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<p>YELP INC.,</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>FEDERAL INSURANCE COMPANY,</p> <p><i>Defendant.</i></p>

SUPERIOR COURT OF NEW JERSEY
UNION COUNTY LAW DIVISION
Docket No. UNN-L-_____

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Plaintiff Yelp Inc. (“Yelp”), by and through its undersigned attorneys, hereby files this Complaint and Demand for Jury Trial against Defendant Federal Insurance Company (“Federal”) and, in support thereof, avers as follows:

NATURE OF THE CASE

1. By this action, Yelp seeks to collect bargained-for coverages pursuant to the all-risk commercial property section of a CHUBB® Customarq Classic Insurance Program policy (the “Policy”) issued by Federal for losses resulting from the novel coronavirus SARS-CoV-2 (the “Coronavirus”) and the COVID-19 global pandemic. The Coronavirus and COVID-19 pandemic have impaired Yelp’s operations, including among others its sales operations, at its

insured locations by forcing Yelp to close all of its offices throughout the country and abroad, resulting in substantial lost business income for which the Policy grants coverage. Yelp also has incurred substantial extra expense in undertaking measures to minimize business interruption losses and prevent continued physical loss or damage to its property.

2. Yelp's losses are covered under applicable coverage parts of the Policy and are not subject to any exclusion. Instead of performing its contractual obligations, Federal has repudiated coverage and unreasonably withheld payment to Yelp under the Policy.

3. Yelp brings this action seeking a judgment: (1) that Federal is obligated to provide insurance coverage to Yelp for lost business income and extra expenses in connection with the Coronavirus and the COVID-19 pandemic; and (2) for damages for breach of contract for Federal's failure to provide coverage to Yelp, together with pre-judgment and post-judgment interest, attorneys' fees, and costs, and such other further relief as the Court may deem just and proper.

THE PARTIES

4. Yelp Inc. operates the popular Yelp website, mobile website, and related mobile applications for users, free of charge to share information about their communities. Yelp, among other things, provides and publishes a forum for users to read and write reviews about local businesses, services, and other entities. Its primary source of revenue is from sales of advertising to businesses. Yelp is a corporation organized under the laws of the State of Delaware with its principal place of business in San Francisco, California.

5. Federal Insurance Company is an insurance company and part of the Chubb Group of insurance companies. Federal is a corporation organized under the laws of the State of Indiana with its principal place of business in New Jersey. Federal is licensed and authorized to transact, and is regularly transacting, business throughout the State of New Jersey.

JURISDICTION AND VENUE

6. The Court has original subject matter jurisdiction over this action because it is an action at law with more than \$15,000.00 in controversy.

7. The Court has personal jurisdiction over Federal pursuant to N.J. CT. R. 4:4-4 because Federal's principal place of business is in the State of New Jersey.

8. Venue is proper pursuant to N.J. CT. R. 4:3-2 because Federal is doing business in Union County and Federal is a resident of Union County for the purposes of venue.

FACTUAL BACKGROUND

The Coronavirus and the COVID-19 Pandemic

9. The Coronavirus and the COVID-19 disease it causes were declared a global pandemic by the World Health Organization ("WHO"), and that pandemic is among the worst public health and economic disasters of the last 100 years. Since the spring of 2020, the pandemic has ravaged every state and district in the United States, as well as foreign countries throughout the world, where Yelp offices insured by Federal are located.

10. On January 21, 2020, the Centers for Disease Control ("CDC") confirmed the first known case of the Coronavirus in the United States, in Washington State.¹

11. On February 3, 2020, the United States declared a nationwide "public health emergency" as to the Coronavirus.²

¹ *First Travel-Related Case of 2019 Novel Coronavirus Detected in United States*, Centers for Disease Control and Prevention (Jan. 21, 2020), available at <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

² *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus*, U.S. Department of Health & Human Services (Jan. 31, 2020), available at <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

12. On February 26, 2020, the CDC stated that an infected individual in California without relevant travel history “could be an instance of community spread of COVID-19, which would be the first time this has happened in the United States. Community spread means spread of an illness for which the source of infection is unknown.”³

13. On March 11, 2020, the WHO declared COVID-19 to be a pandemic,⁴ meaning that the disease and its causative virus are present or imminently present worldwide.

14. On March 13, 2020, the then-President of the United States declared a “National Emergency” as to the Coronavirus, which remains in effect.⁵

15. On March 15, 2020, the CDC recommended canceling or postponing in-person events of more than 50 people for at least 8 weeks because of Coronavirus, and recommended that events of any size should be held virtually if possible, or else “with adherence to guidelines for protecting vulnerable populations, hand hygiene, and social distancing.”⁶

³ *CDC Confirms Possible Instance of Community Spread of COVID-19 in U.S.*, Centers for Disease Control and Prevention (Feb. 26, 2020), available at <https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>.

⁴ *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19*, WHO (Mar. 11, 2020), available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-openingremarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁵ *Proclamation On Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, The White House (Mar. 13, 2020), available at <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁶ See Dawn Kopecki, *CDC Recommends Canceling Events With 50 or More People for the Next Eight Weeks Throughout US*, CNBC (Mar. 15, 2020), available at <https://www.cnbc.com/2020/03/16/cdc-recommends-the-cancellation-of-events-with-50-or-more-people-for-the-next-eight-weeks-throughout-us.html>.

16. In late March 2020, the Federal Emergency Management Agency (“FEMA”) issued major disaster declarations for all states, a designation generally given to devastating natural disasters such as hurricanes, cyclones, or fast-moving wildfires.⁷

17. As of July 8, 2021, over a year after the COVID-19 pandemic began, the Coronavirus has infected more than 185.4 million people and caused more than 4 million deaths worldwide.⁸ At the time of the filing of the instant complaint in July 2021, the Coronavirus, including new and more virulent strains, and COVID-19 remain prevalent throughout the United States and foreign countries where Yelp offices insured by Federal are located.

Nature and Risks of the Coronavirus

18. The Coronavirus is a highly infectious virus that can result in COVID-19 disease in humans, causing severe physical harm to the infected individual and even death.

19. According to numerous public health authorities, everyone is at risk of exposure to Coronavirus and falling ill with COVID-19. Due to its highly contagious and easily transmitted nature, a single instance of the Coronavirus in a community can (and as time has progressed, does) quickly and exponentially grow into a massive outbreak.

20. The Coronavirus has several modes of transmission, all involving contact with physical virus particles. Individuals become infected through inhalation of larger virus-containing droplets or finer aerosolized viral particles in air, or by touching objects or surfaces on which Coronavirus is present and then touching their own eyes, nose or mouth.

⁷ See *Declared Disasters*, FEMA, available at <https://www.fema.gov/disasters/disaster-declarations>.

⁸ See, e.g., *Coronavirus World Map: Tracking the Global Outbreak*, N.Y. Times (data as of last view on July 8, 2021), available at <https://www.nytimes.com/interactive/2021/world/covid-cases.html>.

21. The omnipresence of the Coronavirus and COVID-19 over the course of the pandemic is a product of multiple vectors of transmission, including respiratory droplets, airborne/aerosolizes and fomite transmission (*i.e.*, transmission from surfaces and objects).⁹ Through these transmission vectors the Coronavirus and/or COVID-19 cause direct physical loss of or damage to property where the Coronavirus is present and create and imminent risk of such direct physical loss of or damage to property to surrounding premises.

22. According to the WHO and the CDC, Coronavirus can spread from person to person through physical droplets from the nose or mouth that are spread when an infected person sneezes, coughs or exhales.¹⁰ The CDC stated that the Coronavirus is most likely to spread when people are within six feet of each other, and acknowledged that the virus may spread from an infected person who is more than six feet away or has already left a given space.¹¹ According to research published in the Journal of the American Medical Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet.¹²

⁹ *E.g.*, *Transmission of SARS-CoV-2: Implications for Infection Prevention Precautions*, World Health Organization (July 9, 2020), available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>

¹⁰ *E.g.*, *Transmission of SARS-CoV-2: Implications for Infection Prevention Precautions*, World Health Organization (July 9, 2020), available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

¹¹ *Prevent Getting Sick*, CDC (updated Jan. 7, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/index.html>.

