

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**MT. HAWLEY INSURANCE
COMPANY,
Plaintiff**

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Civil Action No. _____

V.

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**SIKA INVESTMENTS, LLC,
Defendant**

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ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Mt. Hawley Insurance Company (“Mt. Hawley”), pursuant to 28 U.S.C. §2201(a) and Fed.R.Civ.P. 57, files this Original Complaint for Declaratory Judgment against Defendant Sika Investments, LLC and, in support thereof, states the following:

**I.
PARTIES**

1. Plaintiff Mt. Hawley Insurance Company (“Mt. Hawley”) is a corporation organized under the laws of the State of Illinois, with its principal place of business in Peoria, Illinois, and is, therefore, a citizen of Illinois, as defined by 28 U.S.C. §1332. Thus, Mt. Hawley is a citizen of the State of Illinois, and is not a citizen of the State of Louisiana.

2. Defendant Sika Investments, LLC is a limited liability company organized under the laws of the State of Delaware. Defendant has one member, Brian Reine, an individual citizen of the State of Louisiana. Thus, Defendant is a citizen of the State of Louisiana and not a citizen of the State of Illinois. Service of process may be accomplished on Defendant by serving this Complaint and Summons on its registered agent for service in the State of Louisiana, Brian Reine at 90 Glen Court, Pearl River, Louisiana 70452. Defendant is subject to this Court’s personal

jurisdiction pursuant to 28 U.S.C. § 1391(c)(2), in that it maintains a place of business and conducts regular business activities at 1736 Gause Blvd. E., Slidell, Louisiana 70461.

II. **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because Mt. Hawley and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

4. The Court also has jurisdiction over this declaratory judgment action pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201. An actual and substantial controversy exists between the parties. By this action, Mt. Hawley seeks a declaration that an insurance policy issued to Defendant does not provide coverage for the insurance claim made by Defendant as described herein. This suit is necessary because Defendant's representative has expressed disagreement regarding Mt. Hawley's coverage position and has, in fact, already sued Mt. Hawley's parent company, RLI Corp., in connection with this COVID-19 based claim.

5. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391(b)(1) and (2).

III. **FACTUAL BACKGROUND**

6. Mt. Hawley issued Commercial Property Policy No. MCP0168316 to Defendant effective 4/30/19 to 4/30/20 (hereinafter the "Policy," a certified copy of which is attached hereto as **Exhibit A**). The Policy provides potential coverage for direct physical loss of or damage to the Covered Locations, a retail shopping center located at 1736 Gause Blvd. E., Slidell, Louisiana 70461 and a hotel located at 63537 Hwy. 1090, Pearl River, Louisiana 70452 (the "Properties"), as well as business income and extra expense loss, subject to all terms, conditions, limitations, and exclusions therein.

The COVID-19 Claim

11. On April 1, 2020, Defendant presented a claim to Mt. Hawley under the Policy for alleged loss of business income associated with the Coronavirus (“COVID-19”) pandemic (the “Claim”).

12. Defendant claimed a March 23, 2020 date of loss, one day after Louisiana Governor John Bel Edwards issued a “stay-at-home” proclamation pertaining to COVID-19. Neither that proclamation, nor any other proclamation, order, or declaration issued by Governor Edwards, the State of Louisiana, or the City of Slidell, did or has ever required the suspension or cessation of the Defendant’s hotel and shopping center operations or prevented access to the Properties. *See* Proclamation Number 33 JBE 2020, a true and correct copy of which is attached hereto as **Exhibit B**.

13. Indeed, on March 22, 2020, Governor Edwards issued a “Stay at Home” order, which provided that certain businesses that had been included as critical infrastructure sectors by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) could remain open during the COVID-19 pandemic. *See id.* (**Ex. B**) at SECTION 3:C.

14. Hotels, such as Defendant’s, were identified as consistent with CISA guidance and specifically permitted to remain open during the effective period of Governor Edwards’ “Stay at Home” order. *See* list of business permitted to remain open, issued by the Office of the Governor of Louisiana, a true and correct copy of which is attached hereto as **Exhibit C**.

