

STATE OF INDIANA) MARION COUNTY CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO: _____

CIRCLE BLOCK PARTNERS, LLC; and)
CIRCLE BLOCK HOTEL, LLC,)
)
Plaintiffs,)
)
vs.)
)
FIREMAN’S FUND INSURANCE)
COMPANY,)
)
Defendant.)
)
)
)

COMPLAINT

Plaintiffs Circle Block Partners, LLC and Circle Block Hotel, LLC (together, “Circle Block” or “Plaintiffs”), for their Complaint against Fireman’s Fund Insurance Company (“Fireman’s Fund” or “Defendant”), allege as follows:

I. Introduction.

1. This case arises out of Fireman’s Fund’s refusal to honor its agreement to provide insurance coverage, including coverage for business interruption and extra expense, in relation to the loss and damage to Circle Block’s Conrad hotel in downtown Indianapolis. Circle Block purchased, and Fireman’s Fund agreed to provide, broad insurance for the Conrad – including: (1) business income and extra expense coverage; (2) business access coverage; (3) dependent property coverage; (4) communicable disease coverage; and (5) civil authority coverage. Yet, despite agreeing to provide these broad coverages, Fireman’s Fund has refused to pay any proceeds of that insurance.

2. The Conrad is the preeminent luxury hotel in the City of Indianapolis. It hosts visitors from around the country who come to Indianapolis for various local, regional and national events. Those events are particularly prevalent in the spring and often centered around tournaments hosted by the Indianapolis-based NCAA and, of course, the iconic Indianapolis 500, which has taken place each May since 1911 with pauses only for two World Wars.

3. Circle Block purchased commercial property insurance from Firemen's Fund to cover these types of losses in the form of Policy No. USC010934200 (the "Conrad Policy"). *See* Exhibit A. In exchange for a significant premium, the Conrad Policy provides up to \$104,000,000 in coverage for property loss or damage as well as \$12,250,000 in coverage for business interruption losses and extra expenses incurred due to a slowdown or cessation of operations at the Conrad. The Conrad Policy also has specific (1) business income and extra expense coverage; (2) business access coverage; (3) dependent property coverage; (4) communicable disease coverage; and (5) civil authority coverage, among other things.

4. Circle Block has experienced losses falling within at least all these coverages. The hotel itself has suffered physical loss and damage. Customers have been unable to visit the Conrad given stay-at-home orders implemented locally and across the state and country. Sporting events, performances, conventions, and other large events have been cancelled, and the venues that host these events have been shut down. March occupancy rates at the Conrad fell precipitously. Eventually, the Conrad was forced to suspend operations entirely due to these circumstances.

5. Circle Block promptly made a claim for coverage of its losses under the Conrad Policy. However, despite the current crisis, Fireman's Fund has refused coverage. Rather than

treating the situation with appropriate urgency, Fireman's Fund waited more than five months to issue a denial letter.

II. Parties, Jurisdiction, and Venue.

6. The Plaintiff Circle Block entities all have their principal office at 30 South Meridian Street, Suite 1100, Indianapolis, Indiana 46204. Circle Block Partners, LLC, an Indiana limited liability company, owns the Conrad, which is located at 50 West Washington Street, Indianapolis, Indiana 46204, and insured under the Conrad Policy. Circle Block Hotel, LLC, a Delaware limited liability company, is wholly owned by Circle Block Partners, LLC and operates the Conrad. Both of the Circle Block plaintiffs are named insureds under the Conrad Policy.

7. Defendant Fireman's Fund is a California stock company with a principal place of business at 225 West Washington Street, Suite 1800, Chicago, Illinois 60606. Fireman's Fund issued the Conrad Policy to the Circle Block plaintiffs.

8. Marion County is a preferred venue under Trial Rule 75(A) because Plaintiff Circle Block resides in Marion County, the defendant is an out-of-state entity, and this action involves property located in Marion County.

