

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

The Children's Place, Inc.

Plaintiff,

v.

Zurich American Insurance Group,

Defendant.

CASE NO.

COMPLAINT

Plaintiff, The Children's Place, Inc., files this Complaint for damages and declaratory judgment against Defendant, Zurich American Insurance Company ("Zurich"), alleging the following:

I. INTRODUCTION

1. This diversity action for breach of contract and declaratory judgment arises out of The Children's Place's claim of insurance coverage under an "all risks" insurance policy sold by Zurich to The Children's Place.

2. Despite agreeing to cover The Children's Place for all risks of physical loss of or damage to property resulting from any cause not excluded, as well as the resulting business income and extra expense losses, Zurich has refused to honor its contractual obligations in the face of a claim for which coverage is plainly provided. Instead, Zurich attempts to ignore the devastating physical loss and damage caused by COVID-19 and hide behind unenforceable exclusions. However, no amount of willful ignorance or aspirational interpretation will allow Zurich to escape its obligations under the broad all risks coverage provided by the policy.

II. PARTIES

3. The Children's Place is a New Jersey corporation with its principal place of business in Secaucus, New Jersey. The Children's Place is a long-standing retailer of children's clothing and accessories.

4. Based on information and belief, Zurich is a New York corporation with its principal place of business in Schaumburg, Illinois.

5. Zurich is authorized to do business and issue insurance policies in the State of New Jersey.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(2) as a substantial amount or part of the events or omissions giving rise to the claim occurred in this district.

IV. FACTUAL BACKGROUND

a. The Children's Place

8. The Children's Place is recognized internationally as a leading brand among children's specialty apparel retailers. Over 900 stores currently operate in the United States, Canada and Puerto Rico, supplemented by an online marketplace.

9. Zurich is an insurance company that sold an insurance policy to The Children's Place covering "[a]ll risks of direct physical loss of or damage from any cause unless excluded." (See Policy No. PPR1865134-01, attached as Exhibit A (the "Policy"), at TCP0177.)

10. The Policy further provides coverage to The Children's Place for business interruption losses sustained as a result of a "necessary Suspension ... due to direct physical loss of or damage to Property." Exhibit A, at TCP0140.

11. The Policy provides certain "Special Coverages" that extend the Policy's coverage for business interruption losses resulting from the physical loss of or damage to the property of others that results in the necessary slowdown or cessation of The Children's Place's business activities. Exhibit A, at TCP0146-63.

12. The Policy provides up to \$500 million in coverage, subject to certain sublimits. Exhibit A, at TCP0127.

13. The policy has an effective term date of March 1, 2020 through March 1, 2021. Exhibit A, at TCP0125.

14. In exchange for Zurich's agreement to take on The Children's Place's risk of loss, The Children's Place paid Zurich a premium over \$1.2 million.

15. Zurich drafted the Policy.

b. COVID-19 Pandemic

16. Prior to the inception of the Policy, the novel coronavirus, SARS-CoV-2, swept the globe and was well known, including to Zurich.

17. This novel coronavirus causes COVID-19, a disease that, among other complications, attacks the respiratory system.¹

18. On December 29, 2019, the local government in Wuhan City, located in the Hubei Province of China, began tracking cases of what would become internationally known as COVID-19.²

¹ SARS-CoV-2 and COVID-19 are collectively referred herein as COVID-19.

² See <https://coronavirus.jhu.edu/data/hubei-timeline>.

19. On December 31, 2019, the World Health Organization (“WHO”) China Country Office received reports of a pneumonia of an unknown cause. The WHO began monitoring the situation and requesting data for its investigation.³
20. On January 10, 2020, the WHO issued its first guidance regarding the novel coronavirus, providing instructions for countries to review their ability to detect and respond to the public health threat.⁴
21. Just three days later, on January 13, 2020, health officials confirmed the presence of the novel coronavirus outside of China.⁵
22. On January 30, 2020, the WHO declared the novel coronavirus outbreak a Public Health Emergency of International Concern.⁶
23. In a January 30, 2020 “Situation Report,” the WHO identified the risk assessment around the world, including the United States where there were confirmed cases, to be “high”.⁷
24. On February 12, 2020, the United Nations activated the Crisis Management Team, led by the WHO, to develop and coordinate implementation of a worldwide plan in response to the outbreak.⁸
25. Upon information and belief, Zurich was aware of COVID-19 and the likelihood that it would continue spreading throughout the United States before March 1, 2020.
26. On March 11, 2020, the WHO declared COVID-19 to be a pandemic.
27. On March 13, 2020, President Donald Trump declared a nationwide emergency in response to the COVID-19 outbreak.

