

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

FILED  
2/26/2021 2:57 PM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2021CH00949

WILD HOLDINGS LP and GREAT WOLF  
RESORT HOLDINGS, INC.,

Plaintiffs,

v.

ZURICH AMERICAN INSURANCE  
COMPANY,

Defendant.

Case No.: 2021CH00949

Hearing Date: 6/28/2021 9:30 AM - 9:30 AM  
Courtroom Number: 2008  
Location: District 1 Court  
Cook County, IL

**COMPLAINT**

Plaintiffs Wild Holdings LP and Great Wolf Resort Holdings, Inc. (collectively, “Great Wolf”), by and through their attorneys, Perkins Coie LLP, for their Complaint for breach of contract and declaratory judgment pursuant to 735 ILCS § 5/2-701 against Zurich American Insurance Company (“Zurich”) state as follows:

**THE PARTIES**

1. Plaintiff Wild Holdings LP is a Delaware limited partnership.
2. Plaintiff Great Wolf Resort Holdings, Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois. Great Wolf Resort Holdings, Inc. is a subsidiary of Wild Holdings LP.
3. Defendant Zurich is a New York corporation domiciled in Schaumburg, Illinois.

**JURISDICTION AND VENUE**

4. Jurisdiction is proper in this Court pursuant to 735 ILCS § 5/2-209(a)(1), because Zurich at all relevant times was registered with the Illinois Department of Insurance to transact insurance business within the State of Illinois and transacted insurance business within the State. Jurisdiction is additionally proper under 735 ILCS § 5/2-701, because an actual controversy exists

between Great Wolf and Zurich regarding the parties' rights and obligations under the insurance policy at issue.

5. Venue is proper in this Court pursuant to 735 ILCS § 5/2-103(e), because Zurich is licensed and does business in the State of Illinois and has its principal place of business in Cook County, Illinois. Venue is also proper pursuant to 735 ILCS § 5/2-101, because part of the transaction from which this action arose occurred in Cook County, Illinois.

### **NATURE OF THE ACTION**

6. Great Wolf, collectively through its subsidiaries, owns and/or operates indoor water park resorts across North America, with seventeen Great Wolf Lodge® locations in the United States and one additional resort awaiting its grand opening in Northern California.

7. This is a civil action for breach of contract and declaratory relief arising out of Zurich's wrongful failure and refusal to honor its obligation to provide Great Wolf with coverage under a commercial property insurance policy for the multi-million-dollar losses of business income and related losses collectively incurred by Great Wolf's nationwide resorts arising out of direct physical loss of or damage to property caused by the 2020 novel coronavirus pandemic, commonly referred to as the "COVID-19 pandemic," and governmental orders issued in response to the public health crisis.

### **GENERAL ALLEGATIONS**

#### **The Policy**

8. Zurich issued EDGE Global Policy No. ERP4453409-01 to Wild Holdings LP for the policy period of March 15, 2020 to March 15, 2021 (the "Policy"). A true and correct copy of the Policy is attached as **Exhibit A**. The Policy provides up to \$500,000,000 in coverage "for the total of all coverages combined[.]"

9. Wild Holdings LP timely paid all premiums due for the Policy.

10. Wild Holdings LP is the First Named Insured under the Policy, and both Wild Holdings LP and Great Wolf Resort Holdings, Inc. are an “Insured” under the Policy.

11. The Policy “insures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property, at an Insured Location[.]” Policy § 1.01. A Covered Cause of Loss is defined as “[a]ll risks of direct physical loss of or damage from any cause unless excluded.” Policy § 7.11. Covered Property includes Great Wolf’s “interest in buildings (or structures) including new construction, additions, alterations, and repairs that the Insured owns, occupies, leases or rents.” Policy § 3.01.

12. The Policy’s Time Element Coverages Form provides:

The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary **Suspension** of the Insured’s business activities at an Insured Location. The **Suspension** must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at the **Location**, or as provided in Off Premises Storage for Property Under Construction Coverages.