9. This Court has jurisdiction over the parties and claims in this case pursuant to Commercial Court Rule 2(E).

III. Background.

10. The Conrad hotel has been a staple in downtown Indianapolis since its opening in 2006. Located in the heart of the city just south of Monument Circle, the 247-room hotel was a pioneer in Indianapolis's luxury hotel market and only the fourth Conrad to open in the United States. This project was the culmination of a vision dating back decades to make downtown

Indianapolis a vibrant destination for visitors and city residents alike. As then-Mayor Bart Peterson said, “The Conrad represents the continuous growth and evolution of our downtown and its skyline. To see the bold vision for this development become a reality is tremendous, and it speaks volumes for the future success of our city.”¹

11. Part of the vision for the Conrad was to “heighten [the city’s] ability to attract more visitors, more conventions and more great events, such as the NCAA Final Four to this great city in the years ahead.” *Id.* It has fulfilled that vision. Since the hotel’s opening, Indianapolis has attracted and hosted many high profile events including the men’s and women’s Final Four, the Super Bowl at Lucas Oil Stadium, and NBA playoff games. Indianapolis has also become a popular conference venue, hosting a wide range of events from large business conferences to Gen Con. The Conrad depends on Banker’s Life fieldhouse, Lucas Oil Stadium, and the Indiana Convention Center, among other venues, to attract customers to the hotel. All of these venues are within a mile of the Conrad and generate a substantial amount of hotel traffic. The Indiana Convention Center, for example, is physically connected to the Conrad through its skywalk to Circle Center mall. The Conrad prides itself on providing excellent service to its visitors, helping the city to continue attracting these high-profile events. It is ranked the best Indianapolis hotel by U.S. News and World Reports.

12. The Conrad not only serves as a destination for visitors, it is a gathering place for Indianapolis residents who take advantage of its 10,000 square feet of meeting space, the business center, and its spa and fitness facilities. The hotel’s extensive conference facilities are a

¹ *Conrad Indianapolis: Luxury Has a New Address; New Conrad Hotel Offers the Ultimate in Luxury for Business and Leisure Travel*, Business Wire (Mar. 27, 2006), <https://www.businesswire.com/news/home/20060327005229/en/Conrad-Indianapolis-Luxury-New-Address-New-Conrad>.

frequent meeting place for businesses hosting company-wide events. Local residents also choose the Conrad to celebrate some of their most important life milestones such as weddings.

13. The Conrad is a preferred partner of various Indianapolis arts organizations such as the Indiana Repertory Theater and the Indianapolis Symphony Orchestra. Patrons of events at these venues frequently stay at the Conrad after performances.

14. Spring is typically a busy season at the Conrad, as many Indianapolis events occur during that time frame. Indianapolis attracted several high-profile sporting events that were scheduled for spring 2020. The Big Ten Basketball Tournament at Bankers Life fieldhouse in mid-March was expected to draw 18,000 fans to the city.² The NCAA Division I men's basketball tournament's Midwest Regional, scheduled to take place on March 26 and 28 at Lucas Oil Stadium, was expected to draw 42,000 visitors. *Id.* A Nike Mid-East Qualifier volleyball tournament scheduled for March 20 to 22 was expected to draw 38,000 people to the Indiana Convention Center, Lucas Oil Stadium, and the Incrediplex. *Id.* In addition, the Pacers were scheduled to play a number of home games at Bankers Life, and the Indianapolis 500 and associated events were scheduled to take place in May.

15. Large conventions were also expected to attract visitors to the city during this period. The FDIC International convention scheduled in April was expected to draw thousands of fire and rescue professionals to the city. The American Coatings Show scheduled for March 31 to April 2 was set to draw 7,500 attendees.

16. In addition to these large-scale events, Bankers Life fieldhouse, Old National Center, and other venues had a full lineup of concerts, including high-profile performers such as

² Shuey, Mickey, *Hoteliers, restaurants brace for loss of revenue from NCAA, Big Ten tourney games*, Indianapolis Business Journal (Mar. 12, 2020), <https://www.ibj.com/articles/hoteli-ers-restaurants-brace-for-loss-of-revenue-from-ncaa-big-ten-tourney-games>.

Elton John. Live performances were also scheduled at theaters such as the Indiana Repertory Theater.

IV. The SARS-Cov-2 Virus and the COVID-19 Pandemic.

A. The SARS-CoV-2 Virus and the COVID-19 Disease.

17. COVID-19 is a highly transmissible contagious disease first discovered in the human population in Wuhan, China in or around December 2019. COVID-19 is also known as the “coronavirus.”

18. COVID-19 is caused by the SARS-CoV-2 virus (the “virus”), which is a single-stranded RNA virus. SARS-CoV-2 is a physical substance that can be present outside the human body in several forms, for example, in fluid droplets.

19. The World Health Organization (“WHO”) has confirmed that COVID-19 can be transmitted from person to person by physical droplets of SARS-CoV-2 in the air or on surfaces: “The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth.”³

20. These SARS-CoV-2 droplets can travel over significant distances. On surfaces, they can remain detectable for several days. On one cruise ship, the CDC found that SARS-CoV-2 was detectable on surfaces up to 17 days after passengers disembarked.