³ See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

⁴ See <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.

⁵ See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

⁶ See <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.

⁷ See <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>.

⁸ See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

28. A pandemic, by definition, is an outbreak of a disease that affects a wide geographic area and infects an exceptionally high proportion of the population.⁹
29. COVID-19 has proved to be deadly and highly contagious.
30. To date, COVID-19 has infected over 2.5 million people in the United States and caused more than 126,000 deaths.¹⁰
31. The CDC estimates that infection rates for COVID-19 are likely at least ten times higher than reported.¹¹
32. There is still no vaccine for COVID-19.
33. Medical science indicates that COVID-19 has several modes of transmission.
34. In a “Situation Report,” the WHO reported that the virus can be transmitted through symptomatic transmission, pre-symptomatic transmission, or asymptomatic transmission.¹²
35. Symptomatic transmission refers to transmission by an individual who is experiencing symptoms associated with the virus who then transfers COVID-19 to another individual. Data from published studies provide evidence that COVID-19 is primarily transmitted from symptomatic people to others who are in close contact through respiratory droplets, by direct contact with infected persons, or by contact with objects and surfaces that have COVID-19 present.¹³

⁹ Pandemic, Merriam-Webster’s Dictionary, <https://www.merriam-webster.com/dictionary/pandemic>

¹⁰ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed June 29, 2020)

¹¹ See <https://www.nbcnews.com/health/health-news/cdc-says-covid-19-cases-u-s-may-be-10-n1232134>.

¹² See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last viewed June 17, 2020).

¹³ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (“Data from clinical and other studies that have collected repeated biological samples from confirmed patients provide evidence that shedding of the COVID-19 virus is highest in upper respiratory tract (nose and throat) early in the course of the disease. That is, within the first 3 days from onset of symptoms. Preliminary data suggests that people may be more contagious around the time of symptom onset as compared to later on in the disease.”) (last viewed June 17, 2020).

36. The incubation period for COVID-19 – the time between exposure to the virus (becoming infected) and symptom onset – averages 5-6 days; however, it can be up to 14 days.¹⁴

37. During this period, also known as the “pre-symptomatic” period, some infected persons can be contagious. In other words, pre-symptomatic transmission can occur before the infected person shows any symptoms.¹⁵

38. Not only is COVID-19 spread by human-to-human transfer, but the WHO has confirmed that the virus can live on objects or surfaces.

39. According to a study documented in the New England Journal of Medicine, COVID-19 was detectable for up to three hours in aerosols, up to twenty-four hours on cardboard, and up to seventy-two hours on plastic and stainless steel.¹⁶

40. The Children’s Place uses all of these materials in its ordinary course of business.

41. The study’s results suggest that individuals can become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic or not.

42. According to Zurich’s website, it is keenly aware of the risk that COVID-19 poses and has cited the study and CDC guidance that COVID-19 may spread through contact with particles containing the virus.¹⁷

¹⁴ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last viewed June 17, 2020).

¹⁵ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (“In a small number of case reports and studies, pre-symptomatic transmission has been documented through contact tracing efforts and enhanced investigation of clusters of confirmed cases. This is supported by data suggesting that some people can test positive for COVID-19 from 1-3 days before they develop symptoms. Thus, it is possible that people infected with COVID-19 could transmit the virus before significant symptoms develop.”) (last viewed June 17, 2020).

¹⁶ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed June 17, 2020).

¹⁷ See <https://www.zurichna.com/knowledge/articles/2020/05/disinfecting-offices-and-facilities-during-the-covid-19-crisis> (last viewed June 17, 2020).

