

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

ITT INC.,

Plaintiff,

v.

FACTORY MUTUAL INSURANCE
COMPANY,

Defendant.

CIVIL ACTION NO.: _____

COMPLAINT

Plaintiff ITT Inc. (“ITT”) files this complaint for damages and declaratory judgment against defendant Factory Mutual Insurance Company (“FMIC”), alleging the following:

INTRODUCTION

1. This diversity action for declaratory relief and breach of contract arises from FMIC’s improper investigation and refusal to indemnify ITT against tens of millions of dollars of losses caused by the COVID-19 pandemic under an “all risks” insurance policy, Policy No. 1059725 (attached as Exhibit A (the “Policy”)). The Policy is written on the FM Global Advantage policy form.

2. Despite agreeing to cover ITT for “ALL RISKS” of physical loss or damage to property, as well as time element and extra expense losses resulting from such physical loss or damage at insured locations, within five miles of insured locations resulting in civil authority orders prohibiting or limiting access to such insured locations, and at “contingent time element locations” as that term is defined in the Policy, FMIC has refused to honor its contractual obligations. FMIC admits that its policy covers ITT’s COVID-19 losses, but it has to date attempted to limit its coverage to only a portion of the Policy.

THE PARTIES

3. Plaintiff ITT is a corporation organized and existing under the laws of the State of Indiana with its principal place of business in White Plains, New York. ITT is currently in the process of moving its principal place of business to Stamford, Connecticut, in this judicial district. Several of ITT's subsidiaries are headquartered in this judicial district.

4. Defendant FMIC is incorporated under the laws of the State of Rhode Island with its principal place of business in Johnston, Rhode Island.

JURISDICTION AND VENUE

5. Jurisdiction over FMIC is based on diversity of citizenship under 28 U.S.C. § 1332(a)(1) in that the amount in controversy exceeds to sum of \$75,000 and the matter is between "citizens of different States."

6. Specifically and without limitation, the unpaid, covered damages incurred to date, and the future damages ITT expects to incur as covered losses under the Policy, and without taking into account attorney's fees, costs, interest, statutory penalties, or exemplary damages for which FMIC is or may become liable, far exceed \$75,000.

7. Personal jurisdiction over FMIC exists because it has sufficient minimum contacts with Connecticut. Specifically, and without limitation, FMIC is authorized to do, and is currently doing, business in this judicial district.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2) as events or omissions giving rise to ITT's claim took place in this district, including communications concerning ITT's proof of losses under the Policy.

FACTUAL BACKGROUND

A. ITT

9. ITT is a worldwide diversified manufacturing and technology company based in White Plains, New York. ITT manufactures products and components and provides services for the aerospace, transportation, energy, communications and industrial markets. ITT has approximately 10,000 employees in more than 35 countries and serves customers in well over 100 countries. ITT is in the process of moving its headquarters and principal place of business to Stamford, Connecticut, in this judicial district. Several of ITT's subsidiaries are headquartered in Wilton, Connecticut, in this judicial district. Communications regarding the Policy and its proof of losses took place in this judicial district.

10. ITT has properties that are insured locations on the Policy on four continents and its direct customers and suppliers have properties worldwide that have been impacted by the COVID-19 pandemic and civil authority orders that have prohibited or limited access to ITT's insured locations as a result of persons having contracted COVID-19 within five miles of such locations.

B. The Policy

11. FMIC sold ITT an insurance policy which "covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy."¹ See Policy at 1.

12. The Policy provides a wide range of coverages, with FMIC agreeing to a "maximum limit of liability in an **occurrence**, including any insured TIME ELEMENT loss" of "USD 750,000,000." See Policy at 3-4.

13. Among its many features, the All Risks coverage purchased from FMIC under its “property” Policy includes specific coverage for property loss or damage and time-element losses caused by the actual presence of a “Communicable Disease” such as COVID-19 at a property.

14. The All Risks Policy goes even farther, providing coverage designed to address the principal economic consequence of pandemics: lockdowns, facility closures, and other interruptions triggered by the threat that off-site prevalence of the disease will spread to unimpacted factories, offices, stores and other business locations that could become disease vectors if permitted to operate “as usual” during the pandemic. FMIC’s Policy thus specifically addresses the principal economic harm arising from the highly unusual event of *pandemic-caused interruptions* to business, by providing coverage for losses resulting from the threat that the off-site virus will spread to covered ITT locations.

15. The Policy provides coverage on a world-wide basis, *see* Policy at 2, with the specific locations covered by the Policy including, without limitation, those on the Schedules of Locations attached as Appendix A and Appendix B to the Policy.

C. COVID-19 Is a Deadly Communicable Disease

16. The SARS-CoV-2 virus was identified in China. The SARS-CoV-2 virus causes the severe respiratory disease known as COVID-19 which is highly communicable from person to person by direct or indirect contact with an infected individual or an infected individual’s

discharges. “COVID-19” is not a virus but rather the name of the disease caused by the virus, 2019 novel coronavirus or SARS-CoV2.¹

17. COVID-19 has spread across the globe, resulting in a worldwide pandemic that has caused over one hundred million infections and over two million deaths.

18. The Centers for Disease Control and Prevention (“CDC”) estimates that infection rates for COVID-19 are likely at least ten times higher than reported.²

19. The World Health Organization (“WHO”) has declared the COVID-19 outbreak a pandemic and Former President Trump declared a nationwide emergency due to the public health emergency caused by the COVID-19 outbreak in the United States.

20. The incubation period for COVID-19—the time between exposure (becoming infected) and symptom onset—can be up to 14 days.³

¹ See Naming the coronavirus disease (COVID-19) and the virus that causes it WHO available at [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last viewed February 5, 2021); see also Coronavirus (COVID-19) frequently asked questions CDC “Why is the disease being called coronavirus disease 2019, COVID-19?” available at <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last viewed February 5, 2021) (“... the World Health Organization announced an official name for the disease that is causing the 2019 novel coronavirus outbreak, first identified in Wuhan China. The new name of this disease is coronavirus disease 2019, abbreviated as COVID-19. In COVID-19, ‘CO’ stands for ‘corona,’ ‘VI’ for ‘virus,’ and ‘D’ for disease. Formerly, this disease was referred to as “2019 novel coronavirus” or “2019-nCoV”.”)