21. SARS-CoV-2 particles have been transmitted by way of human contact with surfaces and items of physical property, spreading the COVID-19 disease. It has also been

³ See Q&A on coronaviruses (COVID-19), *How Does COVID-19 spread?*, World Health Organization (Apr. 16, 2020), <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

transmitted by human to human contact and interaction with premises, and by way of human contact with airborne SARS-CoV-2 particles present in the air.

22. The presence of SARS-CoV-2 particles can render items of physical property unsafe and the premises unsafe.

23. The presence of SARS-CoV-2 particles on physical property impairs its value, usefulness, and/or normal function.

24. The presence of any SARS-CoV-2 particles causes direct physical harm to property, direct physical damage, and direct physical loss to property.

25. The presence of people infected with COVID-19 and/or carrying SARS-CoV-2 particles renders physical property in their vicinity potentially unsafe and unusable, resulting in actual and direct physical loss to that property.

26. The presence of people infected with COVID-19 and/or carrying SARS-CoV-2 particles at premises potentially renders the premises, including property located at that premises, unsafe, resulting in actual and direct physical loss to the premises and property.

B. The SARS-CoV-2 and COVID-19 Shutdown and Civil Authority Orders.

27. In March 2020, the public health emergency in the United States associated with the COVID-19 pandemic began unfolding quickly. The Governor of Indiana and Mayor of Indianapolis issued a series of executive orders that prohibited non-essential travel, cancelled all the large gatherings scheduled to take place in spring 2020, and prohibited use of hotels for any purpose aside from providing lodging and carryout services.

28. The first case of COVID-19 in Indiana was confirmed on March 6, 2020. That same day, Governor Holcomb declared “that a public health disaster emergency exists in Indiana

attributable to COVID-19.” Executive Order 20-02, *Declaration of Public Health Emergency for Coronavirus Disease 2019 Outbreak* (Mar. 6, 2020).

29. On March 12, 2020, Governor Holcomb provided guidance limiting non-essential gatherings to 250 or fewer people.

30. On March 16, 2020, Governor Holcomb, Indianapolis Mayor Joseph Hogsett, and the Marion County Public Health Department all issued orders related to COVID-19, which effectively cancelled any large events scheduled to take place in Indianapolis by prohibiting gatherings of more than 50 people. Specifically, the Governor’s order emphasized that “Indiana will continue to adhere to the CDC guidance for large events and mass gatherings. The current guidance recommends no in-person events of more than 50 people.” Executive Order 20-04, *Further Orders and Directives in Response to the Coronavirus Disease 2019 Epidemic* (Mar. 16, 2020). The Marion County Public Health Department’s order provided that “[e]ffective March 17, 2020, at 8:00 a.m., all movie theaters, live performance venues, bowling alleys, arcades, and similar indoor entertainment establishments shall be closed to the public through April 6, 2020” and prohibited public gatherings of more than 50 people. The Mayor’s executive order issued a travel watch warning against non-essential travel and otherwise emphasized the prohibition on large gatherings.

31. On March 23, 2020, Governor Holcomb issued an order requiring Indiana residents to stay at home when not engaged in essential activities. Executive Order 20-08, *Directive for Hoosiers to Stay at Home* (Mar. 23, 2020). Governor Holcomb initially issued this order for the period from March 24, 2020 through April 6, 2020, but he extended it to cover the period ending May 1, 2020. Executive Order 20-18, *Continued Directive for Hoosiers to Stay at Home; Extension of Continuity of Operations of Government; and Extension of Executive Orders*

Pertaining to Restaurants and Alcoholic Beverages (Apr. 6, 2020); Executive Order 20-22, *Extension of Directive for Hoosiers to Stay at Home; Continuity of Operations of Government; and Executive Orders Pertaining to Restaurants and Alcoholic Beverages* (Apr. 23, 2020) (collectively, the “Indiana Stay at Home Order”).

32. The Indiana Stay at Home Order prohibited travel except where essential. *Id.* ¶ 6. It also prohibited “[a]ll public and private gatherings of any number of people that occur outside of a single household or living unit” and any non-exempt gathering of more than ten (10) people. *Id.* ¶ 5. All non-essential businesses, including places where public gatherings for entertainment occur, such as concert halls, movie theaters, and museums were ordered to remain closed. *Id.*

33. The Indiana Stay at Home Order deemed hotels and motels essential businesses only “to the extent they are used for lodging and delivery or carryout food services.” *Id.* ¶ 14(w).

