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13
 14 **UNITED STATES DISTRICT COURT**
 15
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 AECOM, a Delaware corporation,
 18
 19 Plaintiff,

20 vs.

21 ZURICH AMERICAN INSURANCE
 22 COMPANY, a New York corporation,
 23
 24 Defendant.

Case No.

25 **COMPLAINT FOR BREACH OF**
 26 **CONTRACT, ANTICIPATORY**
 27 **BREACH OF CONTRACT,**
 28 **TORTIOUS BREACH OF THE**
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING,
AND DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

29 Plaintiff AECOM hereby complains of defendant Zurich American
 30 Insurance Company and alleges as follows:

NATURE OF THIS LAWSUIT

31 1. AECOM is the world’s premier infrastructure consulting firm. It
 32 provides planning, design, engineering, consulting, and construction management

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1 services around the world. Given its global operation, it purchased broad, “all
2 risk” EDGE Global property insurance policies from Zurich. Among other things,
3 the policies promised coverage for AECOM’s economic losses from all risks not
4 expressly excluded. Even though the insurance industry has had a standard-form
5 “virus and bacteria” exclusion since 2006 and various forms of pandemic
6 exclusions, Zurich sold its policies without including either form of exclusions.

7 2. After the outbreak of SARS-CoV-2 and COVID-19, AECOM is
8 informed and believes, and on that basis alleges, that SARS-CoV-2 was present on
9 its properties and the properties of others, thereby physically altering air, airspace,
10 and surfaces preventing AECOM from using its properties for their intended
11 purpose and function. As a consequence, it suffered loss and damage covered by
12 the policies. Therefore, AECOM turned to Zurich for the coverage Zurich
13 promised. However, even though it had decided by March 2020 not to pay for
14 losses associated with the pandemic, Zurich delayed for months in telling AECOM
15 its coverage position. In fact, even though Zurich represented on August 23, 2020,
16 that it would provide its “official coverage determination communication,” Zurich
17 did not provide its final coverage position until October 13, 2020, more than six
18 months after AECOM first notified Zurich of the claim. Instead of agreeing to pay
19 AECOM for any part of its millions of dollars of insured loss, Zurich denied
20 coverage.

21 3. AECOM is informed and believes, and on that basis alleges, that
22 Zurich has taken, and is taking, a similar position with other insureds, having
23 adopted a corporate-wide position that deprives AECOM and its other insureds of
24 hundreds of millions of dollars of promised insurance. AECOM is informed and
25 believes, and on that basis alleges, that Zurich has done so, and is doing so, to
26 protect its financial interests at the expense of its insureds’ interests and with
27 conscious disregard and disdain for the rights, interests, and reasonable
28 expectations of its insureds, including AECOM.

1 4. Zurich's conduct constitutes a breach of the insurance policies and
2 violates the implied covenant of good faith and fair dealing. By this lawsuit,
3 AECOM seeks recovery for the damages Zurich has inflicted upon it by its
4 wrongful conduct. AECOM also seeks declaratory relief confirming that Zurich
5 must honor the terms of its policies.

6 **JURISDICTION AND VENUE**

7 5. The Court has subject matter jurisdiction to hear this case under 28
8 U.S.C § 1332 based on complete diversity of citizenship between the parties and
9 because the amount in controversy, exclusive of the costs and interest, exceeds
10 \$75,000.

11 6. The Court has personal jurisdiction over Zurich because Zurich is
12 licensed to transact, and transacts, business in the State of California and this
13 District.

14 7. Venue is proper in this District because a substantial part of the
15 events giving rise to AECOM's claims occurred in this District, including
16 negotiations regarding the policies and the issuance of the policies through an
17 insurance broker located at 725 S. Figueroa Street, Los Angeles.

18 **THE PARTIES**

19 8. AECOM is a corporation organized and existing under the laws of the
20 State of Delaware with its principal place of business in Los Angeles, California.
21 AECOM is authorized to pursue this action, and to collect, on behalf of all of its
22 affiliates and subsidiaries that are insured under the policies at issue herein.

23 9. AECOM is ranked No. 1 in *Engineering News-Record's* 2020 "Top
24 200 Environmental Firms, is ranked No. 1 in *Engineering News-Record's* 2020
25 "Top 500 Design Firms, and has been named by *Fortune* magazine as one of the
26 "World's Most Admired Companies" for six consecutive years. Among its projects
27 around the world, AECOM (and its various companies) is part of the joint venture
28 that led the development and construction of SoFi Stadium, one of the world's

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1 largest stadium complexes, and is designing all elements of Victoria’s largest-ever
2 public transport project, leading the design of the Inglewood Basketball &
3 Entertainment Center (the future home of the Los Angeles Clippers), and led repair
4 efforts for the Virgin Islands Housing Finance Authority Emergency Home
5 Repairs Program after Hurricanes Irma and Maria.

6 10. Zurich is a corporation organized and existing under the laws of the
7 State of New York with its headquarters in Schaumburg, Illinois. Zurich is a part
8 of the Zurich Insurance Group of Companies. AECOM is informed and believes,
9 and on that basis alleges that Zurich is owned by Zurich Holding Company of
10 America and that its ultimate parent is Zurich Insurance Group Ltd.

11 11. Zurich and the other members of the Zurich Insurance Group Ltd.
12 brand hold themselves out to the public as the Zurich Insurance Group. They
13 maintain a worldwide website at <https://www.zurich.com>. The Zurich Insurance
14 Group makes various statements and representations on its website on behalf of its
15 member companies, including Zurich.

16 12. According to the Zurich Insurance Group website, the Zurich
17 Insurance Group “is a leading multi-line insurer that serves its customers in global
18 and local markets. With about 55,000 employees, it provides a wide range of
19 property and casualty, and life insurance products and services in more than 215
20 countries and territories.”¹

21 13. On its website, the Zurich Insurance Group proclaims:
22 Our heritage is about helping customers understand and
23 protect themselves from risk. Since 1872 we have been
24 applying our expertise and experience so that our
25 customers can have the very best protection for the
26 things they value. This is our mission and the timeless
27

28 ¹ <https://www.zurich.com/en/about-us/a-global-insurer>.

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1 idea behind our brand. It is also the authentic truth that
2 has been and always will be at the heart of the Zurich
3 brand.²

4 14. Since the outbreak of the COVID-19 pandemic, the Zurich Insurance
5 Group has made wide-ranging representations. The following are some of the
6 many representations and promises that the Zurich Insurance Group has made, and
7 still makes as of the date of the filing of this lawsuit:

- 8 • “As a society, we are facing unprecedented challenges that are
9 immediate and will have long-lasting implications. At Zurich,
10 responding to these challenges goes to the heart of our purpose as a
11 business, and our promise to customers.”³
- 12 • “The spread of Coronavirus (Covid-19) is unprecedented and we
13 understand this is an incredibly difficult time for families and
14 businesses. We are here to help customers and businesses who are
15 affected by the impact of Covid-19 in these challenging times.”⁴
- 16 • “Customers buy insurance for times like these. They want to know
17 that there is a strong financial institution backing them up when they
18 are in need.”⁵
- 19 • “Our customers need us now more than ever. It’s a challenging time
20 for everyone, everywhere, both personally and professionally. How
21 we in the insurance sector react in a crisis can make all the difference
22
23

24 ² <https://www.zurich.com/en/about-us/a-global-insurer/our-brand>.

