

Marc D. Grossman, Esq.
Victoria J. Maniatis, Esq.
SANDERS PHILLIPS GROSSMAN, LLC
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Telephone: (516) 741-5600
Fax: (516) 741-0128
Email: MGrossman@thesandersfirm.com
VManiatis@thesandersfirm.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FRANK J. SCACCIA, MD., F.A.C.S., LLC

Plaintiff,

v.

TWIN CITY FIRE INSURANCE
COMPANY, and THE
HARTFORD FINANCIAL
SERVICES GROUP, INC.,

Defendants.

Civil Action No. 3:21-cv-08707

**COMPLAINT AND
JURY DEMAND**

Plaintiff FRANK J. SCACCIA, MD., F.A.C.S., LLC, by way of Complaint against Defendants Twin City Fire Insurance Company (“Defendant” or “Twin City”, or “Hartford”), and The Hartford Financial Services Group, Inc., (“Defendant”, “The Hartford” or “Hartford”), alleges as follows:

INTRODUCTION

1. As early as December 2019, Covid-19 began spreading, first in China and then, because the disease is highly contagious, rapidly around the globe.
2. On January 30, 2020, the World Health Organization (WHO) declared the Covid-19 outbreak constituted a public health emergency of international concern which by March 11,

2020 WHO upgraded to a pandemic.¹

3. On March 13, 2020, President Trump declared the COVID-19 pandemic to be an American national emergency.²

4. Shortly thereafter, on March 16, 2020, the Centers for Disease Control and Prevention (“CDC”), and members of the national Coronavirus Task Force issued to the American public guidance, styled as “30 Days to Slow the Spread” for stopping the spread of COVID-19. This guidance advised individuals to adopt far-reaching social distancing measures, such as working from home, avoiding shopping trips and gatherings of more than ten people, and staying away from bars, restaurants, and food courts.³

5. Following this advice for individuals to adopt far-reaching social distancing measures, many state government administrations across the nation, including New Jersey, recognized the need to take steps to protect the health and safety of their residents from the human to human and surface to human spread of COVID-19. As a result, many governmental entities, including New Jersey, entered civil authority orders suspending or severely curtailing business operations of non-essential businesses that interact with the public and provide gathering places for the individuals.

¹ See World Health Organization, *WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19-11-march-2020>.

² See The White House, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

³ See *The President’s Coronavirus Guidelines for America, 30 Days to Slow the Spread*, WHITE HOUSE, https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last visited Apr. 27, 2020).

6. The result of these far-reaching restrictions and prohibitions has been catastrophic for most non-essential businesses, including Plaintiff's which have been forced to close, furlough employees, and endure a sudden shutdown of cash flow that threatens their survival.

7. Many business owners, like Plaintiff, insure against such catastrophic events like the current unforeseen COVID-19 pandemic through all-risk commercial property insurance policies. These policies promise to indemnify the policyholder for actual business losses incurred when business operations are involuntarily suspended, interrupted, curtailed, when access to the premises is prohibited because of direct physical loss or damage to the property, or by a civil authority order that restricts or prohibits access to the property. This coverage is commonly known as "business interruption coverage" and is standard in most all-risk commercial property insurance policies.

8. Defendants are denying the obligation to pay for business income losses and other covered expenses incurred by Plaintiff for the physical loss and damage to the insured properties from measures put in place by the civil authorities to stop the spread of COVID-19 among the population. This action seeks a declaratory judgment that affirms that the COVID-19 pandemic and the corresponding response by civil authorities to stop the spread of the outbreak triggers coverage, has caused physical property loss and damage to the insured properties, provides coverage for future civil authority orders that result in future suspensions or curtailments of business operations, and finds that Defendants are liable for the losses Plaintiff suffered.

9. In addition, this action brings a claim against Defendants for breach of their contractual obligation under common all-risk commercial property insurance policies to indemnify Plaintiff for business losses and extra expenses, and related losses resulting from actions taken by civil authorities to stop the human to human and surface to human spread of the COVID-19 outbreak.