² See <https://www.nbcnews.com/health/health-news/cdc-says-covid-19-cases-u-s-may-be-10-n1232134> (last viewed February 5, 2021).

³ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last viewed February 5, 2020).

21. During this period (also known as the “pre-symptomatic” period), infected persons can be contagious and disease transmission can occur before the infected person shows any symptoms or has any reason to believe they are infected.⁴

22. The WHO has confirmed that COVID-19 cannot only be spread person-to-person but COVID-19 also can exist on objects or surfaces for days.⁵

23. According to a study documented in *The New England Journal of Medicine*, COVID-19 was detectable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel.⁶

24. ITT and its direct customers and suppliers use these materials in its ordinary course of business.

25. Individuals also can become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic or not.⁷

⁴ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (“In a small number of case reports and studies, pre-symptomatic transmission has been documented through contact tracing efforts and enhanced investigation of clusters of confirmed cases. This is supported by data suggesting that some people can test positive for COVID-19 from 1-3 days before they develop symptoms. Thus, it is possible that people infected with COVID-19 could transmit the virus before significant symptoms develop.”) (last viewed February 5, 2021).

⁵ See <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (“[T]ransmission of the COVID-19 virus can occur by direct contact with infected people and indirect contact with surfaces in the immediate environment or with objects used on the infected person (e.g. stethoscope or thermometer).”) (last viewed February 5, 2021).

⁶ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed February 5, 2021); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed February 5, 2021).

⁷ *Id.*

26. COVID-19 also can spread through person-to-person transmission and airborne transmission.⁸ Person-to-person transmission occurs when an infected person transmits the virus to people in close proximity via large respiratory droplets; if inhaled, such large droplets deposit primarily in the upper airways of the head and neck. Airborne transmission occurs when an infected person transmits the virus via small aerosol particles traveling over long distances; if inhaled, such small droplets deposit primarily in the lower respiratory tract.

27. The CDC published a study in July that concluded “droplet transmission was prompted by air-conditioned ventilation” that caused an outbreak among people who dined in the same air-conditioned restaurant.⁹

28. Governmental authorities have taken actions in response to the COVID-19 pandemic. These actions have included, without limitation:

- a. Orders restricting or prohibiting travel both internationally and within national borders;
- b. Quarantine orders applicable to individuals that have COVID-19, whether or not symptomatic;
- c. Orders closing or limiting business facilities confirmed to have experienced the actual presence of confirmed cases of COVID-19 at their premises;
- d. Orders closing businesses or limiting access at locations without the confirmed or suspected presence of cases of COVID-19 at their premises, based on their geographic proximity to places where cases of COVID-19 occurred.

D. The Impact of the COVID-19 Pandemic on ITT’s Businesses

29. As a consequence of the global pandemic, ITT has undertaken the following activities at substantial cost:

⁸ See <https://academic.oup.com/cid/article-pdf/doi/10.1093/cid/ciaa939/33478095/ciaa939.pdf> (last viewed February 5, 2021).

⁹ See https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article (last viewed February 5, 2021).

- a. **Remediating or Replacing Physical Property Adversely Altered:** Remediation and/or disposal and/or replacement of personal property and real property that had been physically contacted and adversely altered by respiratory particles, phlegm, and other materials expelled by persons with COVID-19;
 - b. **Business Shutdowns Due to COVID-19 Being Present at a Location:** When disease outbreaks occur at a facility a common and necessary response is to shut down the facility and undertake remedial efforts;
 - c. **Time Element Losses Due to the COVID-19 Being in the Community (Even if Not at the Business Location):** Suspension of business activities due to business premises being rendered unreasonably dangerous for any or full occupancy and unfit for their ordinary or intended purposes (even in cases in which COVID-19 was not actually present nor suspected to be present at the business location), due to pandemic conditions and the threat posed by COVID-19 in general geographic proximity (*i.e.*, within five miles) of the business location;
 - d. **Extra Expenses to Remain Operational Even With COVID-19 at the Business Location:** Undertaking out-of-the-ordinary activities and expenses, such as testing, protective equipment, reconfiguration of work spaces for social distancing, reduced or staggered schedules, facilitation of remote work, etc., in order to continue operations at a business location or at replacement locations and to mitigate the effects of shutdowns or slowdowns caused by the actual presence of COVID-19 at a facility;
 - e. **Extra Expenses and Expediting Costs to Remain Operational Even With COVID-19 Being in the Community (Even if Not at the Business Location):** Undertaking out-of-the-ordinary activities and expenses, such as testing, protective equipment, reconfiguration of work spaces for social distancing, reduced or staggered schedules, facilitation of remote work, etc., in order to render business premises safe for occupancy and fit for their ordinary purpose or intended purposes (even in cases in which COVID-19 was neither actually present nor suspected to be present at the business location), due to pandemic conditions and the threat posed by COVID-19 in geographic proximity to the business location spreading to the insured location;
 - f. **Logistics Costs:** Addressing the disruption of the normal movement of goods and materials between business locations and/or vendor or customer locations; and
 - g. **Claims Preparation Costs:** Retention of outside financial and operational experts to document and calculate losses arising from COVID-19.
30. ITT has incurred substantial losses, including but not limited to losses from or damage to property, time-element losses, Extra Expenses, Expediting Costs, Logistics Costs, and

Claims Preparation Expenses – as a result of the presence of COVID-19 at or within five miles of its various facilities and at its direct customers’ and suppliers’ properties.

31. Numerous ITT facilities have incurred covered losses from or damage to property, time-element losses due to government or private closures or suspensions of business, loss of ingress or egress, losses due to Communicable Disease, Extra Expenses, Expediting Costs, and/or Logistics Costs.

32. ITT has incurred substantial losses, including but not limited to losses from physical loss or damage to property, time-element losses, Extra Expenses, Expediting Costs, Logistics Costs, and Claims Preparation Expenses – even in cases in which COVID-19 was neither actually present nor suspected to be present at ITT insured locations, due to pandemic conditions and the threat posed by COVID-19 in general geographic proximity (*i.e.*, within five miles/eight kilometers) of the ITT insured locations spreading to such locations.