25 ³ <https://www.zurich.com/services/coronavirus-support>.

26 ⁴ <https://www.zurich.com/-/media/project/zurich/dotcom/services/docs/coronavirus-support/homeworking-during-covid-19.pdf>.

27 ⁵ Jack Howell, CEO, Zurich Asia Pacific, <https://insuranceasianews.com/zurichs-jack-howell-on-ma-covid-19-and-wfh/>.

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1 for the people we work with, especially the customers who trust and
2 depend on us.”⁶

- 3 • “David Henderson, chief human resources officer at Zurich, says that
4 employers’ duty of care is vital to the success of the social contract
5 and that companies who protect their workforce – physically,
6 mentally, financially – will be applauded in the post-Covid-19 era. He
7 calls this a ‘moment of truth’ for all businesses.”⁷

8 Unfortunately for AECOM, Zurich has breached the time-honored principle that
9 one’s “word is its bond.” In its “moment of truth,” Zurich has failed miserably.

10 **ZURICH’S KNOWLEDGE OF THE RISK OF PANDEMICS**

11 15. Zurich and other insurers were repeatedly warned over the years of
12 the potential impact of pandemics. In fact, there were many publicly available
13 reports about the risks of pandemics and what insurers should do—in the months
14 and years before the outbreak of the COVID-19 pandemic. For example, one
15 article noted in March 2018:

16 Even with today’s technology, a modern severe
17 pandemic would cause substantive direct financial losses
18 to the insurance community. In addition, indirect losses
19 would be severe, most notably on the asset side of the
20 balance sheet.⁸

21 16. One insurance industry repository shows the proverbial “tip of the
22 iceberg” about how much information was available to FFIC and other insurers
23 regarding the risk of pandemics. The Insurance Library Association of Boston,
24

25 ⁶ <https://www.zurichna.com/knowledge/articles/2020/06/covid-19s-business-impact-6-ideas-for-insurance-brokers>.

26 ⁷ <https://www.zurich.com/en/knowledge/topics/workforce-protection/building-a-better-social-contract>.

27 ⁸ “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” *AIR* (Mar. 29,
28 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

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1 founded in 1887, describes itself as “the leading resource for and provider of
2 literature, information services, and quality professional education for the
3 insurance industry and related interests.”⁹ The Association states on its website:

4 The past 20 years [have] seen the rise of a number of
5 pandemics. Slate recently published an article on what
6 has been learned about treating them in that time. We
7 thought it might be apt for us to take a look back and see
8 what the insurance industry has learned as well.¹⁰

9 17. The Association lists more than 20 articles, reports, and white papers
10 available to insurers from early 2007 through 2018. One white paper warned in
11 2009 of a pandemic’s consequences to the insurance industry:

12 It is highly unlikely that the insurance industry would
13 have the financial reserves to meet the worldwide claims
14 arising out of a pandemic of this size.¹¹

15 18. Zurich also has known, or should have known, for decades that its
16 policies could be held to cover losses from the presence of a hazardous substance,
17 such as a virus inside buildings or because a building could not be used for its
18 intended purposes or function. As Zurich has known, or should have known, for
19 decades many courts have held that the presence of a hazardous substance in
20 property, including the airspace inside buildings, constitutes property damage and
21 that there may be “direct physical loss” to property even if the property is not
22 physically damaged. As Zurich has known, or should have known, the many
23 decisions include the following:

24
25

26 ⁹ <http://insurancelibrary.org/about-us/>.

27 ¹⁰ <http://insurancelibrary.org/pandemics-and-insurance/>.

28 ¹¹ Allan Manning, *White Paper on Infectious Disease Cover* (updated 2009),
http://www.lmigroup.com/Documents/Articles/White%20Paper%20on%20Infectious%20Disease%20Cover.pdf?mc_cid=f0cee24803&mc_eid=41023ebc2c.

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- 1 • *AIU Insurance Co. v. Superior Court*, 51 Cal. 3d 807, 842 (1990):
2 “contamination of the environment satisfies” the requirement of
3 property damage.
- 4 • *Aetna Casualty & Surety Co. v. Pintlar Co.*, 1948 F.2d 1507, 1514
5 (9th Cir. 1981): “The insurers further concede that contamination of
6 the soil and water by hazardous substances constitutes injury to
7 property And an ordinary person would find that the
8 environmental contamination alleged . . . falls within the plain mean
9 of ‘property damage’ as that term is used in policies.”
- 10 • *Arbeiter v. Cambridge Mut. Fire Ins. Co.*, 1996 WL 1250616, at *2
11 (Mass. Super. Ct. Mar. 15, 1996): presence of oil fumes in building
12 constituted “physical loss” to building.
- 13 • *Essex Ins. Co. v. BloomSouth Flooring Corp.*, 562 F.2d 399, 406 (1st
14 Cir. 2009): odor from carpet and adhesive “can constitute physical
15 injury to property.”
- 16 • *Farmers Ins. Co. v. Trutanich*, 123 Or. App. 6, 9-11 (1993): “[T]he
17 odor produced by the methamphetamine lab had infiltrated the house.
18 The cost of removing the odor is a direct physical loss.”
- 19 • *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co.*, 2014 WL
20 6675934 (D.N.J. Nov. 25, 2014): closure of facility because of
21 accidentally released ammonia; while “structural alteration provides
22 the most obvious sign of physical damage, . . . property can sustain
23 physical loss or damage without experiencing structural alteration.”
- 24 • *Matzner v. Seacoast Ins. Co.*, 1998 WL 566658 (Mass. Super. Ct.
25 Aug. 12, 1998): building with unsafe levels of carbon monoxide
26 sustained direct physical loss.
- 27 • *Mellin v. N. Sec. Ins. Co.*, 167 N.H. 544, 550-51 (2015): cat urine
28 odor inside condominium constitutes direct physical loss; “a property

