach of The Covenant of Good Faith and Fair Dealing**

100. Plaintiffs repeat and reallege the preceding paragraphs as though fully set forth herein.

101. The contract of insurance carries with it a duty of utmost good faith on the part of the insurer because of the vulnerability of policyholders during and following an insured cause of loss.

102. The Defendants duties include but are not limited to Defendants' obligation to fairly and quickly adjust the Plaintiffs' claims to determine coverage and amount of loss, adjust its insurance claims and provide prompt payment.

103. The Plaintiffs and Defendants are parties to a contract under which the Plaintiffs reasonably expected to receive certain benefits; the Defendants engaged in conduct that injured the Plaintiffs' right to receive those benefits; and when committing the acts by which they injured the Plaintiffs' rights to receive benefits they reasonably expected to receive under the contract, the Defendants acted in bad faith.

104. The Defendants have taken a national approach, apparently in coordination with other members of the insurance industry, to uniformly deny similar claims.

105. Said denials were issued without investigation.

106. The Defendants violated the covenant of good faith and fair dealing by using a predetermined decision not cover any claim; failing to properly inquire into relevant facts supporting their denial; failing to take the appropriate procedures for handling Plaintiffs' claim; declining to make clear, and good faith efforts to resolve the contractual relationship between Plaintiffs and Defendants.

### **COUNT III – CUPTA/CUIPA Violation**

107. Plaintiffs repeat and reallege the preceding paragraphs as if fully set forth herein.

108. Defendants are “persons” and engaged in the business of insurance as defined by C.G.S. § 38a-815.

109. In their handling of business interruption losses caused by the Pandemic, Defendants have a general business practice of refusing to pay claims without conducting a reasonable investigation based upon all available information or attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability is reasonably clear.

110. Section 38a-816 of the Connecticut Unfair Insurance Practices Act (hereinafter, CUIPA), prohibits unfair claim settlement practices and provides in part: “6) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following: (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue; (b) failing to acknowledge and act with reasonable promptness upon communications with respect to claims arising under insurance policies; (c) failing

to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (d) refusing to pay claims without conducting a reasonable investigation based upon all available information; (e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; (f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claim in which liability has become reasonably clear; (g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.”

111. Defendants’ actions set forth herein constitute violations of the Connecticut Unfair Insurance Practices Act, C.G.S. § 38a-816(6)(c)(d)(f) and (g) and were committed with such frequency as to indicate a general business practice.

112. Defendants are “persons” within the meaning of C.G.S. § 42-110a (3).

113. The conduct of the Defendants alleged herein constituted a series of deceptive acts and practices within the meaning of Connecticut General Statute Section 42-110b(a) in the conduct of the trade or business of insurance.

114. As a result of Defendants’ deceptive acts and practices as foresaid within the meaning of Connecticut General Statute Section 42-110b(a), the Plaintiffs failed to receive the coverage and benefits required by the policy of insurance at issue herein, and otherwise have incurred severe ascertainable losses as a direct and proximate result.

**VI. REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, respectfully request that the Court enter judgment in its favor and against Defendants as follows:

- a. For a judgment against Defendants for the causes of action alleged against it;
- b. For compensatory damages in an amount to be proven at trial;
- c. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- d. For Plaintiffs' attorneys' fees';
- e. For Plaintiffs' costs incurred;
- f. For punitive damages; and
- g. For such other and further relief as the Court deems just and proper.

**Respectfully submitted,  
Attorneys for Plaintiffs**

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RETURN DATE: 11/24/2020	)	SUPERIOR COURT
	)	
KAIAFFA, LLC, CHIP'S TRUMBULL, LLC, CHIP'S	)	
WETHERSFIELD, LLC, CHIP'S SOUTHBURY,	)	
LLC, CHIP'S SOUTHLINGTON, LLC, DGA, LLC	)	J.D. OF HARTFORD
AND 525 TUNXIS HILL CUT-OFF, LLC	)	
	)	AT HARTFORD
Plaintiffs	)	
	)	
v.	)	
	)	
TWIN CITY FIRE INSURANCE COMPANY	)	
AND THE HARTFORD FINANCIAL SERVICES	)	
GROUP, INC., D/B/A THE HARTFORD	)	
	)	
Defendants	)	NOVEMBER 4, 2020

**STATEMENT OF AMOUNT IN DEMAND**

The amount in demand is in excess of Fifteen Thousand Dollars and 00/000 (\$15,000.00), exclusive of interests and costs.

**Respectfully submitted,  
Attorneys for Plaintiffs**

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