43. Another scientific study documented in the Journal of Hospital Infection found that human coronaviruses, such as SARS-CoV and MERS-CoV, can remain infectious on inanimate surfaces at room temperature for up to nine days.¹⁸

44. The Centers for Disease Control and Prevention (“CDC”) indicated that it believes an individual can get COVID-19 by touching a surface with the virus present.¹⁹

45. The presence of COVID-19 on frequently touched surfaces is, therefore, a potential source of viral transmission.

46. Surfaces, once physically affected by COVID-19, are referred to as fomites.²⁰

47. Fomites consist of both porous and nonporous surfaces or objects that can host the virus and serve as vehicles in transmission.

48. During and after illness, viruses are shed in large numbers in body secretions, including blood, feces, urine, saliva, and nasal fluid.

49. Fomites become infected with the virus by direct physical contact with body secretions or fluids, contact with soiled hands, contact with aerosolized virus (large droplet spread) released while talking, sneezing, coughing, or vomiting, or contact with airborne virus that settles after disturbance of an infected fomite (e.g., shaking an infected tablecloth or article of clothing).

50. Once a fomite contains the virus, transfer of the virus may readily occur between inanimate and animate objects, or vice versa, and between two separate fomites.

51. On March 27, 2020, the CDC released a report titled “Public Health Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February - March 2020.”²¹

¹⁸ See <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3> (last viewed June 17, 2020).

¹⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last viewed June 17, 2020).

²⁰ See <https://aem.asm.org/content/73/6/1687> (last viewed June 17, 2020).

²¹ See https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w (last viewed June 17, 2020).

52. The report details COVID-19 outbreaks on three different cruise ships, which caused more than 800 confirmed cases and 10 deaths.

53. Of the individuals tested, a high proportion were found to be asymptomatic.

54. Significantly, COVID-19 was identified on a variety of surfaces in cabins of both symptomatic and asymptomatic infected passengers up to 17 days after cabins were vacated but before disinfection procedures.

55. The CDC notes that more studies are required to understand COVID-19 transmission, but the uncertainty has serious implications for safety in retail industry given the significant volume of individuals that visit retail establishments.²²

c. Government Orders and Closure of The Children's Place Stores

56. On March 16, 2020, the CDC and the national Coronavirus Task Force issued public guidance titled "30 Days to Slow the Spread" of COVID-19. The guidance called for extreme social distancing measures, such as working from home, avoiding gatherings of more than 10 people, and avoiding discretionary travel, such as shopping at retail stores.

57. In an effort to combat the virus and slow the spread of COVID-19, state and local governments imposed directives requiring residents to shelter in place or remain in their homes unless performing "essential" activities, like shopping for food, going to see a doctor, or getting fresh air ("Stay at Home Orders").

58. Because COVID-19 physically affects the property on which it is present and can be transferred to individuals that come into contact with the surface of such property, thereby infecting that individual, the Stay at Home Orders minimize the spread of COVID-19 by reducing the likelihood of an individual's exposure.

²² See <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/grocery-food-retail-workers.html>.

59. The Stay at Home Orders typically require businesses deemed “non-essential” to be closed and in-person work is forbidden. For example, on March 16, 2020, New York City Mayor Bill De Blasio issued Executive Order No. 100, emphasizing that COVID-19 “physically is causing property loss and damage.”

60. On March 19, 2020, the City of Los Angeles issued a “Safer at Home” order, detailing how “the COVID-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.”

61. On March 21, 2020, New Jersey Governor Phil Murphy issued Executive Order No. 107, mandating that New Jersey residents remain at their place of residence unless engaged in essential activities, cancelling gatherings of individuals, and closing brick-and-mortar premises of all non-essential retail businesses.

62. Some Stay at Home Orders remain in effect and have caused the suspension of both non-essential and essential businesses.

63. Even as some states begin to reopen and loosen restrictions under the Stay at Home Orders, non-essential businesses are largely not able to resume their normal operations.

64. As a non-essential business with operations in locations under Stay at Home Orders, The Children’s Place was required to comply with the applicable regulations.

65. Stay at Home Orders required complete closure of The Children’s Place locations across the United States, Canada, and Puerto Rico. Many of these locations remain closed or are only partially reopened.

66. COVID-19 and Stay at Home Orders have severely diminished The Children’s Place’s business.

67. The recent and current limitation on operations is not sustainable for The Children's Place, a business that relies on in-store experiences to drive a large proportion of its sales.

68. The Children's Place has suffered direct physical loss of and/or damage to its property due to COVID-19 and the Stay at Home Orders.

