

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THE WHISTLER LLC, and)	
SLEEPING VILLAGE, INC.,)	
)	
Plaintiffs,)	
)	Case No.
v.)	
)	Jury Trial Demanded
SOCIETY INSURANCE, a mutual company,)	
)	
Defendant.)	

**CLASS ACTION COMPLAINT FOR BREACHES OF CONTRACT AND
THE COMMON-LAW DUTY OF GOOD FAITH AND FAIR DEALING,
STATUTORY DAMAGES, AND DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs THE WHISTLER LLC and SLEEPING VILLAGE, INC., on behalf of themselves and all others similarly situated, file this complaint against Defendant SOCIETY INSURANCE, a mutual company, alleging as follows:

I. NATURE OF THIS ACTION

1. This is a class action complaint—for breaches of contract and the common-law duty of good faith and fair dealing, statutory damages, and declaratory and injunctive relief—brought by owners of commercial property insurance policies, which they purchased from Defendant Society Insurance, written either on the company's

Coverage Form number TBP2 (05-15) or another Society Insurance coverage form with the same operative language.

2. Society Insurance's property insurance policies are standard form contracts, rather than bespoke, with uniform language drafted for Society Insurance by the Insurance Services Office (the ISO), an advisory organization that provides policy language and coverage forms to insurers and reinsurers.¹

3. Because both Plaintiffs and all members of the classes they propose to represent ("Class Members") purchased materially uniformly worded policies from Society Insurance, all of them are owed the same scope of coverage for the COVID-19-related losses and expenses they have sustained.

4. For at least the past ten years, most commercial property policies have contained an industry-standard provision that excludes coverage "for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces, or is capable of inducing, physical distress, illness or disease."² By contrast, Society Insurance's

¹ See generally, <https://www.verisk.com/insurance/products-and-services/product-category/policy-language-and-rules/>.

² A copy of ISO's standard-form virus exclusion (Commercial Property endorsement No. CP 01 40 07 06), and the ISO's 2006 submission to state regulators introducing it, is Exhibit 1 to this complaint.

business property policies, including Plaintiffs' and Class Members' policies, written on coverage form No. TBP2 (05-15), do *not* contain any such exclusion.

5. The risk of a virus or pandemic like COVID-19 was, or should have been, foreseeable to Society Insurance. The current COVID-19 pandemic is, after all, the third serious coronavirus outbreak in less than 20 years, following SARS in 2002-2003 and MERS in 2012, and other recent virus epidemics or pandemics have included Ebola (2014-2016), the swine (H1N1) flu (2009-2010), Zika (2015), and various strains of the avian (or bird) flu. Society Insurance nevertheless chose *not* to include a virus or pandemic exclusion in the policies it issued to Plaintiffs and Class Members.

6. In the face of the COVID-19 pandemic, virus exclusions are currently relevant. Their conspicuous omission from Society Insurance's commercial property policies is significant.

7. Because of COVID-19 and the governmental orders issued to try to contain it, Plaintiffs and Class Members have been forced to halt or reduce their business operations. Because the virus attaches to surfaces and objects, it has made their business premises unsafe and unusable for normal business.

8. It is not merely the risk of person-to-person transmission from large groups of people congregating that makes Plaintiffs' and Class Members' business premises unsafe, it is the fact that the virus's presence on surfaces and objects cannot be

sufficiently abated by regular cleaning or disinfecting. The combination of the risks of person-to-person transmission *and* surface-to-person transmission explains why so many government authorities have issued mandatory orders, not just regulating crowd size or requiring social distancing, but also prohibiting access to Plaintiffs' and Class Members' properties.

9. Plaintiffs and Class Members have been forced by COVID-19 and by civil authorities to involuntarily suspend, interrupt, or reduce their operations. As a result, they have sustained substantial losses. They have lost income. Many have furloughed workers. Most continue to have to meet substantial existing obligations and overhead.

10. Seeking the benefit of the coverage they purchased from Society Insurance, Plaintiffs and Class Members have tendered claims under their insurance policies. Yet despite the omission of any exclusion for viruses or pandemics in its policies, Society Insurance has taken a categorical position that Coverage Form TBP2 (05-15) does not provide coverage for COVID-19-related property losses. Society Insurance has denied both Plaintiffs' requests for coverage and, on information and belief, the claims of all Class Members, on the same grounds and without conducting any individualized investigation.

11. There are, therefore, controversies between Plaintiffs and Class Members, on the one hand, and Society Insurance on the other as to their respective rights, duties, and

obligations under the coverage provisions contained in Coverage Form TBP2 (05-15). This class action complaint seeks a class-wide adjudication of these controversies—including a declaration of Society Insurance’s obligations and policyholders’ rights in regard to COVID-19-related claims tendered under Coverage Form TBP2 (05-15) or any other Society Insurance policy containing the same operative language; an injunction enforcing Society Insurance’s coverage obligations; and contract, common-law, and statutory damages for Society Insurance’s breach of its coverage obligations.