¹² Lydia Bouroiba, PHD, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19*. JAMA. (Mar. 26, 2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2763852>. See also Sarah Gibbens, *See how a sneeze can launch germs much farther than 6 feet*, NATIONAL GEOGRAPHIC (April 17, 2020), <https://www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos> (one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles per hour); Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, 914-24 (July 24, 2020),

According to a report in *The New York Times*, “[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough.”¹³

Droplets and aerosols can be expelled in close proximity (1-2 meters) or can be carried on air currents tens of meters.¹⁴

23. According to the WHO, the incubation period for the COVID-19 disease—*i.e.*, the time between exposure to the Coronavirus and symptom onset—can be up to 14 days. Other studies suggest that the period may be up to 21 days. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are the most contagious, as their viral loads will likely be very high, and they may not know they have become carriers.¹⁵

24. Even asymptomatic infected persons (*i.e.*, those who have no sign of illness) can and do spread the Coronavirus.¹⁶ Indeed, the CDC has advised that 40% of those infected may never develop symptoms yet remain able to spread the Coronavirus through physical droplets.¹⁷

[https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext) (respiratory particles produced by the average person can travel almost 20 feet by sneezing).

¹³ See Yuliya Pashina-Kottas, *et al.*, *This 3-D Simulation Shows Why Social Distancing Is So Important*, *The New York Times* (April 14, 2020), available at <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html>.

¹⁴ Lidia Morawska & Donald K. Milton, *It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-19)*, 71 *CLINICAL INFECTIOUS DISEASES* 9, 2311-13 (Dec. 3, 2020), <https://pubmed.ncbi.nlm.nih.gov/32628269>

¹⁵ See *Transmission of SARS-CoV-2: Implications for Infection Prevention Precautions*, WHO (July 9, 2020), available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

¹⁶ See *World Health Organization, Coronavirus disease 2019 (COVID-19) Situation Report – 73* (Apr. 2, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2.

¹⁷ *COVID-19 Pandemic Planning Scenarios*, Centers for Disease Control and Prevention, (updated Sept. 10, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

The National Academy of Sciences has concluded that “the majority of transmission is attributable to people who are not exhibiting symptoms, either because they are still in the presymptomatic stage or the infection is asymptomatic.”¹⁸

25. Transmission of the Coronavirus through aerosols is possible even without close proximity to an infected individual. The Environmental Protection Agency (“EPA”) has compiled studies reflecting “epidemiological evidence suggestive of [Coronavirus] transmission through aerosol.”¹⁹ Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.²⁰

26. Both droplet and aerosol transmission risks are increased in indoor spaces and among larger groups of people. A recent review article on viral, host and environmental factors reported on the “abundant evidence” that proximity is a determinant to the Coronavirus transmission risks.²¹

27. The WHO has reported that airborne transmission of the Coronavirus is possible and “is different from droplet transmission as it refers to the presence of microbes within droplet

¹⁸ Seyed M. Moghadas et al., *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS 30, 17513-15 (July 28, 2020), <https://www.pnas.org/content/117/30/17513> (last visited May 12, 2021).

¹⁹ *Indoor Air and COVID-19 Key References and Publications | Coronavirus (COVID-19)*, US EPA (2020) available at <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications> (capitalization omitted)

²⁰ *Indoor Air and Coronavirus (COVID-19) | Coronavirus (COVID-19)*, US EPA (2020), available at <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

²¹ Eric A. Meyerowitz et al., *Transmission of SARS-CoV-2: A Review of Viral, Host, and Environmental Factors*, ANNALS INTERNAL MED. (Jan. 2021), <https://www.acpjournals.org/doi/10.7326/M20-5008>

nuclei, which...[can] be transmitted to others over distances greater than 1 m.”²² Humans produce a wide range of particle sizes when coughing, sneezing, talking, singing, or otherwise dispersing droplets, with virions predominating in the smallest particles.²³

28. The WHO and the scientific community also have studied the spread of the Coronavirus through aerosols in indoor settings via air circulation systems. For example, the CDC published a research letter concluding that a restaurant’s air conditioning system triggered the transmission of the Coronavirus, spreading it to people who sat at separate tables downstream of the restaurant’s airflow.²⁴ Moreover, a study detected Coronavirus inside the HVAC system connected to hospital rooms of patients sick with COVID-19. The study found the Coronavirus in ceiling vent openings, vent exhaust filters and ducts located as much as 56 meters (over 183 feet) from the rooms of the sick COVID-19 patients.²⁵

²² See *Modes of Transmission of Virus Causing COVID-19: Implications for IPC*. WHO (Mar. 29, 2020, updated on July 9, 2020), <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>.

²³ Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, 914-24 (July 24, 2020), [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext)

²⁴ Jianyun Lu, Jieni Gu, Kuibiao Li, Conghui Xu, Wenzhe Su, Zhisheng Lai, Deqian Zhou, Chao Yu, Bin Xu, and Zhicong Yang, *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China*, 2020, 26 EMERGING INFECTIOUS DISEASES 7 (July 2020), https://www.nc.cdc.gov/eid/article/26/7/20-0764_article (last visited Mar. 20, 2021); see also Keun-Sang Kwon, Jung-Im Park, Young Joon Park, Don-Myung Jung, Ki-Wahn Ryu, and Ju-Hyung Lee, *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 J. KOREAN MED. SCI. 46 (Nov. 2020), <https://doi.org/10.3346/jkms.2020.35.e415> (last visited Mar. 20, 2021).

²⁵ Karolina Nissen, Janina Krambrich, Dario Akaberi, Tobe Hoffman, Jiixin Ling, Ake Lundkvist, Lennart Svensson & Erik Salaneck, *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, SCI REP 10, 19589 (Nov. 11, 2020), <https://doi.org/10.1038/s41598-020-76442-2> (last visited Mar. 21, 2021)/

29. Additionally, the CDC has stated that “there is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away” and infected people who entered the space shortly after the person with COVID-19 had left.²⁶ A recently published (February 2021) systematic review of airborne transmission of the Coronavirus corroborated the CDC’s concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and reduce the Coronavirus’ spread.²⁷

30. In addition to remaining within physical airspace, active Coronavirus on physical surfaces is another vector for transmission. Respiratory droplets expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they physically change the property and its surface by becoming a part of that surface. As a result of this physical alteration, contact with those previously safe, inert surfaces (*e.g.*, walls, tables, countertops, door handles) has been made unsafe.

31. Research reported by the National Science Foundation has indicated that the Coronavirus is “widely disseminated in the environment” where infected individuals have been, including on “commonly used items” used by infected individuals.²⁸ The U.S. Occupational

²⁶ CDC, *How COVID-19 Spreads* (last updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Mar. 20, 2021).

²⁷ Zahra Noorimotlagh, Neemat Jaafarzadeh, Susana Silva Martínez, & Seyyed Abbas Mirzaee, *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 ENV’T RSCH. 110612, 1-6 (Feb. 2021), https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all (last visited Mar. 20, 2021).

²⁸ *Study Reveals Contamination of Air and Environment Near Patients With COVID-19*, National Science Foundation (August 5, 2020), available at https://www.nsf.gov/discoveries/disc_summ.jsp?cntn_id=301008&org=NSF&from=news.