34. Marion County issued its own stay-at-home order the same day, which implemented a ban on all non-essential travel within the county (the “Indianapolis Stay at Home Order”). The Indianapolis Stay at Home Order was extended into May 2020 and, for some businesses, longer.

35. The Governor has repeatedly renewed his public health disaster emergency declaration and accompanying Executive Orders. *See* Executive Orders 20-25, 20-30, 20-34, 20-38.

36. On May 1, 2020, Governor Holcomb lifted restrictions on certain counties, but Marion County continued to be subject to the terms of the Indiana Stay at Home Order. Large gatherings continued to be prohibited. Executive Order 20-26, *Roadmap to Reopen Indiana for Hoosiers, Businesses and State Government* (May 1, 2020).

37. As the State began its phased reopening, Marion County continued to stay at least one reopening “phase” behind the rest of the State.

38. States across the country, from which visitors would frequently travel to Indiana, also issued stay-at-home orders or variations thereof that prevented (and in many cases, continue to prevent) people from traveling for non-essential purposes.⁴

39. The Indiana Stay at Home Order, Indianapolis Stay at Home Order, and the public health emergency associated with COVID-19 resulted in the cancellation or postponement of all large gatherings scheduled to take place from mid-March through May and beyond, including the Big Ten Basketball Tournament, NCAA tournament, Nike Mid-East Qualifier, FDIC International, and American Coatings Show. As a result, Indianapolis lost well over 100,000 visitors expected to travel to the city for these events.

40. Such cancellations have extended into August and beyond. For example, Gen Con—which typically brings approximately 60,000 visitors to Indianapolis—cancelled its August 2020 convention due to the COVID-19 pandemic.

V. The Conrad Policy.

41. Unlike more narrow “specified risk” property insurance policies, the Conrad Policy is an “all-risk” policy. It defines a “Covered cause of loss” as “risks of direct physical loss or damage not excluded or limited in this Coverage Form.” Ex. A at 78. This “all risk” coverage, which includes business income and extra expense coverage, is supplemented by other coverage undertakings. For example, the Policy provides coverage for impairment of access to the

⁴ Wu, Jiachuan et al., *Stay-at-home orders across the country*, NBC News (Mar. 25, 2020), <https://www.nbcnews.com/health/health-news/here-are-stay-home-orders-across-country-n1168736>.

business, dependent property losses, losses associated with civil authority orders, and losses caused by communicable disease.

42. The Conrad Policy provides a maximum blanket limit of insurance for business real property and personal property of \$104,000,000 and a maximum blanket limit of insurance for business interruption and extra expense of \$12,250,000, with various sublimits. The Conrad Policy provides \$1 million in communicable disease coverage, \$2.5 million in civil authority coverage, \$1 million in dependent property coverage and \$2.5 million in business access coverage.

A. The Business Income and Extra Expense Coverage.

43. The Conrad Policy contains several coverages potentially applicable to Circle Block's losses. The Conrad Policy generally covers lost "**business income**" and "**extra expense**" Circle Block "sustain[s] due to the necessary **suspension** of your **operations** during the **period of restoration** arising from direct physical loss or damage to property at a **location**, or within 1,000 feet of such **location**, caused by or resulting from a **covered cause of loss.**" Ex. A at 32.⁵

44. "**Business income**" includes "[t]he net profit or loss before income taxes from your **operations**" and "[c]ontinuing normal operating expenses incurred, including your continuing normal payroll expenses," among other things. Ex. A at 76-77.

45. "**Covered cause of loss**" is broadly defined to include "risks of direct physical loss or damage not excluded or limited in this Coverage Form." Ex. A at 78.

⁵ Terms in bold are bold in the original policy language, indicating that the term is defined in the policy.

46. “**Suspension**” is defined as “the slowdown or cessation of your **operations**, or that a part or all of the described **premises** is rendered untenable.” Ex. A at 87. “**Operations**” means “the usual and customary business activities in the conduct of **your business** occurring at the **location**, including the tenability of the **premises**.” Ex. A at 84.

47. The Conrad Policy also provides “Extended Business Income and Extra Expense Coverage.” This coverage starts when operations resume after a covered loss and ends when operations are restored to the level which would generate the business income that would have existed if no loss or damage had occurred, subject to a maximum of 365 days.