15. With regard to Defendant’s shopping center, Governor Edwards allowed restaurants to remain open for takeout, drive-thru, and delivery services. *See* Proclamation Number JBE 2020-30, SECTION 3, a true and correct copy of which is attached hereto as **Exhibit D**. Governor Edwards also specifically excepted “stores in a mall that have a direct outdoor entrance and exit that provide essential services and products as provided by CISA guidelines”

from being closed to the public. *See* **Ex. B**, SECTION 4(A). Moreover, even those businesses that were closed to the public were permitted to continue “conducting necessary activities such as payroll, cleaning services, maintenance or upkeep as necessary.” *Id.* (**Ex. B**) at SECTION 4(B).

16. In addition, on April 3, 2020, City of Slidell Mayor George Cromer issued a declaration that required residents of the city to stay in their homes from 11:00 p.m. to 5:00 a.m., but did not specifically forbid access to any premises within the City of Slidell. A true and correct copy of Mayor Cromer’s declaration is attached hereto as **Exhibit E**.

17. On June 17, 2020, Mt. Hawley denied the Claim.

IV.
THE POLICY

18. The Claim was submitted under the Policy, which provides potential coverage for commercial property losses subject to all terms, conditions, limitations, and exclusions therein.

19. The Policy provides, in pertinent part, as follows:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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A. Coverage

1. Business Income

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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 damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. . . .

2. Extra Expense

a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.

b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

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3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes of Loss Form as shown in the Declarations.

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5. Additional Coverages

a. Civil Authority

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1)** Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2)** The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
- (2) When your Civil Authority Coverage for Business Income ends;

whichever is later.

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F. Definitions

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2. "Operations" means:

- a.** Your business activities occurring at the described premises; and
- b.** The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

3. "Period of restoration" means the period of time that:

a. Begins:

- (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
- (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

b. Ends on the earlier of:

- (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
- (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the “period of restoration”.

...

6. "Suspension" means:

- a.** The slowdown or cessation of your business activities; or
- b.** That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

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CAUSES OF LOSS - SPECIAL FORM

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A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

- 1.** Excluded in Section **B.**, Exclusions; or
- 2.** Limited in Section **C.**, Limitations;

that follow.

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B. Exclusions

1. 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.

a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1)** Regulating the construction, use or repair of any property; or
- (2)** Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged;

2. We will not pay for loss or damage caused by or resulting from any of the following:

b. Delay, loss of use or loss of market.

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

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INGRESS OR EGRESS

When a Covered Cause of Loss, first commencing during the Policy Period, causes damage to property other than property at a location described in the Declarations, we will pay for the actual loss of Business Income and necessary Extra Expense you incur which is caused by a physical impairment that prevents physical ingress or egress to your location, subject to the terms, exclusions, limits, and conditions of the policy to which this endorsement is attached and to the provisions contained in this endorsement. The physical impairment must be located within one (1) mile of the location(s) described in the Declarations.

Ingress or Egress coverage will begin for business income 72 hours following the time of direct physical loss or damage or immediately after the time of direct physical loss or damage for Extra Expense. This coverage ends at the earlier of:

- 1.** Until access to insured premises is regained; or
- 2.** For a period of up to thirty (30) consecutive days from the date on which such coverage began; or
- 3.** Until exhaustion of any applicable sublimits, whichever occurs first.

In no event will this extension cover any loss which is otherwise covered under any additional coverage provided by this policy for Civil Authority.

The following exclusions apply to the coverage provided for Ingress or Egress:

- 1.** Loss resulting from lack of incoming or outgoing service consisting of electric, fuel, gas, water, steam, refrigerant, sewerage, voice, data, video, or internet connectivity.

2. Loss resulting from picketing or other action by strikers except for physical damage not otherwise excluded by this policy.

This coverage period is part of and not in addition to any period of liability applying to any coverage provided for Business Income and/or Extra Expense elsewhere in this policy.

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ABSOLUTE POLLUTION EXCLUSION

This endorsement replaces any existing terms and/or exclusions regarding pollution liability within this policy.

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

A. Property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of "pollutants," or contaminants;

1. At or from premises owned, leased, rented or occupied by you,

2. At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste,

3. Which are at any time transported, handled, stored, treated, disposed of or processed as waste by or for you or any person or organization for whom you may be legally responsible, or,

4. At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations;

a. If the "pollutants" are brought on or to the site or location in connection with such operations, or

b. If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the "pollutants."