The Company will also pay for the actual Time Element loss sustained by the Insured, during the Period of Liability at other Insured Locations. The Time Element loss must result from the necessary **Suspension** of the Insured’s business activities at the other Insured Locations. Such other Location must depend on the continuation of business activities at the **Location** that sustained direct physical loss or damage caused by a **Covered Cause of Loss**.

Policy, § 4.01.01.

13. The Time Element Coverages provide coverage for loss of “Gross Earnings” which is defined as “the actual loss sustained by the Insured during the period of liability.” Policy § 4.02.01. The Policy Declarations state that this coverage is initially provided for 12 months.

14. The Time Element Coverages provide coverage for an Extended Period of Liability, which extends the Gross Earnings coverage for an additional 365 days pursuant to the Policy Declarations. Policy § 4.02.02.

15. The Time Element Coverages provide “Extra Expense” coverage “for the reasonable and necessary Extra Expenses incurred by the Insured during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**.” Policy § 4.02.03.

16. The Time Element Coverages provide “Leasehold Interest” coverage for the “loss incurred by the Insured (as lessee) resulting from direct physical loss of or damage caused by a **Covered Cause of Loss** to a building (or structure) which is leased and not owned by the Insured[.]” Policy Section § 4.02.04.

17. In addition to the above-referenced Time Element Coverages, the Policy provides certain coverages that supplement and enhance the Time Element Coverages, including “Civil or Military Authority” coverage, “Contingent Time Element” coverage, and “Ingress/Egress” coverage. The Policy provides “Civil or Military Authority” coverage for “the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by order of civil or military authority that prohibits access to the **Location**. That order must result from a civil authority's response to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured's Location as stated in the Declarations.” Policy § 5.02.03.

18. The Policy provides “Contingent Time Element” coverage for the “actual Time Element loss as provided by the Policy, sustained by the Insured during the Period of Liability 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 caused by a **Covered Cause of Loss** to Property (of the type insurable under this Policy) at **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties** located worldwide,” except for certain countries enumerated in the Policy. Policy § 5.02.05.

19. The Policy provides “Ingress/Egress” coverage for “the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if ingress or egress to that Insured Location by the Insured's suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured Location as stated in the Declarations.” Policy § 5.02.15. The Policy Declarations state that this distance is 1 mile.

20. In addition to the various Time Element coverages, the Policy provides “Protection and Preservation of Property” coverage, and “Tenants Prohibited Access” coverage.

21. The Policy provides “Protection and Preservation of Property” coverage for the reasonable and necessary costs incurred, and the Gross Earnings or Gross Profit loss sustained, “for actions to temporarily protect or preserve Covered Property; provided such actions are necessarily due to actual or imminent physical loss or damage due to a **Covered Cause of Loss** to such Covered Property[.]” Policy § 5.02.24.01.

22. The Policy provides “Tenants Prohibited Access” coverage for the actual Gross Earnings or Gross Profit loss sustained, “resulting from the necessary **Suspension** of the Insured’s business activities at an Insured Location if access to that **Location** by the Insured’s suppliers, customers or employees is physically obstructed due to the owner, landlord or a legal representative of the building owner or landlord, prohibiting access to the Insured Location.” Policy § 5.02.29.

23. The Policy contains an exclusion for “**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.” Policy § 3.03.01.01. The Policy’s Louisiana Amendatory Endorsement deletes the Policy’s definition of “Contamination (Contaminated)” and “Contaminant(s)” and replaces it with the following definitions:

**Contamination (Contaminated)** - Any condition of property due to the actual presence of any **Contaminant(s)**.

...

**Contaminant(s)** - Any 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**.

Louisiana Amendatory Endorsement ¶¶ 1, 11-12. Unlike the “Contamination” definition in Policy Section 3.03, the Louisiana Amendatory Endorsement excludes pathogens, viruses, and disease-causing agents from its definition of “Contamination.” *See* Policy § 7.09. Because COVID-19 is not a “solid, liquid, gaseous, thermal or other irritant,” the Policy’s contamination exclusion provides no basis for excluding coverage for the loss at issue. Furthermore, the governmental orders arising from the public health crisis are not “Contamination.”