B. The Civil Authority Coverage.

48. The Conrad Policy contains “Civil Authority Coverage.” Under this coverage, Fireman’s Fund agreed to pay for

the actual loss of **business** income and necessary **extra expense** you sustain due to the necessary **suspension** of your **operations** caused by action of civil authority that prohibits access to a **location**. Such prohibition of access to such **location** by a civil authority must:

- (1) Arise from direct physical loss or damage to property other than at such **location**; and
- (2) Be caused by or result from a **covered cause of loss**; and
- (3) Occur within the number of miles stated in the Declarations [1 mile] from such **location**.

Ex. A at 44.

C. The Dependent Property Coverage.

49. The Conrad Policy contains “Dependent Property Coverage,” which provides that:

- (1) We will pay for the actual loss of **business income** and necessary **extra expense** you sustain due to the necessary **suspension** of **operations** during the **period of restoration** at a location.

(2) The **suspension** must be due to direct physical loss or damage at the **location** of a **dependent property**, situated inside or outside of the Coverage Territory, caused by or resulting from a **covered cause of loss**.

Ex. A at 44.

50. “**Dependent property**” is defined as

[P]roperty operated by others upon whom you depend to:

- a. Deliver materials or services to you or to others for your account other than **utility services** (Contributing Locations);
- b. Accept your products or services (Recipient Locations);
- c. Manufacture products for delivery to your customers under contract of sale (Manufacturing Locations); and
- d. Attract customers to your business (Leader Locations).

Ex. A at 79.

D. The Communicable Disease Coverage.

51. The Conrad Policy provides “Communicable Disease Coverage.” Under this coverage, Fireman’s Fund agreed that:

(1) We will pay for direct physical loss or damage to **Property Insured** caused by or resulting from a covered **communicable disease event** at a location including the following necessary costs incurred to:

- (a) Tear out and replace any part of **Property Insured** in order to gain access to the **communicable disease**;
- (b) Repair or rebuild **Property Insured** which has been damaged or destroyed by the **communicable disease**; and
- (c) Mitigate, contain, remediate, treat, clean, detoxify, disinfect, neutralize, cleanup, remove, dispose of, test for, monitor and assess the effects [of] the **communicable disease**.

Ex. A at 47-48.

52. A “[c]ommunicable disease event means an event in which a **public health authority** has ordered that a location be evacuated, decontaminated, or disinfected due to the

outbreak of a **communicable disease** at such location.” Ex. A at 78. “**Communicable disease** means any disease, bacteria, or virus that may be transmitted directly or indirectly from human or animal to a human.” *Id.*

E. Business Access Coverage.

53. The Conrad Policy covers loss of “**business income**” and “**extra expense**” incurred “due to the necessary **suspension of operations** at a **location** if access to such **location** is impaired or obstructed.” Ex. A at 44.

VI. Fireman’s Fund Chooses Not to Exclude “Loss Due to Virus or Bacteria.”

54. In 2006, the Insurance Services Office (“ISO”), which provides standardized forms to insurance companies, drafted a new endorsement through which insurance companies could exclude losses due to virus or bacteria from coverage.

55. This new endorsement was developed in the wake of the 2002-2003 SARS outbreak, after which “many insurers added exclusions to standard commercial policies for losses caused by viruses or bacteria.”⁶

56. This new endorsement, called “CP 01 40 07 06 – Exclusion of Loss Due to Virus or Bacteria,” would exclude from coverage “loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.”

57. The ISO bulletin accompanying endorsement CP 01 40 07 06 read, in part: “[V]iral and bacterial contamination...appear to warrant particular attention at this point in time....Disease-causing agents may...enable the spread of disease by their presence on interior

⁶ <https://www.washingtonpost.com/business/2020/04/02/insurers-knew-damage-viral-pandemic-couldwreak-businesses-so-they-excluded-coverage/>.

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...cost of decontamination...and business interruption (time element) losses.”

58. The ISO bulletin further warned insurers: “An allegation of property damage may be a point of disagreement in a particular case...In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing micro-organisms.”

59. The ISO’s warnings to insurers about coverage issues associated with viruses and pandemics did not stop there. As recently as 2018, the ISO, through its corporate sister “AIR”, published an article entitled “What the 1918 Flu Pandemic Can Teach Today’s Insurers.”⁷ The article noted: “Even with today’s technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community.”

60. On information and belief, Fireman’s Fund received and reviewed the new endorsement from ISO, “CP 01 40 07 06 – Exclusion of Loss Due to Virus or Bacteria,” in or around 2006.

