

No.: X07 HHD-CV-21-6140378-S

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MASHANTUCKET PEQUOT TRIBAL NATION, :

Plaintiff, :

v. :

FACTORY MUTUAL INSURANCE COMPANY, :

Defendant. :

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SUPERIOR COURT, COMPLEX
LITIGATION DOCKET X07 AT
HARTFORD

JURY TRIAL DEMANDED

April 12, 2021

FIRST AMENDED COMPLAINT

Plaintiff Mashantucket Pequot Tribal Nation (the “Nation”) files this Complaint against Defendant Factory Mutual Insurance Company (“FM”) seeking declaratory and equitable relief and damages for breach of contract and bad faith, alleging the following:

I. INTRODUCTION

1. This action arises out of FM’s failure to meet its obligations under an “all risks” insurance policy number 1053126 that it sold to the Nation covering, among other things, business interruption losses.

2. The Nation paid millions of dollars in premiums to purchase an “all risks” insurance policy with limits of up to \$1,655,000,000 per occurrence. Due to the COVID-19 pandemic, the Nation

suffered business interruption, as defined under the policy, resulting in more than \$76 million in covered losses and expenses, which continue to accrue. Now that the Nation has suffered losses resulting from covered risks, FM has improperly denied the Nation the benefit of coverage that was previously bargained for and that the Nation reasonably expected.

3. Under established principles of insurance law, the Nation is entitled to payment under the policy for business income losses and expenses covered under the policy, but FM has breached its duties under the insurance contract and has refused to provide coverage in bad faith. This Court should enforce the promise that FM made and require it to provide the coverage that the Nation purchased.

II. PARTIES

4. The Plaintiff Nation is a federally recognized Indian Tribe headquartered on the Mashantucket Pequot Reservation (“Reservation”) at 2 Matts Path, Mashantucket, CT 06338.

5. The Defendant FM is incorporated under the laws of the State of Rhode Island with its principal place of business in Johnston, RI.

III. JURISDICTION AND VENUE

6. Jurisdiction is proper pursuant to Connecticut General Statute § 51-164s.

7. Under the insurance policy in dispute, “jurisdiction shall reside within the State Courts of Connecticut.” (Exhibit A, app. B.)

8. This Court may issue a declaratory judgment under Connecticut General Statute § 52-29.

9. Venue is proper in the Judicial District of New London under Connecticut General Statute § 51-345.

IV. FACTUAL BACKGROUND

a. The Nation

10. The Nation is a federally recognized Indian Tribe with a Reservation located within the geographical boundaries of Connecticut.

11. The governing body of the Nation is the Mashantucket Pequot Tribal Council (the “Tribal Council”).

12. On and around the Reservation, the Nation operates and has an interest in a variety of businesses, including a casino, multiple hotels, spas, health centers, golf courses, restaurants, theaters, and a museum.

13. Those businesses are unincorporated instrumentalities of the Nation or limited liability companies owned by the Nation.

14. One of those businesses is the Mashantucket Pequot Gaming Enterprise, doing business as Foxwoods Resort Casino, a resort and casino complex on the Reservation that includes multiple casinos, multiple hotels, theaters, and restaurants that range from fine dining to fast casual.

15. Another business is the Spa at Norwich Inn, a luxury hotel and spa set on 42 acres in Norwich, Connecticut that, in addition to spa services and hotel accommodations, provides dining, meeting space, events, and a wedding venue to guests.

16. Lake of Isles, a Nation-owned golf course located adjacent to the Reservation, is one of the top golf facilities in the country. In addition to the two 18-hole golf courses, Lake of Isles also includes a golf shop, academy, a wedding venue, and dining and event spaces.

17. Pequot Health Care includes PRXN Services and Pequot Plus, which provide pharmaceutical services and health care plans for Native American tribes and commercial enterprises, respectively.

18. The Pequot Outpost is a 5,000-square-foot convenience center on the Reservation that is open 24 hours a day, seven days a week and includes a gas station and a convenience store and, at the time of the shutdown, a fast food restaurant.
19. Two Trees Inn is a 220-room hotel located adjacent to Foxwoods Resort Casino that offers a 24-hour shuttle to attractions on the Reservation.
20. The Mashantucket Pequot Museum and Research Center is a 308,000-square-foot museum on the Reservation that explores the history of the Mashantucket Pequot Tribal Nation and indigenous cultures and societies of the United States and Canada.
21. Together, those entities make up the Tribal Businesses (and are referred to that way in this Complaint).
22. The Nation also occupies, operates, and/or has an insurable interest in a variety of government buildings, real property, and locations listed on the insurance policy's schedule of locations.

b. The FM Policy

23. FM sold an "all risk" insurance policy to the Nation (the "Policy"). A copy of the Policy is attached as Exhibit A.
24. The Policy covers the "Mashantucket Pequot Tribal Nation and any subsidiary, and Mashantucket Pequot Tribal Nation's interest in any partnership or joint venture in which Mashantucket Pequot Tribal Nation has management control or ownership as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the 'Insured,' including legal representatives." (Exhibit A, Declarations § 1.)
25. The Policy states that all loss "will be adjusted with and payable to Mashantucket Pequot Tribal Nation, or as may be directed by Mashantucket Pequot Tribal Nation." (*Id.*, Declarations § 6.)

26. The Tribal Businesses, government buildings, and other locations described above are insured locations of the Nation under the Policy. (*Id.*, Schedule of Locations, app. A.).
27. The Policy recognizes that the Nation is a sovereign government. (*Id.*)
28. The Policy covers “property . . . against ALL RISKS OF PHYSICAL LOSS OR DAMAGE.” (*Id.*, Declarations Preamble.)
29. As used in the Policy, the term “physical loss” is separate, distinct, and has an independent meaning from the term “damage.”
30. The Policy does not define the term “physical.”
31. The Policy does not define the term “physical loss.”
32. The Policy does not define the term “damage.”
33. The Policy does not define the phrase “physical loss or damage.”
34. The Policy insures all property described in Appendix A. (*Id.*, Schedule of Locations, app. A.)
35. The Policy also covers business interruption losses (referred to in the Policy as “Time Element” coverage) “directly resulting from physical loss or damage of the type insured.” (*Id.*, Time Element, Loss Insured § 1.A.)
36. The Policy provides up to \$1,655,000,000 of coverage per occurrence. (*Id.*, Declarations § 11.)
37. The Policy has a term date of July 1, 2019 through July 1, 2020. (*Id.*, Declarations Preamble.)
38. The Policy includes a liberalization clause under which, “[i]f during the period that insurance is in force under this Policy, any filed rules or regulations affecting the same are revised by statute so as to broaden the insurance without additional premium charge, such extended or

broadened insurance will inure to the benefit of the Insured within such jurisdiction.” (*Id.*, General Provisions § 4.)