24. The Policy has exclusions for “[l]oss or damage arising from delay, loss or market, or loss of use” and “[l]oss or damage resulting from the Insured’s suspension of business activities,

except to the extent provided by this Policy.” Policy § 3.03.02. These exclusions do not apply, because Great Wolf’s losses were caused by the presence of the novel coronavirus itself and government orders issued in response to the public health crisis, both of which constitute a Covered Cause of Loss under the Policy.

25. The Policy has an exclusion for “[l]oss or damage arising from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, improvement, modification, demolition, occupancy, operation or other use, or removal including debris removal of any property.” Policy § 3.03.01.03. This exclusion does not apply, because Great Wolf’s losses were caused by the presence of the novel coronavirus itself and the governmental orders issued in response to the public health crisis, both of which constitute a Covered Cause of Loss under the Policy.

### **The COVID-19 Pandemic**

26. COVID-19 is a communicable disease believed to be caused by a novel coronavirus now known as SARS-CoV-2.

27. On January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On March 11, 2020, the WHO upgraded its declaration to recognize COVID-19 as a global pandemic.

28. WHO reporting reflects that COVID-19 is highly transmissible and can be passed, among other ways, through:

- a. “direct, indirect, or close contact with infected people”;
- b. exposure to respiratory droplets from a person “in close contact (within 1 metre) with an infected person who has respiratory symptoms (e.g. coughing or sneezing) or who is talking or singing”;
- c. airborne or aerosol transmission where droplets remain in the air for extended periods of time and over long distances; and

- d. coming into contact with an infected surface as “viable SARS-CoV-2 virus and/or RNA . . . can be found on . . . surfaces for periods ranging from hours to days, depending on the ambient environment (including temperature and humidity) and the type of surface.”<sup>1</sup>

29. The U.S. Centers for Disease Control and Prevention (“CDC”) has similarly concluded that COVID-19 “is spreading very easily and sustainably between people.”<sup>2</sup>

30. Based on this evidence, SARS-CoV-2 plainly can cause direct physical damage to property.

31. Additionally, SARS-CoV-2 plainly can cause direct physical loss of property.

**The COVID-19 Pandemic and Civil Authority Orders Issued in Response to the Public Health Crisis Caused Direct Physical Loss of or Damage to Great Wolf’s Property**

32. COVID-19 was first reported in Wuhan City, China in or around December 2019.<sup>3</sup> Available evidence “suggests that the start of the outbreak resulted from a single point introduction in the human population around the time that the virus was first reported in humans in Wuhan, China in December 2019.”<sup>4</sup>

33. On or about January 21, 2020, the United States confirmed what was then believed to be the first known case of COVID-19 in the country, involving an individual who entered the United States in Seattle, Washington and resided in State of Washington. Investigations concerning potential earlier cases remain ongoing.

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<sup>1</sup> *Transmission of SARS-CoV-2: implications for infection prevention precautions*, World Health Org. (Jul. 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

<sup>2</sup> *How it Spreads*, Ctr. for Disease Control and Prevention (Updated Jun. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

<sup>3</sup> *Coronavirus Disease (COVID-19) Situation Report - 94*, World Health Org. (Apr. 23, 2020), <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19>.

<sup>4</sup> *Id.*

34. On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency to combat COVID-19.<sup>5</sup>

35. Thereafter, COVID-19 began to rapidly spread across the United States, including in, at, and near the Insured Locations and nearby attractions

36. After the late January/early February time period, COVID-19 spread rapidly across the country, going from 24 confirmed cases at the end of February to over 186,000 confirmed cases by the end of March.

37. In response to the rapid spread of COVID-19, states began enacting stay at home orders.

38. On March 11, 2020, the WHO declared COVID-19 to be a “pandemic.”

39. On March 13, 2020, the White House issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.

40. Upon information and belief, many thousands (if not millions) more cases of COVID-19 went unconfirmed due to, among other things, lack of adequate testing infrastructure and capacity and lack of public and scientific understanding about COVID-19, including the ability for individuals to carry and/or shed the virus while pre-symptomatic and/or asymptomatic.