E. The Policy’s Coverages for ITT’s COVID-19 Losses

33. The Policy is a property policy that covers “ALL RISKS” of physical loss or damage to property not otherwise excluded. FMIC is on record in litigation asserting that the undefined term “physical loss or damage” in all-risk policies is susceptible of more than one reasonable interpretation, is therefore ambiguous and must be construed against the policy drafter. In that same case, FMIC asserted that numerous courts have concluded that “loss of functionality or reliability . . . constitutes physical loss or damage” under all-risk policies.

34. The Policy is a fairly organized and methodically laid out policy that sets forth, *inter alia*, specifically enumerated set of coverages and related provisions under a Sub-Section of the Policy called “OTHER ADDITIONAL COVERAGES” under the Policy’s “PROPERTY DAMAGE” Section and another specifically enumerated set of coverages and related provisions

under a Sub-section of the Policy called “ADDITIONAL TIME ELEMENT COVERAGE EXTENSIONS” under the Policy’s “TIME ELEMENT” Section.

35. With respect to the “ADDITIONAL COVERAGES” provided under the “PROPERTY DAMAGE” section, the Policy describes these Additional Coverage as “Additional Coverages *for insured physical loss or damage.*” See Policy at 19 (emphasis added). In other words, *each* of the Additional Coverages under this *property* policy provides coverage for losses or costs for “insured physical loss or damage” to property.

36. One of the Policy’s “ADDITIONAL COVERAGES” for “PROPERTY DAMAGE” is “COMMUNICABLE DISEASE RESPONSE COVERAGE” which concerns costs for “the actual not suspected presence of communicable disease.” In other words, the Policy equates the presences of a “communicable disease” at property with physical loss or damage of the type insured under the Policy. As this coverage part makes plain that “communicable disease” at a location constitutes a physical loss or damage to property under the Policy, as all coverage parts under the Policy provide coverage for losses and/or costs that flow from “physical loss or damage to property,” “communicable disease” is a covered cause of loss for all of the coverages afforded under the “all risks” property Policy.

37. Similarly, with respect to the coverage provided by the “ADDITIONAL TIME ELEMENT COVERAGE EXTENSIONS” under the Policy, the Policy describes all of its “TIME ELEMENT” coverages as being for losses insured “as provided in the TIME ELEMENT COVERAGES, directly resulting *from physical loss or damage of the type insured . . . to property* described elsewhere in this Policy” See Policy at 41 (emphases added). In other words, *each* of the Time Element coverages under this *property* policy provides coverage for certain losses and/or costs resulting from “insured physical loss or damage” to property.

38. One of the Policy's "ADDITIONAL TIME ELEMENT COVERAGE EXTENSION" is "INTERRUPTION BY COMMUNICABLE DISEASE" which covers lost earnings or lost profits and extra expenses resulting from "the actual not suspected presence of communicable disease" at an insured location. In other words, the Policy, again, equates the presence of a "communicable disease" with physical loss or damage of the type insured under the Policy.

39. The Policy which has an exclusion for "contamination" and "cost" "due" to "contamination" defines "communicable disease" differently from "contamination." "Communicable disease" is a "disease which is . . . transmissible from human to human by direct or indirect contact with an affected individual or the individual's discharges . . ." See Policy at 74. By contrast, "contamination" is "any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew." *Id.*

40. The Policy does not include in the definition of "contamination" "any condition of property due to the actual or suspected presence of . . . communicable disease" (which includes "disease . . . transmissible from . . . [an] individual's discharges") but instead not only separately defines "communicable disease" differently from "contamination", it also expressly equates the presence of "communicable disease" with "physical loss or damage" to property expressly of the type insured under the Policy. Or, in other words, the "contamination" exclusion does not reach "communicable disease" because the Policy otherwise covers losses resulting from the covered cause of loss of "communicable disease."

41. The Policy provides several different types of coverages resulting from the covered cause of loss of “communicable disease” in addition that are applicable to ITT’s past, current and future COVID-19 losses, including the following.

e. **Loss or Damage to Property and Direct Time Element Losses:**

42. The Policy provides coverage of up to \$1,000,000 per occurrence for physical loss or damage to Real Property and/or Personal Property (as defined in the Policy), unless such property is excluded or results from an excluded cause of loss. This coverage extends to physical loss or damage to covered property caused by the presence of the COVID-19 communicable disease at specific ITT locations.

43. The Policy also covers “Time Element” losses as a result of the COVID-19 communicable disease as provided under multiple Time Element coverages set forth under the Policy including such losses resulting from properties of direct customers and suppliers that have been impacted by COVID-19 and civil authority orders that have prohibited or limited access to ITT’s insured locations as a result of persons having contracted COVID-19 within five miles of such locations.

44. Under the Policy’s Time Element coverages, the Policy permits ITT to elect to make a claim based on either: “a) GROSS EARNINGS and EXTENDED PERIOD OF LIABILITY; or b) GROSS PROFIT[.]” *See* Policy at 42.

45. ITT is entitled to recover its covered losses with respect to physical loss or damage to its property caused by the COVID-19 communicable disease, and resulting Time Element losses, up to the limits provided in the Policy.

46. FMIC has not paid ITT for any of its covered Property Damage or Time Element losses.

b. **Losses Due to Orders of Civil Authority**

47. The Policy provides up to \$750,000,000 per occurrence for losses resulting from the temporary closure or suspension or limitation of access to ITT's insured locations as a result of orders of civil or military authority resulting from physical loss or damage caused by the COVID-19 communicable disease within five miles of an insured location.

48. The applicable language of the Policy describing this coverage includes the following:

A. CIVIL OR MILITARY AUTHORITY

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY if an order of civil or military authority limits, restricts or prohibits partial or total access to an insured **location** provided such order is the direct result of physical damage of the type insured at the insured **location** or within five statute miles/eight kilometres of it.

This Extension does not apply to LEASEHOLD INTEREST.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of such physical damage; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section,

this period of time is part of and not in addition to any PERIOD OF LIABILITY applying to any coverage provided in the TIME ELEMENT section.

See Policy at 53.

49. The Policy provides for 60 consecutive days of coverage for losses due to each Order of Civil or Military Authority under the circumstances of ITT's losses. *See* Policy at 4.