69. Likewise, COVID-19 has caused direct physical loss of and/or damage to property that The Children's Place does not own, occupy, lease, rent, or have insured under its Policy with Zurich.

d. The Children's Place's "All Risks" Policy

70. The Policy covers property at or within 1,000 feet of The Children's Place's locations against "all risks of direct physical loss of or damage from any cause unless excluded." Exhibit A, at TCP0135, TCP0177.

71. In other words, any direct physical loss of or damage to property triggers coverage under the Policy unless the peril that causes the physical loss of or damage to property is excluded.

72. Thus, if the Policy purports to exclude a particular cause of physical loss of or damage to property, then the Policy recognizes that the peril that is purportedly excluded otherwise triggers coverage.

73. The presence of COVID-19 causes physical loss of and/or damage to property, and there is no enforceable exclusion that applies to preclude coverage for such loss of or damage caused by COVID-19.

i. The Policy's "Property Damage" Coverage Is Triggered

74. The presence of COVID-19 at The Children's Place locations and within 1,000 feet of The Children's Place locations has caused and continues to cause physical loss of and/or damage to property at those locations and, as a result, coverage is triggered under the Policy.

75. Additionally, the Stay at Home Orders have resulted in the “physical loss of” The Children’s Place’s property.

76. Accordingly, the Policy’s “Property Damage” coverage is triggered.

ii. The Policy’s Time Element and Extra Expense Coverage

77. The Policy also provides “Time Element” coverage for the business interruption losses sustained due to the “necessary Suspension of ... business activities at an Insured Location.”

78. Suspension is defined as “slowdown or cessation of [The Children’s Place’s] business activities.” Exhibit A, at TCP0183.

79. The Suspension must result from “direct physical loss of or damage to Property (of the type insurable under this Policy ...) caused by a Covered Cause of Loss at the Location.” Exhibit A, at TCP0140.

80. Additionally, the Policy covers business interruption losses that result from the necessary Suspension of the Insured’s business activities at the The Children’s Place’s locations where there was no physical loss of or damage to property if such locations “depend on the continuation of business activities at the Location that sustained direct physical loss or damage.” Exhibit A, at TCP0140.

81. This means that The Children’s Place can recover its business interruption losses sustained at locations that have not suffered any loss or damage to property if the operations at such locations are suspended due to their reliance on a location or locations that sustained direct physical loss or damage.

82. In addition, the Policy provides coverage for “Extra Expenses,” which are defined as “the amount spent to continue [The Children’s Place]’s business activities over and above the expenses

that [The Children's Place] would have normally incurred had there been no direct physical loss of or damage" to property "of the type insurable" under the Policy. Exhibit A, at TCP0142.

iii. The Policy's Time Element and Extra Expense Coverage Is Triggered

83. As noted above, COVID-19 and the Stay at Home Orders have caused and are continuing to cause direct physical loss of and/or damage to property at The Children's Place locations.

84. This direct physical loss of and/or damage to property at The Children's Place locations has resulted in the necessary slowdown and/or cessation of The Children's Place's business activities.

85. The Children's Place suffered and is continuing to suffer business interruption losses due to these slowdowns and/or cessations of business activities.

86. The Children's Place's business interruption losses are covered by the Policy's Time Element coverage.

87. The Children's Place has incurred and will continue incurring expenses over and above the expenses it would have normally incurred had there been no direct physical loss of and/or damage caused by COVID-19 and the Stay at Home Orders.

88. These expenses are covered by the Policy's Extra Expense coverage.

iv. The Policy's Special Coverages Are Triggered

89. The Policy also provides certain "Special Coverages" and the physical loss of and/or damage caused by COVID-19 at property away from The Children's Place locations has triggered such coverage, including, but not limited to, the following.

90. The Policy's Civil or Military Authority coverage covers losses from the necessary slowdown or cessation of The Children's Place's business activities if such slowdown or cessation

is caused by order of civil or military authority that prohibits access to a The Children's Place location. Exhibit A, at TCP0147-48.

91. The order must be in "response to direct physical loss of or damage" to property in which The Children's Place has no ownership or possessory rights. Exhibit A, at TCP0147-48.