41. Great Wolf closed its resorts on March 15, 2020, and did not accept any check-ins until the resorts began to reopen. Great Wolf began to reopen certain resorts in June 2020. Great Wolf’s Arizona resort reopened on June 9, 2020. Great Wolf’s Texas and Georgia resorts reopened on June 16, 2020. Great Wolf’s Pennsylvania, Washington, and Kansas resorts reopened on June 19, 2020. Great Wolf’s Michigan resort reopened on June 23, 2020. Great Wolf’s Ohio and

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<sup>5</sup> *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus*, U.S. Dep’t of Health and Human Serv. (Jan. 31, 2020), <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

Minnesota resorts reopened on June 26, 2020. Great Wolf's Wisconsin resort reopened on June 30, 2020.

42. Other Great Wolf resorts did not open until July, August, or September. Great Wolf's Colorado resort reopened on July 30, 2020. Great Wolf's Illinois resort reopened on August 24, 2020. Great Wolf's Virginia resort reopened on September 3, 2020. Great Wolf's South Carolina resort reopened on September 17, 2020.

43. Great Wolf's resorts in California and Massachusetts have not reopened.

44. After reopening, four of Great Wolf's resorts were forced to close again due to government orders. Great Wolf's Michigan resort closed on November 18, 2020 and remains closed. Great Wolf's Minnesota resort closed on November 21, 2020 and reopened on January 14, 2021. Great Wolf's Illinois resort closed on November 21, 2020 and reopened on February 4, 2020. Great Wolf's Pennsylvania resort closed on December 21, 2020 and reopened on January 4, 2021.

45. All of Great Wolf's resorts have operated at a reduced occupancy at all times since reopening.

46. In addition to operating at a reduced capacity, Great Wolf implemented a number of measures to prevent the spread of COVID-19 at its resorts including, but not limited to, purchasing personal protective equipment, sanitizer, and thermometers, implementing additional cleaning and sanitizing procedures, installing signs and plexiglass barriers, and developing a screening process for employees to complete before every shift and for hotel guests to complete just prior to their scheduled arrival. In addition, Great Wolf invested resources in robust new training for its employees on new operating procedures and protocols designed to keep employees and guests safe while operating during the pandemic, and added staffing positions specific to COVID-19 related duties, including regulating the flow of traffic and reminding guests of social

distancing in common areas such as the lobby or waterpark. Great Wolf purchased new and additional chemical cleaning supplies and expanded housekeeping cleaning protocols in all room and common areas. Great Wolf consulted with third-party consultants to design a health and safety operating plan, and also consulted with legal counsel to ensure that it was complying with government orders. Great Wolf also invested in new technology to better monitor the occupancy in its waterparks to ensure that it was complying with applicable limits on capacity.

47. Despite these efforts to prevent the transmission of COVID-19 at its resorts, there have been confirmed cases of COVID-19 at Great Wolf's Insured Locations.

48. On information and belief, SARS-CoV-2 was present at Great Wolf's other Insured Locations starting in March 2020 and at all relevant times thereafter due to (i) the prevalence of COVID-19 across the United States; (ii) the fact that Great Wolf's Insured Locations are heavily trafficked public spaces; (iii) the lack of available testing at high volumes; and (iv) the general lack of public knowledge prior to April 2020 that COVID-19 may be spread by pre-symptomatic and asymptomatic individuals.

49. During the same general time period, state and local governments in Great Wolf's Insured Location jurisdictions issued orders that, among other things, closed all but "essential" businesses; imposed occupancy restrictions; urged and/or required the public to avoid all non-essential travel; barred large group gatherings and events; and required Great Wolf to incur costs to provide for social distancing of customers (the "Government Shutdown Orders").

50. As a result of the Government Shutdown Orders, Great Wolf incurred direct physical loss of and damage to its Insured Locations, because its resorts were closed as non-essential businesses and/or required to implement occupancy restrictions mandated by government orders.

51. As of the date of this filing, the majority of Great Wolf's resorts have reopened, although three resorts remain closed with a fourth that has not yet been allowed to open following completion of construction in 2020. Great Wolf's resorts have implemented occupancy restrictions to comply with government orders and/or Great Wolf's health and safety operating plan. All resorts have incurred costs in preparing to safely reopen in compliance with applicable municipal, state, and/or federal guidance concerning COVID-19.