50. The coverage applies separately with respect to each particular Order of Civil or Military Authority and as to each insured location.

51. ITT is entitled to recover separately for each Order of Civil or Military Authority prohibiting or limiting access to each particular covered location.

52. ITT has incurred substantial covered losses due to Orders of Civil or Military Authority that were entered as a consequence of damage to property of ITT and/or to property belonging to third parties. Such damage to property was of the type covered under this policy including, without limitation, the presence of communicable disease (*i.e.*, COVID-19) within five statute miles/eight kilometers of the covered ITT locations.

53. ITT is entitled to recover its covered Civil or Military Authority losses, up to the limits provided in the Policy.

54. FMIC has not paid ITT for any of its covered Civil or Military Authority losses.

c. Losses Due to Impairment of Ingress or Egress:

55. The Policy provides up to \$750 million per occurrence for time-element losses due to the prevention of ingress to or egress from covered locations. Due to restrictions on travel or movement occasioned by the presence of the COVID-19 communicable disease, recoverable time element losses have been incurred.

56. The applicable language of the Policy describing this coverage includes the following:

C. INGRESS/EGRESS

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY due to the necessary interruption of the Insured's business due to partial or total physical prevention of ingress to or egress from an insured **location**, whether or not the premises or property of the Insured is damaged, provided that such prevention is

a direct result of physical damage of the type insured to property of the type insured.

INGRESS/EGRESS Exclusions: As respects INGRESS/EGRESS, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- 1) lack of incoming or outgoing service consisting of electric, fuel, gas, water, steam, refrigerant, sewerage and voice, data or video.
- 2) picketing or other action by strikers except for physical damage not excluded by this Policy.
- 3) physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of such physical damage; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section,

this period of time is part of and not in addition to any PERIOD OF LIABILITY applying to any coverage provided in the TIME ELEMENT section.

See Policy at 54-55.

57. ITT has incurred substantial covered losses due to “partial or total” Loss of Ingress or Egress as a consequence of the COVID-19 communicable disease.

58. ITT is entitled to recover its covered Ingress-Egress losses, up to the limits provided in the Policy.

59. FMIC has not paid ITT for any of its covered Ingress-Egress Losses.

d. Contingent Time-Element Losses:

60. The Policy provides up to \$50 million per occurrence for time-element losses resulting from physical loss or damage the COVID-19 communicable disease caused to the property of ITT's direct customers, suppliers, contract manufacturers, contract service provider (and the direct or indirect customers, suppliers, contract manufacturers or service providers of the foregoing), and companies under a royalty, licensing fee or commission agreement with ITT.

61. The applicable language of the Policy describing this coverage includes the following:

B. CONTINGENT TIME ELEMENT EXTENDED

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured at contingent time element locations located within the TERRITORY of this Policy.

As respects CONTINGENT TIME ELEMENT EXTENDED:

1) Time Element loss recoverable under this Extension is extended to include the following TIME ELEMENT COVERAGE EXTENSIONS:

CIVIL OR MILITARY AUTHORITY
CONTINGENT TIME ELEMENT EXTENDED
DATA SERVICE PROVIDER TIME ELEMENT
DELAY IN STARTUP
EXTENDED PERIOD OF LIABILITY
INGRESS/EGRESS
ON PREMISES SERVICES
SERVICE INTERRUPTION TIME ELEMENT

2) Time Element loss recoverable under this Extension is The Insured will influence and cooperate with the **contingent time element location** in every way and take any reasonable and necessary action to mitigate the loss payable hereunder.

3) TIME ELEMENT EXCLUSIONS C does not apply.

CONTINGENT TIME ELEMENT EXTENDED Exclusions: As respects CONTINGENT TIME ELEMENT EXTENDED, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- 1) lack of incoming or outgoing transmission of voice, data or video.
- 2) **earth movement** as respects a direct or indirect customer, supplier, contract manufacturer or contract service provider located in the **Pacific Northwest Seismic Zone**.
- 3) physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence of loss.

See Policy at 53-53.

“**Contingent time element location**” is defined as follows:

- A. any **location**:
 - 1) of a direct customer, supplier, contract manufacturer or contract service provider to the Insured;
 - 2) of any company under a royalty, licensing fee or commission agreement with the Insured;
- B. any **location** of a company that is a direct or indirect customer, supplier, contract manufacturer or contract service provider to a **location** described in A1 above,

not including **locations** of any company directly or indirectly supplying to, or receiving from, the Insured, electricity, fuel, gas, water, steam, refrigeration, sewage, voice, data or video.

See Policy at 75-76.

62. Numerous of ITT’s direct customers, suppliers, contract manufacturers, contract service providers (and the direct or indirect customers, suppliers, contract manufacturers or service providers of the foregoing), and companies under a royalty, licensing fee or commission agreement

with ITT have incurred physical loss or damage cause by the COVID-19 communicable disease covered by the Policy at their respective “**contingent time-element locations.**”

63. ITT has incurred substantial covered Contingent Time-Element Losses as a consequence of the COVID-19 communicable disease covered by the Policy at their respective “**contingent time-element locations.**”

64. ITT is entitled to recover its covered Contingent Time Element Losses, up to the limits provided in the Policy.

65. FMIC has not paid ITT for any of its covered Contingent Time Element Losses.

e. **Response Costs Due to Communicable Disease Confirmed at ITT Locations**

66. As an additional coverage, the Policy provides up to \$1,000,000 or more for response costs incurred as a result of presence of communicable disease such as COVID-19 at Policy-insured locations.

67. The applicable language of the Policy describing this coverage includes the following:

G. COMMUNICABLE DISEASE RESPONSE

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**,

this Policy covers the reasonable and necessary costs incurred by the Insured at such location with the actual not suspected presence of **communicable disease** for the:

- 1) cleanup, removal and disposal of the actual not suspected presence of **communicable diseases** from insured property; and
- 2) actual costs of fees payable to public relations services or actual costs of using the Insured's employees for reputation management resulting from the actual not suspected presence of **communicable diseases** on insured property.

This Additional Coverage will apply when access to such **location** is limited, restricted or prohibited in excess of 48 hours.