92. COVID-19 has caused and is continuing to cause direct physical loss of and/or damage to property belonging to others and the Stay at Home Orders were issued in response to such loss of or damage to property.

93. As a result of those Stay at Home Orders, The Children's Place suffered and is continuing to suffer business interruption losses covered by the Policy's Civil or Military Authority coverage.

94. The Policy also provides coverage for Contingent Time Element coverage, which covers losses "directly resulting from the necessary Suspension of the Insured's business activities at an Insured Location if the Suspension results from direct physical loss of or damage ... (of the type insurable under this Policy) at Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties." Exhibit A, at TCP0148.

95. Attraction Properties are defined by the Policy as a nearby property that attracts customers to The Children's Place's business. Exhibit A, at TCP0176.

96. Direct Dependent Time Element Locations are defined as "[a]ny Location of a direct: customer, supplier, contract manufacturer or contract service provider to the Insured; [a]ny Location of any company under a royalty, licensing fee or commission agreement with the insured." Exhibit A, at TCP0178.

97. Indirect Dependent Time Element Locations are defined as "[a]ny Location of a company that is a direct: customer, supplier, contract manufacturer or contract service provider to a Direct Dependent Time Element Location; or [a]ny Location of a company that is an indirect: customer,

supplier, contract manufacturer or contract service provider to a Direct Dependent Time Element Location.” Exhibit A, at TCP0179.

98. Attraction Properties have suffered and are continuing to suffer direct physical loss of and/or damage to property due to COVID-19, resulting in the necessary slowdown and/or cessation of The Children’s Place’s business activities. Accordingly, coverage under the Contingent Time Element coverage is triggered.

99. Direct Dependent Time Element Locations also suffered and are continuing to suffer direct physical loss of and/or damage to property due to COVID-19, resulting in the necessary slowdown or cessation of The Children’s Places business activities. Accordingly, coverage under the Contingent Time Element coverage is triggered.

100. Indirect Dependent Time Element Locations also suffered and are continuing to suffer direct physical loss of and/or damage to property due to COVID-19, resulting in the necessary slowdown or cessation of The Children’s Places business activities. Accordingly, coverage under the Contingent Time Element coverage is triggered.

101. The Policy also provides Ingress/Egress coverage, which covers losses “resulting from the necessary Suspension of the Insured’s business activities at an insured location if ingress or egress ... is prevented by physical obstruction due to direct physical loss of or damage caused by a Covered Cause of Loss” to a non-The Children’s Place property. Exhibit A, at TCP0152.

102. As noted above, COVID-19 caused direct physical loss of and/or damage to non-The Children’s Place property.

103. This direct physical loss of and/or damage to non-The Children’s Place property created a physical obstruction that prevented ingress or egress to The Children’s Place’s suppliers, customers, and employees to insured locations.

104. As a result of the physical obstructions resulting from direct loss of or damage to non-The Children's Place properties, The Children's Place suffered and is continuing to suffer business interruption losses covered by the Policy's Ingress/Egress coverage.

e. There Is No Enforceable Exclusion Applicable to COVID-19

105. COVID-19 is not excluded by the Policy.

106. Had Zurich wished to exclude COVID-19 from the Policy, it could have used a specific exclusion such as a pandemic or a communicable disease exclusion.

107. Based on information and belief, Zurich uses such exclusions in other policies.

108. In fact, there were exclusions in the market at the time the Policy inception that specifically addressed physical loss of and/or damage to property caused by COVID-19.

109. Zurich was aware of pandemic and/or communicable diseases prior to the inception of the Policy and intentionally did not specifically exclude such causes of loss, which means that Zurich did not intend to exclude pandemic or communicable diseases under the Policy.

110. Upon information and belief, Zurich was aware of COVID-19 prior to the inception of the Policy and intentionally did not specifically exclude COVID-19 as a cause of loss, which means that Zurich did not intend to exclude COVID-19 under the Policy.

111. Now, only after being presented with a claim, Zurich is desperately attempting to avoid coverage.

112. To the extent Zurich contends that the "Contamination" exclusion applies to limit or bar coverage, Zurich is wrong.

113. The Policy states that: "This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy. Contamination, and any cost due to

Contamination, including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy” Exhibit A, at TCP0136.

114. Contamination was initially defined as “[a]ny condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew.” Exhibit A, at TCP0177.