- 1 policy insures ‘physical loss changes to the insured property, but also
 2 changes that are perceived by a sense of smell’ and ‘may exist in the
 3 absence of structural damage to the insured property.’”
- 4 • *Oregon Shakespeare Festival Ass’n v. Great Am. Ins. Co.*, 2016 WL
 5 3267247, at *9 (D. Ore. June 7, 2016): “smoke infiltration in theatre
 6 caused direct property loss or damage by causing the property to be
 7 uninhabitable and unusable for its intended purpose.”
 - 8 • *Port Authority of New York & New Jersey v. Affiliated FM Ins. Co.*,
 9 311 F.3d 226, 236 (3d Cir. 2002): property sustained a direct
 10 physical loss because it was rendered uninhabitable by the presence of
 11 asbestos fibers.
 - 12 • *Sentinel Mgt. Co. v. Aetna Cas. & Sur. Co.*, 1999 WL 540466, at *7
 13 (Minn. Ct. App. July 27, 1999): “If rental property is contaminated
 14 by asbestos fibers and presents a health hazard to tenants, its function
 15 is seriously impaired.”
 - 16 • *Sentinel Mgt. Co. v. New Hampshire Ins. Co.*, 563 N.W.2d 296, 300
 17 (Minn. Ct. App. 1997): “Although asbestos contamination does not
 18 result in tangible injury to the physical structure of a building, a
 19 building’s function may be seriously impaired or destroyed and the
 20 property rendered useless by the presence of contaminants. . . . Under
 21 these circumstances, we must conclude that contamination by
 22 asbestos may constitute a direct, physical loss to property under an
 23 all-risk insurance policy.”
 - 24 • *Western Fire Ins. Co. v. First Presbyterian Church*, 165 Colo. 34, 39-
 25 40 (1968): direct physical loss when gasoline contaminated church
 26 building making it dangerous to use.

27 19. Because Zurich long has been licensed to sell insurance to California
 28 insureds, it has known, or should have known, that a California Court of Appeal

1 addressed in 1962—59 years ago—the question of whether a property insurance
 2 policy could cover loss or damage to a structure that had no physical damage or
 3 alteration. In *Hughes v. Potomac Insurance Co.*, 199 Cal. App. 2d 239 (1962), the
 4 insureds’ house had been left partially overhanging a cliff after landslide. The
 5 house suffered no physical damage. However, the court rejected the insurer’s
 6 argument that there was no “direct physical loss.” The court explained why, and
 7 what an insurer should do if it did not want to cover such losses:

8 Despite the fact that a “dwelling building” might be
 9 rendered completely useless to its owners, [the insurer]
 10 would deny that any loss or damage had occurred unless
 11 some tangible injury to the physical structure itself could
 12 be detected. Common sense requires that a policy should
 13 not be so interpreted in the absence of a provision
 14 specifically limiting coverage in this manner. [The
 15 insureds] correctly point out that a “dwelling” or
 16 “dwelling building” connotes a place fit for occupancy, a
 17 safe place in which to dwell or live. It goes without
 18 question that [the insureds’] “dwelling building” suffered
 19 real and severe damage when the soil beneath it slid
 20 away and left it overhanging a 30-foot cliff. Until such
 21 damage was repaired and the land beneath the building
 22 stabilized, the structure could scarcely be considered a
 23 “dwelling building” in the sense that rational persons
 24 would be content to reside there.¹²

25 20. Thus, Zurich has known, or should have known, for decades that its
 26 policies would be called upon to pay perhaps hundreds of millions of dollars or
 27

28 ¹² *Id.* at 248-49.

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1 more to their insureds and, specifically knows that it could be obligated under its
2 policies to pay tens of millions of dollars to AECOM for losses associated with
3 viruses and pandemics.

4 21. Given the potential liability that insurers, including Zurich, faced
5 under their policies for losses from pandemics, shortly after the outbreak of SARS
6 in 2003, the insurance industry undertook to draft exclusions applicable to losses
7 from viruses and bacteria. In 2006, the Insurance Services Office, the insurance
8 industry’s drafting organization, considered the need to draft an exclusion that
9 would bar coverage for losses caused by a virus.¹³

10 22. On July 6, 2006, ISO prepared a circular that included a standard
11 exclusion of loss due to viruses and bacteria as part of its filing with state
12 insurance regulators.¹⁴ In that circular, it noted that examples of “viral and
13 bacterial contaminants are rotavirus, SARS, [and] influenza,” observing, “[t]he
14 universe of disease-causing organisms is always in evolution.”¹⁵ ISO recognized
15 that viruses could cause property damage, stating:

16 Disease-causing agents may render a product impure
17 (change its quality or substance), or enable the spread of
18 disease by their presence on interior building surfaces or
19 the surfaces of personal property. When disease-causing
20 viral or bacterial contamination occurs, potential claims
21

22 ¹³ “ISO is a non-profit trade association that provides rating, statistical, and
23 actuarial policy forms and related drafting services to approximately 3,000
24 nationwide property or casualty insurers. Policy forms developed by ISO are
25 approved by its constituent insurance carriers and then submitted to state agencies
for review. Most carriers use the basic ISO forms, at least as the starting point for
their general liability policies.” *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10
Cal. 4th 645,671 n.13 (1995).

26 ¹⁴ See ISO Circular, “New Endorsements Filed to Address Exclusion of Loss Due
27 to Virus or Bacteria,” (July 6, 2006),
[https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-
CF-2006-175-Virus.pdf](https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf).

28 ¹⁵ *Id.*

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1 involve the cost of replacement of property (for example,
2 the milk), cost of decontamination (for example, interior
3 building surfaces), and business interruption (time
4 element) losses.¹⁶

5 23. ISO introduced a standard-form exclusion that it entitled “Exclusion
6 Of Loss Due To Virus Or Bacteria” (form CP 01 40 07 06 and, in certain
7 jurisdictions, form CP 01 75 07 06).

8 24. Thus, Zurich has had a “virus or bacteria” exclusion since 2006 that is
9 approved for use throughout the United States. As one recent article succinctly
10 stated, “Insurers knew the damage a viral pandemic could wreak on businesses.
11 So they excluded coverage.”¹⁷

12 25. However, even though Zurich knew it could be liable for losses from
13 viruses and pandemics if it did not include an appropriate exclusion in its policies,
14 Zurich sold the policies here to AECOM agreeing to delete an exclusion that it
15 otherwise might argue applied to limit coverage available for losses involving a
16 virus. Specifically, while the policy form that Zurich included in the policies
17 contained an ambiguous Zurich form exclusion that included a “virus [or] disease
18 causing or illness causing agent” as an excluded “contaminant,” Zurich included
19 an endorsement deleting the exclusion’s reference to a “virus [or] disease causing
20 or illness causing agent.” By doing so, Zurich confirmed its intent to cover losses
21 caused by a virus or other disease-causing agent. Therefore, Zurich cannot be
22 surprised that AECOM asked it to pay for AECOM’s losses.

23
24
25 _____
¹⁶ *Id.*

26 ¹⁷ Todd Frankel, “Insurers knew the damage a viral pandemic could wreak on
27 businesses. So they excluded coverage,” *Washington Post* (April 2, 2020). In the
28 early wave of coverage litigation over losses associated with the pandemic, many
 insureds and insurers are fighting over whether the standard-form exclusion
 actually bars coverage, in whole or in part, for those losses. Only time will tell.