This Additional Coverage does not cover any costs incurred due to any law or ordinance with which the Insured was legally obligated to comply prior to the actual not suspected presence of **communicable disease**.

COMMUNICABLE DISEASE RESPONSE Exclusions: As respects COMMUNICABLE DISEASE RESPONSE, the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- 1) **terrorism**.

See Policy at 25-26.

68. COVID-19 qualifies as a "Communicable Disease" under the Policy.

69. The actual presence of the COVID-19 communicable disease has been confirmed at certain ITT insured locations.

70. These locations have incurred costs for the cleanup, removal and disposal of the actual not suspected presence of COVID-19 from insured property.

71. These costs are covered under the Policy, up to the limits of such Communicable Disease coverage.

72. FMIC has not paid ITT for these costs resulting from the actual presence of COVID-19 at ITT facilities.

f. Interruption Costs Due to Communicable Disease Confirmed at ITT Locations:

73. The Policy provides up to \$1,000,000 or more for interruption/time-element losses incurred as a result of the actual presence of the COVID-19 communicable disease at Policy-insured locations.

74. The applicable language of the Policy describing this coverage includes the following:

E. INTERRUPTION BY COMMUNICABLE DISEASE

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**,

this Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY at such **location** with the actual not suspected presence of **communicable disease**.

This Extension will apply when access to such **location** is limited, restricted, or prohibited in excess of 48 hours.

INTERRUPTION BY COMMUNICABLE DISEASE Exclusions:
As respects INTERRUPTION BY COMMUNICABLE DISEASE, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- 1) the enforcement of any law or ordinance with which the Insured was legally obligated to comply prior to the time of the actual spread of **communicable disease**.
- 2) loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any sequence of loss.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of the order of the authorized governmental agency or the Officer of the Insured; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section,

this period of time is part of and not in addition to any PERIOD OF LIABILITY applying to any coverage provided in the TIME ELEMENT section.

See Policy at 60-61.

75. COVID-19 qualifies as a “Communicable Disease” under the Policy.
76. The actual presence of the COVID-19 communicable disease has been confirmed at ITT locations.
77. These locations have incurred interruption/time-element losses as a result of the actual not suspected presence of the COVID-19 communicable disease at Policy-insured property.
78. These interruption/time-element losses are covered under the Policy, up to the limits of such Communicable Disease coverage.
79. FMIC has not paid ITT for these interruption/time-element losses resulting from the actual presence of COVID-19 at ITT facilities.

g. Expediting Costs and Extra Expenses:

80. The Policy provides up to \$100 million per occurrence in coverage for Expediting Costs and Extra Expenses incurred by ITT to minimize covered losses.

81. The applicable policy language describing this coverage includes the following language applicable to Expediting Costs incurred to expedite the repair or replacement of property physically damaged by a covered cause of loss, such as a communicable disease:

M. EXPEDITING COSTS

This Policy covers the reasonable and necessary costs incurred:

- 1) for the temporary repair of insured physical damage to insured property;
- 2) for the temporary replacement of insured equipment suffering insured physical damage; and
- 3) to expedite the permanent repair or replacement of such damaged property.

This Additional Coverage does not cover costs recoverable elsewhere in this Policy, including the cost of permanent repair or replacement of damaged property.

See Policy at 28.

82. The applicable Policy language describing this coverage includes the following language applicable to Extra Expense incurred to temporarily continue business as nearly normal as practicable and other related expenses:

D. EXTRA EXPENSE

Measurement of Loss:

The recoverable EXTRA EXPENSE loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the PERIOD OF LIABILITY:

- 1) extra expenses to temporarily continue as nearly **normal** as practicable the conduct of the Insured's business;
- 2) extra costs of temporarily using property or facilities of the Insured or others; and
- 3) costs to purchase finished goods from third parties to fulfill orders when such orders cannot be met due to physical loss or damage to the Insured's finished goods, less payment received for the sale of such finished goods.

less any value remaining at the end of the PERIOD OF LIABILITY for property obtained in connection with the above.

If the Insured makes claim in accordance with the terms and conditions of the INSURED OPTION clause, the PERIOD OF LIABILITY for EXTRA EXPENSE coverage will be the PERIOD OF LIABILITY applicable to the Time Element coverage option selected.

EXTRA EXPENSE Exclusions: As respects EXTRA EXPENSE, the following applies:

- 1) TIME ELEMENT EXCLUSIONS C does not apply to item 3 above.
- 2) The following additional exclusions apply:

This Policy does not insure:

- a) any loss of income.
- b) costs that usually would have been incurred in conducting the business during the same period had no physical loss or damage happened.
- c) costs of permanent repair or replacement of property that has been damaged or destroyed. However, this exclusion does not apply to item 3 above.
- d) any expense recoverable elsewhere in this Policy.

See Policy at 45-46.

83. ITT has incurred substantial covered Expediting Costs and Extra Expenses in order to minimize covered losses relating to the COVID-19 communicable disease.

84. ITT is entitled to recover its covered Expediting Costs and Extra Expenses incurred to minimize covered losses, up to the limits provided in the Policy.

85. FMIC has not paid ITT for any of its Expediting Costs and Extra Expenses incurred to minimize covered losses.

h. **Logistics Extra Costs:**

86. The Policy also provides up to 200% of normal costs to cover the extra logistics costs incurred by ITT as a result of the COVID-19 communicable disease to goods and materials between its locations and/or to the locations of its suppliers, customers or other business partners.

87. The applicable policy language describing this Logistics Costs coverage includes the language contained in the “Logistics Extra Costs” section of the Policy, which is found at pages 56-58 of the Policy but, due to its length, is set forth only in part here:

D. LOGISTICS EXTRA COST

This Policy covers the extra cost incurred by the Insured during the PERIOD OF LIABILITY due to the disruption of the **normal** movement of goods or materials:

- 1) directly between insured locations; or
- 2) directly between an insured **location** and a **location** of a direct customer, supplier, contract manufacturer or contract service provider to the Insured,

provided that such disruption is a direct result of physical loss or damage of the type insured to property of the type insured located within the TERRITORY of this Policy.