Safety and Health Administration (“OSHA”) promulgated cleaning guidelines because “[w]hen people touch a surface or object contaminated with SARS-CoV-2, the virus that causes COVID-19, and then touch their own eyes, noses, or mouths, they may expose themselves to the virus.”²⁹ The WHO also has noted that such “fomite transmission” via surfaces is “a likely mode of transmission” for the Coronavirus because studies have consistently confirmed the existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,” and it is well known that other coronaviruses can be transmitted via fomite transmission.³⁰ (“Fomites” are physical objects or materials that carry, and are capable of transmitting infectious agents, altering these objects to become vectors of disease.³¹) Indeed, a study of a Coronavirus outbreak published in the CDC’s Emerging Infectious Diseases journal identified indirect transmission via objects such as elevator buttons and restroom taps as an important possible cause of a “rapid spread” of the Coronavirus in a shopping mall in Wenzhou, China.³² A study published in the Journal of Epidemiology and Infection demonstrated that after lockdown in the United Kingdom, Coronavirus transmission via fomites may have contributed to as many as 25% of deaths in that region.³³

²⁹ E.g., Control and Prevention, OSHA COVID-19, available at <https://www.osha.gov/SLTC/covid-19/controlprevention.html>.

³⁰ *Transmission of SARS-COV-2: Implications for Infection Prevention Precautions*, WHO, available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

³¹ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/fomite> (last visited Mar. 20, 2021).

³² Jing Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, Emerging Infectious Diseases Journal – CDC (June 2020), available at https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article.

³³ A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 2020), <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of>

32. When Federal evaluated Yelp’s claim for coverage, research showed that the Coronavirus can remain on surfaces for extended periods of time, even weeks after infected persons are present at a given location. For example, a CDC research letter reported that the Coronavirus can remain viable on polystyrene plastic, aluminum, and glass for 96 hours in indoor living spaces.³⁴ A study documented in the *New England Journal of Medicine* found that the Coronavirus is detectable in aerosols (*i.e.*, fine solid particles in air) for three hours, on copper for up to four hours, on cardboard up to 24 hours, and on plastic or stainless steel for up to two to three days.³⁵ Another study found that human coronaviruses, such as SARS-CoV and MERS-CoV, can remain infectious on inanimate surfaces and objects at room temperature for up to nine days.³⁶ The CDC confirmed that the Coronavirus was identified on surfaces of the *Diamond Princess* cruise ship up to 17 days after cabins were vacated.³⁷ A peer-reviewed article published in *Virology Journal* on October 7, 2020, found that the Coronavirus can persist on surfaces (including glass, stainless steel, and paper and polymer money) for up to 28 days at

covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3 (last visited Mar. 20, 2021).

³⁴ CDC, Boris Pastorino, Franck Touret, Magali Gilles, Xavier de Lamballerie, and Rémi N. Charrel, *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 EMERGING INFECTIOUS DISEASES 9 (Sept. 2020), https://www.nc.cdc.gov/eid/article/26/9/20-1788_article (last visited Mar. 20, 2021).

³⁵ News Release, *New Coronavirus Stable for Hours on Surfaces*, NAT’L INSTS. OF HEALTH (Mar. 17, 2020), available at <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>; N. van Doremalen, PHD et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1* (Correspondence), *New England Journal of Medicine* (Mar. 17, 2020), available at <https://www.nejm.org/doi/full/10.1056/nejmc2004973>.

³⁶ G. Kampf et al., *Persistence of Coronaviruses on Inanimate Surfaces and Their Inactivation with Biocidal Agents*, *J. HOSPITAL INFECTION* (Feb. 6, 2020), available at [https://www.journalofhospitalinfection.com/article/S0195-6701\(20\)30046-3/fulltext](https://www.journalofhospitalinfection.com/article/S0195-6701(20)30046-3/fulltext).

³⁷ *Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February–March 2020*, Centers for Disease Control and Prevention (Mar. 27, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

ambient temperature and humidity.³⁸ The article concludes that the Coronavirus “can remain infectious for significantly longer time periods than generally considered possible” prior to the research. Numerous other scientific studies and articles have identified the persistence of the Coronavirus on doorknobs, toilets, faucets and other high-touch points, as well as on commonly overlooked surfaces such as floors.³⁹

33. Accordingly, the presence of the Coronavirus in and on property, including in indoor air, on surfaces, and on objects, causes direct physical loss or damage to property by causing physical harm to and altering property and otherwise making it incapable of being used for its intended purpose.

34. Because an individual with no symptoms can spread the Coronavirus simply by breathing or talking, and because droplets containing the Coronavirus can land and remain infectious within physical airspace and on physical surfaces for many days, the risks posed by the Coronavirus are not temporary. Even when the air and surfaces inside a building are thoroughly and effectively cleaned, each time an infected person enters that space the cycle renews such that infectious Coronavirus is likely (if not certain) to be present wherever people are located or congregate.

³⁸ S. Riddell, *et al.*, *The Effect of Temperature on Persistence of SARS-CoV-2 on common surfaces*, 17 *Virology J.*, Art. No. 145 (Oct. 7, 2020), available at <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

³⁹ Zhen-Dong Guo, Zhong-Yi Wang, Shou-Feng Zhang, Xiao Li, Lin Li, Chao Li, Yan Cui, Rui-Bin Fu, Yun-Zhu Dong, Xiang-Yang Chi, Meng-Yao Zhang, Kun Liu, Cheng Cao, Bin Liu, Ke Zhang, Yu-Wei Gao, Bing Lu, Wei Chen, *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 *EMERG. INFECT. DIS.* 7, 1583-91 (July 2020), <https://pubmed.ncbi.nlm.nih.gov/32275497/> (last visited Mar. 20, 2021).

35. The Coronavirus has spread widely in this manner, in the United States and elsewhere, including through interactions with physical property inside premises, and encounters with airborne particles within premises.

36. Respiratory particles (including droplets and airborne aerosols) are physical substances that physically and tangibly alter property, such as property insured by Zurich at issue in this case.

37. Experts in other coverage litigations have opined as to the precise mechanism by which such physical loss or damage occurs. In litigation pending in the federal district court in Nevada, styled *Treasure Island LLC v. Affiliated FM Ins. Co.*, No. 2:30-cv-00965-JC-EJY (D. Nev.), the insured's virology expert, Dr. Angela Rasmussen, opined as follows in her November 6, 2020 initial report (*see Exhibit B* attached hereto, as attached to the complaint in the action styled *Cinemark Holdings, Inc. v. Factory Mutual Insurance Company*, Civil Action No. 4:21-cv-00011 (E.D. Tex.)):

- a. "COVID-19 is a communicable disease that impacts and physically damages Treasure Island's property in the following way: persons on site with COVID-19 shed the SARS-CoV-2 virus into the air and surfaces at Treasure Island. This results in tangible, demonstrable, and detectable physical alternation and transformation to the air and surfaces rendering them dangerous transmission vehicles for the potentially deadly disease."
- b. "The impact and physical damage caused by persons with COVID-19 is not temporary and is sustained through any occupation of the property. Because COVID-19 is an infectious viral disease that can be transmitted to susceptible people, it causes additive, sustained property damage. A substantial amount of transmission is prior to onset of clinical symptoms, which makes it difficult to detect. Due to the size of the property at Treasure Island, cleaning and disinfection alone are insufficient to remediate the damage."

38. In the same case, the insured's epidemiology expert, Dr. Alex LeBeau, opined in his November 6, 2020 initial report (*see Exhibit B* attached hereto, as attached to the complaint

in the action styled *Cinemark Holdings, Inc. v. Factory Mutual Insurance Company*, Civil Action No. 4:21-cv-00011 (E.D. Tex.) as follows: “Individuals with COVID-19 at Treasure Island altered the physical characteristics of surfaces and the air of occupied spaces at the location and at facilities in the vicinity with respiratory secretions and aerosols. As a result, the surfaces and air of occupied spaces at Treasure Island became vehicles for COVID-19 transmission.”

39. Owing to the extreme contagiousness and pervasiveness of the Coronavirus, the world has seen communities shut down and reopen, only to be shut down again following further outbreaks, making the risk of spread wherever people are gathered (when indoors or in many instances, outdoors) a near certainty.

40. Due to the actual presence of the Coronavirus in or near its premises, which physically and tangibly alters the air and surfaces within covered locations, Yelp suffered physical loss of or damage to insured property.