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THE ZURICH EDGE GLOBAL POLICIES

1
2 26. Zurich sold AECOM Zurich EDGE Global Policy, No. PPR6299216-
3 00 for the period of April 1, 2019, to April 1, 2020 and Zurich Edge Global Policy,
4 No. PPR6299216-01 for the period April 1, 2020, to April 1, 2021 (the “Policies”).
5 True and correct copies of the Policies are attached hereto as Exhibits A and B and
6 incorporated herein by reference.

7 27. Zurich introduced its EDGE policies in 2008. When it did so, it
8 stated:

9 “We listened to our customers and developed a policy that
10 meets their needs,” said Mario Vitale, CEO of Zurich’s
11 Global Corporate in North America (GCiNA) business
12 unit. “This new policy gives them higher limits, broader
13 coverage and greater flexibility. The Zurich Edge
14 dramatically enhances our ability to serve customers in
15 this important line of business and offers significant
16 advantages for global property programs and global
17 property fronting arrangements.

18 “In addition to being globally compliant, the policy also
19 has the advantage of being offered by Zurich, which is
20 often recognized for offering one of the broadest and most
21 diverse portfolios of products and services in the world,”
22 Vitale said. “The Zurich Edge policy is clearly written
23 with all limits, sub-limits and other critical coverage
24 issues incorporated within the policy declarations and is
25 supported by Zurich’s global network of risk engineering
26 and claims professionals.”¹⁸

27
28 ¹⁸[http://www.zurichservices.com/zus/zna_config.nsf/pages/9123da88864cd81485257433006ed710!OpenDocument&Click=.](http://www.zurichservices.com/zus/zna_config.nsf/pages/9123da88864cd81485257433006ed710!OpenDocument&Click=)

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1 28. Each of the Policies provides \$250,000,000 of insurance, with
2 sublimits for various perils. Unless the Policies otherwise state, these limits of
3 liability apply separately to each **Occurrence**.

4 29. The Policies insure AECOM’s “interest in buildings (or structures)”
5 and “Personal Property.” Policies ¶¶ 3.01.01 & 3.01.02.

6 30. The Policies state in part:

7 This Policy excludes the following unless it results from
8 direct physical loss or damage not excluded by this
9 Policy.

10 **Contamination**, and any cost due to **Contamination**
11 including the inability to use or occupy property or any
12 cost of making property safe or suitable for use or
13 occupancy, except as provided by the Radioactive
14 Contamination Coverage of this Policy.

15 *Id.* ¶¶ 3.03.01 & 3.03.01.01.

16 31. The Policies’ standard form defines **Contamination (Contaminated)** as
17 Any condition of property due to the actual presence of
18 any foreign substance, impurity, pollutant, hazardous
19 material, poison, toxin, pathogen or pathogenic
20 organism, bacteria, *virus, disease causing or illness*
21 *causing agent*, **Fungus**, mold or mildew.

22 *Id.* ¶ 7.09 (emphasis added). However, Zurich agreed in selling the Policies to
23 delete “virus [and] disease causing or illness causing agent” from the definition
24 and thus from what the Policies excluded. Specifically, Zurich agreed to replace
25 the standard-form definition of excluded **Contamination (Contaminated)** by
26 narrowing the scope of the definition of **Contamination (Contaminated)**. Zurich
27 changed the definition of **Contamination (Contaminated)** to:
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1 Any condition of property due to the actual presence of
2 any **Contaminant(s)**.

3 *Id.*, Amendatory Endorsement – Louisiana, EDGE-219-C (01/18) ¶ 11. Zurich
4 then defined **Contaminants** not to include “virus, disease causing or illness
5 causing agent.” Specifically, Zurich defined **Contaminants** as

6 Any solid, liquid, gaseous, thermal or other irritant,
7 including but not limited to smoke, vapor, soot, fumes,
8 acids, alkalis, chemicals, waste (including materials to be
9 recycled, reconditioned or reclaimed), other hazardous
10 substances, **Fungus** or **Spores**.

11 *Id.*, Amendatory Endorsement – Louisiana, EDGE-219-C (01/18) ¶ 12. Therefore,
12 while the **Contamination (Contaminated)** exclusion in the policy form included
13 “virus, disease causing or illness causing agent,” Zurich amended the Policies to
14 remove viruses and disease-causing or illness-causing agents from the scope of the
15 exclusion.

16 32. Furthermore, while the Amendatory Endorsement referenced
17 “Louisiana” in its title, unlike other amendatory endorsements in the Policies, this
18 endorsement did not purport to limit its changes to just risks in Louisiana.
19 Therefore, the endorsement plainly, clearly, and reasonably interpreted is not
20 limited in geographic scope to only risks and losses in Louisiana.

21 33. Even if Zurich had not removed “virus, disease causing or illness
22 causing agent” from the scope of the exclusion, the exclusion still would not apply
23 because the efficient proximate (predominant) causes of AECOM’s losses cannot
24 be ascribed to “contamination” within the scope of the exclusion and because there
25 are other insured causes of AECOM’s loss. Additionally, the exclusion would not
26 apply to bar coverage because it is a hidden virus exclusion, rather than one that is
27 conspicuous, plain, and clear, and because “contamination” and “contaminant” are
28 not reasonably understood to include a virus or disease.

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1 34. The Policies have a separate section providing AECOM with “Time
2 Element” insurance. Its “Loss Insured” provision states in relevant part:

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

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

23 *Id.* ¶ 4.01.01. A **Covered Cause of Loss** is defined as “All risks of direct physical
24 loss of or damage from any cause unless excluded.” *Id.* ¶ 7.11.

25 35. The Policies’ “Time Element” section also insures “Extra Expense,”
26 obligating Zurich to pay for

27 the reasonable and necessary Extra Expenses incurred by
28 the Insured, during the Period of Liability, to resume and

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1 continue as nearly as practicable the Insured’s normal
2 business activities that otherwise would be necessarily
3 suspended, due to direct physical loss of or damage
4 caused by a **Covered Cause of Loss** to Property of the
5 type insurable under this policy at a **Location**.

6 *Id.* ¶ 4.02.03.

7 36. The Policies also provide AECOM with “Special Coverages &
8 Described Causes of Loss. *See id.* § V.

9 37. The “Special Coverages” include insurance of “Civil or Military
10 Authority” losses

11 resulting from the necessary **Suspension** of the Insured’s
12 business activities at an Insured Location if the
13 **Suspension** is caused by order of civil or military
14 authority that prohibits access to the **Location**. That
15 order must result from a civil authority’s response to
16 direct physical loss of or damage caused by a **Covered**
17 **Cause of Loss** to property not owned, occupied, leased
18 or rented by the Insured or insured under this Policy and
19 located within [five miles] of the Insured’s Location

20 *Id.* ¶ 5.02.03.

21 38. The “Special Coverages” include insurance for “Contingent Time
22 Element” losses that AECOM suffers because of “direct physical loss of or
23 damage to” third-party property. *Id.* ¶ 5.02.05.