II. PARTIES

12. Plaintiff The Whistler LLC (The Whistler) is an Illinois corporation with its principal place of business at 2421 N. Milwaukee Avenue in Chicago, where it operates a bar and concert venue, hosting live music and DJs and serving award-winning cocktails seven nights a week, with an indoor seating capacity of 74 persons, and patio seating outdoors for 48. The Whistler is the named insured on a standard-form commercial property policy issued by Society Insurance (No. TRM 587236), covering the period November 15, 2019 to November 15, 2020. That policy includes coverage written on “Businessowner’s Special Property Coverage Form” —No. TBP2 (05-15). A copy of The Whistler’s policy is Exhibit 2 to this complaint. Due to business closures required by COVID-19 and/or orders from civil authorities, The Whistler has sustained hundreds of thousands of dollars of lost income.

13. Plaintiff Sleeping Village, Inc. (Sleeping Village), is an Illinois corporation with its principal place of business at 3734 Belmont Avenue in Chicago, where it operates a bar and live music venue seven nights a week, with a front bar capacity of 176 persons, patio seating for 152 persons, and additional venue capacity. Sleeping Village was named “Best New Bar” of 2019 by the Chicago Reader. Sleeping Village is the named insured on a standard-form commercial property policy issued by Society Insurance (No. BP 17026033), covering the period January 2, 2020 to January 2, 2021. That policy includes coverage written on “Businessowner’s Special Property Coverage Form,” –No. TBP2 (05-15). A copy of Sleeping Village’s policy is Exhibit 3 to this complaint. Due to business closures required by COVID-19 and/or orders from civil authorities, Sleeping Village has sustained hundreds of thousands of dollars of lost income.

14. Defendant Society Insurance is a mutual company organized under Wisconsin law, with its principal place of business in Fond du Lac, Wisconsin, engaged in the business of selling insurance contracts. The company is licensed to do business in several states, including Arizona, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, North Carolina, Ohio, Tennessee, and Wisconsin. A significant part of Society Insurance’s commercial property business involves selling property and casualty coverage to bars and taverns, restaurants, caterers, banquet halls, and other hospitality businesses, including to Plaintiffs and Class Members.

III. JURISDICTION AND VENUE

15. Jurisdiction is proper in this Court under the Class Action Fairness Act, 28 U.S.C. 1332(d)(2), because at least one member of the class is a citizen of a state different from the defendant, the amount in controversy exceeds \$5 million, exclusive of interest and costs, and the proposed class contains more than 100 members.

16. This Court can exercise personal jurisdiction over Society Insurance because the company has transacted business in Illinois, contracted to insure property located in Illinois, and has and continues to make and perform contracts and seek additional business in Illinois. 735 ILCS 5/2-209(a)(1), (4), (7).

17. Venue is proper in this District because a substantial portion of the events giving rise to Plaintiffs' claims for relief occurred here. 28 U.S.C. 1391(b).

IV. FACTUAL ALLEGATIONS

A. COVID-19

18. COVID-19—more formally known as Severe Acute Respiratory Syndrome Coronavirus 2 (or SARS-CoV-2)—is a physical pathogen. It is spread among humans both through respiratory droplets and aerosols (when people talk, cough, or sneeze)

and also—when those droplets land on objects and surfaces—by human contact with those objects or surfaces.³

19. According to several studies, COVID-19 can survive for days on objects and surfaces. The CDC has reported that the virus was still detectable on variety of surfaces on a cruise ship, inside the cabins of both symptomatic and asymptomatic infected passengers, 17 days after the cabins had been vacated.⁴

B. Civil Authorities' Response to the Property Harms Caused by COVID-19

20. In every state in the Union, state or local government authorities have issued emergency declarations and orders relating to COVID-19. These orders have typically required the shut-down of all businesses deemed “non-essential.” Even many businesses deemed “essential” have been required to cease or curtail in-person services. Many of these civil-authority orders explicitly acknowledge the physical impacts that COVID-19 causes to property. For example:

- a. On April 30, 2020, the Governor of Illinois issued an Executive Order requiring restaurants and other facilities that prepare and serve food to prepare and serve it only for consumption off-premises, “due to the virus’s propensity to physically impact surfaces and personal property.”
- b. On March 25, 2020, the Colorado Department of Public Health & Environment issued a Stay at Home Order stating that “COVID-19 ...

³ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf#:~:text=COVID%2D19%20is%20primarily,nose%2C%20or%20eyes.>

⁴ <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf>

physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time” and that a Stay at Home Order was necessary “to reduce the property damage caused by COVID-19,” including by minimizing “the exposure of the public to contaminated public surfaces.”