10. Plaintiff brings this action having paid premiums in exchange for a business insurance policy that included lost business income and extra expense coverage.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, in that the Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

12. Venue is proper in this District pursuant to 28 U.S.C. §1391 in that a substantial part of the events or omissions giving rise to this action occurred in this judicial district and Plaintiff has his principal place of business in this judicial district and conducts business in this judicial district.

PARTIES

13. Plaintiff FRANK J. SCACCIA, MD., F.A.C.S., LLC is a New Jersey limited liability corporation with its principal place of business at 70 East Front Street, Red Bank, New Jersey with other covered facilities at 525 Route 70, Suite 3A, Brick, New Jersey and 4251 U.S. Highway 9, Freehold, New Jersey.

14. As a result of the Closure Orders referenced below, Dr. Scaccia had to cease performing non-emergency medical procedures at each of his three covered facilities.

15. Defendant Twin City Fire Insurance Company (“Twin City”) is an Indiana corporation with its principal place of business at 1 Hartford Plaza, Hartford, Connecticut. Defendant Twin City underwrote the insurance provided to Plaintiff.

16. Defendant The Hartford Financial Services Group, Inc., known as The Hartford, (“The Hartford” or “Hartford”), is an insurance carrier that provides business interruption insurance to Plaintiff. Hartford is headquartered at 1 Hartford Plaza, Hartford, Connecticut 06155. Hartford is the parent company of Defendant Twin City.

17. Defendants issued Policy No. 13 SBA AA1030 SB to Plaintiff that includes coverage for business interruption losses, for the policy period of March 26, 2020, through March

26, 2021.

FACTUAL BACKGROUND

A. The Global COVID-19 Pandemic

18. In December 2019, an initial cluster of patients with an unknown cause of viral pneumonia was found to be linked to the Huanan seafood market in Wuhan, China.⁴

19. By January 2020, genetic sequencing from patient samples was conducted to identify a novel virus, SARS-CoV-2, as the causative agent for the pneumonia cluster.⁵

20. The first confirmed case of the outside China was diagnosed on January 13, 2020, in Bangkok, Thailand with the number of cases exceedingly increasing worldwide. On January 30, 2020, the WHO declared the SARS-CoV-2 outbreak constituted a public health emergency of international concern, and by February 11, 2020, the disease caused by SARS-CoV-2 was named “COVID-19” by the WHO Director-General. By April 23, 2020, the WHO reported a confirmed 2.5 million cases of COVID-19 globally and over 170,000 deaths, with the United States dealing with more than 800,000 confirmed cases and 40,000 deaths – more than any other country.⁶

21. The clinical features of COVID-19 vary from asymptomatic forms to fatal conditions of severe respiratory failure that requires ventilation and support in an intensive care unit (“ICU”). Pneumonia has been the most frequent severe manifestation of COVID-19, with

4 See *id*; Francesco Di Gennaro et al., *Coronavirus Diseases (COVID-19) Current Status and Future Perspectives a Narrative Review*, MDPI: INT’L J. ENVTL. RESEARCH & PUB.HEALTH, (Apr. 1, 2020), <https://www.mdpi.com/1660-4601/17/8/2690> (There are four genera of coronaviruses: (I) α -coronavirus (alphaCoV) and (II) β -coronavirus (betaCoV), which are probably present in bats and rodents; and (III) δ -coronavirus (deltaCoV) and (IV) γ -coronavirus (gammaCoV), which probably represent avian species.).

5 See Di Gennaro, *supra* note 4.

6 See *Coronavirus disease 2019 (COVID-19) Situation Report – 94*, WORLD HEALTH ORGANIZATION (Apr. 23, 2020) https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf?sfvrsn=b8304bf0_4.

symptoms of fever, cough, dyspnea, and bilateral infiltrates on chest imaging.⁷ There are no specific treatments recommended for COVID-19, vaccines have only recently become available, and the learning curve continues to evolve.