#### **Zurich's Denial of Coverage**

52. On June 30, 2020, Great Wolf provided Zurich with notice of loss under the Policy ("Claim").

53. On July 2, 2020, Zurich sent an email to Great Wolf acknowledging receipt of the Claim and requesting information and documents from Great Wolf. A true and correct copy of the July 2, 2020 email is attached as **Exhibit B**.

54. On July 22, 2020, Great Wolf sent an email to Zurich that attached a response to the requests for information and copies of government orders requested by Zurich. A true and correct copy of the July 22, 2020 email is attached as **Exhibit C**.

55. On July 23, 2020, Zurich sent a letter to Great Wolf stating it had concluded that the Policy does not provide coverage for the Claim. A true and correct copy of the July 23, 2020 letter is attached as **Exhibit D**.

56. On August 20, 2020, Great Wolf's counsel sent a letter to Zurich disputing Zurich's coverage position and requesting that Zurich reconsider its denial of the Claim. A true and correct copy of the August 20, 2020 letter is attached as **Exhibit E**.

57. As of the date of this filing, Zurich has not responded to the August 20, 2020 letter from Great Wolf's counsel.

58. On February 24, 2021, Great Wolf's counsel sent an email to Zurich requesting an extension of the Policy's 12-month service of suit deadline. Zurich responded that same day denying the request for extension. A true and correct copy of the February 24, 2020 email correspondence is attached as **Exhibit F**.

**Great Wolf's Claim for COVID-19 Related Losses Triggers the  
"All Risks" Zurich Policy and Various Coverages Therein**

59. The presence of SARS-CoV-2 at Great Wolf's Insured Locations and Government Shutdown Orders arising from the public health crisis first arose during the Policy period, and caused direct physical loss of and direct physical damage to covered property caused by a Covered Cause of Loss at the Insured Locations as defined in the Policy.

60. SARS-CoV-2 and the Government Shutdown Orders are both Covered Causes of Loss that caused direct physical loss of and direct physical damage to the Insured Locations by, among other things, requiring material alterations to the Insured Locations and operations and systems used therein, imposing occupancy restrictions on Insured Locations, and forcing closure of the Insured Locations that rendered them physically nonfunctional and inaccessible for the conduct of Great Wolf's ordinary business operations.

*i. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Time Element Coverages*

61. Starting in March 2020, the spread of SARS-CoV-2 and the Government Shutdown Orders arising from the public health crisis caused Great Wolf to incur a necessary Suspension, both partial and total, in its business activities caused by direct physical loss of or damage to Insured Locations caused by a Covered Cause of Loss during the Policy period as defined by the Policy.

62. This Suspension triggers the Policy's Time Element Coverages, including but not limited to Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest Coverages as defined by the Policy.

63. Great Wolf's business Suspension is on-going due to the continuing physical loss of or damage to its Insured Locations caused by the spread of SARS-CoV-2 and Government Shutdown Orders arising from the public health crisis.

*ii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Gross Earnings and Extended Period of Liability Coverages*

64. SARS-CoV-2 and the Government Shutdown Orders arising from the public health crisis have caused a business Suspension resulting in an actual loss of gross earnings sustained by Great Wolf during the Policy's Period of Liability, thus triggering the Policy's Gross Earnings coverage for up to 12 months. Furthermore, at the conclusion of that Period of Liability, the Policy's Extended Period of Liability coverage is triggered for actual gross earnings loss resulting from business Suspension up to an additional 365 days.

65. The duration and amount of the Policy's Gross Earnings coverage and Extended Period of Liability coverage will be proven at trial.

*iii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Extra Expense Coverage*

66. SARS-CoV-2 and the Government Shutdown Orders arising from the public health crisis have caused covered loss of or damage to insurable Property at the Insured Locations. This has forced Great Wolf to incur expenses in excess of the total cost chargeable to the operation of Great Wolf's business over and above the total cost that would normally have been incurred to conduct the business had no covered loss of or damage to insurable Property occurred at the Insured Locations.