61. Fireman’s Fund, through “CP 01 40 07 06 – Exclusion of Loss Due to Virus or Bacteria,” could have excluded coverage for “loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease” from the Conrad Policy. It chose not to do so, confirming it to be a covered cause of loss not excluded by the Conrad Policy.

⁷ <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>

VII. The Impact of the SARS-CoV-2 Virus and COVID-19 on the Conrad.

62. As a result of the SARS-CoV-2 virus and the COVID-19 pandemic, occupancy rates at the Conrad dropped precipitously into the single digits as patrons cancelled their reservations and new bookings came to a halt. On March 19, 2020, only six of the hotel's 247 rooms were occupied. As a luxury property, the Conrad is not a hotel that is used for long-term lodging, and the slowdown (virtual shutdown) of its operations rendered continued operation untenable. The hotel was forced to suspend its operations entirely on April 18, 2020.

63. As a result of the SARS-CoV-2 virus and the COVID-19 pandemic, the Conrad lost virtually all of its business income during this time but has continued to incur and satisfy ordinary business expenses, including payroll and mortgage costs. It has also incurred significant additional expenses for cleaning and disinfecting the Property, among other things, to comply with government orders that have been issued to protect the Property and its occupants.

64. The Governor of this State has expressly acknowledged the virus's "propensity to **physically** impact surfaces and personal property." Executive Order 20-08 at 7 (emphasis added). Other state and local governments agree. *See, e.g.*, Colorado Executive Order D 2020 024 ("COVID-19...physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time."); New York City Emergency Executive Order 101 ("[T]he virus physically is causing property loss and damage."); Los Angeles Safer at Home Order ("[T]he COVID-19 virus...is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.").

65. As a result of the virus and the COVID-19 pandemic, caused by physical SARS-CoV-2 particles, Circle Block has suffered physical loss or damage to its property, the Conrad, from a covered cause of loss, which is covered under the Conrad Policy.

66. The bases for coverage include, but are not limited to, the following.

The Business Income and Extra Expense Coverage.

67. On information and belief, the Conrad, like all other places of public accommodation in central Indiana and throughout the United States, has been affected by physical SARS-CoV-2 particles. Specifically, on information and belief, physical SARS-CoV-2 particles have attached to the Conrad property and have deprived Plaintiffs and their customers of the use of that property. The incubation period for COVID-19 is at least 14 days. Current evidence shows that COVID-19 reached the state of Indiana by at least early March 2020. On information and belief, visitors, employees, vendors, and contractors present at the Conrad in at least February, March, and April 2020 carried COVID-19 and dispersed physical SARS-CoV-2 particles within the Conrad property. On information and belief, these physical SARS-CoV-2 particles caused direct physical loss or damage to property at the Conrad by denying use of and damaging the property and by causing a necessary suspension of operations during a period of restoration.

68. Circle Block has suffered direct physical loss of or damage to its property, the Conrad, as a result of the physical presence of the SARS-CoV-2 particles described above. Additionally, Circle Block has suffered direct physical loss of or damage to its property, the Conrad, as a result of the COVID-19 pandemic and/or the civil closure orders associated with the COVID-19 pandemic. All of these direct physical losses or damages to the Conrad caused a necessary suspension of the Conrad's operations during a period of restoration and caused the Conrad to lose business income and incur necessary extra expenses.

69. Locations within one thousand (1,000) feet of the Conrad have been affected by SARS-CoV-2 particles. Specifically: (1) between March and August 2020, there have been at

least 18,000 confirmed COVID-19 infections and nearly 750 confirmed COVID-19 deaths in Marion County, (2) there have been at least 300 confirmed COVID-19 cases among the 5,000 residents of the 46204 ZIP code, which encompasses the Conrad, and (3) the 46204 ZIP code appears as the most severe “hot spot” on the Marion County Health Department Dashboard for COVID-19 Cases by Resident ZIP Code.⁸ Individual COVID-19 carriers have dispersed physical SARS-CoV-2 particles within property within one thousand (1,000) feet of the Conrad. These physical SARS-CoV-2 particles caused direct physical loss or damage to property within one thousand (1,000) feet of the Conrad and required the Conrad to suspend operations during a period of restoration. This denied use of and damaged the Conrad.

70. Circle Block has suffered an actual loss of business income and necessary extra expense due to the necessary suspension of its operations at the Conrad during a period of restoration arising from the direct physical loss or damage to property within one thousand (1,000) feet of the Conrad, as described above.