24 39. The “Special Coverages” include “Ingress/Egress” losses that
25 AECOM suffers when

26 ingress or egress to [an] Insured Location by [its]
27 suppliers, customers or employees is prevented by
28 physical obstruction due to direct physical loss of or

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1 damaged caused by a **Covered Cause of Loss** to
2 property not owned, occupied, leased or rented by
3 [AECOM] or insured under this Policy and located
4 within [5 miles] of the Insured Location

5 *Id.* ¶ 5.02.15.

6 40. The “Special Coverages” include insurance for “Protection and
7 Preservation of Property.” Specifically, the Policies state that they cover
8 [t]he reasonable and necessary costs incurred for actions
9 to temporarily protect or preserve Covered Property;
10 provided such actions are necessary due to actual or
11 imminent physical loss or damage due to a **Covered**
12 **Cause of Loss** to such Covered Property; and [t]he
13 Gross Earnings loss or Gross Profit loss sustained by the
14 Insured for a period of time not to exceed [48 hours]
15 prior to and after the Insured first taking reasonable
16 action for the temporary protection and preservation of
17 Covered Property.

18 *Id.* ¶¶ 5.02.23.01 & 5.02.23.02.

19 41. The Policies provide a range of other coverages for losses, which also
20 may apply.

21 42. None of the Policies’ exclusions bar coverage for AECOM’s losses
22 because the efficient proximate causes of those losses are covered under the terms
23 of the “all-risk” policy and are not conspicuously, plainly, and clearly excluded.

24 **ZURICH’S BREACHES AND WRONGFUL CONDUCT**

25 43. In December 2019, SARS-CoV-2 and COVID-19 broke out in
26 Wuhan, China. Since then, SARS-CoV-2 and COVID-19 have spread throughout
27 the world, prompting the World Health Organization to declare a global pandemic.

28 44. As explained by the World Health Organization,

1 People can catch COVID-19 from others who have the
 2 [SARS-CoV-2] virus. The disease can spread from
 3 person to person through small droplets from the nose or
 4 mouth which are spread when a person with COVID-19
 5 coughs or exhales. These droplets land on objects and
 6 surfaces around the person. Other people then catch
 7 COVID-19 by touching these objects or surfaces, then
 8 touching their eyes, nose or mouth. People can also catch
 9 COVID-19 if they breathe in droplets from a person with
 10 COVID-19 who coughs out or exhales droplets.¹⁹

11 45. The spread of SARS-CoV-2 is insidious because it can be readily
 12 transmitted by asymptomatic individuals—and approximately 40% of all
 13 individuals who have COVID-19 are asymptomatic.²⁰ Furthermore, pre-
 14 symptomatic persons carry the greatest viral-load (i.e., the quantity of virus in an
 15 individual's system) among all infected persons, meaning their ability to transmit
 16 SARS-CoV-2 is greater than that of symptomatic persons.²¹

17 46. Aerosolized droplets exhaled by normal breathing can travel
 18 significant distances and stay suspended in air and infective for 16 hours, until
 19 gravity ultimately forces them to the nearest surface.²² Studies have reported that
 20

21 ¹⁹ See <https://www.who.int/news-room/q-a-detail/q-acoronaviruses>.

22 ²⁰ Ellen Cranley, *40% of people infected with COVID-19 are asymptomatic, a new*
 23 *CDC estimate says*, Business Insider (Jul 12, 2020),
 24 [https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7)
 25 [asymptomatic-2020-7](https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7).

24 ²¹ Xi He, *et al.*, *Temporal dynamics in viral shedding and transmissibility of*
 25 *COVID-19*, 26 NATURE MED. 672, 674 (Apr. 15, 2020),
 26 <https://www.nature.com/articles/s41591-020-0869-5> (“We detected high viral
 27 loads soon after symptom onset, which then gradually decreased towards the
 28 detection limit at about day 21. . . . Our analysis suggests that viral shedding may
 begin 5 to 6 days before the appearance of the first symptoms. After symptom
 onset, viral loads decreased monotonically, consistent with two recent studies.”)

28 ²² See Leslie Tate, *Virus Survives In Air For Hours*, Tulanian (Fall 2020),
<https://tulanian.tulane.edu/fall-2020/virus-survives-in-air-for-hours>.

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1 SARS-CoV-2 can remain on surfaces for at least 28 days.²³ These droplets thus
2 physically alter the air and airspace in which they are present and the surfaces to
3 which they attach. By doing so, they also render property unusable for its intended
4 purpose and function and require further physical alterations, such as installation
5 of physical barriers restricting the movement of the aerosolized droplets.

6 47. Since January 1, 2020, and as of the date of the filing of this
7 Complaint, there have been more than 89,000,000 confirmed cases of COVID-19
8 throughout the world, more than 1,900,000 of which have resulted in deaths.²⁴
9 Moreover, due in part to the initial absence of available tests, it is believed that the
10 true number of coronavirus cases is significantly higher than the reported numbers
11 might suggest.²⁵

12 48. Since the outbreak of SARS-Cov-2 and COVID-19, and in response
13 thereto, civil authorities throughout the world issued “stay-at-home” and “shelter
14 in place” orders, travel restrictions, quarantines, and other orders, including orders
15 requiring the suspension of non-essential business operations.

16 49. AECOM has locations, offices, operations, and projects around the
17 world. To date, more than 500 AECOM employees throughout the world have
18 tested positive for COVID-19. Thus, there is no doubt that SARS-CoV-2 was
19 present, or at least potentially present, at many of AECOM’s locations, offices,
20 operations, and projects that remained open throughout the world.

21

22

23 ²³ See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common*
24 *surfaces, research says* (Oct. 12, 2020), [https://www.cnbc.com/2020/10/12/virus-](https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html)
25 [that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html](https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html);
26 Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles, & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17
27 *Virology J.*, Art. No. 145 (2020),
28 <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

23 ²⁴ See <https://covid19.who.int/>.

24 ²⁵ See [https://www.nbcnews.com/health/health-news/how-many-people-have-had-](https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681)
25 [coronavirus-no-symptoms-n1187681](https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681).

1 50. Though microscopic, SARS-CoV-2—like all viruses—is a physical
 2 substance. The virus is highly contagious and mobile. The SARS-CoV-2 virus
 3 spreads from person to person primarily through fine aerosolized droplets
 4 containing the virus. These aerosolized droplets are expelled into the air when
 5 infected individuals breathe, talk, sing, cough, or sneeze. Their presence in the air
 6 and airspace constitutes a physical alteration to the air and airspace, constituting
 7 physical damage. Once released, these droplets can physically rest and remain on
 8 surfaces of objects or materials for at least 28 days. Human contact with the air,
 9 airspace, and surfaces can lead to transmission of the virus, making it very
 10 dangerous for individuals to come in contact with property contaminated by the
 11 SARS-CoV-2 virus. This is a particular concern for places of employment and
 12 places open to the public, which contain numerous common touchpoints and areas,
 13 such as door handles and bathrooms, with surfaces that are used by multiple
 14 people every day.