115. However, pursuant to an endorsement to the Policy, the definition of “Contamination” was amended to mean “[a]ny condition of property due to the actual presence of any Contaminant(s).” Exhibit A, at TCP0233.

116. In turn, “Contaminant(s)” is defined as “[a]ny solid, liquid, gaseous, thermal or other irritant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), other hazardous substances, Fungus or Spores.” Exhibit A, at TCP0233.

117. COVID-19 does not fit within the definition of “Contamination” or “Contaminant(s).”

118. The endorsement changing the definition of “Contamination” and “Contaminant(s)” reflects Zurich’s intent to specifically provide coverage for loss caused by COVID-19.

119. Even if the definition of “Contamination” was not changed by endorsement, the “Contamination” exclusion is ambiguous and, therefore, unenforceable.

120. The “Contamination” exclusion is misleading and ambiguous since COVID-19 is not something that is ordinarily understood to be within the plain meaning of the term “contamination” and COVID-19 is unlike the other things identified in the list.

121. The “Contamination” exclusion is further rendered ambiguous based on the preamble to the exclusion, which provides a carve-out for “Contamination” that “results from direct physical

loss or damage not excluded by this Policy” since, unlike the other things in the list, COVID-19 cannot “result from” physical loss or damage.

122. The ambiguity of the “Contamination” exclusion is buttressed by the fact that Zurich could have used more specific exclusions, such as a pandemic or communicable disease exclusion.

123. Moreover, the “Contamination” exclusion is unenforceable pursuant to principals of equitable estoppel.

124. Based on information and belief, Zurich and other insurers misrepresented the effect of the “Contamination” exclusion to receive regulatory approval for the new language.

125. The Children’s Place reasonably did not believe that the exclusion would avoid coverage for damages resulting from COVID-19.

f. Zurich’s Reservation of Rights

126. On approximately April 3, 2020, Zurich received a notice of loss from The Children’s Place that detailed the losses described above and requested coverage.

127. On June 11, 2020, Zurich responded through a claims representative.

128. Zurich indicated that it did not believe that the presence of COVID-19 triggers coverage under the Policy because it does not constitute physical loss of or damage to property.

129. Paradoxically, Zurich also stated that the presence of COVID-19 falls within the “Contamination” exclusion.

130. In other words, it is Zurich’s position that, even though coverage is not triggered, coverage is excluded; however, as noted above, exclusions only apply when coverage is triggered.

131. Zurich also purports to rely on a number of other exclusions that are plainly not applicable.

132. Thus, Zurich’s position necessarily concedes that the presence of COVID-19 triggers coverage under the Policy.

133. Zurich asserted that it would proceed with an investigation under a reservation of rights and requested that The Children's Place provide responses to various requests for information.

134. Upon information and belief, Zurich has no intention of recognizing that the presence of COVID-19 causes physical loss of or damage to property irrespective of the information provided by The Children's Place in response to Zurich's requests.

135. Upon information and belief, Zurich has a company-wide policy of disputing coverage for claims based on COVID-19.

136. Upon information and belief, Zurich has no intention of providing coverage for The Children's Place's claim pursuant to the "Contamination" exclusion.

137. Zurich's refusal to recognize the coverage available for The Children's Place's claim is improper.

138. The Children's Place's claim triggers coverage under this Policy.

139. Zurich's refusal to provide coverage for The Children's Place's claim constitutes a breach of its obligations under the Policy.

V. CAUSES OF ACTION

COUNT I

Declaratory Judgment

140. The Children's Place repeats and realleges the allegations in the preceding paragraphs.

141. The Children's Place seeks the Court's declaration of the parties' rights and duties under the Policy pursuant to 28 U.S.C. § 2201. A justiciable controversy exists between The Children's Place and Zurich concerning the availability of coverage under the Policy for The Children's Place's claim.

142. The controversy between The Children's Place and Zurich is ripe for judicial review.

143. New Jersey has adopted the Uniform Declaratory Judgment Act for purposes of declaring parties' right in this precise circumstance.

144. Accordingly, The Children's Place seeks a declaration from the Court that:

- a. The various coverage provisions identified herein are triggered by The Children's Place's claim;
- b. No Policy exclusion applies to bar or limit coverage for The Children's Place's claim; and
- c. The Policy covers The Children's Place's claim.