71. The (1) physical presence of the SARS-CoV-2 particles described above; (2) COVID-19 pandemic; and/or (3) civil closure orders associated with the COVID-19 pandemic resulted in a quantifiable loss in the Conrad’s usefulness and/or in its function for normal purposes.

72. The (1) physical presence of the SARS-CoV-2 particles described above; (2) COVID-19 pandemic; and/or (3) civil closure orders associated with the COVID-19 pandemic physically incapacitated the Conrad facility.

⁸ None of these figures include visitors to Marion County or to the 46204 ZIP code, some of whom doubtless also carried COVID-19 and dispersed SARS-CoV-2 particles within one thousand (1,000) feet of the Conrad.

The Business Access Coverage.

73. Other properties within one (1) mile of the Conrad have been physically affected by SARS-CoV-2 particles (the “Other Properties”). Individual COVID-19 carriers have dispersed physical SARS-CoV-2 particles within property within one (1) mile of the Conrad. Specifically, between March and August 2020, there have been at least 18,000 confirmed COVID-19 infections and nearly 750 confirmed COVID-19 deaths in Marion County.

74. Due to the physical presence of SARS-CoV-2 particles within the Other Properties, which caused a direct physical loss or damage to the Other Properties, access to the Conrad was impaired and/or obstructed.

75. This impairment and/or obstruction of access caused the necessary suspension of the Conrad’s operations, which caused the Conrad to sustain an actual loss of business income and necessary extra expense.

The Dependent Property Coverage.

76. Properties operated by individuals other than Plaintiffs, upon whom the Conrad depends to: (1) deliver materials or services to the Conrad other than utilities; (2) accept the Conrad’s services and products; (3) manufacture products for delivery to the Conrad’s customers; and/or (4) attract customers to the Conrad (collectively, the “Dependent Properties”) have all been physically affected by SARS-CoV-2 particles. Individual COVID-19 carriers have dispersed physical SARS-CoV-2 particles within the Dependent Properties, causing direct physical loss or harm to the Dependent Properties. The Dependent Properties have also been ordered to shut down by civil authorities due to the virus and the COVID-19 pandemic and/or

have shut down and/or cancelled events due to direct physical loss and/or damage resulting from a covered cause of loss.

77. These direct physical losses or damages at the Dependent Properties has caused the Conrad to necessarily suspend operations during a period of restoration, which has caused the Conrad to incur an actual loss of business income and necessary extra expenses.

The Communicable Disease Coverage.

78. The Conrad has incurred direct physical loss or damage caused by and resulting from an event in which state and local public health officials have ordered that all businesses take certain actions to mitigate the spread of COVID-19, caused by SARS-CoV-2, which is a physical virus that may be transmitted directly or indirectly from human to human. These actions have been required due to the outbreak of the virus throughout Marion County (including, especially, the Conrad's ZIP Code of 46204) and the State of Indiana.

79. By way of example only, the Marion County Health Department has issued the following public health orders and directives (the "Disinfection Orders"):

- a. Requiring the washing of hands with soap and water for at least 20 seconds as frequently as possible, or the use of hand sanitizer when necessary;
- b. Requiring the frequent disinfection frequently used surfaces;
- c. Requiring the minimization of sharing of food, drinks, utensils, and office supplies and equipment;
- d. Requiring the increase of ventilation of indoor spaces; and

- e. Requiring the frequent cleaning of communal office equipment, such as printers and copiers.⁹

80. Many other Disinfection Orders were issued by federal, state, and local public health authorities.

81. Each of the Disinfection Orders constitutes an order that a location be decontaminated and/or disinfected due to the outbreak of a communicable disease, and each of the Disinfection Orders applied to the Conrad.

82. The Conrad's direct physical losses and damages caused by and resulting from the events leading to the Disinfection Orders have included, but have not been limited to, expenses required to test for, monitor, and assess the effects of any potential SARS-CoV-2 particles and to disinfect the Conrad on a frequent basis.

83. The direct physical loss or damage caused by and resulting from the events leading to the Disinfection Orders has caused the Conrad to necessarily suspend operations during a period of restoration, which has caused the Conrad to incur an actual loss of business income and necessary extra expenses.

*The Civil Authority Coverage.*¹⁰

84. Other properties within one (1) mile of the Conrad have been physically affected by SARS-CoV-2 particles (the "Other Properties"). Individual COVID-19 carriers have dispersed physical SARS-CoV-2 particles within property within one (1) mile of the Conrad.