- c. On March 23, 2020, the Governor of Hawaii issued a proclamation citing “the virus’s propensity to physically impact surfaces and personal property” and limiting restaurants and other facilities that prepare and serve food exclusively to delivery, drive-through, curbside pick-up, and carry-out.
- d. On March 22, 2020, the Governor of Louisiana issued a proclamation citing the necessity of closing certain businesses and limiting the operations of others “because of physical contamination of property due to its ability to attach to surfaces for prolonged periods of time.”
- e. On April 1, 2020, the Governor of Mississippi issued an Executive Order stating that “the risk of spread of COVID-19 within Mississippi constitutes a public emergency that may result in substantial injury or harm to life, health, and property within Mississippi.”
- f. On March 26, 2020, the Governor of Montana issued a Directive barring restaurants and other entities that provide food services from preparing and serving food unless for consumption “off premises,” due to “the virus’s propensity to physically impact surfaces and personal property.”
- g. On March 23, 2020, the Governor of West Virginia issued an order citing the need to close certain business and limit the operation of others “because of physical contamination of property due to its ability to remain on surfaces for prolonged periods of time” and specifically restricting food and beverage facilities to serving and preparing food and drinks exclusively for consumption off premises “due to the virus's propensity to physically impact surfaces and personal property.”
- h. On March 16, 2020, the Mayor of New York City issued an Emergency Executive Order, in part “because the virus physically is causing property loss and damage,” and on April 14, 2020, an Order stating that “this Order is given because of the propensity of the virus to spread person to-person

and also because the actions taken to prevent such spread have led to property loss and damage.”

- i. On March 22, 2020, the County Administrator of Broward County, Florida issued an Emergency Order, made “necessary,” in part, the Order stated, “because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.”
- j. On April 6, 2020, the Governor of Indiana issued an Executive Order limiting entities that provide food services to the public to pick-up and takeaway services only, “due to the virus's propensity to physically impact surfaces and personal property.”
- k. On March 16, 2020, the Mayor of New Orleans issued an Emergency Order noting “the propensity” of COVID-19 “to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances.”
- l. On March 18, 2020, the Health Officer of Napa County, California issued a shelter-at-home order “based on evidence of increasing occurrence of COVID-19 throughout the Bay Area, increasing likelihood of occurrence of COVID-19 within the County, and the physical damage to property caused by the virus.”
- m. On March 19, 2020, the Mayor of Los Angeles issued a stay-at-home order, stating that “This Order is given because, among other reasons, the COVID-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.”

21. COVID-19’s impact on property has likewise been acknowledged by the federal Center for Disease Control (CDC), which has issued guidance emphasizing the spread of the virus through surface transmission and advising that “surfaces and objects in

public places” therefore “should be cleaned and disinfected before *each* use.” (Emphasis added).⁵

22. As these statements from the CDC and state and local officials indicate, myriad civil authorities have consistently emphasized the direct physical impact of COVID-19 on property and the role that surface transmission can play in spreading the virus.

23. As a result of COVID-19 and one or more orders by civil authorities, Plaintiffs and all Class Members have been forced to involuntarily suspend, interrupt, or curtail their operations.

C. The Insurance Industry’s Response to the Property Harms Caused by COVID-19

24. In 2006, citing “the specter of pandemic” and specifically identifying the deadly SARS-CoV outbreak (that affected 26 countries in 2003), the ISO filed a new standard-form exclusion with state insurance regulators to address “loss due to disease-causing agents such as viruses and bacteria.” Exhibit 1. The ISO accompanied that submission to regulators with an explanatory statement, in which the ISO expressly acknowledged the impact of disease-causing agents on properties insured under commercial property policies, stating that: “Disease causing agents may ... enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.”

Exhibit 1.

25. Despite thus previously expressing concern to regulators that disease-causing agents such as viruses cause contamination and other loss of or damage to building surfaces, now that the insurance industry is in fact facing proliferating and sizeable claims of precisely that kind, it has changed its message. In a letter to Congressmen on April 2, 2020, the CEOs of four leading insurance industry trade organizations launched a preemptive campaign to limit COVID-19 claims, citing *financial* concerns. These four CEOs argued to Congress that although “standard commercial policies offer coverage and protection against a wide range of risks and threats and are vetted and approved by state regulators,” that model, however, “cannot account for” the present situation, “*in which losses are catastrophic and nearly universal.*” Exhibit 4 (emphasis added). In the face of mounting property claims, these executives breezily opined that the industry’s policies do not cover pandemic-related losses: “Standard business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19, and as such, were not actuarially priced to do so.” Exhibit 4.

26. Society Insurance, for its part, has also launched its own campaign to discourage claims. On March 16, 2020, Society Insurance’s President and CEO wrote to the company’s “agency partners” (“independent” insurance agents), prospectively

concluding that “the current circumstances are unlikely to result in facts that support ... coverage under our policies, or liability to a policyholder” Exhibit 5.

27. In an attempt to counteract such preemptive statements by insurers and their lobbyists, the California Insurance Commissioner has issued a formal statement of disapproval—noting “numerous complaints from businesses, public officials, and other stakeholders asserting that certain insurers, agents, brokers, and insurance company representatives are attempting to dissuade policyholders from filing a notice claim under its Business Interruption insurance coverage, or refusing to open and investigate these claims ...” Exhibit 6. The California Commissioner expressed his regret in finding it “necessary” to remind “all agents, brokers, insurance companies and other Department licensees that they are required” to conduct “a thorough, fair and objective investigation” of claims and cease actions that will “dissuade policyholders” from filing claims. Exhibit 6.

