

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Torgerson Properties, Inc.
(b) County of Residence of First Listed Plaintiff Kandiyohi
(c) Attorneys (Firm Name, Address, and Telephone Number)
Todd M. Kleinhuizen
Johnson, Moody, Schmidt & Kleinhuizen, P.A.
320 First St. SW - PO Box 913, Willmar, MN 56201
(320) 235-2000

DEFENDANTS
Continental Casualty Company
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Amy J. Woodworth
Meagher & Geer, P.L.L.P.
3 So. Sixth St., Suite 4400< Mpls., MN 55402
(612) 338-0661

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sec. 1332 (a)(1); 28 U.S.C. sec. 1441, 1446; 28 U.S.C. sec. 2201, 2202.
Brief description of cause:
Declaratory judgment seeking insurance coverage for lost income due to coronavirus pandemic

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 10/16/2020 SIGNATURE OF ATTORNEY OF RECORD /s Amy J. Woodworth

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Torgerson Properties, Inc,

Court File No.:

Plaintiff,

v.

**DEFENDANT CONTINENTAL
CASUALTY COMPANY'S NOTICE
OF REMOVAL**

Continental Casualty Company,

Defendant.

PLEASE TAKE NOTICE, under Title 28 of the United States Code, §§ 1332, 1441, and 1446, Defendant Continental Casualty Company (“Continental”) submits this Notice of Removal of the above-captioned action to the United States District Court for the District of Minnesota.

This Court has original jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship between Continental and Plaintiff Torgerson Properties, Inc. (“TPI”), and the amount in controversy exceeds \$75,000, exclusive of interest and costs. In support of its Notice of Removal of the above-captioned action from the district court for the Eighth Judicial District, County of Kandiyohi, State of Minnesota, Continental states as follows:

1. Pursuant to an agreement by Continental for its counsel to accept service on behalf of Continental, on September 25, 2020, Plaintiff TPI served a copy of the Summons and Complaint upon the undersigned counsel. Plaintiff’s Summons and

redacted Complaint, including exhibits, are attached hereto as Exhibit A and incorporated herein by reference.

2. On October 8, 2020, Plaintiff served the undersigned counsel, via facsimile and U.S. Mail, with an Amended Complaint. The redacted Amended Complaint, including exhibits, are attached hereto as Exhibit B and incorporated herein by reference.

3. Plaintiff's Amended Complaint seeks insurance coverage under a policy issued by Continental. Plaintiff's Amended Complaint states that it has brought this action to establish it is entitled to insurance coverage and it states it is entitled to reimbursement under the policy. Specifically, Plaintiff seeks a declaration that it is entitled to business interruption coverage, civil authority coverage and ingress/egress coverage. Plaintiff's claims for coverage arise out of the business income losses it sustained due to COVID-19 and related orders from the governors of Minnesota and Florida, the states in which plaintiff conducts business. Plaintiff has indicated it has incurred more than \$10,000,000.00 in damages for which it seeks insurance coverage. (*See* Ex. 14 to Amended Complaint).

4. This action is venued in the district court for the Eighth Judicial District, County of Kandiyohi, State of Minnesota, Case No. 34-CV-20-339 and is pending therein (the "State Court Action").

5. Attached collectively, as Exhibit C are true and correct copies of all public process, pleadings, and orders filed in the State Court Action: Notice of Noncompliance dated August 24, 2020; Notice of Noncompliance dated August 25, 2020; Motion for Admission of Tamra J. Miller *Pro Hac Vice*; Motion for Admission of Daniel

Schlessinger *Pro Hac Vice*; Order for *Pro Hac Vice* for Tamra J. Miller; Order for *Pro Hac Vice* for Daniel Schlessinger; Notice of Filing *Pro Hac Vice* Orders; and Notice of Deficiency dated September 9, 2020. No further proceedings have been held in the district court for the Eighth Judicial District, County of Kandiyohi, State of Minnesota.

6. The thirty-day period for removal does not begin to run until a party has been properly served. See *Murphy Brothers Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999). Thirty days have not elapsed since Continental received the Summons and Complaint on September 25, 2020. Accordingly, this Notice is timely filed under 28 U.S.C. § 1446(b).