Government Responses to the Coronavirus Pandemic

41. The pandemic has resulted in an unprecedented series of governmental orders by national, state, and local authorities in the United States and throughout the world. Beginning in and after mid-March 2020, and continuing until recently, state and local governments in the United States have imposed, relaxed, and in many cases re-imposed strict limits on gatherings of persons, operations of businesses, and occupancy of indoor and outdoor spaces in response to the actual presence and spread of the Coronavirus in their jurisdictions.

42. In requiring the closure of nonessential businesses and issuing other orders restricting the operations of businesses at various times throughout the COVID-19 pandemic, governmental authorities throughout the United States, including in localities where Yelp has

premises insured by the Policy, have recognized that the Coronavirus and/or the COVID-19 pandemic causes direct physical loss and damage to property. For example:

- a. The State of New Jersey issued an Executive Order requiring closures of certain “brick-and-mortar facilities” and businesses in order to minimize “contact with common surfaces”;⁴⁰
- b. The City of New York issued an Emergency Executive Order in response to the COVID-19 pandemic, in part “because the virus physically is causing property loss and damage”;⁴¹
- c. The State of Illinois and the State of Indiana both issued Executive Orders recognizing that the Coronavirus has the “propensity to physically impact surfaces and personal property”;⁴²
- d. The State of Colorado issued a Public Health Order indicating that the “[Coronavirus]...physically contributes to property loss, contamination and damage...”;⁴³
- e. Broward County, Florida issued an Emergency Order acknowledging that the Coronavirus “is physically causing property damage”;⁴⁴
- f. The City of New Orleans issued an order stating “there is reason to believe that [the Coronavirus] may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for a prolonged period of

⁴⁰ State of New Jersey Executive Order No. 104 (March 16, 2020), *available at* <https://nj.gov/infobank/circular/eocc104.pdf>

⁴¹ City of New York Emergency Exec. Order No. 100 (Mar. 16, 2020), *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf>.

⁴² State of Illinois Exec. Order No. 2020-10 (COVID-19 Exec. Order No. 8) (Mar. 20, 2020), *available at* <https://coronavirus.illinois.gov/resources/executive-orders/display.executive-order-2020-10.html>; State of Indiana Exec. Order No. 20-22 (Apr. 20, 2020), *available at* <https://www.in.gov/sboa/files/Executive-Order-20-22-Extension-of-Stay-at-Home.pdf>.

⁴³ State of Colorado Dep’t of Public Health & Environment Fourth Updated Public Health Order 20-24 (Apr. 9, 2020), *available at* <https://cha.com/wp-content/uploads/2020/04/Fourth-Updated-Public-Health-Order-Authorized-Business.pdf>.

⁴⁴ Broward County, Florida Administrator’s Emergency Order 20-01 (Mar. 22, 2020), *available at* <https://www.broward.org/CoronaVirus/Documents/BerthaHenryExecutiveOrder20-01.pdf>.

time, thereby spreading from surface to person and causing property loss and damage in certain circumstances”;⁴⁵

- g. The City of Philadelphia issued an order stating that “COVID-19 may remain viable for hours to days on surfaces made from a variety of materials located in businesses and other places, thus contaminating certain property and places”;⁴⁶
- h. The City of Los Angeles issued an Order in response to the Coronavirus pandemic “because, among other reasons, the COVID-19 virus [*i.e.* Coronavirus] 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”;⁴⁷
- i. The City of San Francisco issued multiple orders “during this emergency ... because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for long periods of time”;⁴⁸
- j. Dallas County, Texas issued an Emergency Order recognizing that “the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”;⁴⁹
- k. Washington State issued a “Stay Home – Stay Healthy” order requiring every Washingtonian to stay home unless they needed to pursue an essential activity, banning all gatherings for social, spiritual, and recreational purposes, and closing all nonessential businesses, which expressly stated, among its justifications, that the COVID-19 pandemic was a “public disaster affecting . . . property;” that state government agencies were working with local health officials “in alleviating the impacts to . . . property;” and that among its objectives was to “help preserve and

⁴⁵ City of New Orleans Mayoral Proclamation (Mar. 16, 2020), *available at* <https://nola.gov/mayor/executive-orders/emergency-declarations/03162020-mayoral-proclamation-to-promulgate-emergency-orders-during-the-state-of-emergency-due-to-co/>.

⁴⁶ City of Philadelphia Emergency Order No. 2 (Mar. 22, 2020), *available at* <https://www.phila.gov/media/20200322130746/Order-2-Business-And-Congregation-Prohibition-Stay-At-Home.pdf>.

⁴⁷ City of Los Angeles, Public Order Under City of Los Angeles Emergency Authority (Subject: Safer At Home) (March 19, 2020) (revised April 10, 2020), *available at* <https://www.lamayor.org/sites/g/files/wph446/f/page/file/SaferAtHomeAPR10.pdf>.

⁴⁸ San Francisco Ninth Supplement to Mayoral Proclamation (Apr. 10, 2020), *available at* <https://sfmayor.org/sites/default/files/NinthMayoralSupplement.pdf>.

⁴⁹ Dallas County, TX Amended Order of County Judge Clay Jenkins, Safer at Home Order (Apr. 6, 2020), *available at* <https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/2020/april/040620-AmendedOrder.pdf>.

maintain . . . property[.]”⁵⁰

Yelp’s Ongoing Losses Related to the Coronavirus and the COVID-19 Pandemic

43. The Coronavirus, including its actual presence in or around Yelp’s premises insured by the Policy, and the COVID-19 pandemic have caused direct physical loss and damage to property at and near such premises by, among other things, precluding such property from being utilized for its ordinary and intended purposes. As a result, the value, utility, and normal function of Yelp’s insured premises (including the physical property and airspace contained within them) has been severely impaired and diminished. The highly infectious nature of the Coronavirus – cautioned of by the CDC and governmental authorities throughout the United States and elsewhere – also has presented imminent threats of harm to persons and damage to premises insured by the Policy, likewise precluding these premises from being utilized for their ordinary and intended purposes and severely impairing the value, utility, and normal function of those premises (and the physical property and airspace contained within such premises).

44. The risks of significant harm to Yelp’s employees associated with the physical loss and damage to Yelp’s offices and their buildings caused by the Coronavirus and the COVID-19 pandemic made it necessary to close Yelp’s offices for normal operations. It is also why the offices remain closed today.

45. Before and during the Coronavirus pandemic, Yelp has had offices at which it conducted advertising sales in a number of different states, districts, and countries, including

⁵⁰ *Proclamation By the Governor Amending Proclamation 20-05*, Off. of the Governor, Proclamation No. 20-25 (Mar. 23, 2020), available at <https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf>.

New York, California, the District of Columbia, Arizona, Illinois, the United Kingdom, and Germany.

46. By Friday, March 13, 2020, Yelp had received reports of employees being sick with symptoms consistent with COVID-19 at several of Yelp's offices, in addition to reports of employees calling in sick with such symptoms. Affected offices included those in New York, Phoenix (Scottsdale), San Francisco, and Washington, DC, among others. These reports went beyond the occasional reports of employees' illnesses that Yelp would normally receive; indeed, a number of Yelp employees at various offices would test positive for COVID-19 soon thereafter. It was therefore clear to Yelp and virtually certain that some number of its employees in its locations throughout the country and overseas had COVID-19 and that the Coronavirus was all over the interior surfaces at its offices. Moreover, Yelp was receiving reports of COVID-19 cases in other areas and floors of the buildings it occupied (certainly within 1,000 feet of its office space), making it perilous for its workforce to continue coming to the office. As a direct result of the presence of Coronavirus at its offices and their buildings and the danger from the COVID-19 pandemic, on March 13, 2020, Yelp directed that only essential personnel should come into its offices and that the rest of its workforce should work from home.

47. On March 16, 2020, with only a small fraction of its San Francisco office personnel in the office and greatly diminished numbers of employees in its other offices, the City of San Francisco issued a "shelter in place" order. This order hastened the inevitable. Yelp closed its San Francisco offices that day. And, even though similar "shelter in place" or "safer at home" orders had not yet been issued in the jurisdictions of its other offices, the ongoing presence of Coronavirus and instances of COVID-19 at and near those offices compelled Yelp to order all of them closed between March 17 and 20, 2020. Shortly thereafter, a number of

additional Yelp employees tested positive for COVID-19, confirming the prudence and necessity of Yelp's office closures.