**D. Coverage for COVID-19-Related Losses Under
Society Insurance’s Commercial Property Policies**

28. Over the years, the insurance industry has developed specialty products for commercial property policies that include an express and specific grant of coverage for lost profits and other economic losses sustained when a business must either shut down or curtail its operations, including due to a pandemic. This category of coverage is sometimes called “time element” insurance—because the amount of loss usually

depends on how long it takes to recover from the shutdown or slowdown and re-open. Society Insurance's Special Property Coverage Form No. TBP2 (05-15) contains several such coverages, of which three are the subject of this class action complaint: "Business Interruption" coverage, "Civil Authority" coverage, and "Contamination" coverage.

29. Significantly, Plaintiffs' and Class Members' policies provide coverage that is not limited to losses sustained merely as the result of designated causes or specified perils. The insuring agreement works the other way around: Coverage Form TBP2 (05-15) promises coverage "unless the loss is excluded or limited under this coverage form."

Business Interruption Coverage
Under Form No. TBP2 (05-15)

30. The business interruption coverage provided by Form No. TBP2 (05-15), which is described on that policy form as "business income" coverage, provides in pertinent part as follows:

5. Additional Coverages

g. Business Income

(1) Business Income

- (a) 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 damage to covered*

property at the described premises.... (Emphasis added).

31. The phrase “*direct physical loss of or damage to*” property is not defined in Coverage Form TBP2 (05-15)—or anywhere else in Plaintiffs’ or Class Members’ policies. Their policies also do not define the individual terms in that phrase—“*direct,*” “*physical,*” “*loss,*” and “*damage.*”

32. There is no accepted meaning of the phrase “direct physical loss of or damage to” property. Courts have given it varying and conflicting interpretations. Thus, for example, it has been applied by courts both to require and to deny coverage for losses of business income due to odors, asbestos, lead, mold, and the loss of electronic data.

33. In addition, in construing the phrase “direct physical loss of or damage to” property, some courts have found coverage for the lost or reduced use or functionality of an insured’s property without any demonstrable structural change or other physical alteration, while others, by contrast, have interpreted the same language as requiring a demonstrable structural damage or other physical alteration.

34. As applied to COVID-19 and that virus’s impacts on surfaces and objects, Society Insurance’s use of the phrase “direct physical loss of or damage to” property in its commercial property policies is ambiguous. Its ambiguity is underscored by the combination of several factors, including the following:

- (a) The absence of any definition of the phrase anywhere in Society Insurance's commercial property policies;
- (b) The longstanding disagreements among courts about the meaning of the phrase—including disagreements about whether "loss" differs from "damage," whether one or both of those terms are modified by "physical," and whether the loss of a property's use, functionality, or reliability constitutes "direct physical loss of or damage to" property or whether, more narrowly, evidence of a demonstrable physical alteration of the property should be required;
- (c) The obvious ease with which Society Insurance could have drafted its policy language to plainly express an intention to exclude coverage for viruses (or other pandemics) if it had intended to exclude them—by, for example, simply adopting the ISO-standardized exclusion for viruses. Ambiguity was eminently avoidable here;
- (d) The consistent and reasonable understanding of civil authorities, reflected in their official public statements (illustrative examples of which are quoted in paragraph 20 above), regarding the propensity of the virus to cause property loss or damage. Just as many civil authorities have, so, too, a reasonable policyholder could understand the physical impacts of COVID-19 on surfaces and objects as physically damaging or otherwise causing losses to property—and, therefore, would reasonably have expected coverage; and
- (e) The explicit admission by the American Association of Insurance Services, when the standard-form virus exclusion was introduced, in 2006, that its purpose was to "clarify" that "loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress is excluded." No such "clarification" would have been needed if policies without that language already clearly excluded coverage for viruses and pandemics.

35. The ambiguity in the phrase "direct physical loss of or damage to" property, as applied to the corona virus, must be construed against the drafter and, therefore, in favor of coverage.

Civil Authority Coverage
Under Form No. TBP2 (05-15)

36. The “Civil Authority” coverage provided by Form No. TBP2 (05-15) provides in pertinent part as follows:

5. Additional Coverages

k. Civil Authority

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within the area;

and

- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for Business Income will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage begins. Civil Authority coverage for necessary Extra Expense will begin immediately after the time of first action of civil authority

that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the time of that action;
or
- (2) When your Civil Authority coverage for Business Income ends; whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance.

37. The Civil Authority coverage provision quoted above does not specify what “damage” to property means. It also does not elaborate on what “access to” a policyholder’s property means or how much of that access must be “prohibited.”

38. Because of the dangerous physical conditions and property damage caused by COVID-19, including dangerous physical conditions caused by the virus at other nearby business properties, civil authorities have issued blanket closure orders prohibiting Plaintiffs’ and Class Members’ from continuing to grant open, public access to their businesses and to involuntarily suspend, interrupt, or reduce their operations. The Illinois closure order, for example, specifically prohibited food service at restaurants and other facilities that serve and prepare food, regardless of social distancing, “due to the virus’s propensity to physically impact surfaces and personal property.” The suspensions or interruptions of their businesses have caused Plaintiffs and Class

Members substantial losses, for which Society Insurance has wrongfully denied them “Civil Authority” coverage.