7. This court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, and removal to this court is proper under 28 U.S.C. §§ 1441 and 1446, in that:

a. Plaintiff is a citizen of Minnesota because it is incorporated in Minnesota with its principal place of business in Willmar, Minnesota. See 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010) (“the phrase ‘principal place of business’ [in § 1332(c)(1)] refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.”).

b. Defendant is a citizen of Illinois because it is incorporated in Illinois with its principal place of business in Chicago, Illinois. See 28 U.S.C. § 1332(c)(1); *Hertz*, 559 U.S. at 80.

c. Based on the allegations in the Amended Complaint, including the exhibits to the Amended Complaint, Plaintiff claims damages in excess of \$75,000, exclusive of interest and costs.

8. Because the Plaintiff is a citizen of Minnesota and the Defendant is a citizen of Illinois, complete diversity exists. *See* 28 U.S.C. § 1332(c)(1); *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 88–89 (2005) (holding that defendants may remove an action on the basis of diversity of citizenship if there is a complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum state).

9. Under 28 U.S.C. § 1332(a), diversity jurisdiction requires that the matter in controversy “exceed[] the sum of value of \$75,000, exclusive of interest and costs.” This requirement is met here.

10. A notice of removal “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold,” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014), and if contested, a court will determine whether the threshold is met by a preponderance of the evidence. *Id.* at 99; 28 U.S.C. § 1446(c)(2)(B).

11. Here, the Complaint makes clear that TPI’s alleged loss of business income exceeds \$75,000. (*See* Complaint Ex. 14 (email from counsel for TPI asserting losses in April and March of 2020 in excess of \$10 million).)

12. Concurrent with the filing of this removal, Continental is filing a Notice of Filing of Removal with the district court for the Eighth Judicial District, County of Kandiyohi, State of Minnesota.

WHEREFORE, Defendant prays that all further proceedings in the civil action be conducted in the United States District Court for the District of Minnesota as provided by law.

Dated: October 16, 2020

s/Amy J. Woodworth

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EXHIBIT A

STATE OF MINNESOTA
COUNTY OF KANDIYOHI

IN DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
Case Type: Contract/ Other Civil

Court File No.: _____
Jury Trial Demanded

Torgerson Properties, Inc.,

Plaintiff,

v.

SUMMONS

Continental Casualty Company,

Defendant.

THIS SUMMONS IS DIRECTED TO: DEFENDANT ABOVE-NAMED.

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiffs' Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a written response called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at JOHNSON, MOODY, SCHMIDT & KLEINHUIZEN, 320 S. First St., P.O. Box 913, Willmar, MN 56201-0913.

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiffs everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint


5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can

get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 7-24-2020

**JOHNSON, MOODY, SCHMIDT
& KLEINHUIZEN, P.A.**

By: 

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ATTORNEYS FOR PLAINTIFF

STATE OF MINNESOTA
COUNTY OF KANDIYOHI

IN DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

Case Type: Contract/Other Civil

Court File No.: _____
Jury Trial Demanded

Torgerson Properties, Inc.,

Plaintiff,

v.

COMPLAINT

Continental Casualty Company,

Defendant.

COMPLAINT

NOW COMES Torgerson Properties, Inc. ("TPI"), and for its Complaint against Defendant Continental Casualty Company ("Defendant" or "CNA"), alleges as follows:

Introduction

1. TPI is an employee-owned company that develops and operates hotels, restaurants and conference centers throughout Minnesota and in select locations in Florida.
2. TPI operates over 40 different facilities as a franchisee of well-known national brands such as Hilton, Best Western, Holiday Inn and Marriott.
3. In March and April 2020, state and local officials in Minnesota and Florida issued a series of orders eliminating, or substantially restricting, the ability to function of the hospitality industry, including TPI. These orders, together with directives from public health officials, also instructed consumers to avoid travel and public entertainment and to isolate at home. The orders

precluded TPI's customers and employees from physically occupying TPI's premises, and prevented TPI from operating most of its business. TPI suffered a staggering loss of business income as a result of these orders and directives and the public reaction to them.

4. Plaintiff is insured under a commercial property insurance policy issued by Defendant, which provides for reimbursement of lost business income in the event TPI's business operations are suspended. TPI purchased the policy to help assure its continued operations and financial health in the event of an unforeseen interruption of its business, and faithfully paid premiums over the years to obtain this protection.

5. The recent government and public health mandated restrictions on TPI's facilities are precisely the sort of unforeseen, economically calamitous events TPI sought to insure itself against when it purchased insurance from Defendant. But when TPI made a claim for coverage as a result of the shutdowns and restrictions that physically deprived TPI of its business, Defendant summarily denied TPI's claim.