48. All of Yelp's offices have remained closed due to the ongoing presence of the Coronavirus and the dangers of the COVID-19 pandemic at their premises and within 1,000 feet of them (as well as, at certain times, due to government shutdown orders in various applicable jurisdictions). Yelp has limited access to its offices to skeleton crews comprising a tiny fraction of its employees (and no sales employees) for purposes of maintaining the offices and helping Yelp's workforce work remotely as effectively as practicable. Even then, several of these employees on the skeleton crews have tested positive for COVID-19, even as recently as April 2021, when such an employee tested positive shortly after being inside Yelp's Phoenix (Scottsdale) office, making clear that there was actual presence of the Coronavirus and an instance of COVID-19 at that office. In addition, there have been numerous ongoing reports of positive COVID-19 tests from management at the buildings in which Yelp leases office space, even as recently as February 2021, confirming that the Coronavirus and instances of COVID-19 remain present within 1,000 feet of Yelp's offices throughout the country. The ongoing presence of the Coronavirus and the COVID-19 pandemic at and/or close by Yelp's domestic and international offices has caused direct physical loss and damage to Yelp's property by, without limitation, making those premises unsafe for ordinary use, thus driving the continuing closure of Yelp's offices.

49. Developing protocols to protect its employees' health and safety has presented a challenge for Yelp, like other impacted companies. As Federal itself has observed, "the COVID-19 pandemic is one of the most disruptive and unprecedented events to occur in modern times" and "[t]he direction and guidance surrounding the welfare of a business and its employees is

constantly evolving – sometimes weekly and often daily.”⁵¹ In the face of this uncertainty, the danger posed by the Coronavirus and the COVID-19 pandemic has required Yelp, like other businesses, to proceed with substantial caution in any usage of its office locations.

50. Indeed, under normal operating pre-pandemic conditions, there was no effective way to repair or remediate the physical loss or damage the Coronavirus and COVID-19 cause to commercial properties because of the risk that the continued use of such properties under normal operating conditions would result in the continuous reintroduction of the Coronavirus into such properties.

51. A number of studies have demonstrated that the Coronavirus is “much more resilient to cleaning than other respiratory viruses so tested.”⁵² The measures that must be taken to remove the Coronavirus from property are significant and go far beyond ordinary or routine cleaning.

52. Efficacy of decontaminating agents for viruses is based on a number of factors, including the initial amount of virus present, contact time with the decontaminating agent, dilution, temperature, and pH, among many others. Detergent surfactants are not recommended as single agents, but rather in conjunction with complex disinfectant solutions.⁵³ Studies of

⁵¹ See *Safeguarding Your Business and Employees During COVID-19* (April 8, 2021), available at <https://www.chubb.com/us-en/businesses/resources/safeguarding-your-business-employees-during-covid-19.html>.

⁵² Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), <https://doi.org/10.1002/jmv.26170>

⁵³ *Id.*

coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.⁵⁴

53. Additionally, it can be challenging to accurately determine the efficacy of decontaminating agents. The toxicity of an agent may inhibit the growth of cells used to determine the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces.⁵⁵

54. Cleaning surfaces in an indoor space also will not remove the aerosolized Coronavirus particles from the air that can be inhaled and cause people to develop COVID-19. Nor will cleaning prevent an infected person from entering an indoor space and exhaling Coronavirus particles and virions into the air and surrounding environment.

55. Consequently, as set forth above, mere routine cleaning and disinfecting could not suffice to repair or remediate the actual physical and tangible alteration to property caused by the Coronavirus and/or the COVID-19 pandemic. Moreover, for a substantial period of time after Yelp closed its offices due to the actual presence of the Coronavirus and instances of COVID-19, Yelp experienced extreme supply shortages of cleaning products, making it difficult even to clean the interiors to a satisfactory extent.

56. The closure of Yelp's offices, which was proximately caused by the direct physical loss or damage to its office interiors and to property within 1,000 feet of its offices from the Coronavirus and COVID-19 pandemic, impaired Yelp's sales operations (among other operations), causing Yelp to lose business income and to incur additional expenses. Among

⁵⁴ Joon Young Song et al., *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome Coronavirus Infection*, 47 *INFECTION & CHEMOTHERAPY* 4, 254-55 (Dec. 2015), <https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252> (last visited May 12, 2021).

⁵⁵ *Id.*

other things and without limitation, its salesforce's transition from working in the office to working at home produced significant disruptions in the immediate and medium term. In addition, in an effort to continue its normal sales and other business operations as productively as possible, Yelp has paid its workforce both a one-time work-from-home subsidy and an ongoing monthly work-from-home subsidy, which can be used for purchasing equipment and other services to assist with job functions. Yelp also has spent additional amounts for continued regular cleaning and disinfecting at its office locations for the safety of the skeleton crews who are present to maintain basic operations.

Statistical Certainty of the Presence of Coronavirus In or Around Commercial Properties, Such as Insured Premises

57. Owing to the Coronavirus' contagiousness and pervasiveness once the Pandemic began, it was statistically certain, or near-certain, that many individuals in or around commercial properties where people congregate had been exposed to the Coronavirus and were carrying the virus. Statistical modeling confirms to a high degree of certainty that the Coronavirus has been present in or around such commercial properties, including insured premises.⁵⁶ After the COVID-19 pandemic began, it also was statistically certain, or near-certain, that the Coronavirus was being dispersed continuously into the air and on property in or around such premises.

⁵⁶ See, e.g., *COVID-19 Event Risk Assessment Planning Tool*, Georgia Institute of Technology <https://covid19risk.biosci.gatech.edu>; *Covid-19 Projections*, IHME (last updated May 7, 2021), <https://covid19.healthdata.org/united-states-of-america?view=total-deaths&tab=trend>; *Covid-19 Risk Mapping*, Columbia University (Last updated May 10, 2021), <https://columbia.maps.arcgis.com/apps/webappviewer/index.html?id=ade6ba85450c4325a12a5b9c09ba796c>; *Covid-19 Modeling*, NORTHEASTERN UNIVERSITY (last updated May 3, 2021), <https://covid19.gleamproject.org>; *LANL Covid-19 Cases and Deaths Forecasts*, LOS ALAMOS NATIONAL LABORATORY (Last updated May 9, 2021), <https://covid-19.bsvgateway.org>

58. Once the COVID-19 pandemic began in the United States, COVID-19 positivity rates revealed by the commercially available testing initially available demonstrated the pervasiveness of the Coronavirus in or around such premises.⁵⁷

59. Epidemiologists have explained that “the percent positive is a critical measure because it gives us an indication of how widespread infection is in the area where the testing is occurring[.]”⁵⁸ It is a crucial indicator of whether a business can safely remain open. As a threshold for the percent positive being “too high,” the WHO stated that the percent positive should remain below 5% for at least two weeks before re-opening.⁵⁹

60. Once the COVID-19 pandemic began in the United States, the states and cities in which Yelp’s insured premises are located began experiencing exceptionally high positivity rates far exceeding this CDC standard. For example:

- a. **New York:** As of March 31, 2020, New York State reported a daily positivity rate of 50.4%, a 7-day rolling average of 45.1%, and a 14-day rolling average of 39.5%.⁶⁰
- b. **Illinois:** As of March 31, 2020, Illinois had a 7-day moving positivity average rate of 18.8%.⁶¹

⁵⁷ See, e.g., Aroon Chande et al., *Real-time, interactive website for US-county-level COVID-19 event risk assessment*, 4 NATURE HUM. BEHAV. 1313-19 (Nov. 9, 2020), <https://doi.org/10.1038/s41562-020-01000-9>.

⁵⁸ David Dowdy & Gypsyamber D’Souza, *COVID-19 Testing: Understanding the “Percent Positive,”* JOHNS HOPKINS (Aug. 10, 2020), <https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html>.

