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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

NORDSTROM, INC., a Washington
corporation,

Plaintiff,

v.

XL INSURANCE AMERICA, INC.; ACE
AMERICAN INSURANCE COMPANY;
AIG SPECIALTY INSURANCE
COMPANY; CONTINENTAL CASUALTY
COMPANY; IRONSHORE SPECIALTY
INSURANCE COMPANY; and FACTORY
MUTUAL INSURANCE COMPANY,

Defendants.

NO.

COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES

Nordstrom, Inc. alleges for its Complaint as follows:

I. INTRODUCTION

1.1. This is an insurance coverage dispute. Nordstrom has incurred substantial business losses and extraordinary expenses as a result of the COVID-19 pandemic. The defendant insurers issued policies that insure Nordstrom “against all risks of direct physical loss or damage to insured property” and “all risks of physical loss or damage.” Nordstrom has

1 submitted claims to defendants seeking coverage for its COVID-19-related loss. No defendant
2
3 has agreed to cover this loss; some have denied coverage outright and others have yet to state a
4
5 coverage position.
6

7 1.2. In this action Nordstrom seeks:
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9 1.2.1. A declaration of the rights, duties, and liabilities of the parties under the
10
11 subject insurance policies with respect to Nordstrom’s loss from the governmental orders issued
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13 during the COVID-19 pandemic, which limited or eliminated Nordstrom’s ability to use its
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15 physical locations; and
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17 1.2.2. Damages for defendants’ breach of their contractual duties under the
18
19 policies.
20

21 II. THE PARTIES 22

23 2.1. **Plaintiff Nordstrom, Inc.** Plaintiff Nordstrom, Inc. is a Washington corporation,
24
25 with its primary place of business in Seattle, Washington. Founded in 1901 in Seattle as a retail
26
27 shoe store, Nordstrom went on to become one of the leading U.S.-based fashion retailers. In
28
29 addition to its robust online retail business, Nordstrom operates approximately 350 brick-and-
30
31 mortar retail stores in 40 U.S. states and Canada, employing more than 50,000 workers.
32

33 2.2. **Defendant XL Insurance America, Inc.** Defendant XL Insurance America, Inc.
34
35 (“XL”) is a foreign corporation domiciled in Delaware, with its primary place of business in
36
37 Stamford, Connecticut. XL conducts business in King County.
38

39 2.3. **Defendant ACE American Insurance Company.** Defendant ACE American
40
41 Insurance Company (“ACE”) is a foreign corporation domiciled in Pennsylvania, with its
42
43 primary place of business in Philadelphia, Pennsylvania. ACE conducts business in King
44
45 County.

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3 **IV. FACTUAL BACKGROUND**

4 **A. The COVID-19 Pandemic**

5 4.1. In or about February 2020, the United States and Canada saw their first cases of
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7 persons infected by COVID-19, which has been designated a worldwide pandemic.

8
9 4.2. COVID-19 can be spread in many ways, including by breathing, coughing,
10
11 sneezing, and talking. Persons infected with COVID-19 can be asymptomatic. To slow or stop
12
13 the spread of COVID-19, the United States Centers for Disease Control and Prevention
14
15 recommended avoiding indoor activities, avoiding crowded and congested areas, selecting
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17 seating based on the ability to maintain six feet of space from people outside your household,
18
19 and otherwise maintaining social distance of at least six feet between people. The Public Health
20
21 Agency of Canada has made similar recommendations.

22
23 **B. Federal, State, Provincial, and Local Governments Imposed Orders Restricting**
24 **Retail and Other Businesses**

25
26 4.3. In response to the COVID-19 pandemic, federal, state (or, in Canada, provincial),
27
28 and local governments issued numerous orders limiting travel, temporarily closing and/or
29
30 limiting the capacity of businesses, and requiring social distancing (collectively, “Governmental
31
32 Orders”). The Governmental Orders prevented in-person retail businesses from using their
33
34 physical locations, or in some cases severely restricted such use, which impacted their ability to
35
36 continue normal business operations and serve their customers.

37
38 **C. Nordstrom Sustained Losses as a Result of the Governmental Orders**

39
40 4.4. The Governmental Orders greatly affected Nordstrom’s ability to use its physical
41
42 store locations throughout the United States and Canada as intended. The Governmental Orders
43
44
45

1 required temporary store closures, prevented Nordstrom from reopening its stores, and prevented
2
3 Nordstrom from servicing the number of in-person customers it typically served.
4

5 4.5. As a result of the restrictions imposed by the Governmental Orders, Nordstrom
6
7 sustained significant loss in its gross earnings and/or gross profit and incurred certain
8
9 extraordinary expenses.
10

11 **D. Insurance Policies at Issue**
12

13 4.6. For the period of December 1, 2019 to December 1, 2020, defendants XL
14
15 Insurance, ACE, AIG, Continental, and Ironshore sold all-risk property insurance policies to
16
17 Nordstrom, covering “direct physical loss or damage to” insured property occurring during the
18
19 policy term. These policies provide broad property and business interruption coverage except
20
21 where excluded. These policies each provide coverage for a fixed percentage of a \$25 million
22
23 quota-share layer of coverage over a \$1 million per-occurrence deductible.
24

25 4.7. For the period of December 1, 2019 to December 1, 2020, defendant FM Global
26
27 sold an excess insurance policy to Nordstrom, covering “direct physical loss or damage to”
28
29 insured property occurring during the policy term. The FM Global policy is an “all-risk” policy
30
31 that provides broad property and business interruption coverage except where excluded.
32

33 4.8. The insurance policies referenced in paragraphs 4.6 and 4.7 are referred to in this
34
35 Complaint collectively as “the Policies.”
36

37 **E. Nordstrom’s Efforts to Obtain the Coverage to Which it Is Entitled**
38

39 4.9. The Governmental Orders deprived Nordstrom of the use of its insured property.
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41 This deprivation constitutes a direct physical loss of Nordstrom’s property within the meaning of
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43 the Policies. In March 2020, Nordstrom submitted a claim to defendants seeking coverage for its
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45 loss stemming from the Governmental Orders.

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VI. SECOND CLAIM: BREACH OF CONTRACT

6.1. **Incorporation by reference.** Nordstrom realleges the allegations of paragraphs 1.1 through 5.5 above.

6.2. **Breach of Contract.** Defendants have failed and refused to: (1) fully reimburse Nordstrom for its covered losses up to the applicable policy limits; and (2) acknowledge that Nordstrom's loss from the Governmental Orders constitutes direct physical loss and/or damage.

6.3. **Damages.** As a direct and proximate result of the breaches of these insurance contracts, Nordstrom has been deprived of the benefits of its insurance coverage with respect to the Governmental Orders.

6.4. **Additional Damages.** As another direct and proximate result of defendants' breaches of their Policies, Nordstrom has been forced to incur attorney's fees and other expenses in order to prosecute this action.

VII. PRAYER FOR RELIEF

Nordstrom prays for the following relief:

7.1. **Declaratory Judgment.** A declaratory judgment in favor of Nordstrom that: (1) Nordstrom's losses from the Governmental Orders constitute direct physical loss and/or damage under each of the Policies; and (2) Nordstrom is entitled to coverage under each of the Policies.

7.2. **Money Damages.** For money damages, in an amount to be proved at trial, together with pre-judgment and post-judgment interest.

7.3. **Attorney's Fees and Costs of Suit.** For reasonable attorney's fees and costs, including, without limitation, actual attorney's fees pursuant to *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).