39. The Policy provides that “[i]f the provisions of this Policy conflict with the laws of any jurisdictions in which this Policy applies, and if certain provisions are required by law to be stated in this Policy, this Policy will be read so as to eliminate such conflict or deemed to include such provisions for insured locations within such jurisdictions.” (*Id.*, General Provisions § 3.)

40. FM drafted the Policy.

41. The Nation paid a substantial premium to FM, including nearly \$2 million for the Policy and more than \$23.9 million over the last decade, for coverage provided by the Policy (and those policies that preceded and have since replaced it).

42. Upon information and belief, FM calculated the business interruption premiums based in material part on the revenue that FM expected the Tribal Businesses to generate as fully functioning and operational businesses.

43. The Nation has suffered direct physical loss and damage to the locations and properties insured under the Policy as well as business interruption and other losses covered under the Policy.

c. COVID-19 Pandemic

44. SARS-CoV-2 causes COVID-19, a disease that attacks the respiratory system and causes other harm to humans. SARS-CoV-2 and COVID-19 are collectively referred to in this Complaint as COVID-19.

45. COVID-19 is deadly and highly contagious.

46. On January 30, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a Public Health Emergency of International Concern.

47. On March 11, 2020, the WHO declared COVID-19 to be a pandemic.

48. A pandemic is an outbreak of a disease that affects a wide geographic area and infects an exceptionally high proportion of the population.

49. A pandemic is thus worldwide.

50. On March 13, 2020, the President of the United States declared a nationwide emergency in response to COVID-19.

51. According to the WHO, as of March 31, 2021, COVID-19 has infected more than 127,000,000 people and caused more than 2,780,000 deaths. *See* World Health Organization, WHO Coronavirus Disease (COVID-19) Dashboard, <https://covid19.who.int/> (last updated March 31, 2021) (website updated regularly with new data).

52. According to the Centers for Disease Control and Prevention (CDC), as of March 31, 2021, COVID-19 has infected more than 30,000,000 people and caused more than 547,000 deaths in the United States. *See* CDC, Coronavirus Disease 2019 (COVID-19): United States COVID-19 Cases and Deaths by State, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last updated March 30, 2021) (website updated regularly with new data).

53. The CDC has estimated that infection rates for COVID-19 were likely at least ten times higher than reported for March 2020 through May 2020.

d. COVID-19 Is a Risk That Causes Physical Loss and Damage to Property

54. COVID-19 causes a physical, tangible alteration to property, and the presence of COVID-19 amounts to physical loss and damage to property.

55. According to the CDC, COVID-19 can spread in several ways, including from person to person through respiratory droplets, through airborne transmission, and by contact with objects or surfaces.

56. The CDC has also noted that airborne transmission involves exposure to COVID-19 in small droplets and particles that can linger in the air for minutes to hours and can infect individuals

who are further than six feet away from the person who is infected or after that person has left the space.

57. According to a CDC study published in July 2020, droplets were spread by air-conditioned ventilation and caused an outbreak among people who dined in the same air-conditioned restaurant.

58. The WHO has confirmed that COVID-19 can remain viable on objects or surfaces, which, once infected with COVID-19, are sometimes referred to as fomites.

59. Multiple studies, including studies from the National Institute of Health and various academic, scientific journals, have concluded that COVID-19 can remain viable on various objects, surfaces, or materials for a period of up to 28 days.

60. For example, studies have reported that COVID-19 was detectable in aerosols for up to three hours, up to four hours on copper, up to twenty-four hours on cardboard, and up to three days on plastic and stainless steel.

61. The Tribal Businesses contain those sorts of surfaces, objects, and materials, which they use in their ordinary course of business.

62. In addition, according to at least one study, during and after illness, COVID-19 particles are shed in large numbers in bodily secretions, including saliva, oral and nasal fluid, respiratory droplets, blood, feces, and urine particles.

63. That study noted that COVID-19 can be introduced to surfaces by direct physical contact with such surfaces; contact with soiled hands; contact with aerosolized COVID-19 (i.e., large droplet spread) released while breathing, talking, sneezing, or coughing; and contact with airborne COVID-19 that settles after disturbance of a surface damaged by COVID-19 (e.g., shaking a tablecloth at a restaurant).

64. The study also found that once an object or surface is detrimentally affected, impaired, altered, or damaged by COVID-19, transfer of COVID-19 may readily occur between inanimate and animate objects, or vice versa, and between two separate surfaces.

65. According to the CDC, individuals can become infected with COVID-19 by contacting surfaces or objects or through airborne transmission after an infected person was present.

66. The prospect of COVID-19 being present on property is a risk of direct physical loss or damage, and it causes physical loss or damage to property.

67. COVID-19 causes a physical, tangible alteration to property and seriously and detrimentally affects, impairs, damages, and alters its value, usefulness, or normal function, rendering the property nonfunctional.

68. The presence of COVID-19 physically alters property, and its existence on objects or surfaces renders them unsafe or unusable.

69. The physical alteration, damage, and impairment described herein includes, but is not limited to, damage to:

- a. In the restaurants: cooking equipment and appliances, storage equipment, signs, menus, ovens, microwaves, refrigerators, freezers, ice machines, napkins, utensils, measuring cups and spoons, utensils, plates, cups, saucers, scales, thermometers, timers, aprons, soda dispensers, bar, glasses, bottles of alcohol, and containers, among other items.
- b. In the retail outlets: retail merchandise, signs, shelves, displays, counters, clothes hangers, boxes, packaging, and bags, among other items.
- c. In the casinos: tables, chairs, lights, displays, cards, chips, dice, cards, cups, containers, slot machines, games, screens, handles, and money, among other items.
- d. In the spas: tables, chairs, bottles, packaging, curtains, showers, tubs, cushions, blankets, pillows, towels, linens, cups, glasses, coolers, pitchers, and trays, among other items.
- e. In the hotels: beds, linens, key cards, remotes, handles, tables, desks, chairs, lamps, switches, curtains, blinds, cords, luggage racks, irons, ironing boards, shelves, toilet paper, paper towels, cups, soap boxes, shampoo bottles, conditioner bottles, lotion

bottles, bells, desks, signs, pillows, pens, paper, cleaning supplies, elevators, bell carts, housekeeping carts, housekeeping supplies, mops, brooms, bottles, rags, and cloths, among other items.