Measurement of Loss:

The recoverable extra cost loss will be the reasonable and necessary extra costs incurred by the Insured of the following:

- 1) extra costs to temporarily continue as nearly **normal** as practicable the movement of goods or materials.

This Extension will apply when the PERIOD OF LIABILITY is in excess of 48 hours except 168 hours applies for **earth movement** and/or **flood** and/or **wind**.

See Policy at 55-56.

88. ITT has incurred substantial covered Logistics Extra Costs as a consequence of the COVID-19 communicable disease.

89. ITT is entitled to recover its covered Logistics Extra Costs, up to the limits provided in the Policy.

90. FMIC has not paid ITT for any of its covered Logistics Extra Costs.

i. Claims Preparation Costs:

91. The Policy provides up to \$500,000 incurred by ITT to investigate, calculate and document its loss for purposes of submission of its claim to FMIC.

92. The applicable policy language describing this Claims Preparation Costs coverage includes the following language:

E. CLAIMS PREPARATION COSTS

This Policy covers the actual costs incurred by the Insured:

- 1) of reasonable fees payable to the Insured's: accountants, architects, auditors, engineers, or other professionals; and
- 2) the cost of using the Insured's employees,

for producing and certifying any particulars or details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Company resulting from insured loss payable under this Policy for which the Company has accepted liability.

This Additional Coverage will not cover the fees and costs of:

- 1) attorneys, public adjusters, and loss appraisers, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them,
- 2) loss consultants who provide consultation on coverage or negotiate claims.

This Additional Coverage is subject to the deductible that applies to the loss.

See Policy at 24-25.

93. ITT has incurred substantial covered Claims Preparation Costs in connection with its COVID-19 communicable disease losses.

94. ITT is entitled to recover its covered Claims Preparation Costs, up to the limits provided in the Policy.

95. FMIC has not paid ITT for any of its Claims Preparation Costs.

j. Other Available Coverages

96. The foregoing is not intended to be an exhaustive list of the various coverages available to ITT under the Policy.

F. No Exclusions Apply

97. The Policy contains a so-called “Contamination Exclusion” that provides as follows:

D. This Policy excludes the following unless directly resulting from other physical damage not excluded by this Policy:

- 1) **contamination**, and any cost due to **contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If **contamination** due only to the actual not suspected presence of **contaminant(s)** directly results from other physical damage not excluded by this Policy, then only physical damage caused by such **contamination** may be insured.

This exclusion D1 does not apply to radioactive contamination which is excluded elsewhere in this

See Policy at 17. The Policy in turn defines “**contaminant**” as “anything that causes “**contamination**” and defines “**contamination**” as:

any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.

See Policy at 74.

98. As noted above, the Contamination Exclusion does not apply to ITT’s losses caused by the pandemic, for numerous reasons, including but not limited to the following:

- a. **Inapplicable to the presence of virus brought on to the premises by persons with COVID-19:** The Policy expressly provides that the presence of a “communicable disease” is a “physical loss or damage” to property of the type insured under the Policy. The Policy’s definition of contamination does not include within it a “condition of property” due to the presence of “communicable disease” (defined as including “disease . . . transmissible from . . . [an] individual’s discharges”), only due to the presence of “virus.” The Contamination Exclusion concerns a “condition of property” due to a “virus” and contains an important exception providing that coverage is *available* if “the actual not suspected presence of **contaminant(s)** *directly results from other physical damage not excluded by this Policy.*” Policy at 18 (italics added). Persons who contract the Communicable Disease of COVID-19 did so as a consequence of being exposed to others and to property that was adversely impacted by an “individual’s discharges” or respiratory droplets; and, as noted, the Policy does not exclude coverage for physical damage resulting from such “Communicable Disease.” Accordingly, to the extent losses result from infected persons being on ITT locations and “discharging” the transmissible disease or, with respect to the Civil or Military Authority time element coverage within five miles of such property, or at pertinent properties with respect to other coverages as set forth herein, any resulting impact results from “other physical damage not excluded by this Policy” and therefore is not subject to the Contamination Exclusion.
- b. **“Contamination” Exclusions apply to traditional pollution, not to natural catastrophes such as disease outbreaks:** To the extent the SARS-

CoV-2 virus is actually present or suspected of being present at pertinent locations, its presence would be the result of a natural process, as opposed to an act of pollution or contamination. So-called “contamination” exclusions, such as the form of Contamination Exclusion in the Policy, apply only to situations that reasonable policyholders would understand to constitute *polluting* activities, as opposed to natural catastrophes such as the COVID-19 pandemic.

- c. The narrow language of the so-called Contamination Exclusion stands in stark contrast with broader exclusions within the Policy for other excluded property damage (for example, with respect to the exclusion for “loss or damage directly or indirectly caused by or resulting from [nuclear contamination] . . . contributing concurrently or in any other sequence to the loss) as well as standard-form broader “virus exclusions” that are found in many other, less generous policy forms issued throughout the insurance industry. Indeed, as a means of collecting higher premiums from and attracting desired customers such as ITT, FMIC eschewed many other broader standard-form virus exclusions that have been widely available since 2006, when the Insurance Services Office published and circulated an explicit virus exclusion (the “ISO Virus Exclusion”) stating “We will not pay 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” and specifically stating that this exclusion applies to “all coverage” under the policy. Rather than using an explicit and broad virus exclusion, FMIC instead opted for an exclusion that barred only virus-related damage that could fairly be described as resulting from an act of “contamination” or “pollution”; and even then, FMIC further limited the scope of the Contamination Exclusion by also permitting coverage if the “contamination” is not actually at an insured location or suspected to be at an insured location, or if the contamination itself resulted from a covered instance of loss or damage to property.
- d. The Contamination Exclusion excludes only “contamination, and any *cost* resulting from contamination,” Policy at 18 (*italics added*), but makes no mention of “losses” and does not purport to exclude “loss or damage to property” resulting from Contamination. Thus, the Contamination Exclusion is expressly directed solely at any costs incurred to remove the contamination from covered property, but not to consequential economic losses such as, *e.g.*, time-element losses or extra expenses.
- e. The Contamination Exclusion is directed solely at “conditions of property” and thus does not address, *e.g.*, time-element losses due to civil authority orders or impairment of ingress or egress occasioned by covered Communicable Disease.