22. Not only is COVID-19 transmitted via human-to-human, but the WHO and scientific studies have confirmed that the virus can live on contaminated objects or surfaces.⁸

23. With vaccines only recently becoming available to protect against COVID-19, effective control of the outbreak relies on measures designed to reduce human-to-human and surface-to-human exposure. The CDC's website provides that COVID-19 spreads when people are within six feet of each other or when a person comes in contact with a surface or object that has the virus on it.⁹

24. The secondary exposure of the surface-to-humans is particularly acute in public places, thus why the CDC recommends staying at home and taking preventive measures such as frequent hand washing and avoiding activities promoting close proximity of people with the virus or surfaces where the virus may reside.

25. Because these recommendations have proven ineffective to minimize the spread of COVID-19, containment efforts have led to civil authorities, including New Jersey to issue orders

⁷ See Di Gennaro, *supra* note 4 (Asymptomatic infections have also been described, but their frequency is unknown. Other, less common symptoms have included headaches, sore throat, and rhinorrhea. Along with respiratory symptoms, gastrointestinal symptoms (*e.g.*, nausea and diarrhea) have also been reported, and in some patients, they may be the presenting complaint.).

⁸ See *Coronavirus disease 2019 (COVID-19) Situation Report – 94*, WORLD HEALTH ORGANIZATION (Apr. 23, 2020) https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf?sfvrsn=b8304bf0_4.

⁹ See Centers for Disease Control and Prevention, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-spreads.html> (last visited Apr. 27, 2020).

closing many business establishments, including medical offices, and to conserve medical supplies, orders have been issued prohibiting the performance of non-urgent or non-emergency elective procedures and surgeries, forcing the suspension of operations at many medical, surgical, practices, including Plaintiff's.

B. Defendants' Standard Uniform All-Risk Commercial Property Insurance Policies

26. Defendants' insurance policy issued to Plaintiff is an "all risk" commercial property policy which cover loss or damage to the covered premises resulting from all risks other than those expressly excluded.

27. An "all risk" policy also puts the onus on the insurer to detail the basis of a denial of coverage.

28. Plaintiff's Policy uses standard forms that are used by Hartford for all insureds having applicable coverage.

C. Plaintiff's Factual Allegations

29. Among the coverages provided by the Policy was business interruption insurance, which, generally, would indemnify Plaintiff for lost income and profits in the event that Plaintiff's business was shut down.

30. Plaintiff's Special Property Coverage Form, Form SS 00 07 07 05, provided coverage as follows:

Business Income

(1) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". *The suspension must be caused by direct physical loss of or physical damage to property at the "scheduled premises", including personal property in the open (or in a vehicle) within 1,000 feet of the "scheduled premises", caused by or resulting from a Covered Cause Of Loss. (Emphasis added).*

31. The Additional Coverages section of Plaintiff's Special Property Coverage Form,

Form SS 00 07 07 05, also provides coverage as follows:

- (1) This insurance is extended to apply to the actual loss of Business Income you sustain when access to your “scheduled premises” is *specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property* in the immediate area of your “scheduled premises”. (*Emphasis added*).

32. In addition, Plaintiff’s Special Property Coverage Form, Form SS 00 07 07 05, provided coverage as follows:

Extra Expense

(1) We will pay reasonable and necessary Extra Expense you incur during the “period of restoration” that you would not have incurred if there had been no direct physical loss or physical damage to property at the “scheduled Premises”, including personal property in the open (or in a vehicle) within 1,000 feet, caused by or resulting from a Covered Cause of Loss.

33. Under Plaintiff’s Policy, Business Income is defined as:

- a. Net Income (Net Profit or Net Loss before income taxes), that would have been earned or incurred if not direct physical loss or physical damage had occurred; and
- b. Continuing normal operating expenses incurred, including Payroll Expenses.

34. Plaintiff’s Special Property Coverage Form, Form SS 00 07 07 05, defined Extra Expense as follows:

- (a) To avoid or minimize the suspension of business and to continue “operations”:
 - (i) At the “scheduled premises”; or
 - (ii) At replacement premises or at temporary locations, including:
 - (aa) Relocation expenses; and
 - (bb) Cost to equip and operate the replacement or temporary location, other than those costs necessary to repair or to replace damaged stock and equipment.
- (b) To minimize the suspension of business if you cannot continue “operations”.