- f. At all locations: lighting fixtures, cash registers, computers, tables, chairs, couches, stools, curtains, blinds, doors, door handles, carts, countertops, display cases, shelving, uniforms, floors, windows, fans, mirrors, decorative items, pictures, frames, sinks, faucets, faucet handles, soap dispensers, paper towels, paper towel holders, toilets, urinals, and trash cans, among other items.

70. The presence of COVID-19 in the air at a property also renders the property unusable, uninhabitable, and unfit for its normal occupancy or use.

71. COVID-19 has caused physical loss or damage at the locations and properties insured under the Policy and is a risk of physical loss or damage to the locations and properties.

e. COVID-19 Has Been Present at the Tribal Businesses

72. The Tribal Businesses employed more than 5,400 individuals before COVID-19 began spreading in Connecticut and throughout the United States.

73. There have been at least 205 suspected or confirmed COVID-19 cases among those individuals that work on the premises of the Tribal Businesses.

74. It is likely that more of the Tribal Businesses' employees and guests have had COVID-19 in addition to those who have reported suspected or confirmed cases.

75. As referenced above, the CDC estimated that infection rates for COVID-19 were likely at least ten times higher than those reported for March 2020 through May 2020.

76. The Tribal Businesses are high-traffic locations, visited by hundreds of thousands of individuals monthly from various locations who have just spent hours in a confined location with many other individuals because they drove or flew to visit the Tribal Businesses.

77. At the end of March 2020, Connecticut reported that 2,571 people in Connecticut had tested positive for COVID-19. *See* Ct. State Dep't of Pub. Health, COVID-19 Update March 30, 2020,

<https://portal.ct.gov/-/media/Coronavirus/CTDPHCOVID19summary3302020.pdf> (last visited April 12, 2021).

78. Connecticut has a population of approximately 3,565,287. *See* U.S. Census Bureau, Quick Facts: Connecticut, <https://www.census.gov/quickfacts/CT> (last visited April 12, 2021).

79. That means that, at a minimum, one in every 1,387 people in Connecticut had tested positive for COVID-19 by the end of March 2020.

80. Because the CDC has estimated that actual infection rates were likely ten times higher than reported rates, it is likely that one in every 139 people in Connecticut was infected with COVID-19 by the end of March 2020.

81. Approximately 4,000 individuals who work at the Tribal Businesses' locations and an estimated average of more than 17,000 guests visited the Tribal Businesses every day in the weeks leading up to the governmental orders discussed in the following paragraphs.

82. On this basis alone, it is more probable than not that COVID-19 was actually present at the Tribal Businesses by March 2020.

83. The ubiquitous nature of the pandemic also confirms that COVID-19 has been present at the Tribal Businesses.

84. COVID-19 has caused physical loss or damage to property at those locations and constitutes a risk of physical loss or damage to the Tribal Businesses and other Nation property.

85. Because of the physical loss or damage caused by COVID-19, the Tribal Businesses shut down or appropriately limited operations. The operations remained closed or appropriately limited until it was clear that it was safe to reopen for employees and guests, consistent with adherence to the Tribal Businesses' strict and rigorous protocols and health and safety guidelines in place to

prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

f. In Response to the Physical Loss or Damage to Property Caused by COVID-19, Governments Issued Orders Restricting Activities

86. COVID-19 physically affects the property on which it is present and can infect individuals who are exposed to that property.

87. Tribal and state governments issued orders restricting activities directly because of that physical loss or damage to property and to minimize the spread of COVID-19 by reducing the likelihood of an individual's exposure to damaged property.

88. On March 12, 2020, because of the physical loss or damage to property caused by COVID-19, the Governor of Connecticut issued Executive Order No. 7. That order prohibited social gatherings of 250 people or more for social and recreational activities.

89. On March 13, 2020, because of the physical loss or damage to property caused by COVID-19 and to protect the health and safety of the community, the Tribal Council ordered the temporary closure of certain governmental operations, including the Mashantucket Pequot Museum and Research Center, to begin at the end of the day of March 13, 2020 and to extend for two weeks.

90. On March 16, 2020, the Governor of Connecticut issued Executive Order No. 7D, which prohibited social and recreational gatherings of 50 or more people. The order also noted that the Governor was working with the federally recognized tribes on the temporary closure of their casino operations.

91. On March 16, 2020, because of the physical loss or damage caused by COVID-19 and to protect the health and safety of the residents of and visitors to the Nation, the Tribal Council ordered the temporary closure of the Mashantucket Pequot Gaming Enterprise (including Foxwoods Resort Casino and Two Trees Inn), effective 8:00 pm ET on March 17, 2020.

92. On March 19, 2020, the Tribal Council declared a State of Emergency throughout the Nation and confirmed the closure of the Tribal Businesses located on the Reservation.

93. On March 20, 2020, the Governor issued Executive Order No. 7H, which required businesses and not-for-profit organizations to implement work-from-home procedures to the maximum extent possible and required all non-essential businesses to reduce their in-person workforces completely.

94. On March 27, 2020, the Tribal Council reaffirmed its closure of certain operations, including the Mashantucket Pequot Gaming Enterprise (including Foxwoods Resort Casino, Two Trees Inn, and all other businesses located therein), and the Mashantucket Pequot Museum and Research Center.

95. To mitigate losses and to comply with the government orders, the Tribal Businesses shut down or appropriately limited operations. The operations remained closed or appropriately limited until it was clear that it was safe to reopen for employees and guests, consistent with adherence to the Tribal Businesses' strict and rigorous protocols and to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

g. The "All Risks" Coverage is Triggered

96. To insure against losses from unexpected and unprecedented circumstances like these, the Nation purchased business interruption coverage as part of the all-risk commercial property insurance Policy from FM.

97. The Policy covers property against "ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded." (Exhibit A, Declarations Preamble.)

98. The Policy includes, among other things, Time Element coverage, which insures against the loss of business income and extra expense sustained as a result of “physical loss or damage to” insured property. (*Id.*, Time Element Coverages § 2.C.-E.)