“Contamination” Coverage
Under Form No. TBP2 (05-15)

39. The “Contamination” coverage provided by Form No. TBP2 (05-15) provides in pertinent part as follows:

5. Additional Coverages

m. Contamination

If your “operations” are suspended due to “contamination”:

(1) We will pay for your costs to clean and sanitize your premises, machinery and equipment, and expenses you incur to withdraw or recall products or merchandise from the market. We will not pay for the cost or value of the product.

The most we will pay for any loss or damage under this Additional Coverage arising out of the sum of all such expenses occurring during each separate policy period is \$5,000; and

(2) We will also pay for the actual loss of Business Income and Extra Expense you sustain caused by

(a) “Contamination” that results in an action by a public health or other governmental authority that prohibits access to the described premises or production of your product.

(b) “Contamination threat”

(c) “Publicity” resulting from the discovery *or suspicion* of “contamination”. (Emphasis added).

Coverage for the actual loss of Business Income under this section will begin immediately upon the suspension of your business operations and will continue for a period *not to exceed a total of three consecutive weeks* after coverage begins. (Emphasis added).

Coverage for necessary Extra Expense under this section will likewise begin immediately upon the suspension of your business operations and will continue only for a total of three consecutive weeks after coverage begins, or until the loss of Business Income coverage ends, whichever is longer. The coverages under this section may not be extended nor repeated. The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages section shall also apply to the additional coverages under this section.

(3) Contamination Exclusions

(All exclusions and limitations apply except Exclusions B.2.j.(2) and B.2.j.(5)

(4) Additional Definitions:

(a) "Contamination" means a defect, deficiency, inadequacy *or dangerous condition* in your products, merchandise *or premises*. (Emphasis added).

(b) "Contamination threat" means a threat made by a third party against you to commit a "malicious contamination" unless the third party's demand for money or other consideration is met.

(c) "Malicious contamination" means an intentional, malicious and illegal altercation or adulteration of your products

(d) "Publicity" means a publication or broadcast by the media, of the discovery or suspicion of "contamination" at a described premise.

40. The impacts of COVID-19 on surfaces and objects constitute “a dangerous condition” in Plaintiffs’ and Class Members’ premises and, therefore, “contamination” as that term is used in TBP2 (05-15).

41. In addition, the pervasive coverage of COVID-19 by both print and broadcast media has resulted in “suspicion of ‘contamination’” in Plaintiffs’ and Class Members’ business premises (and, indeed, suspicion of contamination at all, or virtually all, places of business open to the public).

E. Society Insurance’s Blanket Denials of Coverage for COVID-19 Related Losses

42. To protect their businesses against sudden, unanticipated suspensions of operations due to property losses or damage, Plaintiffs (and Class Members) purchased commercial property policies from Society Insurance. Plaintiffs paid Society Insurance substantial premiums in exchange for commercial property loss coverage, and Plaintiffs have complied with all applicable provisions of their policies.

43. On or about March 16, 2020, Plaintiffs The Whistler and Sleeping Village gave notice of their COVID-19 business losses to Society Insurance.

44. On March 23, 2020, Society Insurance advised The Whistler and Sleeping Village that “there is no insurance coverage” for their claims. A copy of Society Insurance’s substantially identically worded letters denying coverage to The Whistler and Sleeping Village are, respectively, Exhibits 7 and 8 to this complaint.

45. With respect to Business Interruption coverage, Society Insurance's denial of coverage stated that:

A Covered Cause of Loss is a direct physical loss not otherwise excluded or limited by the policy. A slowdown in business due to the public's fear of the coronavirus or a suspension of business because a governmental authority (i.e. the governor or the mayor) has ordered or recommended all or certain types of businesses to close is not a direct physical loss. In addition, the actual or alleged presence of the coronavirus is not a Covered Cause of Loss. (Exhibits 7 and 8).

46. With respect to Civil Authority coverage, Society Insurance's denial of coverage letter stated that:

The Civil Authority additional coverage requires that a Covered Cause of Loss cause damage to property other than the property at the described premises, and that access to the area immediately surrounding the damaged property is prohibited by a civil authority. There is no coverage here because, as detailed above, Coronavirus is not a Covered Cause of Loss, and because a civil authority has not prohibited access to your business because of a Covered Cause of Loss that caused damage to a premises other than the described premises. (Emphasis in original). (Exhibits 7 and 8).

47. With respect to Contamination coverage, Society Insurance's denial of coverage letter stated that:

The Contamination Coverage provides that Society will pay for costs to clean and sanitize the premises, up to \$5,000, if the insured's operations are suspended due to "contamination." Contamination is defined as "a defect, deficiency, inadequacy or dangerous conditions in your products, merchandise, or premises." Coverage is provided for loss of business income for a period of up to three consecutive weeks after the suspension of the insured's business operations. The Contamination coverage

also covers an actual loss of Business Income and Extra Expense only if caused by (1) "'Contamination' that results in an action by a public health or other governmental authority that prohibits access to the described premises;" or (2) "Publicity resulting from the discovery or suspicion of contamination ." "Publicity" is defined as "a publication or broadcast by the media, of the discovery or suspicion of 'contamination' at a described premises.