⁵⁹ *Id.*

⁶⁰ *Percentage Positive Results by Region Dashboard*, NY.GOV (last updated May 12, 2021), <https://forward.ny.gov/percentage-positive-results-region-dashboard>.

⁶¹ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED., <https://coronavirus.jhu.edu/testing/individual-states/illinois>.

- c. **District of Columbia:** As of March 31, 2020, the District of Columbia had a 7-day moving positivity average rate of 14.8%.⁶²
- d. **California:** As of April 5, 2020, California reported a 7-day test positivity rate of 11.8%.⁶³
- e. **Virginia:** As of March 31, 2020, Virginia had a 7-day moving positivity average rate of 9.4%.⁶⁴
- f. **Arizona:** As of March 31, 2020, Arizona had a 7-day moving positivity average rate of 6.4%.⁶⁵

61. In addition, owing to the absence of commercially-available tests for surface and aerosol presence of the Coronavirus and the shortage of testing kits for humans at the time the COVID-19 pandemic began in the United States, positive test results did not and could not provide sufficient means for ascertaining the presence of the Coronavirus in or around commercial properties, including insured premises.

62. The high number of COVID-19 deaths indicates a significantly higher number of cases than those that have been confirmed by COVID-19 tests.⁶⁶ The Infection Fatality Ratio (IFR) for COVID-19 is defined as the number of individuals who die of the disease per

⁶² *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED., <https://coronavirus.jhu.edu/testing/individual-states/district-of-columbia>.

⁶³ *Tracking COVID-19 in California*, COVID19.CA.GOV, <https://covid19.ca.gov/state-dashboard/>

⁶⁴ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED., <https://coronavirus.jhu.edu/testing/individual-states/virginia>.

⁶⁵ *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED., <https://coronavirus.jhu.edu/testing/individual-states/arizona>.

⁶⁶ Andrew T. Levin et al., *Assessing the age specificity of infection fatality rates for COVID-19: systematic review, meta-analysis, and public policy implications*, 35 EUR. J. EPIDEMIOLOGY 12, 1123-38 (Dec. 2020), <https://pubmed.ncbi.nlm.nih.gov/33289900>.

1,000,000 infections.⁶⁷ Application of the IFR to the United States death toll of 583,000 since the beginning of the COVID-19 pandemic,⁶⁸ results in a larger number of statistically positive cases than those confirmed by tests.

63. The CDC estimates that the number of people in the United States who have been infected with COVID-19 was ten times higher than the number of reported cases in June 2020.⁶⁹

Federal's Preexisting Knowledge of the Risk of Viruses and Pandemics

64. For many years, the insurance industry has been aware of the potentially calamitous risks presented by pandemics. In the months and years before the Coronavirus pandemic, there were many publicly available reports about the risks of pandemics and actions insurers could take to mitigate their liability for these risks. For example:

- a. One article noted in March 2018: “Even with today’s technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.”⁷⁰
- b. The Insurance Library Association of Boston (founded 1887) lists on its website more than 20 topical articles, reports, and white papers available to insurers from early 2007 through 2018. The Association states on its website: “The past 20 years has seen the rise of a number of pandemics. Slate recently published an article on what has been learned about treating them in that time. We thought it might be apt for us to take a look back and see what the insurance industry has learned as well.” The webpage then lists various articles and reports discussing the risks and impacts of pandemics on the insurance industry. For example, an article stated in 2014 that pandemics “can have a significant impact on life and

⁶⁷ CDC, *COVID-19 Planning Pandemic Scenarios* (last updated March 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>

⁶⁸ See *Coronavirus in the U.S.: Latest Map and Case Count*, NEW YORK TIMES, <https://www.nytimes.com/interactive/2021/us/covid-cases.html>

⁶⁹ Lena H. Sun & Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher than reported*, WASH. POST (June 25, 2020, 10:41 PM), <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger>

⁷⁰ See “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” *AIR* (Mar. 29, 2018), available at <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

health insurance portfolios, and, depending on contract terms, could also affect other lines such as workers' compensation, business interruption, travel and event cancellation and disability insurance."⁷¹

65. Moreover, over the course of decades, courts in New Jersey and elsewhere have held that the presence of a hazardous substance on property, including the airspace inside buildings, constitutes property damage. In connection with business interruption coverage of the kind at issue here, the New Jersey Appellate Division also has cited with approval decisions from other jurisdictions that have held that "'physical damage' is not restricted to the physical destruction or harm" but also "includes loss of access, loss of use, and loss of functionality."⁷² *Wakefern Food Corp. v. Liberty Mut. Fire Ins. Co.*, 406 N.J. Super. 524, 541, 968 A.2d 724, 736 (App. Div. 2009).⁷² The New Jersey Appellate Division has similarly held that direct physical loss to property does not require an actual change in the material composition of the affected property.⁷³ Upon information and belief, insurers, including Federal, which is headquartered in New Jersey and sells insurance throughout the state, have been and continue to be aware of these court decisions.

66. Shortly after the outbreak of SARS in 2003, the Insurance Services Office ("ISO"), the industry trade association that drafts standard insurance forms, undertook to draft

⁷¹ See Nita Madhav, "Travel Sickness: Pandemic Risk Models Show Diseases Move More Quickly and with Greater Impact in our Connected World," *Best's Review*, 115 no. 8 (Dec. 1, 2014).

⁷² See, e.g., *Mellin v. N. Sec. Ins. Co.*, 167 N.H. 544, 550-51, 115 A.3d 799 (2015) (cat urine odor); *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014) (ammonia); *TRAVCO Ins. Co. v. Ward*, 715 F. Supp. 2d 699 (E.D. Va. 2010), *aff'd*, 504 F. App'x 251 (4th Cir. 2013) (toxic gases); *Motorists Mut. Ins. Co. v. Hardinger*, 131 F. App'x 823 (3d Cir. 2005) (bacterial contamination); *Matzner v. Seaco Ins. Co.*, Case No. 96-0498, 1998 WL 566658 (Mass. Super. Aug. 26, 1998) (carbon monoxide); *Farmers Ins. Co. of Oregon v. Trutanich*, 858 P.2d 1332, 1335-36 (Or. Ct. App. 1993) (methamphetamine odor).

⁷³ *Customized Distribution Servs. v. Zurich Ins. Co.*, 862 A.2d 560, 564-65 (N.J. Super. Ct. App. Div. 2004).

exclusions seeking to eliminate coverage for losses caused by a virus. In July 2006, ISO prepared a circular as part of filings made with state insurance regulators that included a standard exclusion of loss due to human disease-causing viruses and bacteria, which it entitled “Exclusion Of Loss Due To Virus Or Bacteria” (form CP 01 40 07 06 or, in certain jurisdictions, form CP 01 75 07 06).

67. In its circular, ISO cited “rotavirus, SARS, [and] influenza” and observed that “[t]he universe of disease-causing organisms is always in evolution.” ISO also recognized that viruses could cause property damage, stating:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

68. With its circular, ISO thus acknowledged that (i) the presence of a human disease causing virus could give rise to physical damage to property; (ii) such damage could trigger coverage under property policies for property losses, including business interruption losses; and (iii) absent ISO’s exclusion, the existing language in property policies, like that issued by Federal to Yelp here, did not bar coverage for such losses.

69. Since 2006, various insurers have chosen to incorporate this standard virus exclusion in certain of their policies in an effort to avoid covering losses due to a virus like the Coronavirus and disease such as COVID-19. Some insurers have gone a step further and sought to bar coverage by including in their policies their own express “pandemic,” “infectious disease,” or other similar broad human disease-based exclusions. Federal chose not to include any such exclusion in the Policy it sold to Yelp.

70. Federal’s parent company Chubb Limited recognized that its insurer subsidiaries could be required to pay substantial claims due to a pandemic. Chubb Limited warned investors in its 2017 Annual Report:

Our results of operations or financial condition could be adversely affected by the occurrence of natural and man-made disasters.