99. The Policy contains certain “ADDITIONAL COVERAGES.” Specifically, the Property Damage sections of the Policy provide that it “includes the following Additional Coverages for insured physical loss or damage.” (*Id.*, Property Damage § 6.)

100. One of the “Additional Coverages for insured physical loss or damage” is “COMMUNICABLE DISEASE RESPONSE.” (*Id.*, Other Additional Coverages § F.)

101. Under the “COMMUNICABLE DISEASE RESPONSE” coverage, the Policy expressly covers, among other things, “the reasonable and necessary costs incurred . . . for the: 1) cleanup, removal and disposal of . . . communicable diseases from insured property.” (*Id.*)

102. By including “COMMUNICABLE DISEASE RESPONSE” coverage as one of the “Additional Coverages for insured physical loss or damage,” the Policy expressly acknowledges that communicable disease causes “insured physical loss or damage.” (*Id.*, Property Damage § 6.)

103. Similarly, by providing for the “cleanup, removal and disposal of . . . communicable disease,” the Policy explicitly recognizes that communicable disease causes a physical, tangible alteration to the integrity of property. (*Id.*, Other Additional Coverages § F.)

104. Because the Policy specifically covers remediation of the damage caused by communicable disease, the physical damage to property caused by communicable disease is “physical damage of the type insured” under the Policy.

105. FM has acknowledged that COVID-19 met the definition of a communicable disease under the Policy.

106. The Policy contains numerous different coverage parts, many of which provide coverage for the Nation's losses and expenses.

107. The majority of the coverage parts are not mutually exclusive, and where a particular coverage part is intended to be exclusive, the Policy states so explicitly.

108. Thus, a particular loss may trigger several different coverage parts, all of which provide multiple, independent pathways to coverage under the Policy.

109. Because the Nation paid a substantial premium for this broad, multi-pronged, "all risks" insurance coverage, it reasonably expected coverage for the losses described in this Complaint under every one of the coverage parts implicated.

110. The Nation and its Tribal Businesses have incurred substantial covered losses and expenses as a result of the risks of physical loss or damage identified above.

111. The coverages triggered include those described below.

1. COVID-19 Triggered the Policy's All Risks Coverage

112. The presence of COVID-19 is a "risk of physical loss or damage," triggering the Policy's "all risks" coverage.

113. COVID-19 has caused physical loss and damage to the Tribal Business locations.

114. The Nation submitted a claim under the Policy as a result of suffering losses covered by the Policy.

115. In addition, or alternatively, various government orders concerning COVID-19 are a "risk of physical loss or damage" that is not excluded or limited, and they trigger the Policy's Property Damage coverage.

116. Because those government orders resulted in damage to the Nation's property and loss of use of that property, they are a "risk of physical loss or damage."

117. FM has previously acknowledged that loss of use, functionality, or reliability of property constitutes physical loss or damage for the purposes of coverage under a commercial property policy such as the Policy. Specifically, FM has argued in court filings that the presence of mold in a laboratory caused physical loss or damage and was a covered loss, despite not causing structural alteration of the property. *See Factory Mut. Ins. Co. v. Fed. Ins. Co.*, Case No. 1:17-cv-00760 (D.N.M. Nov. 11, 2019), ECF No. 127 (asserting that “numerous courts have concluded that loss of functionality or reliability under similar circumstances constitutes physical loss or damage,” as well as arguing that another insurer’s failure to define “physical loss or damage” made that phrase “susceptible of more than one reasonable interpretation,” rendered the policy “ambiguous” as to what constituted “physical loss or damage,” and “must be construed against” the insurer that drafted that policy).

118. FM denied or effectively denied coverage for that claim and did so in bad faith based on apparent systematic company practices designed to avoid or minimize payments for covered COVID-19 claims.

2. COVID-19 Triggered the Policy’s Time Element Coverage

119. The policy affords coverage for the Nation’s Time Element loss.

120. COVID-19 has caused the Nation to suffer Time Element loss as a direct result of physical loss and damage of the type insured under the Policy.

121. As shown above, the presence of COVID-19 is physical loss or damage of the type insured.

122. In the alternative, COVID-19 has caused the Nation to suffer Time Element loss due to the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on Reservation) that limited, restricted, or prohibited access to the Tribal Businesses’ locations as a direct result of physical damage of the type incurred under the Policy that occurred at or within five statute miles of an insured location.

123. This loss triggers coverage under the Policy’s Time Element provisions including, without limitation, coverage for Gross Earnings loss, Gross Profits loss, Extra Expense, and Rental Income loss up to the Policy’s applicable limits and sublimits. (*See* Exhibit A, Time Element.)

3. COVID-19 Triggered the Policy’s Civil Authority Coverage

124. The physical damage caused by the presence of COVID-19 at property located at or within five statute miles of the Tribal Businesses’ locations has directly resulted in the issuance of orders from civil authorities including the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on Reservation), restricting or prohibiting access to the Tribal Businesses.

125. The Nation has sustained and will continue to sustain Time Element loss and extra expense because of those orders, which trigger the Policy’s “Civil or Military Authority” coverage, subject to the Policy’s applicable limits. (*See id.*, Time Element § 5, Supply Chain Time Element Coverage Extensions § A.)

4. COVID-19 Triggered the Policy’s Contingent Time Element Extended Coverage

126. The presence of COVID-19 at the locations of the Tribal Businesses’ direct and indirect customers, suppliers, contract manufacturers, or contract service providers has caused physical loss or damage to property at those locations.

127. The Nation has sustained and will continue to sustain Time Element loss as a result of the physical loss or damage to property at the locations described above, triggering the Policy’s “Contingent Time Element Extended” coverage. (*See id.*, Time Element § 5, Supply Chain Time Element Coverage Extensions § B.)

5. COVID-19 Triggered the Policy’s Ingress/Egress Coverage

128. The Nation has sustained loss and extra expense due to the necessary interruption of business because “physical loss or damage of the type insured” caused a “partial or total physical prevention of ingress to or egress from an insured location.” (*Id.*, Time Element § 5, Supply Chain Time Element Coverage Extensions § C.)

129. That physical loss or damage caused by COVID-19 prevented physical ingress to the Tribal Businesses, triggering the Policy’s “Ingress/Egress” coverage.