15 51. Aerosolized droplets expelled by individuals with COVID-19 also
 16 can linger suspended in the airspace of buildings for up to 16 hours. Scientists
 17 have likened the ubiquitous aerosolized droplets of the virus to smoke, present in
 18 the air long after the source of its dissemination has gone.²⁶ Thus, entering a
 19 building or other location where the SARS-CoV-2 virus is physically present in
 20 the air poses an imminent and severe risk to human health.

21 52. Because SARS-CoV-2 attaches to surfaces, lingers in the air and
 22 airspace of buildings, and can move through HVAC systems to spread throughout
 23 buildings, the presence of SARS-CoV-2 causes a distinct, demonstrable, physical
 24 alteration to property, thus causing “direct physical loss of or damage to property”
 25 as that phrase is used in the Policies.²⁷ Just like invisible pollution in water *alters*

26 ²⁶ See “Airborne Transmission of SARS-CoV-2,” *Science* (Oct. 16, 2020),
 27 available at <https://science.sciencemag.org/content/370/6514/303.2>.

28 ²⁷ See Jianyun Lu & Zhicong Yang, *COVID-19 outbreak associated with air*

1 the water, the presence of the SARS-CoV-2 virus *alters* the air and airspace in
 2 which it is found and the property on which it lands. In fact, the presence of
 3 SARS-CoV-2-causes a physical transformation of the air and surfaces. It changes
 4 the air and the surfaces into dangerous transmission mechanisms for SARS-CoV-
 5 2, rendering the affected property unsafe, unfit and uninhabitable for ordinary
 6 functional use.

7 53. SARS-CoV-2 spreads by property- or surface-to-person transmission
 8 when an uninfected person touches an object or surface that has come into contact
 9 with the discharges of an infected person, and the uninfected person then touches
 10 their eyes, nose, or mouth.²⁸ Once surfaces are physically affected by SARS-CoV-
 11 2, they are referred to as fomites.²⁹ Fomites consist of both porous and nonporous
 12 surfaces or objects that can become infected with a virus and serve as vehicles of
 13 transmission.³⁰

14 54. Because COVID-19 is a global pandemic and SARS-CoV-2 is
 15 statistically certain to be carried by a number of individuals who visit AECOM's
 16 locations, SARS-CoV-2 is continually reintroduced to the air, airspace, and
 17 surfaces of AECOM's properties and the property of third parties.
 18

19 _____
 20 *conditioning in restaurant, Guangzhou, China, 2020*, 26 Emerging Infectious
 21 Diseases 11 (Sep. 11, 2020), https://wwwnc.cdc.gov/eid/article/26/11/20-3774_article#suggestedcitation (“We conclude that the air conditioner prompted
 22 transmission of SARS-CoV-2; the customers in the airflow were at high risk for
 23 infection with SARS-CoV-2 in the poorly ventilated environment.”)

24 ²⁸ Zeynep Tufekci, *We Need to Talk About Ventilation*, The Atlantic (July 30,
 25 2020), [https://www.theatlantic.com/health/archive/2020/07/why-arent-we-talking-
 26 more-about-airborne-transmission/614737/](https://www.theatlantic.com/health/archive/2020/07/why-arent-we-talking-more-about-airborne-transmission/614737/); National Institutes of Health, *New
 27 coronavirus stable for hours on surfaces* (Mar. 17, 2020),
 28 [https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-
 surfaces](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces); Neeltje van Doremalen, *et al.*, *Aerosol and Surface Stability of SARS-
 CoV-2 as Compared with SARS-CoV-1*, New England Journal of Medicine (2020),
<https://www.nejm.org/doi/full/10.1056/nejmc2004973>.

²⁹ Stephanie A. Boone and Charles P. Gerba, *Significance of Fomites in the Spread
 of Respiratory and Enteric Viral Disease*, American Society for Microbiology
 (Mar. 13, 2007) (<https://aem.asm.org/content/73/6/1687>).

³⁰ *Id.*

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1 55. As SARS-CoV-2 and COVID-19 spread around the world, AECOM
2 suffered loss and damage covered by the Policies. Indeed, SARS-CoV-2 and the
3 resulting government closure orders physically altered and impaired the
4 functioning of the tangible, material dimensions of AECOM’s property. This is
5 especially true when, as here, property has been rendered partially or wholly
6 nonfunctional for its intended purpose as a result of the presence of SARS-CoV-2,
7 the pandemic, and the government closure orders, and when AECOM has had to
8 take, and will need to continue to take, steps that involve physical alterations to its
9 insured locations, including installation of transmission-restricting barriers and
10 devices and redesigns to accomplish physical spacing and distancing.

11 56. AECOM timely notified Zurich and, over the course of several
12 months, provided Zurich with information about its losses.

13 57. On May 6, 2020, AECOM representatives spoke with John Harmon,
14 Zurich’s Supervisor International Property Claims and its designated
15 representative, providing additional information about AECOM’s losses.

16 58. On May 7, 2020, Mr. Harmon sent an e-mail to AECOM, providing a
17 “a recap of the information shared” by AECOM, summarizing it in part as follows:

- 18 • AECOM provides multinational design and consulting engineering
19 services to major clients globally.
- 20 • AECOM has a total of 800 offices with 350 in North America and
21 450 outside of North America
- 22 • Insured is claiming revenue loss throughout the global network
23 including Asia, Europe and the Middle East. Additionally, several
24 hundred projects were shut down.
- 25 • Some offices were closed (China and Hong Kong). In some offices,
26 services were deemed essential and did not close. Whether offices
27 were closed depends on the circumstances of each office. Some
28 offices are working remotely.

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- 1 • More than 100 employees tested positive at various offices globally
2 for COVID-19.
- 3 • Insured counsel representative stated that there was no physical
4 damage in regards to structural damage to any of the buildings.
5 However, counsel stated that physical damage was quite evident with
6 presence of the virus.
- 7 • Insured is gathering the information and will submit a detailed claim
8 submission including a spreadsheet of all locations impacted in the
9 upcoming weeks/months.

10 59. On May 11, 2020, AECOM responded, correcting certain aspects of
11 Mr. Harmon's "recap" as follows:

- 12 • AECOM provides multinational design and consulting engineering
13 services to major clients globally. ~~AECOM also provides real estate~~
14 ~~development, construction and construction management~~
15 ~~services. Please reference aecom.com for a full range of services.~~
- 16 • AECOM has ~~a total of under~~ 800 offices with ~~350~~ 343 in the US,
17 Puerto Rico and USVI ~~North America~~ and ~~450~~ 436 non-US locations
18 ~~outside of North America~~
- 19 • Insured is claiming revenue loss ~~throughout the~~ from its global
20 ~~network throughout the Americas, EMEA and APAC regions. Asia,~~
21 ~~Europe and the Middle East.~~ Additionally, ~~several~~ over 650 projects
22 ~~have been were shut down~~ were closed as of last week. ~~This does not~~
23 ~~include prior closures that have been reopened.~~
- 24 • Some offices were closed (China and Hong Kong ~~are two examples,~~
25 ~~but the full scope of closures is being compiled~~). In some offices,
26 services were deemed essential and did not close. Whether offices
27 were closed depends on the circumstances of each office. Some
28 offices are working remotely.