There is no coverage under Section A.5(m) [for contamination] because no government authority has prohibited access to the described premises because of "contamination," as that term has been defined in the policy, and likewise there has been no publication or broadcast by the media of a "contamination" at the described premises. Your business operations have not been suspended, nor has access to your premises been prevented, by a public health authority or other governmental authority because of a "defect, deficiency, inadequacy or dangerous condition" in any of your products, merchandise or premises. In addition, there has been no publication or broadcast by the media of any such "defect, deficiency, in adequacy or dangerous condition" in any of your products, merchandise or premises. (Exhibits 7 and 8).

48. On information and belief, Society Insurance has categorically denied all COVID-19-related claims tendered to it on these same bases, using the same standardized letter, uniform in all material respects to the letters it sent to The Whistler and to Sleeping Village.

49. Society Insurance decided to deny Plaintiffs' claims without any inspection or review of Plaintiffs' physical locations. On information and belief, Society Insurance has also denied all Class Members' claims for COVID-19-related losses without inspecting their physical locations. Society Insurance has therefore waived any right to inspect Plaintiffs' or Class Members' properties, deny coverage for any reason related to

conditions at their properties, or raise any defense related to conditions or facts specific to a property.

50. Plaintiffs' and Class Members' claims for coverage for COVID-19-related business losses arise from a single course of conduct by Society Insurance, which, unless restrained by this Court, will continue and will continue to cause both Plaintiffs and all Class Members significant damage and injury.

CLASS ALLEGATIONS

51. Plaintiffs bring this action on behalf of themselves and all others similarly situated, seeking to represent the following classes:

The Business Income Coverage Class: All persons and entities that (a) have "Business Income" coverage under a Society Insurance commercial property policy written on Coverage Form TBP2 (05-15), or any other Society policy with the same operative language; (b) made a claim under that policy for COVID-19-related property losses; and (c) were denied "Business Income" coverage for that claim.

The Illinois Business Income Coverage Subclass: All persons and entities that (a) have "Business Income" coverage under a Society Insurance commercial property policy written on Coverage Form TBP2 (05-15), or any other Society policy with the same operative language; (b) made a claim under that policy for COVID-19-related property losses in Illinois; and (c) were denied "Business Income" coverage for that claim.

The Civil Authority Coverage Class: All persons and entities that (a) have "Civil Authority" coverage under a Society Insurance commercial property policy written on Coverage Form TBP2 (05-15), or any other Society policy with the same operative language; (b) made a claim under that policy for COVID-19-related property losses; and (c) were denied "Civil Authority" coverage for that claim.

The Illinois Civil Authority Coverage Subclass: All persons and entities that (a) have “Civil Authority” coverage under a Society Insurance commercial property policy written on Coverage Form TBP2 (05-15), or any other Society policy with the same operative language; (b) made a claim under that policy for COVID-19-related property losses in Illinois; and (c) were denied “Civil Authority” coverage for that claim.

The Contamination Coverage Class: All persons and entities that (a) have “Contamination” coverage under a Society Insurance commercial property policy written on Coverage Form TBP2 (05-15), or any other Society policy with the same operative language; (b) made a claim under that policy for coverage for COVID-19-related property losses; and (c) were denied “Contamination” coverage for that claim.

The Illinois Contamination Coverage Subclass: All persons and entities that (a) have “Contamination” coverage under a Society Insurance commercial property policy written on Coverage Form TBP2 (05-15), or any other Society policy with the same operative language; (b) made a claim under that policy for coverage for COVID-19-related property losses in Illinois; and (c) were denied “Contamination” coverage for that claim.

52. Plaintiffs may, in the future, expand, narrow, or otherwise modify the above class definitions, or propose the formation of additional subclasses, as the result of discovery or for other reasons.

53. **Numerosity.** The exact number of members of the class is not known but the numbers are sufficiently large that individual joinder is impracticable. The Classes consist of hundreds if not thousands of members. The identify of all members of the class will be ascertainable in Society Insurance’s books and records.

54. **Commonality and Predominance.** Several questions of both fact and law are common to the claims of Plaintiffs and Class Members; those questions predominate

over any questions that may affect only individual Class Members; and these common questions include, but are not limited to, the following:

- a. Are the terms of coverage for property losses in Coverage Form TBP2 (05-15) –namely, coverage for “direct physical loss or damage” –ambiguous as applied to COVID-19?
- b. Does the *Business Income* coverage in Coverage Form TBP2 (05-15) provide coverage for the COVID-19-related property losses sustained by Plaintiffs and Class Members?
- c. Does the *Civil Authority* coverage in Coverage Form TBP2 (05-15) provide coverage for the COVID-19-related property losses sustained by Plaintiffs and Class Members?
- d. Does the additional coverage provision for “*Contamination*” in Coverage Form TBP2 (05-15) provide coverage for the COVID-19-related property losses sustained by Plaintiffs and Class Members?
- e. Has Society Insurance breached or repudiated its coverage obligations, under Coverage Form TBP2 (05-15), by denying Plaintiffs’ and Class Members’ claims for coverage for COVID-19-related property losses?
- f. By not inspecting their properties, has Society Insurance waived any right to inspect Plaintiffs’ or Class Members’ properties, deny coverage for any reason related to conditions at their properties, or raise any defense related to conditions or facts specific to a property?
- g. By denying Plaintiffs’ and Class Members’ Claims, has Society Insurance breached its duty of good faith and fair dealing?
- h. By denying Plaintiffs’ and Class Members’ Claims, has Society Insurance acted vexatiously and unreasonably, triggering liability (for Plaintiffs and Illinois Class Members) under 215 ILCS §§ 5/154.6 & 5/155?