We have substantial exposure to losses resulting from natural disasters . . . such as . . . catastrophic events, including pandemics. This could impact a variety of our businesses, including our commercial and personal lines Catastrophes can be caused by various events, including . . . natural or man-made disasters, including a global or other wide-impact pandemic The occurrence of claims from catastrophic events could result in substantial volatility in our results of operations or financial condition for any fiscal quarter or year. The historical incidence for events such as . . . pandemics . . . is infrequent and may not be representative of contemporary exposures and risks. . . . [T]he occurrence of one or more catastrophic events could have an adverse effect on our results of operations and financial condition.⁷⁴

The All-Risk Insurance Federal Sold to Yelp

71. The Chubb Group of insurance companies, including Federal, market the Customarq Property & Business Income policy forms as covering “broad all-risk property and income perils.”⁷⁵

72. Federal sold Yelp a CHUBB® Customarq Series Customarq Classic Insurance Program policy, No. 3600-42-33 SFO, for the policy period of November 30, 2019 to November 30, 2020, for the policy period December 31, 2019, to December 31, 2020 (the “Policy”). The Policy provides up to \$33.5 million in Business Income With Extra Expense coverage to Yelp with respect to each Scheduled Premises according to its terms. The Scheduled Premises are located in, among other cities, San Francisco, California; New York, New York; Washington, DC;

⁷⁴ Chubb Limited, 2017 Annual Report, at 19, *available at* https://s1.q4cdn.com/677769242/files/doc_financials/2018/AGM/Chubb_Limited_2017_Annual_Report.pdf.

⁷⁵ See “Customarq Property & Business Income,” Chubb (Apr. 8, 2021), *available at* <https://www.chubb.com/us-en/business-insurance/customar-property-business-income.html>.

Scottsdale, Arizona; Chicago, Illinois; London, United Kingdom; and Hamburg, Germany. The Policy also provides certain coverages for Yelp’s unscheduled premises, such as those located in Pittsburgh, Pennsylvania, and Toronto, Canada. A true and correct copy of the Policy is attached as **Exhibit A**.

73. As discussed further below, the “Business Interruption and Extra Expense” Coverage in the “Business Income With Extra Expense” Contract within the Property Insurance Section of the Policy separately and disjunctively grants coverage for business income loss and extra expense caused by or resulting from “direct physical loss or damage caused by a **covered peril to property. . .**” (emphasis added). As used in the Policy, the term “physical loss” thus is a separate, distinct term with meaning independent from the term “damage.”

74. The Policy provides no definition for the terms “direct,” “physical,” “loss,” “physical loss,” “damage,” or the phrase “direct physical loss or damage,” and there is no indication in the Policy that Federal intended some specialized or unique meaning of those terms.

75. Dictionary definitions of “physical” include:

- a. “[O]f or relating to natural science.” Physical, 1a, Merriam-Webster, <https://www.merriam-webster.com/dictionary/physical>
- b. “[R]elating to things you can see or touch.” Physical, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/physical>

76. Based on such definitions, the New Jersey Appellate Division has observed that the policy term “‘physical’ can mean more than material alteration or damage,” and that if the insurer intended for the term to have a more restrictive reading it should have “clearly and specifically” so stated. *Customized Distrib. Servs. v. Zurich Ins. Co.*, 373 N.J. Super. 480, 487-88, 862 A.2d 560 (App. Div. 2004), certif. denied, 183 N.J. 214, 871 A.2d 91 (2005).

77. Dictionary definitions of “damage” include:

- a. “[L]oss or harm resulting from injury to person, property or reputation.” Damage, 1, Merriam-Webster, <https://www.merriam-webster.com/dictionary/damage>
- b. “[T]o harm or spoil something.” Damage, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/damage>
- c. “[P]hysical harm caused to something so that it is broken, spoiled or injured.” Damage, 1, Macmillan Dictionary, https://www.macmillandictionary.com/us/dictionary/american/damage_1

78. Dictionary definitions of “loss” include:

- a. “Deprivation.” Loss, 2a, Merriam-Webster, <https://www.merriam-webster.com/dictionary/loss>
- b. “[D]ecrease in amount, magnitude, or degree.” Loss, 5, Merriam-Webster, <https://www.merriam-webster.com/dictionary/loss>
- c. “The fact that you no longer have something or have less of something.” Loss, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/loss?q=Loss>
- d. “Having less than before.” Loss, 2, Macmillan Dictionary, <https://www.macmillandictionary.com/us/dictionary/american/loss>
- e. “[T]he state of no longer having something or as much of something.” Loss, 1, Oxford Advanced Learner’s Dictionary, <https://www.oxfordlearnersdictionaries.com/us/definition/english/loss?q=loss>

79. Based on such commonly recognized dictionary definitions, courts in New Jersey and elsewhere have recognized that the phrase “direct physical loss or damage” to property is susceptible to more than one reasonable interpretation and must be construed favorably to the insured.⁷⁶

80. Courts also have recognized that it is reasonable to read the phrase “direct physical loss or damage” to property to include “loss of function or value.”⁷⁷

⁷⁶ *Wakefern Food Corp. v. Liberty Mut. Fire Ins. Co.*, 406 N.J. Super. at 543; *Customized Distrib.*, 373 N.J. Super. at 487-88.

⁷⁷ *Wakefern*, 406 N.J. Super. at 543.

81. Under this reasonable reading of the policy language, Federal is obligated to cover Yelp’s losses regardless of whether Yelp also suffered “damage” to covered property because the Coronavirus and the COVID-19 pandemic caused Yelp to suffer “deprivation,” “decrease,” or “having less” of its covered property, constituting “physical loss” covered by the Policy.

82. Nothing in the Policy specifies or suggests that structural damage or structural alteration to a Yelp location is a prerequisite or condition for triggering the Business Interruption and Extra Expense coverage granted by the Policy.

83. Over fifty courts throughout the country have already concluded that insureds have properly alleged or are in fact entitled to coverage under similar policy terms and in similar factual circumstances to those of Yelp. Upon information and belief, Federal is aware of these court decisions. Yelp’s understanding and expectation that the Policy provides coverage is at least reasonable, and that reasonable interpretation should control over the contrary interpretation espoused by Federal.

**Yelp’s Losses Trigger the Policy’s
Business Income and Extra Expense Coverage**

84. The “Business Income and Extra Expense” Coverage in the “Business Income With Extra Expense” Contract within the Property Insurance Section of the Policy grants coverage for the “**business income** loss [Yelp] incur[s] due to the actual impairment of [Yelp’s] **operations**; and [¶] **extra expense** [Yelp] incur[s] due to the actual or potential impairment of [Yelp’s] **operations**, [¶] during the **period of restoration**,” where the impairment is “caused by or result[s] from direct physical loss or damage by a **covered peril** to **property**” This Coverage applies only at premises where Yelp incurs “a **business income** loss or **extra expense**” and for which a Limit Of Insurance for Business Income With Extra Expense is shown in the

Policy's Declarations. The direct physical loss or damage must occur either at the insured premises or within 1,000 feet of the premises.⁷⁸

85. The Policy defines "**business income**" to include Yelp's "net profit or loss, including rental income from tenants and net sales value of production, that would have been earned or incurred before income taxes." The Policy defines "**extra expense**" to include "necessary expenses [that Yelp] incur[s] . . . in an attempt to continue operations, over and above the expenses [Yelp] would have normally incurred."

86. The Policy defines "**operations**" as "[Yelp's] business activities occurring at [Yelp's] premises, including [Yelp's] activities as a lessor of premises, prior to the loss or damage." The Policy defines "**period of restoration**," as applicable here, to run from "immediately after the time of direct physical loss or damage by a **covered peril to property**" to the time when "[Yelp's] **operations** are restored, with reasonable speed, to the level which would generate the **business income** amount that would have existed if no direct physical loss or damage occurred," and the expiration date of the Policy does "not cut short the **period of restoration**." Federal describes its Customarq policies as providing "[b]usiness income insurance [that] automatically includes an unlimited period of indemnity, so protection extends for as long as it takes to restore the business to the level that would have existed had no loss occurred."⁷⁹

87. As applicable here, the Policy defines "**covered peril**" as a peril covered by the applicable policy form, which is the Business Interruption With Extra Expense form. That form

⁷⁸ With respect to unscheduled locations, the Policy provides similar Business Interruption coverage and Extra Expense coverage, but coverage is limited to \$1,000,000 for business income and \$1,000,000 for extra expense per location.