COUNT II

Breach of Contract – Property Damage Coverage

145. The Children's Place repeats and realleges the allegations in the preceding paragraphs.

146. The Policy is a valid and enforceable contract between The Children's Place and Zurich.

147. In the Policy, Zurich agreed to insure against all risks of direct physical loss of or damage to property from any cause unless excluded.

148. COVID-19 is a covered cause of loss.

149. COVID-19 has caused and is continuing to cause direct physical loss of and/or damage to The Children's Place's property.

150. The Stay at Home Orders are covered causes of loss.

151. The Stay at Home Orders have caused and are continuing to cause direct physical loss of The Children's Place's property.

152. No exclusions apply to bar coverage.

153. The Children's Place is entitled to coverage for the direct physical loss of or damage to The Children's Place's property up to the Policy's \$500 million limit of liability or any applicable sublimits.

154. The Children's Place complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

155. Nonetheless, Zurich unjustifiably refuses to pay for The Children's Place's physical loss of or damage to property in breach of the Policy.

156. The Children's Place has suffered and continues to suffer damages as a result of Zurich's breach of the Policy.

157. The Children's Place is entitled to damages as a result of Zurich's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT III

Breach of Contract – Time Element Coverage

158. The Children's Place repeats and realleges the allegations in the preceding paragraphs.

159. The Policy is a valid and enforceable contract between The Children's Place and Zurich.

160. In the Policy, Zurich agreed to afford coverage for Time Element losses and Extra Expenses.

161. COVID-19 and the Stay at Home Orders have caused and are continuing to cause physical loss of and/or damage to The Children's Place's property that has caused The Children's Place to sustain Time Element losses and Extra Expenses that are covered under the Policy.

162. No exclusions apply to bar coverage.

163. The Children's Place is entitled to coverage for the Time Element losses and Extra Expenses sustained up to the applicable limit of liability or any applicable sublimits.

164. The Children's Place complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

165. Nonetheless, Zurich unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

166. The Children's Place has suffered and continues to suffer damages as a result of Zurich's breach of the Policy.

167. The Children's Place is entitled to damages as a result of Zurich's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT IV

Breach of Contract – Special Coverages

168. The Children's Place repeats and realleges the allegations in the preceding paragraphs.

169. The Policy is a valid and enforceable contract between The Children's Place and Zurich.

170. In the Policy, Zurich agreed to provide certain Special Coverages, including, but not limited to, coverage for Civil or Military Authority, Contingent Time Element, and Ingress/Egress.

171. COVID-19 and the Stay at Home Orders have caused and, upon information and belief, are continuing to cause physical loss of and/or damage to the property of others that has caused The Children's Place to sustain Time Element losses and Extra Expenses that are covered under the Policy's Special Coverages.

172. The Stay at Home Orders have caused The Children's Place to sustain Time Element losses and Extra Expenses that are covered under the Policy's Special Coverages.

173. No exclusions apply to bar coverage.

174. The Children's Place is entitled to coverage for the Time Element losses and Extra Expense sustained up to the applicable limit of liability or any applicable sublimits.

175. The Children's Place complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

176. Nonetheless, Zurich unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

177. The Children's Place has suffered and continues to suffer damages as a result of Zurich's breach of the Policy.

178. The Children's Place is entitled to damages as a result of Zurich's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

VI. PRAYER FOR RELIEF

179. Wherefore, The Children's Place prays for judgment against Zurich as follows:

(1) A declaration from the Court that:

- a. The various coverage provisions identified herein are triggered by The Children's Place's claims;
- b. No Policy exclusion applies to bar or limit coverage for The Children's Place's claim; and
- c. The Policy covers The Children's Place's claim.

(2) For special and consequential damages against Zurich in an amount to be proved at trial in excess of \$75,000.00;

(3) Pre- and post-judgment interest as provided by law;

- (4) An award of attorney's fees and costs of suit incurred; and
- (5) For such other and further relief as the Court deems just and proper.

VII. JURY TRIAL DEMANDED

The Children's Place demands trial by jury on all issues so triable.

Dated: June 30, 2020

Respectfully submitted,
HUNTON ANDREWS KURTH LLP

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