67. Such extra expenses include without limitation: purchasing personal protective equipment, sanitizer, and thermometers; implementing additional cleaning and sanitizing procedures; installing signs and plexiglass barriers; developing a screening process for employees to complete before every shift; developing and providing new training for its employees on new operating procedures and protocols designed to keep employees and guests safe while operating during the pandemic; adding staffing positions specific to COVID-19 related duties, including regulating the flow of traffic and reminding guests of social distancing in common areas such as the lobby or waterpark; purchasing new and additional chemical cleaning supplies and expanding housekeeping cleaning protocols in all room and common areas; consulting with third-party consultants to design a health and safety operating plan; consulting with legal counsel regarding compliance with government orders; and investing in new technology to better monitor the occupancy in its waterparks to ensure that it was complying with applicable limits on capacity.

68. The foregoing and any similar expenses incurred by Great Wolf trigger the Policy's Extra Expense coverage, for a duration and in an amount to be proven at trial.

*iv. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Leasehold Interest Coverage*

69. Various building premises leased by Great Wolf became wholly untenable or unusable as a result of direct physical loss of or damage caused by SARS-CoV-2 and the Government Shutdown Orders, which are Covered Causes of Loss. Great Wolf has incurred Leasehold Interest loss as a result of rent paid by Great Wolf as a lessee of such building premises, for which Great Wolf remained obligated to pay rent.

70. The foregoing and any similar expenses incurred by Great Wolf trigger the Policy's Leasehold Interest coverage, for a duration and in an amount to be proven at trial.

v. *SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Civil or Military Authority Coverage*

71. Starting in March 2020, state and local governments in various jurisdictions in which Great Wolf does significant business issued proclamations and orders that, among other things, closed all but “essential” businesses; imposed occupancy restrictions; urged and/or required the public to avoid all non-essential travel; barred large group gatherings and events; and, even if resorts remained open, required Great Wolf to incur costs to provide for social distancing of guests and employees.

72. These state, county, and/or municipal proclamations and orders partially or totally prohibited access to Great Wolf's Insured Locations.

73. Such proclamations and orders were issued as a direct result of the COVID-19 pandemic and public health crisis, which is a “Covered Cause of Loss” under the Policy and led Great Wolf to incur substantial losses at its Insured Locations, thus triggering the Policy's Civil or Military Authority coverage for a duration and in an amount to be proven at trial.

vi. *SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Contingent Time Element Coverage*

74. Great Wolf's Claim under the Policy includes loss resulting from Suspension of Great Wolf's activities at Insured Locations caused by direct physical loss of or damage to the properties of Great Wolf's customers, suppliers, contract manufacturers, or contract service providers in connection with the COVID-19 pandemic and the Government Shutdown Orders as a result of the public health crisis. As a result of that loss or damage, Great Wolf's customers, suppliers, contract manufacturers, or contract service providers were prevented from being able to accept or deliver the goods or services provided or required by Great Wolf.

75. In other words, and without limitation, because individuals or businesses that would have otherwise patronized Great Wolf's resorts or supplied Great Wolf could not do so due to the loss or damage to their own properties caused by the COVID-19 pandemic and Government Shutdown Orders, Great Wolf itself incurred Suspension that triggers the Contingent Time Element coverage under the Policy, for a duration and in an amount to be proven at trial.

*vii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Ingress/Egress Coverage*

76. Great Wolf has sustained an actual Time Element Loss due to Suspension of Great Wolf's business activities at Insured Locations, because ingress or egress to its Insured Locations by suppliers, customers, or employees was prevented by physical obstruction due to direct physical loss of or damage to property within 1 mile of the Insured Locations caused by the COVID-19 pandemic and Government Shutdown Orders.

77. The foregoing Suspension incurred by Great Wolf triggers the Policy's Ingress/Egress coverage, for a duration and in an amount to be proven at trial.

*viii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Protection and Preservation of Property Coverage*

78. Great Wolf has incurred reasonable and necessary costs, and Gross Earnings or Gross Profit losses, for actions to temporarily protect or preserve Covered Property due to imminent physical loss of or damage to such Covered Property due to the COVID-19 pandemic and the Government Shutdown Orders.