6. COVID-19 Triggered the Policy’s Attraction Property Coverage

130. COVID-19 has caused and is continuing to cause physical loss or damage to property outside of the Tribal Businesses, including property located within one statute mile of the Tribal Businesses that attracts business to the Tribal Businesses.

131. The Nation has sustained and will continue to sustain loss and extra expenses directly resulting from physical loss and damage of the type insured to property that attracts business to the Tribal Businesses. These losses and extra expenses trigger the Policy’s “Attraction Property” coverage, subject to the Policy’s applicable limits. (*Id.*, Time Element § 5, Additional Time Element Coverage Extensions § A.)

7. COVID-19 and the Resulting Governmental Orders Triggered the Policy’s Interruption by Communicable Disease Coverage

132. The actual presence of COVID-19 at the Tribal Businesses and elsewhere has resulted in the issuance of orders by authorized governmental agencies regulating communicable disease.

133. The actual presence of COVID-19 has existed at the Tribal Businesses’ locations, despite the Tribal Businesses’ strict and rigorous protocols in addition to adherence to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals’ exposure to COVID-19 and affected property.

134. Access to those locations has been limited, restricted, or prohibited both because of the civil authority orders—the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on Reservation)—and because of decisions by the Tribal Businesses as a result of the actual presence of COVID-19.

135. The Time Element loss and extra expenses that the Nation has incurred because of these civil authority orders and decisions by the Nation trigger the Policy’s “Interruption by Communicable Disease” coverage. (*Id.*, Time Element § 5, Additional Time Element Coverage Extensions § E.)

136. The “Interruption by Communicable Disease” coverage, unlike other coverages in the Policy, is not exclusive.

137. As a result, the Nation’s recovery up to the limit of that communicable disease coverage does not preclude or limit recovery under any other coverages to the extent that the Nation meets the requirements to trigger such other coverages.

8. COVID-19 Triggered the Policy’s Communicable Disease Response Coverage

138. The actual presence of COVID-19 has existed at the Tribal Businesses’ locations, despite the Tribal Businesses’ strict and rigorous protocols and adherence to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals’ exposure to COVID-19 and affected property.

139. Access to those locations has been limited, restricted, or prohibited both because of the civil authority orders—the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on

Reservation)—and because of decisions by the Tribal Businesses as a result of the actual presence of COVID-19.

140. The reasonable and necessary costs that the Nation has incurred because of these civil authority orders and decisions by the Nation trigger the Policy’s “Communicable Disease Response” coverage.

141. The “Communicable Disease Response” coverage, unlike other coverages in the Policy, is not exclusive. (*Id.*, Property Damage § 6.F.)

142. As a result, the Nation’s recovery up to the limit of that communicable disease coverage does not preclude or limit recovery under any other coverages to the extent that the Nation meets the requirements to trigger such other coverages.

9. COVID-19 Triggered the Policy’s Protection and Preservation of Property Coverage

143. COVID-19 has threatened and continues to threaten to cause physical loss or damage to insured property.

144. The actual and threatened physical loss or damage to insured property has caused the Nation to take action to temporarily protect or to preserve its property, triggering the Policy’s “Protection and Preservation of Property” coverage.

10. COVID-19 Triggered the Policy’s Claims Preparation Costs Coverage

145. The Policy covers Claims Preparation Costs, which it defines as the actual costs incurred by the Nation for producing and certifying any particulars or details contained in its books or documents, or such other proofs, information, or evidence required by FM resulting from insured loss payable under the Policy for which FM has accepted liability.

146. The Nation has incurred actual costs to respond to FM’s requests for additional information regarding the claim, thereby triggering the Policy’s “Claims Preparation Costs” coverage.

h. The Policy's Contamination Exclusion Does Not Apply

147. The “Communicable Disease Response” coverage expressly covers, among other things, “the reasonable and necessary costs incurred . . . for the . . . cleanup, removal and disposal of . . . communicable diseases from insured property.” (*Id.*, Other Additional Coverages § F.)

148. FM has acknowledged that COVID-19 is a communicable disease as that term is defined in the Policy.

149. FM contended in an October 30, 2020 letter that the contamination exclusion bars recovery here.

150. The Policy defines “contamination” as, among other things, a “virus.” (*Id.*, General Provisions § 13, Definition of Contamination.)

151. Under the Policy, the term “communicable disease” has a defined meaning that is different from the broad and general term “virus.” (*Id.*, General Provisions § 13, Definition of Communicable Disease.)

152. Thus, the Policy’s “contamination” exclusion does not exclude coverage for loss caused by “communicable disease.”

153. To the extent FM contends that the Policy’s “contamination” exclusion bars coverage for loss caused by “communicable disease” or some other aspect of the Nation’s claim, the Policy is, at best, ambiguous because it is susceptible to more than one reasonable interpretation and, therefore, must be construed in favor of coverage.

154. In addition, the risks associated with pandemics have been known to the insurance industry for more than a century and have been even more pronounced and evident to FM in recent decades through outbreaks and pandemics involving SARS, Ebola, MERS, H1N1, and Zika.

155. Because such risks are well known, there are exclusions in common usage in the insurance industry that specifically exclude losses caused by communicable diseases, viruses, and pandemics without also covering such risks in the policy.

156. However, FM did not include any such exclusion in the Policy it sold to the Nation. To the contrary, the Policy expressly states that losses from communicable disease are covered.

157. The terms of the Policy, coupled with the absence of any applicable exclusion (despite the existence of commonly used exclusions for losses caused by viruses, communicable diseases, or pandemics), demonstrate that the Policy provides insurance coverage for the Nation's business interruption losses at the Tribal Businesses.

158. In addition, the contamination exclusion is ambiguous because, among other reasons, it directly conflicts with other coverages in the Policy under which contamination is covered.

159. Because the contamination exclusion is ambiguous, it must be read in favor of the Nation.

i. No Other Exclusions Bar Coverage

160. The Nation's losses and expenses, and coverage for such losses and expenses, are not excluded by the Policy under the contamination exclusion discussed above nor any other exclusion.

161. If FM wanted to exclude coverage for physical loss or damage caused directly or indirectly by a novel disease that was transmissible from human to human, it could have used an exclusion that clearly and unambiguously did so, as other insurers have done in other policies for other novel diseases. It did not.

j. FM's Bad Faith Denial, Delay, and Adjustment of the Claim

162. Upon information and belief, most of the commercial property policies issued by FM afford coverage for the actual presence of communicable disease at insured locations and the resulting business interruption.