55. Typicality. Plaintiffs’ claims are typical of Class Members’ claims in that all of them purchased insurance policies from Society Insurance containing materially

identical language regarding business income losses, civil authority coverage, and contamination; their coverage claims were denied by Society Insurance; and they have sustained damages from those denials as a result.

56. Superiority. Class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy because separate actions by individual Class Members would both burden the courts and create risks of inconsistent or varying adjudications of common questions; and because class proceedings, by contrast, will present fewer management difficulties, create economies of scale, and coordinate and consolidate discovery, reducing the cost and duplication that would otherwise result from overlapping discovery requests, disputes, and compliance proceedings occurring in several cases and courtrooms at once.

57. Declaratory and Injunctive Relief. Society Insurance has acted or refused to act on grounds generally applicable to Plaintiffs and all Class Members, making final declaratory relief as to the interpretation of Coverage Form TBP2 (05-15) appropriate, as well as final injunctive relief enforcing Society Insurance's coverage obligations under that form. Separate actions would create a risk of inconsistent adjudications, resulting in incompatible standards, and disparate treatment of similar claims, and as a practical matter, adjudications in one case might impair or impede the ability of other insureds, not parties to this action, to protect their interests.

58. Adequacy. Plaintiffs will fairly and adequately represent and protect the interests of the proposed classes. Plaintiffs have no disabling conflicts with, or interests materially adverse to, members of the proposed classes; and Plaintiffs have retained qualified and experienced counsel with proven track records both in class litigation and insurance coverage disputes.

59. One of Plaintiffs' counsel, Jay Angoff, served for six years as Director of the Missouri Department of Insurance. Mr. Angoff has also served as Deputy Insurance Commissioner of New Jersey.

FIRST CAUSE OF ACTION
Declaratory Relief
(By Plaintiffs and all Classes)

60. Plaintiffs repeat and re-allege paragraphs 1–59 above.

61. An actual controversy exists between Plaintiffs and the members of the proposed classes, on the one hand, and Society Insurance on the other, regarding Plaintiffs' and the Classes' rights and Society's obligations under Coverage Form TBP2 (05-15) and other Society Insurance policies with the same operative language for Business Income, Civil Authority, and Contamination coverages.

62. Pursuant to 28 U.S.C. § 2201, Plaintiffs and the Classes seek a judgment from the Court declaring that:

- a. The language in Society Insurance’s Coverage Form TBP2 (05-15), promising coverage for “direct physical loss of or damage to” covered property —and likewise the same operative language in any other Society Insurance policy—is ambiguous, and that ambiguity must be construed against Society and in favor of coverage.
- b. COVID-19-related property losses are covered losses *under the Business Income Coverage* provided by Society Insurance’s Coverage Form TBP2 (05-15)-- and likewise under any other Society Insurance commercial property policy using the same operative language.
- c. COVID-19-related property losses are covered losses *under the Civil Authority Coverage* provided by Society Insurance’s Coverage Form TBP2 (05-15)-- and likewise under any other Society Insurance commercial property policy using the same operative language.
- d. COVID-19-related property losses are covered losses *under the Contamination Coverage* provided by Society Insurance’s Coverage Form TBP2 (05-15)—and likewise under any other Society Insurance commercial property policy using the same operative language
- e. Society Insurance has waived any right to inspect Plaintiffs’ or Class Members’ business premises, deny coverage for any reason related to conditions at their business premises, or raise any defense related to conditions or facts specific to a premises.
- f. Society Insurance is obligated to pay Plaintiffs and members of *the Business Income Coverage Class* for all Business Income losses (up to policy limits), resulting from the interruption of their businesses due to COVID-19.
- g. Society Insurance is obligated to pay Plaintiffs and members of *the Civil Authority Coverage Class* for all Business Income losses (up to policy limits), resulting from the interruption of their businesses due to COVID-19.

- h. Society Insurance is obligated to pay Plaintiffs and members of *the Contamination Coverage Class* for all Contamination losses (up to policy limits), resulting from the contamination of their covered property due to COVID-19.

63. Plaintiffs and Class Members also seek injunctive relief, compelling Society

Insurance to:

- a. Provide notice to all policyholders that Business Income and Extra Expenses losses resulting from the interruption, suspension, or curtailment of their businesses due to COVID-19 or the related orders of civil authorities, or the contamination of their property or suspicion of contamination of their property due to COVID-19 or civil authority orders, are covered losses which, if claimed, will be eligible for payment (up to policy limits).
- b. Pay Plaintiffs and all Class Members for all Business Income and Extra Expenses losses they have sustained (up to policy limits), resulting from: (i) the suspension, interruption, or curtailment of their businesses due to COVID-19 or the related orders of civil authorities; or (b) the contamination, or suspicion of contamination, of their property due to COVID-19 or the related orders of civil authorities.