- (c) (i) To repair or replace any property; or
- (ii) To research, replace or restore the lost information on damaged “valuable papers and records”; to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage o., Business Income.

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or physical damage. This Additional Coverage is not subject to the Limits of Insurance.

35. Plaintiff’s Special Property Coverage Form provides coverage for direct physical loss of or physical damage to Covered Property at the premises described in the Declarations (also called “scheduled premises” in this policy) caused by or resulting from a Covered Cause of Loss.

36. The interruption of Plaintiff’s business was not caused by any of the exclusions set forth in the applicable Policy.

37. Plaintiff’s Policy, unlike many others impacted by insurance denials, contains the endorsement Form SS 40 93 07 05 providing for Limited Fungi, Bacteria or Virus Coverage.

38. Plaintiff suffered a direct physical loss of and damage to his property because he has been unable to use the property for its intended purpose.

39. Notwithstanding the foregoing, by way of letter dated April 8, 2020, Defendants denied Plaintiff’s claim for business interruption losses.

D. The Closure Orders Affected Policyholders in New Jersey and Nationwide.

40. The Closure Orders have physically impacted private commercial property throughout the United States and the State of New Jersey, threatening the survival of thousands of businesses, including Plaintiff’s, that have had their business operations suspended or curtailed indefinitely by order of civil authorities.

41.

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State’s Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health (“DOH”), in order to

coordinate the State’s efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 (“COVID-19”); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

.....

WHEREAS, the best way for New Jersey residents to keep themselves, their families, and their communities safe during the COVID-19 outbreak is to stay at home as much as possible; and

.....

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts,

All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses.

New Jersey Executive Orders No. 103, 104, and 107.

42. Defendants did not intend to cover losses caused by the Closure Orders as part of business interruption coverage. Defendants denied Plaintiff’s claim, even though Plaintiff was forced to close due to the Closure Orders. On information and belief, Defendants have denied similar claims by other insured’s across-the-board, a practice which is belied by not only the express terms of the insurance policies, but also: (a) the Small Business Administration’s requirement that “reimbursement” from “business interruption insurance” be submitted along with an application

for an Economic Injury Disaster Loan (“EIDL”) loan;¹⁰ and (b) America’s SBDC, whose COVID-19 newsletter expressly states, “Business interruption insurance also applies if government actions cause operations to cease temporarily, which results in a loss for a firm.”¹¹

43. As a result, many small businesses that maintain commercial multi-peril insurance policies with business interruption coverage will have significant uninsured losses absent declaratory relief from this Court. Indeed, even once state and local governments re-opened, small businesses are still under social-distancing mandates and will continue to experience diminishing revenues due to the loss of covered property.

44. A declaratory judgment determining that the business income loss and extra expense coverage provided in standard commercial property insurance policies applies to the suspension, curtailment, and interruption of business operations resulting from measures put into place by civil authorities is necessary to prevent Plaintiff from being denied critical coverage for which he has paid premiums.

¹⁰ *Applying for SBA Disaster Loans (EIDL)* at 12, U.S. SMALL BUS. ADMIN. (Mar. 26, 2020), https://www.sba.gov/sites/default/files/articles/EIDL_Information_and_Documentation_-_3-30-2020_FINAL_2_pm.pdf (last visited Apr. 30, 2020).

¹¹ *COVID-19: The Latest News and Resources for Your Business*, at 15, AMERICA’S SBDC (Mar. 20, 2020), <https://www.dropbox.com/s/jcw2iw9vk2hcq9y/COVID%2019%20-%20Rev6.pdf?dl=0> (last visited Apr. 30, 2020).

COUNT I
DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE

45. Plaintiff repeats the preceding allegations as if fully set forth herein.

46. Plaintiff's Hartford Policy as underwritten by Twin City, is a contract under which Defendants were paid premiums in exchange for their promise to pay Plaintiff's losses for claims covered by the Policy.