163. 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”).

164. Aware that the Policy and others like it afford coverage for COVID-19 losses beyond the On-Site Sublimited Communicable Disease Coverages, FM devised a plan to improperly avoid paying covered losses to the detriment of its policyholders.

165. In particular, in responding to policyholders’ claims, FM systemically steered its policyholders, including the Nation, into the On-Site Sublimited Communicable Disease Coverages for their COVID-19 losses, which improperly deprived its policyholders of the full extent of coverage available under the all-risk policies issued by FM.

166. FM executed that plan in response to the Nation’s claim, consistently mischaracterizing the nature and scope of the claim.

167. The Nation turned to FM, reasonably expecting that FM would cover its losses and expenses as described in this Complaint.

168. On April 8, 2020, the Nation promptly submitted its initial claim for coverage under the Policy.

169. The Nation explained that it had suffered loss, expense, or damage in a number of forms covered under the Policy, including, but not limited to, cleanup, disposal and other remediation of property exposed to COVID-19, loss of earnings, loss of business income and profit, extra expenses incurred to operate and return its business to normal, public relations expenses, and loss of rental income.

170. On April 23, 2020, FM responded through a claims manager providing a non-substantive acknowledgment of the notice.

171. Nearly two months later, on June 3, 2020, FM issued its first substantive letter, which improperly attempted to narrow the scope of the claim to the Policy's On-Site Sublimited Communicable Disease Coverages. It also included a dozen requests for information as part of FM's purported investigation.

172. On October 9, 2020, the Nation wrote another letter to FM, explaining that FM had inappropriately limited its claims to the On-Site Sublimited Communicable Disease Coverages, when in fact numerous other types of coverage were implicated.

173. FM responded on October 30, 2020, stating that the presence of COVID-19 at an insured location does not constitute "physical damage of the type insured" or "insured physical loss or damage" and that none of the provisions requiring physical loss or damage applied.

174. Despite that position, in its October 30, 2020 letter, FM persisted in seeking information that was neither reasonably required for nor material to the resolution of the Nation's claim in view of FM's coverage position.

175. In that letter, FM indicated it was neither admitting nor denying liability, yet it refused to confirm any applicable coverages, loss payables, and deductibles until the Nation responded to burdensome requests by FM not reasonably required for or material to the resolution of the Nation's claim in view of FM's coverage position.

176. Thus, after admitting that it had not yet completed its investigation and was not in a position to confirm any applicable coverages, FM both denied liability for any coverage that required a showing of physical loss or damage and claimed that it was not denying liability.

177. FM's adjustment of the claim and its coverage position letters were designed to confuse, mislead, or deceive the Nation and to delay resolution of the claim.

k. FM's Bad Faith Conduct Pertaining to the Proof of Loss

178. While it prepared to improperly deny or limit coverage, FM also failed to respond to questions from the Nation regarding whether a proof of loss was due under the Policy.

179. On August 4, 2020, FM extended a deadline for any proof of loss to November 1, 2020, but purported to reserve its rights under the Policy's proof-of-loss deadline, stating that, to the extent that extending the time to file a proof of loss was already barred by contract or any other time limitations as of the date of FM's response, the extension of time is not applicable.

180. On September 10, 2020, the Nation rejected FM's purported reservation of rights, explaining that the time period to file a proof of loss had not begun to run and asking for FM to clarify its unclear position and to confirm FM's unconditional agreement to extend any purported proof-of-loss deadline. The Nation stated that, if FM believed that, despite its agreement to extend the deadline to file a proof of loss, the proof-of-loss deadline is somehow barred, FM must immediately say so and provide the basis for that position.

181. FM did not promptly respond to that letter.

182. On September 21, 2020, the Nation sent a follow-up email to FM requesting FM's response and confirmation of an extension to file a proof of loss.

183. On October 21, 2020, the Nation sent another follow-up email to FM requesting FM's response and confirmation of an extension to file a proof of loss.

184. Having received no response or confirmation from FM concerning coverage or a further extension to any purported proof of loss deadline of November 1, 2020, the Nation devoted substantial manpower and economic resources to preparing a preliminary proof-of-loss statement, which it submitted under a full reservation of rights to FM by email on Friday, October 30, 2020 at 3:28 pm ET.

185. Having failed to respond promptly to numerous communications from the Nation, FM finally responded on Friday, October 30, 2020 at 9:45 pm ET, after it had already forced the Nation to incur time and resources to submit a preliminary proof of loss. FM's dilatory response stated, among other things, that the letter acknowledged FM's receipt of the Nation's Preliminary Proof of Loss via email by Mr. Trevor Robinson on October 30, 2020. FM said that it would review the submission and respond in due course, but yet again refused to confirm coverage under the Policy.

186. FM waited almost two more months, until December 21, 2020, to respond.

187. In its December 21, 2020 letter, FM stated that the Nation's proof of loss was incomplete because there were outstanding requests for information, but FM did not explain what those requests were and why they were relevant to its coverage evaluation, which further hampered the Nation's ability to clarify or supplement its prior submissions or to assist FM's purported investigation.

188. Despite acknowledging that it did not possess all information that it deemed relevant to complete its investigation, FM stated definitively that the presence of COVID-19 at an insured location does not constitute physical damage of the type insured as required under the Policy provisions and, as a result, none of the Policy's coverages are available except with the possibility of communicable disease coverages, for which FM also refused to confirm coverage.

189. The Nation responded to that letter on January 25, 2021, confirming that FM had denied coverage for the Nation's claims.

190. As the Nation explained in that letter, in refusing to acknowledge coverage under the Policy for the Nation's claim, FM took the position that: (i) the presence of COVID-19 at an insured location does not constitute physical damage of the type insured or insured physical loss or damage, as used in the Policy; (ii) the presence of COVID-19 at such locations is a form of

contamination, as defined in the Policy, which is excluded; and (iii) the only coverage that may be available for the Nation's claim is for communicable disease coverages, which FM disputes the Nation has established through its prior communications and sworn proof of loss.

191. In that letter, the Nation further explained that FM's refusal to confirm coverage under the applicable coverage parts identified in the parties' prior correspondence constitutes a breach of the Policy.