79. The foregoing costs and losses trigger the Policy's Protection and Preservation of Property coverage, for a duration and amount to be proven at trial.

*ix. An Owner or Landlord's Physical Obstruction of Access to an Insured Location Causing Business Suspension Triggers the Policy's Tenants Prohibited Access Coverage*

80. Great Wolf has incurred Gross Earnings and Gross Profit losses as a result of Suspension of Great Wolf's business activities at Insured Locations, because access to Insured Locations by Great Wolf's suppliers, customers, or employees has been physically obstructed and prohibited by the Insured Locations' owners, landlords, or their representatives.

81. The foregoing Suspension triggers the Policy's Tenants Prohibited Access coverage, for a duration and amount to be proven at trial.

82. The Claim is covered under each of the foregoing Policy coverages, and there are no Policy exclusions or conditions that preclude coverage for the Claim under the Policy.

**The Contamination Exclusion Does Not Apply to This Claim**

83. The Policy's Contamination Exclusion does not apply to the Claim, because the definition of contamination, as amended by the Louisiana Amendatory Endorsement, does not identify a virus, a communicable disease, or any government order(s).

84. Moreover, SARS-CoV-2, COVID-19, and/or the Government Shutdown Orders are not a "solid, liquid, gaseous or thermal irritant or contaminant" as those terms are commonly understood.

85. Even if SARS-CoV-2 or COVID-19 could be considered an "irritant or contaminant," which it is not, there was no "[d]ischarge, dispersal, seepage, migration, release or escape," as those terms are commonly understood and applied. This exclusion is applied as a matter of law only to traditional forms of environmental pollution, which are not involved in this Claim.

86. Furthermore, in no event could the Contamination Exclusion apply to Government Shutdown Orders, which were issued in response to a public health crisis.

**The Loss of Market and Law/Ordinance Exclusions Do Not Apply to This Claim**

87. The Policy's exclusions relating to delay, loss of market, and loss of use do not

apply to this Claim because Great Wolf's losses were caused by the COVID-19 pandemic and Government Shutdown Orders, both of which are a Covered Cause of Loss under the Policy and are plainly not within the scope of the exclusions.

88. The Policy's exclusion for loss or damage resulting from enforcement of a government ordinance does not apply because the presence of SARS-CoV-2 and the Government Shutdown Orders at issue, both of which are a Covered Cause of Loss under the Policy, are plainly not within the scope of the exclusion.

**COUNT ONE**  
**Breach of Contract**

89. Great Wolf realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

90. Wild Holdings LP and Zurich entered into a legally binding written contract when Zurich issued the Policy.

91. Both Wild Holdings LP and Great Wolf Resort Holdings, Inc. are an Insured under the Policy.

92. Wild Holdings LP made a claim to Zurich under the Policy on behalf of Great Wolf for substantial, multi-million-dollar losses arising out of the COVID-19 pandemic and the Government Shutdown Orders, both of which were the result of a "Covered Cause of Loss."

93. Great Wolf's property damage costs, business interruption losses, extra expenses, and other losses are covered under various coverages in the Policy as outlined herein and are not excluded.

94. Great Wolf has complied in all material respects with the conditions and requirements of the Policy, or such conditions and requirements have been waived, or their satisfaction otherwise excused by operation of law or by Zurich's conduct. Such conditions or

requirements include without limitation paying the premium and providing timely notice of its claim.

95. By failing and refusing to provide coverage to Great Wolf, Zurich has breached the Policy.

96. As a direct and proximate result of such breach, Great Wolf has been deprived of the benefit of its insurance coverage and has incurred damages in an amount to be proven at trial.

**COUNT TWO**  
**Declaratory Judgment Pursuant to 735 ILCS § 5/2-701**

97. Great Wolf realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

98. Both Wild Holdings LP and Great Wolf Resort Holdings, Inc. are an Insured under the Policy, which is a valid and enforceable contract sold to Wild Holdings LP by Zurich that provides up to \$500,000,000 in coverage for property loss or damage, business interruption, extra expense, and other coverages.