⁷⁹ See "Customarq Property & Business Income," Chubb (Apr. 8, 2021), *available at* <https://www.chubb.com/us-en/business-insurance/customar-property-business-income.html>.

provides broad all-risk coverage and does not limit coverage to named perils, and it does not exclude coverage for losses due to a virus or pandemic.

88. The Policy defines “**property**” to include a “**building**,” which includes a “structure” and “**building components**,” which in turn include “glass forming part of a structure” and “indoor or outdoor fixtures, whether above or below ground.”

89. The Policy thus grants business interruption coverage when Yelp suffers an impairment of its business activities (or, for extra expense it incurs, mere potential impairment of such activities) due to direct physical loss or damage to its insured premises or (among other things) to the interiors of the buildings in which they are located that is caused by the Coronavirus or the COVID-19 pandemic.

90. Yelp’s operations at covered locations were impaired by direct physical loss or damage to property due to the Coronavirus and the COVID-19 pandemic. These include locations for which a Limit Of Insurance for Business Income With Extra Expense is shown in the Policy’s Declarations, including its locations in Arizona, California, the District of Columbia, Illinois, New York, the United Kingdom, and Germany, among others.

91. Yelp also has incurred and will continue to incur expenses over and above the expenses it would have normally incurred had there been no direct physical loss or damage to its covered property.

92. Accordingly, the Policy’s “Business Income and Extra Expense” Coverage is triggered, and Yelp’s business interruption and extra expense losses are covered by the Policy. In addition, similar coverages for Yelp’s unscheduled insured locations are triggered, and Yelp’s business interruption and extra expense losses associated with those locations also are covered, albeit at lower per-premises limits than those applicable to scheduled locations.

The Policy Contains No Exclusion Applicable to Yelp's Losses

93. The Policy does not exclude coverage for either a virus or a pandemic, at least insofar as such an exclusion would apply to Yelp's losses at issue here.

94. Upon information and belief, Federal was aware of the risk of a virus or an infectious disease pandemic such as due to a novel strain of coronavirus or influenza prior to issuing the Policy to Yelp.

95. Now, after being presented with Yelp's claims, Federal is attempting to avoid coverage for a virus or an infectious disease pandemic, such as the Coronavirus and the present COVID-19 pandemic.

Other Coverages Granted by the Policy Also May Apply

96. The foregoing discussion does not provide a comprehensive discussion of all potentially applicable coverages, terms, and conditions, which are fully set forth in the Policy. Among numerous other additional coverages, the Policy also includes coverage entitled "Building or Personal Property," "Civil Authority," and "Ingress and Egress." At such time as Yelp's losses are fully known, additional coverages provided by the Policy may be applicable and additional provisions may become relevant.

97. To the extent that such additional coverages may be applicable to any of the losses Yelp has incurred and is continuing to incur as a result of the Coronavirus and the COVID-19 pandemic, the Policy also contains no exclusion applicable to such losses.

The Parties' Insurance Coverage Dispute

98. Yelp provided timely notice to Federal that Yelp was incurring losses because of the Coronavirus and the COVID-19 pandemic ("Coronavirus Losses") for which it was seeking all available insurance coverage.

99. Yelp's Coronavirus Losses include amounts covered, inter alia, as "Business Income and Extra Expense" losses pursuant to the Policy.

100. Federal refused to acknowledge coverage for the Coronavirus Losses. On July 23, 2020, Federal wrote: "Chubb's [Federal's] position is that neither the presence nor the cleaning of surfaces to remove the potential existence of a virus from property constitutes direct physical loss or damage covered by the policy." Federal reiterated that statement in a subsequent letter.

101. In response, Yelp wrote to Federal, among other things: "[I]f Chubb's position is that the presence of the novel coronavirus or an individual infected by COVID-19 at or near scheduled premises, or the cleaning of surfaces to remove the potential existence of the novel coronavirus, cannot constitute covered direct physical loss or damage — even if it results in lost business income for Yelp — then we do not understand how Chubb would ever agree to provide coverage for any losses arising out of the novel coronavirus and/or the COVID-19 pandemic. [¶] Are there any other potential scenarios related to the novel coronavirus and/or the COVID-19 pandemic in which Chubb might provide coverage?" Federal identified no potential scenarios in which it might provide coverage under any provision of the Policy and otherwise refused to respond to the substance of Yelp's inquiry.

102. Yelp also asked Federal, in response to its demand to Yelp for all information related to the Coronavirus Losses, whether Federal "will accept proof of loss of use of the scheduled premises in support of Yelp's claim." Yelp explained that it "needs to know so that it can determine whether to expend potentially significant time and resources collecting and providing such information, as such efforts may be fruitless if [Federal] will not accept that

information to support a claim for which it will pay Policy benefits.” Federal refused to respond to the substance of this inquiry as well.

103. Federal’s statement of its coverage position, its failure to identify any potentially available coverage under the Policy, and its refusals otherwise to respond substantively to Yelp’s associated inquiries constitute a denial of coverage of Yelp’s claim for the Coronavirus Losses under the Policy.

104. Yelp disputes Federal’s asserted coverage position and its denial of coverage under the Policy.

105. Yelp has satisfied all terms and conditions of the Policy.

106. There is a current dispute between Yelp and Federal as to the application of the Policy to the Coronavirus Losses.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

107. Yelp restates and re-alleges all of the foregoing paragraphs of this Complaint as though fully set forth herein.

108. Pursuant to the Policy, Federal undertook the duty to provide insurance against “direct physical loss or damage caused by a **covered peril to property**” at or within 1,000 feet of an insured location.

109. The actual presence of the Coronavirus and the risk of its spread and resulting infection of Yelp personnel with COVID-19 causes direct physical loss or damage to property, and the Policy contains no enforceable exclusion that would preclude coverage for such loss or damage to covered property.

110. Yelp’s Coronavirus Losses are covered by the Policy.

111. Federal disclaimed and denied all coverage for the Coronavirus Losses and refused to pay any portion of these Losses.

112. Federal's denial of coverage and failure to pay constitutes a material breach of Federal's obligations pursuant to the Policy, for which it is not excused.

113. Yelp has performed all of its obligations under the Policy.

114. Federal's breach of the Policy has proximately caused Yelp harm for which Yelp is entitled to damages according to proof.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment)

115. Yelp restates and re-alleges all of the foregoing paragraphs of this Complaint as though fully set forth herein.

116. A justiciable controversy exists between Yelp and Federal as to their respective rights and obligations, and the scope of insurance coverage owed to Yelp for the Coronavirus Losses pursuant to the Policy.

117. Yelp seeks a judicial determination to resolve a present justiciable controversy among the parties regarding the insurance coverage available for the Coronavirus Losses pursuant to the Policy.

118. Yelp is entitled to a judicial declaration by the Court pursuant to N.J. Stat. Ann. § 2A:16-52 that Federal is obligated to provide insurance coverage to Yelp for the Coronavirus Losses up to the applicable policy limits of the Policy.

119. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy among the parties.

PRAYER FOR RELIEF

WHEREFORE, Yelp respectfully requests an order as follows:

- a. Awarding Yelp compensatory and consequential damages against Federal for breach of contract in an amount to be awarded at trial;
- b. Declaring that Federal is obligated to provide insurance coverage to Yelp in connection with the Coronavirus Losses pursuant to the Policy;
- c. Awarding Yelp its attorneys' fees and costs of suit;
- d. Awarding Yelp pre-judgment and post-judgment interest; and
- e. Awarding Yelp any other and further relief as this Court deems just and proper.

Dated: July 12, 2021

/s/ Stephen M. Orlofsky

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