47. Plaintiff complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendants or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

48. Upon information and belief, Defendants have denied claims related to the Closure Orders on a uniform, across-the-board basis, without individual bases or investigations, enabling the Court to render declaratory judgment.

49. Defendants informed Plaintiff that his claims for coverage were being denied in a standard form denial dated April 8, 2020 without conducting any investigation with plaintiff, against New Jersey rules and Insurance best practices.

50. Defendants' denial letter is a "kitchen sink" denial lacking reference to Plaintiff's specific losses. The denial refers incomprehensively and inconsistently to various exclusions, many of which do not govern nor apply, and without acknowledging coverage Plaintiff is entitled to, specifically "Limited Coverage for Fungi, wet rot, dry rot, bacteria and virus".

51. Plaintiff paid for virus protection, was under the belief he was protected from same and under the plain meaning of the insurance contract, virus is not excluded from Plaintiff's coverage but is in fact coverage Plaintiff purchased.

52. It is clear the denial and reliance upon a variety of exclusions that do not even apply

in this situation without investigation into Plaintiff's claims, is unsubstantiated and without merit.

53. An actual case or controversy exists regarding Plaintiff's rights and Defendants' obligations under the Policy to reimburse Plaintiff for the full amount of Business Income losses incurred by Plaintiff in connection with the suspension of his business stemming from the Closure Orders.

54. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's Business Income losses incurred in connection with the Closure Order and the necessary interruption of his business stemming from those Orders are insured losses under his Policy; and
- ii. Defendants are obligated to pay Plaintiff for the full amount of the Business Income losses incurred and to be incurred in connection with the Closure Orders during the period of restoration and the necessary interruption of his business stemming from those Orders.

COUNT II
BREACH OF CONTRACT – BUSINESS INCOME COVERAGE

55. Plaintiff repeats the preceding allegations as if fully set forth herein. Plaintiff's Hartford Policy as underwritten by Twin City, is a contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

56. In the "Business Interruption Coverage", Defendants agreed to pay for its insured's actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration."

57. Defendants also agreed to pay for its insured's actual loss of Business Income sustained due to the necessary "interruption of ... operations" during the "Period of Restoration" caused by direct physical loss or damage.

58. "Business Income" under the Policy means the "Net Income (Net Profit or Net Loss before income taxes), including Income and Royalties, that would have been earned or incurred",

as well as “continuing normal operating expenses incurred, including Payroll Expenses”.

59. The Closure Orders caused direct physical loss and damage to Plaintiff’s Covered Properties, requiring suspension of operations at the Covered Properties. Losses caused by the Closure Orders thus triggered the Business Income provision of Plaintiff’s Defendants’ policy.

60. Plaintiff has complied with all applicable provisions of his policy and/or those provisions have been waived by Defendants or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy’s clear and unambiguous terms.

61. By denying coverage for any Business Income losses incurred by Plaintiff as a result of the Closure, Defendants have breached its coverage obligations under the Policy.

62. Defendants informed Plaintiff that his claims for coverage were being denied in a standard form denial dated April 8, 2020 without conducting any investigation with plaintiff, against New Jersey rules and Insurance best practices.

63. Defendants’ denial letter is a “kitchen sink” denial lacking reference to Plaintiff’s specific losses. The denial refers incomprehensively and inconsistently to various exclusions, many of which do not govern nor apply, and without acknowledging coverage Plaintiff is entitled to, specifically “Limited Coverage for Fungi, wet rot, dry rot, bacteria and virus.”

64. Plaintiff paid for virus protection, was under the belief he was protected from same and under the plain meaning of the insurance contract, virus is not excluded from Plaintiff’s coverage but is in fact coverage Plaintiff purchased.

65. It is clear the denial and reliance upon a variety of exclusions that do not even apply in this situation without investigation into Plaintiff’s claims, is unsubstantiated and without merit.

66. As a result of Defendants’ breach of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

COUNT III
DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE

67. Plaintiff repeats the preceding allegations as if fully set forth herein.

68. Plaintiff's Hartford Policy as underwritten by Twin City is a contract under which Hartford was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

69. Plaintiff complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendants or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

70. Defendants have denied claims related to the Closure Orders on a uniform basis without individual bases or investigations, so the Court can render declaratory judgment.