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- 1 • **As of last week**, more than 100 employees tested positive at various
- 2 offices globally for COVID-19.
- 3 • Insured counsel representative stated that there was no physical
- 4 damage **in the sense of** structural damage to any of the buildings.
- 5 However, counsel stated that physical **loss or** damage was quite
- 6 evident with presence of the virus.
- 7 • Insured is gathering the information and will submit a detailed claim
- 8 submission including a spreadsheet of all locations impacted in the
- 9 upcoming weeks/months. **AECOM will be submitting claims for**
- 10 **locations as they become available.**

11 60. AECOM and Zurich continued to communicate thereafter about
12 AECOM's claim.

13 61. On August 18, 2020, AECOM's representatives engaged in a WebEx
14 meeting with Mr. Harmon and Zurich's coverage counsel. During that meeting,
15 AECOM presented Zurich with "**AECOM – Mainland China Offices Interim**
16 **Time Element Insurance Claim Resulting from Lockdowns in China Caused by**
17 **COVID.**" AECOM also shared with Zurich a written copy of its presentation.

18 62. On August 23, 2020, Mr. Harmon acknowledged receipt of the
19 presentation and posed a few questions for clarification. He also stated:

20 Zurich maintains its position that the presence of
21 COVID-19 on or in a building or on surfaces does not
22 constitute physical loss or damage and will advise in the
23 official coverage determination communication.

24 63. By September AECOM still had not received Zurich's promised
25 "official coverage determination communication." Therefore, AECOM sent an e-
26 mail to Mr. Harmon stating, in relevant part:

27 We wanted to circle back to your previous questions:
28

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1 1) Please note that there are other countries and regions
2 where AECOM’s businesses have been affected by
3 COVID besides China. At this time, we are still
4 collecting and reviewing the impact. We will be
5 submitting these losses in addition to the China/HK
6 claim.

7 2) Regarding the infection rate, this is based on internal
8 reporting, not the CDC’s 10% infection modeling rate.

9 3) Finally, physical alterations were and continue to be
10 undertaken and AECOM intends to submit the losses
11 associated with such as part of its claim.

12 Please advise the timing of Zurich’s official coverage
13 determination, and whether you have any other
14 questions. Thank you.

15 64. On October 13, 2020, Zurich finally provided AECOM with its
16 coverage position. Mr. Harmon stated that Zurich has “completed review of this
17 file and conclude that occurrence is not covered under the global program, both
18 local and master policies. We are therefore proceeding to deny coverage at this
19 time.” Specifically, Mr. Harmon stated:

20 [T]he Policy does not provide coverage for AECOM’s
21 claim. In short, AECOM’s claim . . . does not establish a
22 physical loss or damage of the type insured by the
23 Policy. The Policy, under the Property Damage coverage
24 part, insures risks of direct physical loss or damage
25 which is not excluded by the Policy. AECOM’s claim,
26 which is based on slow-downs or closures due to actual
27 or suspected spread of the SARS-CoV-2 virus, which
28 causes the disease COVID-19, or governmental orders

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1 issued to prevent the spread of COVID-19, is not due to
2 direct physical loss or damage.

3 65. Mr. Harmon further stated:

4 In addition, if or to the extent AECOM claims that the
5 presence of the SARS-CoV-2 virus on or in tangible
6 property constitutes contamination of that property,
7 AECOM's claim would in any event be excluded by the
8 Contamination exclusion in the Policy, which
9 specifically excludes any condition of property due to the
10 actual presence of any virus, or other disease causing or
11 illness causing agent.

12 66. AECOM is entitled to the maximum amounts of coverage needed to
13 indemnify it for its losses for the maximum periods of time provided by and under
14 the Policies.

15 67. To the extent not waived or otherwise excused, AECOM has
16 complied with the provisions contained in the Policies. Therefore, AECOM is
17 entitled, on behalf of itself and all other insureds, to all benefits of insurance
18 provided by the Policies.

19 68. As a direct result of Zurich's breaches, AECOM has suffered and will
20 continue to suffer millions of dollars in damages. Zurich is liable for these
21 damages.

22 **FIRST CAUSE OF ACTION**

23 **(Breach of Contract—2019-20 Policy)**

24 69. AECOM realleges and incorporates by reference paragraphs 1
25 through 68 above.

26 70. By acting as alleged above, by denying coverage, and by failing to
27 agree to pay, let alone pay AECOM for the insured losses, Zurich breached its
28 duties under the 2019-20 Policy.

1 71. As a direct and proximate result of Zurich’s breaches, AECOM has
2 sustained, and will continue to sustain, damages in an amount to be proven in
3 excess of this Court’s jurisdictional limit. AECOM will seek leave to amend this
4 Complaint once it ascertains the full extent of its damages.

5 **SECOND CAUSE OF ACTION**

6 **(Anticipatory Breach of Contract—2019-20 Policy)**

7 72. AECOM realleges and incorporates by reference paragraphs 1
8 through 68 above.

9 73. By acting as alleged above, by stating that “Zurich maintains its
10 position that the presence of COVID-19 on or in a building or on surfaces does not
11 constitute physical loss or damage,” and by failing to agree that it will pay for any
12 part of AECOM’s losses, Zurich has clearly stated that it will not meet or perform
13 its obligations under the 2019-20 Policy and will not pay for AECOM’s losses.
14 Zurich has done so even though AECOM has fully cooperated with Zurich in its
15 investigation, fully answered the questions posed by Zurich, and AECOM has
16 indicated that it is willing to perform any obligations that it might have under the
17 2019-20 Policy to the extent not waived or excused. AECOM is, in fact, prepared
18 and ready to perform any such obligations.

19 74. Therefore, to the extent that any aspect of Zurich’s acts and omissions
20 is not deemed to constitute a breach of the 2019-20 Policy, they constitute an
21 anticipatory breach of the 2019-20 Policy.

22 75. As a direct and proximate result of Zurich’s acts and omissions,
23 AECOM has sustained, and will continue to sustain, damages in an amount to be
24 proven in excess of this Court’s jurisdictional limit. AECOM will seek leave to
25 amend this Complaint once it ascertains the full extent of its damages.
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THIRD CAUSE OF ACTION

(Anticipatory Breach of Contract—2020-21 Policy)

76. AECOM realleges and incorporates by reference paragraphs 1 through 68 above.

77. By acting as alleged above, by stating that “Zurich maintains its position that the presence of COVID-19 on or in a building or on surfaces does not constitute physical loss or damage,” and by failing to agree that it will pay for any part of AECOM’s losses under the 2019-20 Policy, Zurich has clearly stated that it will not meet or perform its obligations under the Policies and will not pay for AECOM’s losses. Zurich has done so even though AECOM has fully cooperated with Zurich in its investigation, fully answered the questions posed by Zurich, and AECOM has indicated that it is willing to perform any obligations that it might have under the Policies to the extent not waived or excused. AECOM is, in fact, prepared and ready to perform any such obligations.