⁹ See Marion County Public Health Orders 2-2020, 4-2020, 5-2020, 9-2020, 10-2020, 13-2020, and 14-2020.

¹⁰ To the extent required, the Civil Authority Coverage theory is pled in the alternative to the Business Access Coverage theory.

Specifically, between March and August 2020, there have been at least 18,000 confirmed COVID-19 infections and nearly 750 confirmed COVID-19 deaths in Marion County.

85. The Indiana Stay at Home Order, Indianapolis Stay at Home Order, and other similar civil orders related to COVID-19 prohibited access to and use of the Conrad for its normal function. This prohibition of access for normal function arose from the physical presence of SARS-CoV-2 particles within the Other Properties, which caused a direct physical loss or damage to the Other Properties.

86. This prohibition of access for normal function caused the necessary suspension of the Conrad's operations, which caused the Conrad to sustain an actual loss of business income and necessary extra expense.

VIII. Circle Block Timely Submitted Notice of Its Claim to Fireman's Fund.

87. On March 23, 2020, Circle Block provided prompt notice of its claim to Fireman's Fund. Following the submission of its notice, Circle Block made its April mortgage payment and took other steps to satisfy all commercial obligations, including future obligations to its lender, Wells Fargo.

88. In response to the notice, the claims adjuster wrote to inform Circle Block that Fireman's Fund was reviewing and evaluating the claim.

89. Circle Block presented its demand for indemnity pursuant to the terms and conditions of the policy and requested a response from Fireman's Fund by May 6, 2020.

90. On September 2, 2020, Circle Block received Fireman's Fund denial of coverage.

91. Fireman's Fund waited more than five months—until September 2020—to deny coverage in full.

92. Circle Block has paid all required premiums and has otherwise complied with all terms and conditions of the Conrad Policy.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

93. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs as if fully set forth herein.

94. Pursuant to the terms of the Conrad Policy, Fireman's Fund is obligated to pay, up to the limit of its liability, for all covered risks of property loss or damage.

95. Circle Block's losses and costs, as outlined above, are covered under multiple Conrad Policy coverages and are not excluded.

96. Fireman's Fund has disputed its legal obligation to pay Circle Block's claim.

97. Pursuant to Ind. Code 34-14-1-1 et seq., Circle Block is entitled to a declaration by this Court of Circle Block's rights and Fireman's Fund's obligations under its Conrad Policy.

98. This Court should enter a declaratory judgment in favor of Circle Block and against Fireman's Fund declaring that there is coverage available for Circle Block's claim up to the full limits or applicable sublimits of the policies and award any other just and proper relief.

SECOND CAUSE OF ACTION
(Breach of Contract)

99. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs as if fully set forth herein.

100. The Conrad Policy constitutes a valid and enforceable contract between Circle Block and Fireman's Fund because Circle Block and its affiliates are named insureds under the Conrad Policy.

101. Circle Block provided prompt notice of its losses, performed all obligations required of it under the Conrad Policy, and/or was ready, willing, and able to perform its obligations under the Conrad Policy at all times.

102. Fireman's Fund's has denied Circle Block's claim.

103. Under the terms of the Conrad Policy, Fireman's Fund is required to pay Circle Block's losses as described herein under the Conrad Policy.

104. As described in more detail above, Circle Block has sustained, and continues to sustain, losses covered by the Conrad Policy.

105. Fireman's Fund has not paid any amount to Circle Block in connection with its claim, and Circle Block reasonably believes that Fireman's Fund does not intend to do so.

106. As a direct result of Fireman's Fund's breach of contract, Circle Block has suffered and continues to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Circle Block respectfully prays that this Court:

- (i) Enter judgment against Fireman's Fund, award Circle Block damages in an amount to be determined at trial plus consequential damages, attorneys' fees, and pre-and post-judgment interest;

- (ii) Enter a declaratory judgment in favor of Circle Block and against Fireman's Fund declaring that Fireman's Fund is required to pay Circle Block for claimed amounts under the Conrad Policy up to the applicable Conrad Policy limits;
- (iii) Award all other just and proper relief.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

Dated: September 4, 2020.

Respectfully submitted,

/s/Robert D. MacGill

Robert D. MacGill (9989-49)

Matthew T. Ciulla (34542-71)

MACGILL PC

55 Monument Circle

Suite 1200C

Indianapolis, IN 46204

Telephone: (317) 721-1253

Robert.MacGill@MacGillLaw.com

Matthew.Ciulla@MacGillLaw.com

Counsel for Plaintiff