B. Any loss, damage, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, treat, remove, detoxify or neutralize "pollutants" or in any way respond to or assess the effects of "pollutants."

This includes loss or damage caused by or resulting from contributing to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of contaminants and/or pollutants, all of which direct or indirect, proximate or remote, or in whole or in part, caused by, contributed to, or aggravated by any damage insured by the policy.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. In addition to "pollutants" to be disposed of, waste also includes materials to be recycled, reconditioned or reclaimed. It also includes any material which after its release, dispersal or discharge, can cause or threaten damage to human health and/or human welfare, or causes or threatens damage, deteriorations, loss of value, marketability and/or loss of use, to insured property; including, but not limited to bacteria, fungi, virus, or hazardous substances as listed in the Federal Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976 and/or Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency.

V.
DECLARATORY JUDGMENT

20. Mt. Hawley incorporates by reference the allegations in the paragraphs stated above.

21. The circumstances of the Claim and the provisions of the Policy conclusively establish that there simply is no coverage under the Policy for the Claim because Defendant has not sustained direct physical loss of or damage to Covered Property from any Covered Cause of Loss.

22. The Business Income coverage provided by the Policy applies to the actual loss of Business Income sustained due to the necessary suspension of Defendant's "operations" during the "period of restoration." The "suspension" must be caused by direct physical loss of or damage to property at the described premises as a result of a Covered Cause of Loss. Here, there was no direct physical loss of or damage to property at the premises. Rather, Defendant contends that its operations were suspended based upon orders issued by civil authorities in Louisiana and certain business considerations. Accordingly, Defendant has not sustained direct physical loss of or damage to any property that would trigger its Business Income coverage.

23. The Civil Authority Coverage does not apply because Defendant has not been prohibited from accessing its premises by an order of a civil authority specifically prohibiting such

access. In addition, the orders from civil authorities were not the result of dangerous physical conditions resulting from damage by a peril insured by the Policy to property away from Defendant's premises and within one mile from same. The orders were implemented as a preventative measure to minimize the spread of COVID-19. Accordingly, there is no coverage for the Claim under the Civil Authority Coverage.

24. The coverage for Ingress or Egress applies only when a Covered Cause of Loss causes damage to property other than at Defendant's premises, which causes a physical impairment and prevents physical ingress or egress to Defendant's premises. These circumstances are not presented here, and therefore, there is no coverage under the Ingress or Egress endorsement.

25. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused directly or indirectly by the enforcement of any ordinance or law regulating the use of any property, and such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Accordingly, there is no coverage for the COVID-19 Claim under the Policy.

26. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused by or resulting from any delay, loss of use and loss of market. Accordingly, there is no coverage for the Claim under the Policy.

27. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused by the acts or decisions of any person, group, organization or governmental body. Accordingly, there is no coverage for the Claim under the Policy.

28. Additionally, the Absolute Pollution Exclusion Endorsement specifically excludes coverage for loss or damage caused directly or indirectly by the actual, alleged, or threatened discharge, dispersal, release or escape of pollutants or contaminants, including virus, and such loss

or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Accordingly, coverage for the Claim is excluded under the Absolute Pollution Exclusion Endorsement.

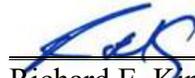
29. Accordingly, Mt. Hawley requests that this Court declare the rights of the parties regarding the actual controversies existing between them as set forth herein and enter judgment finding and declaring that there is no coverage under the Policy for Defendant's Claim and that Mt. Hawley does not owe Defendant any sums under the Policy in connection with the Claim.

V.
JURY DEMAND

30. Mt. Hawley hereby requests that this civil action be tried before a jury.

WHEREFORE, Plaintiff Mt. Hawley Insurance Company prays that this Court enter judgment finding and declaring: (1) that there is no coverage under the Policy for Defendant's Claim; (2) that Mt. Hawley Insurance Company does not owe Defendant any sums under the Policy in connection with the Claim; and (3) for such other and further relief as it deems just and fit under the circumstances.

Respectfully submitted,



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