SECOND CAUSE OF ACTION
Breach of Contract – Business Interruption Coverage
(By Plaintiffs and All Classes)

64. Plaintiffs repeat and re-allege paragraphs 1–59 above.

65. Plaintiffs' and Class Members' commercial property policies, issued by Society

Insurance, are contracts.

66. Pursuant to their policies with Society Insurance, Plaintiffs and Class Members paid Society Insurance premiums, in exchange for Society Insurance's promise to indemnify Plaintiffs and Class members for covered losses due to business interruptions.

67. Plaintiffs have complied with all applicable obligations under their insurance contracts.

68. By its conduct, as alleged above, Society Insurance has breached the contractual obligations it owed Plaintiffs and to all Class Members to provide them Business Interruption coverage, causing them substantial damages.

THIRD CAUSE OF ACTION
Breach of Contract – Civil Authority Coverage
(By Plaintiffs and All Classes)

69. Plaintiffs repeat and re-allege paragraphs 1-59 above.

70. Plaintiffs' and Class Members' commercial property policies, issued by Society Insurance, are contracts.

71. Pursuant to their policies with Society Insurance, Plaintiffs and Class Members paid Society Insurance premiums, in exchange for Society Insurance's promise to indemnify Plaintiffs and Class Members for covered losses due to civil authority orders.

72. Plaintiffs have complied with all applicable obligations under their insurance contracts.

73. By its conduct, as alleged above, Society Insurance has breached its contractual obligations to Plaintiffs and to all Class Members to provide them Civil Authority coverage, causing them substantial damages.

FOURTH CAUSE OF ACTION
Breach of Contract – Contamination Coverage
(By Plaintiffs and All Classes)

74. Plaintiffs repeat and re-allege paragraphs 1–59 above.

75. Plaintiffs’ and Class Members’ commercial property policies, issued by Society Insurance, are contracts.

76. Pursuant to their policies with Society Insurance, Plaintiffs and Class Members paid Society Insurance premiums, in exchange for Society Insurance’s promise to indemnify Plaintiffs and Class Members for covered losses due to contamination, including publicity resulting from the suspicion of contamination.

77. Plaintiffs have complied with all applicable obligations under their insurance contracts.

78. By its conduct, as alleged above, Society Insurance has breached its contractual obligations to Plaintiffs and to all Class Members to provide them Contamination coverage, causing them substantial damages.

FIFTH CAUSE OF ACTION
Breach of the Common Law Duty of Good Faith and Fair Dealing
(By Plaintiffs and All Classes)

79. Plaintiffs repeat and re-allege paragraphs 1–59 above.

80. Plaintiffs’ and Class Members’ commercial property policies, issued by Society Insurance, are contracts.

81. In contracting with Plaintiffs and Class Members, Society Insurance incurred a duty of good faith and fair dealing.

82. By its conduct, as alleged above, Society Insurance has breached the duty of good faith and fair dealing it owes to Plaintiffs and to all Class Members, proximately causing them substantial damages.

SIXTH CAUSE OF ACTION
Violation of the Illinois Insurance Code, 215 ILCS §§ 5/154.6 & 5/155
(By the Illinois Subclasses)

83. Plaintiffs repeat and re-allege paragraphs 1–59 above.

84. By its conduct alleged above, including categorically denying claims for COVID-19-related commercial property coverage, Society Insurance has engaged in “improper claims practice, has vexatiously and unreasonably denied Plaintiffs’ and Class Members’ claims, and has demonstrated a recurring pattern or practice of superficial and perfunctory claims investigation and analysis, including by looking only in one

self-serving direction for evidence about the source, nature, or extent of COVID-19-related property losses.

85. By its conduct, as alleged above, Society Insurance has caused Plaintiffs and all Class Members suffered substantial injury and losses, entitling Plaintiffs and the Classes to an award of attorney's fees, costs, and penalties under 215 ILCS 5/155.

PRAYER FOR RELIEF

Plaintiffs, both individually and on behalf of Class Members, request orders and/or judgments:

1. Certifying the proposed classes, appointing Plaintiffs to represent those classes, and appointing their counsel as Class Counsel for those classes.
2. Entering judgments awarding the declaratory relief sought identified in paragraph 62, above.
3. Entering injunctive orders of relief compelling Society Insurance to take the actions identified in paragraph 63, above.
4. Awarding Plaintiffs and all members of the Business Income and Contamination Coverage Classes full contract damages for Society Insurance's breaches of their insurance contracts.
5. Awarding Plaintiffs and all Class Members pre- and post-judgment interest, to the extent allowable.
6. Awarding Plaintiffs and Class Members attorneys' fees and their costs and expenses of suit.
7. Awarding all such other and further relief as may be just and appropriate.

JURY DEMAND

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

Date: July 8, 2020

Respectfully submitted,

/s/ Joshua Karsh

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