71. Defendants informed Plaintiff that his claims for coverage were being denied in a standard form denial dated April 8, 2020 without conducting any investigation with plaintiff, against New Jersey rules and Insurance best practices.

72. Defendants' denial letter is a "kitchen sink" denial lacking reference to Plaintiff's specific losses. The denial refers incomprehensively and inconsistently to various exclusions, many of which do not govern nor apply, and without acknowledging coverage Plaintiff is entitled to, including "Limited Coverage for Fungi, Wet rot, dry rot, bacteria and virus".

73. Plaintiff paid for virus protection, was under the belief he was protected from same and under the plain meaning of the insurance contract, virus is not excluded from Plaintiff's coverage but is in fact coverage Plaintiff purchased.

74. It is clear the denial and reliance upon a variety of exclusions that do not even apply

in this situation without investigation into Plaintiff's claims, is unsubstantiated and without merit. An actual controversy exists regarding Plaintiff's rights and Hartford's obligations under the Policy to reimburse Plaintiff the full amount of covered Civil Authority losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of plaintiff's business stemming from those Orders.

75. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's Civil Authority losses incurred in connection with the Closure Orders and the necessary interruption of plaintiff's business stemming from those Orders are insured losses under plaintiff's Policy; and
- ii. Hartford is obligated to pay Plaintiff the full amount of the Civil Authority losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary interruption of plaintiff's business stemming from those Orders.

COUNT IV
BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE

76. Plaintiff repeats the preceding allegations as if fully set forth herein.

77. Plaintiff's Hartford Policy as underwritten by Twin City is a contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the policy.

78. Plaintiff's Policy provided for "Civil Authority" coverage, which promises to pay "the actual loss of is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your 'Scheduled Premises'".

79. The Closure Orders triggered the Civil Authority provision under Plaintiff's Policy.

80. Plaintiff had complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendants or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear

and unambiguous terms.

81. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders, Defendants breached their coverage obligations under the Policy.

82. Defendants informed Plaintiff that his claims for coverage were being denied in a standard form denial dated April 8, 2020 without conducting any investigation with plaintiff, against New Jersey rules and Insurance best practices.

83. Defendants' denial letter is a "kitchen sink" denial lacking reference to Plaintiff's specific losses. The denial refers incomprehensively and inconsistently to various exclusions, many of which do not govern nor apply, and without acknowledging coverage Plaintiff is entitled to, including "Limited Coverage for Fungi, wet rot, dry rot, bacteria and virus.

84. Plaintiff paid for virus protection, was under the belief he was protected from same and under the plain meaning of the insurance contract, virus is not excluded from Plaintiff's coverage but is in fact coverage Plaintiff purchased.

85. It is clear the denial and reliance upon a variety of exclusions that do not even apply in this situation without investigation into Plaintiff's claims, is unsubstantiated and without merit.

86. As a result of Defendants' breach of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

COUNT V
DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE

87. Plaintiff repeats the preceding allegations as fully set forth herein.

88. Plaintiff's Hartford Policy as underwritten by Twin City is a contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

89. Plaintiff has complied with all applicable provisions of the Policy and/or those

provisions have been waived by Defendants or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

90. Defendants have denied claims related to the Closure Orders uniformly without individual bases or investigation, enabling the Court to render declaratory judgment.

91. Defendants informed Plaintiff that his claims for coverage were being denied in a standard form denial dated April 8, 2020 without conducting any investigation with plaintiff, against New Jersey rules and Insurance best practices.

92. Defendants' denial letter is a "kitchen sink" denial lacking reference to Plaintiff's specific losses. The denial refers incomprehensively and inconsistently to various exclusions, many of which do not govern nor apply, and without acknowledging coverage Plaintiff is entitled to, specifically "Limited Coverage for Fungi, wet rot, dry rot, bacteria and virus."

93. Plaintiff paid for virus protection, was under the belief he was protected from same and under the plain meaning of the insurance contract, virus is not excluded from Plaintiff's coverage but is in fact coverage Plaintiff purchased.