192. While the Nation is prepared to provide additional information in support of its claim for coverage, FM is not permitted to persist in seeking information not reasonably required for or material to the resolution of the Nation's claim for coverage, particularly when all along FM intended to deny the Nation's coverage. FM's dilatory, unfair, and misleading conduct to date in handling, purportedly investigating, and ultimately denying coverage with no reasonable basis to do so constitutes bad faith.

I. FM's Bad Faith Talking Points

193. Upon information and belief, FM's misleading conduct in its investigation, delay in providing written coverage positions or otherwise responding to policyholder communications, and repeated requests for voluminous information and documents are not by accident but rather are part of a systematic claims-handling practice and procedure that it has deployed across all COVID-19 claims.

194. FM's systematic practice is outlined in a set of "talking points" prepared for FM claim adjusters to use to ensure that the adjusters reach the same conclusion for all COVID-19 claims.

195. FM drafted the talking points.

196. FM provided the talking points to its personnel for use when adjusting claims based on COVID-19.

197. The talking points explicitly acknowledge that FM has a wide range of clients who may be affected in a variety of ways by COVID-19.
198. The talking points outline only a few of the many different coverages contained in FM's standard commercial property policies, including policies of the type FM sold to the Nation that specifically afford coverage for COVID-19 claims.
199. The talking points outline certain specific "triggers" of coverage that the adjuster should look for when investigating any COVID-19 claim.
200. Notably, the only "triggers" identified are those applicable to the On-Site Sublimited Communicable Disease Coverages.
201. Indeed, the talking points fail to include all of the different "triggers" of coverage that may be implicated by COVID-19 claims.
202. Among those "triggers" included by FM in its talking points is an employee of the insured who actually has the communicable disease.
203. At the same time, however, the talking points recognize that some insureds may be unable to disclose that an employee actually had COVID-19 due to medical privacy restrictions.
204. By including only the On-Site Sublimited Communicable Disease Coverages as coverages potentially applicable to a COVID-19 claim, the talking points steer adjusters to seek information that pertains only to the On-Site Sublimited Communicable Disease Coverages.
205. The talking points acknowledge that a virus can cause physical damage to property.
206. But the talking points foreclose the availability of the Policy's Civil or Military Authority coverage provision for such physical damage without regard to the particular facts or law involved in each claim.

207. The talking points specifically provide that the Civil and Military Authority coverage does not apply.

208. The talking points make similar statements with respect to certain of the Policy's Time Element coverages.

209. The talking points further instruct that the presence of a communicable disease does not constitute physical damage and is not of the type insured against because a virus falls within the definition of contamination, which is excluded.

210. As alleged above, however, the Policy that FM sold to the Nation 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." (Exhibit A, Other Additional Coverages § F.)

211. Not only that, FM has represented in court that loss of functionality or reliability of property constitutes physical loss or damage under an FM property insurance policy.

212. FM's talking points therefore contradict not only the coverage provided under the Policy but also what FM has represented in court regarding what constitutes physical loss or damage under a commercial property insurance policy.

213. Regardless, FM failed to conduct an investigation with respect to the Nation's claim to determine whether it had, in fact, sustained physical loss or for the purposes of establishing coverage under a commercial property insurance policy.

214. FM, through the relevant adjuster(s), relied on the talking points in adjusting the Nation's claim.

215. The 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.

216. Instead, the talking points coach the adjuster to 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.

217. FM followed the instructions of the talking points and denied coverage beyond the On-Site Sublimited Communicable Disease Coverages without fully considering the facts of the Nation's claim or the law controlling the interpretation of the Policy.

218. Upon information and belief, FM used the talking points, as a general business practice, in all COVID-19 related claims.

219. The talking points reflect a self-interested or sinister motive to defraud FM's policyholders from the coverage that each is contractually entitled to for the physical loss and damage to property caused by COVID-19.

220. Thus, FM refused to fulfill a contractual obligation for a dishonest, self-interested motive.

221. In improperly denying coverage without a reasonable basis, FM put its financial self-interest ahead of the Nation's interests.

222. FM's bad faith has compelled the Nation to institute this litigation to recover amounts of which it has been deprived due to FM's wrongful conduct.

223. Due to FM's bad faith, the Nation has suffered ascertainable losses and is continuing to suffer ascertainable losses.

V. CAUSES OF ACTION

**COUNT I
(Declaratory Judgment)**

224. The Nation repeats and re-alleges the allegations in the preceding paragraphs.

225. The Nation seeks the Court's declaration of the parties' rights and duties under the Policy pursuant to Connecticut General Statute § 52-29.

226. A justiciable controversy exists between the Nation and FM concerning the availability and amount of coverage under the Policy for the Nation's claims.

227. The controversy between the Nation and FM is ripe for judicial review.

228. As a result, the Nation seeks a declaration from the Court that: (a) the various coverage provisions identified herein are triggered by the Nation's claims; (b) the Policy covers the Nation's claims; (c) the Nation sustained direct physical loss or damage from a covered cause of loss under the Policy; (d) FM waived or is estopped from asserting its positions, as described above, to bar or limit coverage; (e) no exclusion applies to bar or limit coverage for the Nation's claims; and (f) granting any other declaratory relief useful to resolving the dispute between the parties.

**COUNT II
(Breach of Contract)**

229. The Nation repeats and re-alleges the allegations in the preceding paragraphs.

230. The Policy is a valid and enforceable contract between the Nation and FM.

231. The Nation complied with all applicable Policy provisions and any other requirements; or, FM waived those provisions or any such requirements or is estopped from asserting any purported non-compliance with those provisions or any such requirements.

232. FM breached the Policy by improperly denying coverage to the Nation or otherwise repudiating FM's obligation to cover the Nation's losses and expenses as expressly required under the Policy.

233. The Nation has sustained and continues to sustain damages as a result of FM's breach of the Policy.

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

COUNT III
(Common Law Bad Faith)

235. The Nation repeats and re-alleges the allegations in the preceding paragraphs.

236. FM acted in bad faith, both in its refusal to provide coverage and in its handling of the Nation's claims.

237. FM did not have a reasonable basis for denying coverage, and it knew or recklessly disregarded its lack of reasonable basis in denying the claim.

238. FM had a dishonest purpose, sinister motive, or malicious intent.

239. FM's reaction to the Nation's claims was to press the Nation to respond to premature or unnecessary information requests in an attempt to create time-consuming and costly work, to dissuade the Nation from pursuing its claim, and to paint an inaccurate picture that the Nation was somehow delaying FM's investigation or not cooperating and that FM was investigating the claim and evaluating coverage in good faith. The unreasonable nature of those tactics is further demonstrated by the fact that, because FM denies that the presence of COVID-19 amounts to physical loss or damage, FM always intended to deny coverage regardless of the Nation's responses to those inquiries.