78. AECOM is informed and believes that given Zurich’s denial of coverage under the 2019-20 Policy, Zurich will deny coverage for AECOM’s claim under the 2020-21 Policy and refuse to meet and perform its obligations under the 2020-21 Policy as well.

79. Therefore, Zurich’s acts and omissions constitute an anticipatory breach of the 2020-21 Policy.

80. As a direct and proximate result of Zurich’s acts and omissions, AECOM has sustained, and will continue to sustain, damages in an amount to be proven in excess of this Court’s jurisdictional limit. AECOM will seek leave to amend this Complaint once it ascertains the full extent of its damages.

FOURTH CAUSE OF ACTION

(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)

81. AECOM realleges and incorporates by reference herein each allegation contained in paragraphs 1 through 68, 70, 73, 74, 77, 78, and 79 above.

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1 82. Implied in the Policies is a covenant that Zurich would act in good
2 faith and deal fairly with AECOM, that Zurich would do nothing to interfere with
3 the rights of AECOM to receive the benefits due under the Policies, and that
4 Zurich would give at least the same level of consideration to AECOM’s interests
5 as it gives its own interests.

6 83. Zurich also had a duty under the Policies, the law, and insurance
7 industry custom, practice, and standards to honor the terms of insurance promised
8 under its Policies.

9 84. Instead of complying with these duties, Zurich acted in bad faith by,
10 among other things,

11 a. Adopting the position that “the presence of COVID-19 on or in
12 a building or on surfaces does not constitute physical loss or damage” in spite of
13 its prior knowledge of the risks of losses associated with pandemics, its knowledge
14 of court decisions recognizing that the presence of a hazardous substance in a
15 building or its airspace could constitute “direct loss of or damage to property,” its
16 failure to include the standard ISO “virus or bacteria exclusion,” its deletion of
17 “virus” from its definition of **Contaminants(Contaminated)**, and its failure to
18 consider, let alone meaningfully investigate, the possibility that perils other than a
19 conspicuously, plainly, and excluded peril may be the efficient proximate cause of
20 AECOM’s losses;

21 b. Unreasonably failing and refusing to honor its promises and
22 representations;

23 c. Putting its interests above that of its insured; and

24 d. Otherwise acting as alleged above.

25 85. In breach of the implied covenant of good faith and fair dealing,
26 Zurich committed the acts alleged above for the purpose of knowingly withholding
27 from AECOM the rights and benefits to which it is and was entitled under the
28 Policies.

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1 86. Zurich’s acts are inconsistent with the reasonable expectations of
2 AECOM, are contrary to established industry custom and practice, are contrary to
3 the express and implied terms of the Policies and constitute bad faith.

4 87. As a direct and proximate result of Zurich’s breach of the implied
5 covenant of good faith and fair dealing, AECOM has sustained, and continues to
6 sustain, damages in an amount in excess of this Court’s jurisdictional limit to be
7 proven at trial. Also, pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985),
8 AECOM is entitled to recover all attorneys’ fees that it has reasonably incurred,
9 and continues to incur, in its efforts to obtain the benefits due under the Policies
10 that Zurich wrongfully has withheld, and is withholding, in bad faith. AECOM is
11 entitled to interest thereon at the maximum legal rate. AECOM continues to suffer
12 damages because of Zurich’s bad faith and will seek to amend this Complaint once
13 it ascertains the full extent of its damages.

14 88. AECOM is informed and believes, and on that basis alleges, that
15 Zurich, acting through one or more of its officers, directors, or other corporate
16 employees with substantial independent and discretionary authority over
17 significant aspects of Zurich’s business, performed, authorized, and/or ratified the
18 bad faith conduct alleged above.

19 89. Zurich’s conduct is contemptible and has been done with a conscious
20 disregard of AECOM’s rights, constituting oppression, fraud, and/or malice.
21 Zurich has engaged in a series of acts designed to deny AECOM of the benefits
22 due under the Policies. Specifically, Zurich, by acting alleged above, consciously
23 disregarded AECOM’s rights and forced AECOM to incur substantial financial
24 losses, thereby inflicting substantial financial damage on AECOM. Zurich ignored
25 AECOM’s interests and concerns with the requisite intent to injure within the
26 meaning of California Civil Code section 3294. Therefore, AECOM is entitled to
27 recover punitive damages from Zurich in an amount sufficient to punish and make
28 an example of Zurich and to deter similar conduct in the future.

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FIFTH CAUSE OF ACTION

(Declaratory Relief)

90. AECOM realleges and incorporates by reference herein each allegation contains in paragraphs 1 through 68 above.

91. AECOM contends that it is entitled to coverage for its losses under the Policies and that its contentions stated above are correct.

92. AECOM is informed and believes, and on that basis alleges, that Zurich disputes AECOM’s contentions and contends that AECOM is not entitled to coverage under the Policies for any of its losses.

93. Therefore, an actual and justiciable controversy exists between AECOM and Zurich concerning the matters alleged herein.

94. AECOM seeks a judicial declaration by this Court in accord with its contentions and rejecting Zurich’s contentions and stating that AECOM’s losses are insured under the Policies.

95. A declaration is necessary at this time in order that the parties’ dispute may be resolved and that they may be aware of their prospective rights and duties.

PRAYER FOR RELIEF

WHEREFORE, AECOM prays for relief as follows:

ON THE FIRST CAUSE OF ACTION

1. For damages, plus interest, according to proof at the time of trial;

ON THE SECOND CAUSE OF ACTION

2. For damages, plus interest, according to proof at the time of trial;

ON THE THIRD CAUSE OF ACTION

3. For damages, plus interest, according to proof at the time of trial;

ON THE FOURTH CAUSE OF ACTION

4. For damages, including reasonable attorneys’ fees plus interest, according to proof at the time of trial;

1 5. For punitive damages in an amount to be determined at the time of
2 trial;

3 **ON THE FIFTH CAUSE OF ACTION**

4 6. For a declaration in accord with AECOM’s contentions;

5 **ON ALL CAUSES OF ACTION**

6 7. For costs of suit incurred herein; and

7 8. For such other, further, and/or different relief as may be just and
8 proper.

9 DATED: January 11, 2021 PASICH LLP

10 By: /s/ Sandra Smith Thayer
11 Sandra Smith Thayer
12 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff AECOM hereby demands a trial by jury in this action.

DATED: January 11, 2021 PASICH LLP

By: /s/ Sandra Smith Thayer
Sandra Smith Thayer

Attorneys for Plaintiff

PASICH^{LLP}