94. It is clear the denial and reliance upon a variety of exclusions that do not even apply in this situation without investigation into Plaintiff's claims, is unsubstantiated and without merit.

95. An actual case or controversy exists regarding Plaintiff's rights and Defendants' obligations under the Policy to reimburse Plaintiff for the full amount of Extra Expense losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of plaintiff's business stemming from those Orders.

96. Pursuant to 28 U.S.C. § 2201, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- i. Plaintiff's Extra Expense losses incurred in connection with the Closure Orders and the necessary interruption of plaintiff's business stemming from those Orders are insured losses under plaintiff's Policy; and
- ii. Defendants are obligated to pay Plaintiff for the full amount of the Extra Expense losses incurred and to be incurred in connection with the covered losses related to the Closure Orders during the period of restoration and the necessary interruption of plaintiff's business stemming from those Orders.

COUNT VI
BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE

97. Plaintiff repeats the preceding allegations as if fully set forth herein.

98. Plaintiff's Hartford Policy as underwritten by Twin City is a contract under which Defendants were paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Policy.

99. Plaintiff's Policy provided that Defendants agreed to pay necessary Extra Expense that the insured incurred during the "period of restoration" that the insured would not have incurred if there had been no direct physical loss or damage to the described premises. "Extra Expense" means expenses "to avoid or minimize the suspension of business and to continue 'operations,'" and to repair or replace property.

100. Due to the Closure Orders, Plaintiff incurred Extra Expense at the Covered Properties.

101. Plaintiff has complied with all applicable provisions of the Policy and/or those provisions have been waived by Defendants or Defendants are estopped from asserting them, and yet Defendants have abrogated their insurance coverage obligations pursuant to the Policy's clear and unambiguous terms.

102. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders, Defendants breached their coverage obligations under the Policy.

103. Defendants informed Plaintiff that his claims for coverage were being denied in a

standard form denial dated April 8, 2020 without conducting any investigation with plaintiff, against New Jersey rules and Insurance best practices.

104. Defendants' denial letter is a "kitchen sink" denial lacking reference to Plaintiff's specific losses. The denial refers incomprehensively and inconsistently to various exclusions, many of which do not govern nor apply, and without acknowledging coverage Plaintiff is entitled to, specifically "Limited Coverage for Fungi, wet rot, dry rot, bacteria and virus."

105. Plaintiff paid for virus protection, was under the belief he was protected from same and under the plain meaning of the insurance contract, virus is not excluded from Plaintiff's coverage but is in fact coverage Plaintiff purchased.

106. It is clear the denial and reliance upon a variety of exclusions that do not even apply in this situation without investigation into Plaintiff's claims, is unsubstantiated and without merit.

107. As a result of Defendants' breach of the Policy, Plaintiff has sustained substantial damages for which Defendants are liable, in an amount to be established at trial.

WHEREFORE, Plaintiff, demands judgment against the Defendant as follows:

- (1) Issuing a Declaratory Judgment declaring the Parties' rights and obligations under the insurance policies;
- (2) Awarding Plaintiff compensatory damages from Defendants' breach of the insurance policy in an amount to be determined at trial, together with appropriate prejudgment interest at the maximum rate allowable by law;
- (3) Awarding Plaintiff costs, fees and disbursements;
- (4) Awarding Plaintiff exemplary and punitive damages; and
- (5) Awarding such other and further relief the Court deems just, proper, and equitable.

DEMAND FOR A JURY TRIAL

Plaintiff requests a jury trial for all Counts for which a trial by jury is permitted by law.

Dated: April 8, 2021

SANDERS PHILLIPS GROSSMAN, LLC

By: /s/ Marc Grossman
Marc D. Grossman, Esq.
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Telephone: (516) 741-5600
Fax: (516) 741-0128
Email: MGrossman@thesandersfirm.com

Victoria J. Maniatis, Esq.
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Telephone: (516) 741-5600
Fax: (516) 741-0128
Email: VManiatis@thesandersfirm.com