99. In short, the Policy reflects FMIC's deliberate decision to exclude only virus contamination resulting from acts of pollution (such as inadvertent or deliberate releases of waste streams from a lab, water-treatment plants, or other facilities). The Contamination Exclusion is inapplicable to any of the losses that ITT incurred as a consequence of the COVID-19 pandemic.

G. The Policy's Communicable Disease Sublimits Do Not Cap ITT's Recovery

100. The Policy affords coverage to ITT for the actual presence of **communicable disease** at an ITT Location. This coverage is found under two sections of the Policy titled "Communicable Disease Response" and "Interruption by Communicable Disease" (together, the "On-Site Sublimited Communicable Disease Coverages").

101. The On-Site Sublimited Communicable Disease Coverages, including any sublimits, do not apply to limit any other coverage under the Policy, including but not limited to physical damage resulting from or caused by **communicable disease** away from ITT Locations.

102. Rather, coverage for physical loss and damage and/or resulting Time Element loss, from or caused by **communicable disease** with respect to other implicated coverage parts under the Policy, is subject to the policy limits associated with the coverage or coverages implicated.

H. FMIC's Unreasonable Coverage Denial

103. On June 26, 2020, ITT submitted its initial proof of loss under the Policy to FMIC. June 26, 2020 e-mail containing initial proof of loss, attached as Exhibit B.

104. On July 17, 2020, FMIC sent a letter to ITT acknowledging receipt of the proof of loss. (Exhibit C.)

105. In the July 17 letter, FMIC improperly attempted to narrow the scope of the claim to the Policy's On-Site Sublimited Communicable Disease Coverage, and suggested that the contamination exclusion may exclude ITT's claim. (Exhibit C.)

106. In response, ITT's officer Craig Johnson, sent a letter to FMIC dated September 24, 2020. Mr. Johnson enclosed a disk of costs and supporting documents requested in FMIC's July 17 letter, and clarified FMIC's apparent misunderstanding and apparent confusion regarding ITT's claim. Mr. Johnson noted that FMIC had "inaccurately asserted that the Policy does not provide your insured responsive coverage for any of its losses under the Policy's civil or military authority, time element and contingent time element extended and extra expense coverages." Mr. Johnson also noted that FMIC asserted "that the Policy's contamination exclusion separately precludes coverage under the Policy." Mr. Johnson explained that the exclusion did not apply to ITT's claim because the "Policy actually expressly equates 'communicable disease' with 'property damage' and distinguishes the defined term 'communicable disease' from the separately defined term 'contamination.'" (Exhibit C.) Mr. Johnson's communications were made from his office in Wilton, Connecticut, in this judicial district.

107. FMIC's unreasonable conduct in the investigation of ITT's claim is consistent with a systemic claims handling practice and procedure that FMIC has deployed across all COVID-19 claims.

108. FMIC's systematic practice is outlined in a set of "Talking Points" (the "FMIC Talking Points") prepared for FMIC claim adjusters to use to ensure that FMIC's adjusters reach the same conclusion for all COVID-19 claims. (Copy of Talking Points, attached as Exhibit D.)

109. FMIC drafted the FMIC Talking Points.

110. FMIC provided the FMIC Talking Points to its personnel for use when adjusting claims based on COVID-19.

111. The FMIC Talking Points explicitly acknowledge that FMIC "ha[s] a wide range of clients who may be affected in a variety of ways" by COVID-19. (Exhibit D.)

112. The FMIC Talking Points outline only a few of the many different coverages contained in FMIC's standard commercial property policies, including policies of the type FMIC sold to ITT, that specifically afford coverage for COVID-19 claims. (Exhibit D.)

113. The FMIC Talking Points outline certain specific "triggers" of coverage that the adjuster should look for when investigating any COVID-19 claim. (Exhibit D.)

114. Notably, the only "triggers" identified are those applicable to the On-Site Sublimited Communicable Disease Coverages.

115. Indeed, the FMIC Talking Points fail to include all of the different "triggers" of coverage that may be implicated by COVID-19 claims.

116. By including only the On-Site Sublimited Communicable Disease Coverages as coverages potentially applicable to a COVID-19 claim, the FMIC Talking Points steer adjusters to only seek information that pertains to the On-Site Sublimited Communicable Disease Coverages.

117. Ironically, the FMIC Talking Points expressly acknowledge that a virus can cause physical damage to property.

118. Nonetheless, the FMIC Talking Points expressly and unequivocally foreclose the availability of coverage under the Policy's Civil or Military Authority coverage provision for such physical damage without regard to the particular facts or law involved. (Exhibit D.)

119. The FMIC Talking Points specifically provide:

Q. Does coverage under Civil or Military Authority apply?

A. No

(Exhibit D.)

120. The FMIC Talking Points make similar statements with respect to certain of the Policy's Time Element coverages. (Exhibit D.)

121. The FMIC Talking Points further instruct that "the presence of a communicable disease does not constitute physical damage and is not of the type insured against as a virus falls within the definition of contamination, which is excluded." (Exhibit D.)

122. But as alleged above, the Policy FMIC sold to ITT expressly recognizes that the presence of communicable disease causes physical damage to property because it provides coverage for the resulting "cleanup, removal and disposal of ... communicable disease." (Policy at 26.)

123. Additionally, the Policy defines "communicable disease" differently than "contamination" and while it includes within the definition of "contamination" a "condition of property" due to the presence of a "virus," it does not include within the definition of "contamination" a "condition of property" due to the presence of "communicable disease," which reasonably is because losses and costs for such conditions of property are expressly covered under the Policy.

124. Upon information and belief, FMIC, relied on the FMIC Talking Points in adjusting ITT's claim.

125. The FMIC Talking Points direct the claims adjuster to reach conclusions without considering the specific facts of the particular claim and without considering the applicable law that governs interpretation of the relevant insurance policy.

126. Instead, the FMIC Talking Points coach FMIC adjusters to suggestively steer the policyholder toward the On-Site Sublimited Communicable Disease Coverages, which provide only a fraction of the coverage limits otherwise available under the Policy.

127. Upon information and belief, FMIC followed the instructions of the Talking Points and denied coverage beyond the On-Site Sublimited Communicable Disease Coverages without fully considering the facts of ITT's claim or the law controlling the interpretation of the Policy.