99. Great Wolf gave Zurich timely notice of its Claim for property loss or damage, business interruption, extra expense, and other coverages, each of which involve a “Covered Cause of Loss” that is sufficient to trigger the Policy’s Time Element Coverages (including Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest), Civil or Military Authority coverage, Contingent Time Element coverage, Ingress/Egress coverage, Protection and Preservation of Property coverage, and Tenants Prohibited Access coverage, as well as any other coverages or benefits potentially available under the Policy.

100. Zurich has wrongfully denied coverage for the Claim, erroneously contending that certain Policy exclusions purportedly preclude coverage for the Claim.

101. As such, an actual and justiciable controversy exists between Zurich and Great

Wolf concerning the application of the Policy to the Claim, including whether the presence of SARS-CoV-2 at an insured location constitutes a “Covered Cause of Loss”; whether Government Shutdown Orders that limit or prohibit access to Insured Property constitute a “Covered Cause of Loss”; whether the “contamination exclusion” applies; and whether certain other exclusions, such as the “loss of market” and exclusion for “law/ordinance” enforcement apply.

102. Great Wolf seeks a declaration from the Court that: (a) the presence of SARS-CoV-2 at an Insured Location is a “Covered Cause of Loss” under the Policy; (b) the Government Shutdown Orders prohibiting or limiting access to Great Wolf’s Insured Locations constitute a “Covered Cause of Loss”; (c) Great Wolf is entitled to coverage under the Policy’s Time Element Coverages (including Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest) for its COVID-19- related losses or damages; (d) Great Wolf is entitled to coverage under the Policy’s Civil or Military Authority coverage for its COVID-19-related losses or damages; (e) Great Wolf is entitled to coverage under the Policy’s Contingent Time Element coverage for its COVID-19-related losses or damages; (f) Great Wolf is entitled to coverage under the Policy’s Ingress/Egress coverage for its COVID-19-related losses or damages; (g) Great Wolf is entitled to coverage under the Policy’s Protection and Preservation of Property coverage for its COVID-19-related losses or damages; (h) Great Wolf is entitled to coverage under the Policy’s Tenants Prohibited Access coverage for its COVID-19-related losses or damages; and (i) there is no applicable Policy exclusion or condition that precludes coverage for the Claim.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Wild Resort Holdings LP and Great Wolf Resort Holdings, Inc. pray for the following relief:

A. Enter a judgment in favor of Great Wolf and against Zurich, as requested herein, on each of the Counts in Great Wolf’s Complaint;

B. Award Great Wolf its actual and consequential damages sustained as a result of

Zurich's breach of the Policy in an amount to be established through proof;

C. Enter a declaration that: (a) the presence of SARS-CoV-2 at an Insured Location is a "Covered Cause of Loss" under the Policy; (b) the Government Shutdown Orders prohibiting or limiting access to Great Wolf's Insured Locations constitute a "Covered Cause of Loss"; (c) Great Wolf is entitled to coverage under the Policy's Time Element Coverages (including Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest) for its COVID-19-related losses or damages; (d) Great Wolf is entitled to coverage under the Policy's Civil or Military Authority coverage for its COVID-19-related losses or damages; (e) Great Wolf is entitled to coverage under the Policy's Contingent Time Element coverage for its COVID-19-related losses or damages; (f) Great Wolf is entitled to coverage under the Policy's Ingress/ Egress coverage for its COVID-19-related losses or damages; (g) Great Wolf is entitled to coverage under the Policy's Protection and Preservation of Property coverage for its COVID-19-related losses or damages; (h) Great Wolf is entitled to coverage under the Policy's Tenants Prohibited Access coverage for its COVID-19-related losses or damages; and (i) there is no applicable Policy exclusion or condition that precludes coverage for the Claim.

D. Enter a judgment awarding Great Wolf pre-judgment interest and post-judgment interest under applicable law; and

E. Enter a judgment awarding Great Wolf its costs of court and any other and further relief to which it may justly be entitled.

**JURY DEMAND**

Great Wolf hereby demands a trial by jury of all issues so triable that are raised herein or which may be raised in this action.

Dated: February 26, 2021

Respectfully submitted,

By: /s/ Bradley H. Dlatt

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