240. The Nation has suffered and continues to suffer damages as a result of FM's bad faith.

241. The Nation is entitled to an award of damages as a result of FM's bad faith in an amount to be determined at trial, plus pre-judgment, post-judgment, and statutory interest, punitive and

exemplary damages, court costs, attorneys' fees, and any other costs and relief that this Court deems appropriate.

COUNT IV
(Bad Faith under Connecticut Unfair Trade Practices Act
(CUTPA) Conn. Gen. Stat. § 42-110b)

242. The Nation repeats and re-alleges the allegations in the preceding paragraphs.

243. FM has engaged in acts, omissions, and conduct that violated CUTPA Conn. Gen. Stat. § 42-110b, giving rise to a private right of action by the Nation against FM.

244. FM engaged in unfair or deceptive acts by engaging in the unfair practices discussed in the Connecticut Unfair Insurance Practices Act (CUIPA), Connecticut General Statute § 38a-816, including by: misrepresenting pertinent facts or insurance Policy provisions relating to coverages at issue; failing to acknowledge and act with reasonable promptness upon communications with respect to claims arising under insurance policies; failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; refusing to pay claims without conducting a reasonable investigation based upon all available information; failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed; not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; delaying the investigation or payment of claims by requiring an insured to submit a preliminary claim report and then requiring the subsequent submission of formal proof-of-loss forms, both of which submissions contain substantially the same information; and failing to promptly settle claims, where liability has become reasonably clear under one portion of the Policy in order to influence settlements under other portions of the Policy; and failing to promptly provide a reasonable explanation of the basis in the Policy in relation to the facts or applicable law for denial of a claim.

245. FM engaged in unfair or deceptive acts faith by misrepresenting the Policy.
246. FM acted in bad faith by engaging in unfair claim settlement practices, including those discussed above.
247. Because of those unfair acts, the Nation lost money and the benefit of coverage that was previously bargained for and that the Nation reasonably expected.
248. The deceptive acts or practices of FM have a potential effect on the general consuming public, offend public policy, are immoral, unethical, oppressive, and unscrupulous and cause substantial injury to consumers.
249. FM has committed those acts with such frequency and with such prevalence and widespread use in handling COVID-19 claims as to indicate a general business practice.
250. Any applicable requirements for a private right of action under CUTPA Connecticut General Statute § 42-110b have been satisfied.
251. The Nation is entitled to damages as a result of FM's bad faith in an amount to be determined at trial, plus pre-judgment, post-judgment, statutory interest, punitive and exemplary damages, court costs and attorneys' fees, and any other costs and relief that this Court deems appropriate.

VI. PRAYER FOR RELIEF

252. Wherefore, the Nation requests judgment against FM as follows:
- a. A declaration from the Court that: (a) the various coverage provisions identified above are triggered by the Nation's claims; (b) the Policy covers the Nation's claims; (c) the Nation sustained direct physical loss or damage from a covered cause of loss under the Policy; (d) FM waived or is estopped from asserting its positions, as described above, to bar or limit coverage; (e) no exclusion applies to bar or limit

coverage for the Nation's claims; and (f) provides any other declaratory relief useful to resolving the dispute between the parties;

- b. An order requiring FM to provide coverage for the Nation's claims;
- c. For damages, including actual, compensatory, consequential, special, exemplary, and punitive damages, against FM in an amount to be proved at trial;
- d. Pre-judgment, post-judgment, and statutory interest;
- e. An award of attorneys' fees and costs of suit incurred; and
- f. For such other and further relief, including any equitable relief, as the Court deems just and proper.

Dated: April 12, 2021

Respectfully submitted,

/s/ Timothy J. Fazio

Timothy J. Fazio (Juris No. 423149)
HUNTON ANDREWS KURTH LLP
60 State Street
Suite 2400
Boston, MA 02109
(617) 648-2745
tfazio@hunton.com

Counsel for Plaintiff Mashantucket Pequot Tribal Nation

No.: X07 HHD-CV-21-6140378-S X

MASHANTUCKET PEQUOT TRIBAL NATION, :

Plaintiff,

v.

FACTORY MUTUAL INSURANCE COMPANY, :

Defendant.

SUPERIOR COURT, COMPLEX
LITIGATION DOCKET X07 AT
HARTFORD

JURY TRIAL DEMANDED

April 12, 2021

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CERTIFICATE OF NOTICE TO INTERESTED PARTIES

As required under Section 17-56(b) of the Connecticut Practice Book, Mashantucket Pequot Tribal Nation certifies that all interested parties have been joined as parties to this action.

Dated: April 12, 2021

/s/ Timothy J. Fazio

Timothy J. Fazio (Juris No. 423149)
HUNTON ANDREWS KURTH LLP
60 State Street
Suite 2400
Boston, MA 02109
(617) 648-2745
tfazio@hunton.com

Counsel for Plaintiff Mashantucket Pequot Tribal Nation

No.: X07 HHD-CV-21-6140378-S X

MASHANTUCKET PEQUOT TRIBAL NATION, :

Plaintiff,

v.

FACTORY MUTUAL INSURANCE COMPANY, :

Defendant.

SUPERIOR COURT, COMPLEX
LITIGATION DOCKET X07 AT
HARTFORD

JURY TRIAL DEMANDED

April 12, 2021

----- X

STATEMENT OF AMOUNT IN DEMAND

The amount in demand is greater than \$15,000, exclusive of interest, costs, and attorneys' fees.

Dated: April 12, 2021

/s/ Timothy J. Fazio
Timothy J. Fazio (Juris No. 423149)
HUNTON ANDREWS KURTH LLP
60 State Street
Suite 2400
Boston, MA 02109
(617) 648-2745
tfazio@hunton.com

Counsel for Plaintiff Mashantucket Pequot Tribal Nation

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2021 a copy of the foregoing will be served via electronic mail to the following counsel of record for Defendant Factory Mutual Insurance Company:

Chase T. Rogers
DAY PITNEY LLP
242 Trumbull Street
Hartford, CT 06103
ctrogers@daypitney.com

/s/ Timothy J. Fazio

Timothy J. Fazio