I. FMIC's Breach Under the Policy

128. ITT has sustained losses covered under the Policy and, accordingly, submitted its claim to FMIC. FMIC has wrongfully failed to accept full coverage for ITT's claim in breach of the Policy.

129. FMIC has asserted the following coverage positions with respect to ITT's claim under the Policy: (i) coverage for ITT's claim is limited to the On-Site Sublimited Communicable Disease Coverage; (ii) COVID-19 does not cause physical damage of the type insured; and (iii) that coverage for COVID-19 is excluded pursuant to the "contamination" exclusion. All of these coverage positions are wrong and constitute a wrongful denial of coverage for ITT's claim under the Policy.

130. In denying ITT's claim, FMIC failed to faithfully apply the language of the Policy it drafted, failed to conduct a reasonable investigation, and failed to consider the facts relevant to ITT's claim against the language of the Policy.

131. As a consequence of FMIC's wrongful denial of coverage and fraudulent conduct, ITT has suffered and continues to suffer significant damages.

COUNT I
Declaratory Judgment

132. ITT repeats and realleges the allegations in the preceding paragraphs.

133. ITT seeks a declaration of the parties' rights and duties under the Policy pursuant to 28 U.S.C. § 2201. A justiciable controversy exists between ITT and FMIC concerning the availability of coverage under the Policy for ITT's claim.

134. The controversy between ITT and FMIC is ripe for judicial review.

135. Connecticut has adopted the Uniform Declaratory Judgment Act for purposes of declaring parties' right in this precise circumstance.

136. Accordingly, ITT seeks a declaration from the Court that:

- (1) The "communicable disease" COVID-19 at a property constitutes "physical loss or damage" to property insured under the Policy;
- (2) Each coverage provision identified herein is triggered by ITT's claim;
- (3) No exclusion in the Policy applies to bar or limit coverage for ITT's claim;
- (4) The limit applicable to the On-Site Sublimited Communicable Disease Coverages does not apply to coverage otherwise applicable under the Policy including but not limited to with respect to physical loss or damage away from ITT's Locations;
- (5) The Policy covers ITT's claim;
- (6) Any other declaratory relief that would be useful to the resolution of the dispute between the parties.

COUNT II
Breach of Contract
(Property Damage)

137. ITT repeats and realleges the allegations in the preceding paragraphs.

138. The Policy is valid and enforceable contract between ITT and FMIC.

139. In the Policy, FMIC agreed to cover property against all risks of physical loss or damage not otherwise excluded.

140. COVID-19 has caused and is continuing to cause physical loss and/or damage to ITT's property.

141. No exclusions apply to bar coverage.

142. ITT is entitled to coverage for the physical loss and/or damage up to the Policy's \$700 million limit of liability or any applicable sublimits.

143. ITT complied with all applicable provisions in the Policy and satisfied all conditions precedent to coverage, including paying premiums and providing timely notice of its claim. To the extent FMIC contends otherwise, any such conditions have been waived.

144. Nonetheless, FMIC unjustifiably refuses to pay for ITT's loss in breach of the Policy.

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

COUNT III
Breach of Contract
(Time Element)

146. ITT repeats and realleges the allegations in the preceding paragraphs.

147. The Policy is a valid and enforceable contract between ITT and FMIC.

148. In the Policy, FMIC agreed to cover Time Element loss and incurred Extra Expense directly resulting from physical loss or damage of the type insured under the Policy as provided in the Time Element Coverages.

149. COVID-19 has caused and, upon information and belief, is continuing to cause physical loss and/or damage to ITT's property and the property of others that has caused ITT to suffer Time Element loss and incur extra expenses.

150. No exclusions apply to bar coverage.

151. ITT is entitled to coverage for its Time Element loss and incurred extra expenses related to COVID-19 up to the Policy's limit of liability or any applicable sublimits.

152. ITT complied with all applicable provisions of the Policy, including paying premiums and providing timely notice of its claim.

153. Nonetheless, FMIC unjustifiably refuses to pay for ITT's loss and expenses in breach of the Policy.

154. ITT has suffered and continues to suffer damages as a result of FMIC's breach of the Policy.

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

COUNT IV
Breach of Contract
(Time Element Coverage Extensions)

156. ITT repeats and realleges the allegations in the preceding paragraphs.

157. The Policy is a valid and enforceable contract between ITT and FMIC.

158. In the Policy, FMIC agreed to afford coverage for Time Element loss as provided in the Policy's Time Element Coverage Extensions.

159. COVID-19 has caused and, upon information and belief, is continuing to cause physical loss and/or damage to ITT's property and the property of others that has caused ITT to suffer business interruption loss covered under the Policy's Time Element Coverage Extensions.

160. No exclusions apply to bar coverage.

161. ITT is entitled to coverage for its business interruption loss related to COVID-19 up to each Time Element Coverage Extensions' limit of liability or any applicable sublimits.

162. ITT complied with all applicable provisions of the Policy, including paying premiums and providing timely notice of its claim.

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

164. ITT has suffered and continues to suffer damages as a result of FMIC's breach of the Policy.

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

PRAYER FOR RELIEF

Wherefore, ITT prays for judgment against FMIC as follows:

- (1) Declarations from the Court that:
 - a. The "communicable disease" COVID-19 at a property constitutes "physical loss or damage" to property insured under the Policy;
 - b. Each of the coverage provisions identified herein is triggered by ITT's claim;
 - b. No exclusion under the Policy applies to bar or limit coverage for ITT's claim;

- c. The limit applicable to the On-Site Sublimited Communicable Disease Coverages does not apply to coverage applicable to physical loss or damage away from ITT's Locations;
 - d. The Policy cover ITT's claim; and
 - e. Any other declaratory relief that would be useful to the resolution of the dispute between the parties.
- (2) For special and consequential damages against FMIC in an amount to be proven at trial.
 - (3) Pre- and post-judgment interest as provided by law;
 - (4) An award of attorney's fees and costs of suit incurred; and
 - (5) For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

ITT demands trial by jury on all issues so triable.

Dated: February 5, 2021

Respectfully submitted,

/s/ Michael C. D'Agostino

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