6. Specifically, Defendant denied TPI's claim, without investigation, based on an erroneous reading of the language in the policy it issued to TPI. Defendant's denial of TPI's claim was arbitrary, unreasonable, contrary to the language of the policy, contrary to the undisputed facts, and contrary to law.

7. Due to Defendant's wrongful denial of coverage, TPI brings this action for a declaratory judgment establishing that it is entitled to receive the benefit of the insurance coverage it purchased, for indemnification of the business losses it has sustained, and for breach of contract.

Parties

8. Plaintiff TPI is a Minnesota corporation with its principal place of business in Willmar, Minnesota.

9. Upon information and belief, Defendant Continental Casualty Company is an insurance company organized under the laws of the State of Illinois with its principal place of business in Chicago, IL. Defendant is a subsidiary of CNA Financial Corporation.

Jurisdiction and Venue

10. Defendant is admitted to operate as an insurance company in the State of Minnesota and regularly underwrites coverage and insures risks in this state. Venue is proper in Minnesota and specifically in Kandiyohi County because the policy at issue was delivered to TPI here, TPI is headquartered here, and the risks insured under the policy at issue are primarily located in Minnesota, including in Kandiyohi County.

Factual Background

11. In March 2020, officials in Minnesota and Florida—as in many other states—ordered the closing of all non-essential businesses, and restrictions on the operations of many businesses deemed essential. For example, on March 13, 2020, the Governor of Minnesota entered Executive Order 20-01, (attached hereto as Ex.1), declaring a state of emergency. Then, on March 16, 2020, the governor issued Executive Order 20-04, (Ex. 2), which closed hotel restaurants, bars, breakfast service, pools, fitness centers, game rooms and conference facilities and other places of public accommodation serving food or beverages for on-site consumption. On March 25, 2020, the governor issued Executive Order 20-20, (Ex. 3) which, with limited exceptions, ordered Minncotans to stay at home.

12. On March 1, 2020, the Governor of Florida entered Executive Order 20-51 (Ex. 4), declaring a public health emergency. In the ensuing days and weeks, federal officials, the governors of Minnesota and Florida, various local and municipal officials and public health authorities issued numerous orders, bulletins and directives which had the effect of precluding or

limiting business and consumer travel and use of hospitality space such as the hotels, restaurants and conference facilities operated by TPI.

13. As a result of the orders, bulletins and directives noted above, TPI suffered severe interruption to its business and critical loss of income.

The Policy

14. TPI is insured by CNA Property Insurance Policy No. [REDACTED] 8772 in effect for the period May 1, 2019 to May 1, 2020 (the "Policy," Ex. 5). TPI obtained the Policy to ensure that it would be reimbursed for lost income in the event that its business operations were interrupted.

15. TPI faithfully paid premiums on the Policy and earlier policies issued by Defendant to TPI.

16. The Policy is an all-risk property insurance policy, meaning that it broadly covers risk of loss of or damage to all of TPI's listed locations, unless a coverage exclusion applies.

17. Under the terms of the Policy, Defendant agreed to pay for "risks of direct physical loss of or damage to property and/or interests described herein at covered Locations" (Ex. 5, p.10 of 37.) "Direct physical loss" is not defined in the Policy.

18. As part of this coverage, Defendant agreed to pay for "loss resulting from necessary business interruption caused by direct physical loss of or damage to covered property." (Ex. 5, p. 11 of 37.)

19. The Policy also provides for recovery of TPI's lost income when a "Covered Cause of Loss" occurs at property other than TPI's property, causing TPI to be denied access to its property.

20. For example, the Policy contains a “Civil Authority” provision, which provides that Defendant will pay TPI’s lost income when a “civil authority” takes action that prohibits access to TPI’s premises, where that action is taken as the result of a direct physical loss or damage occurring in the vicinity of TPI’s Location. (*Id.* p. 14 of 37.)

21. The Policy further provides for coverage of loss sustained where ingress and/or egress to TPI’s property is prohibited as the result of a direct physical loss or damage occurring elsewhere. (*Id.*)

Plaintiff’s Claim and Defendant’s Denial

22. On April 16, 2020, TPI made a claim under the Policy for losses suffered as a result of the interruptions to TPI’s business and resulting losses described above (the “Claim”). (TPI’s initial notice of the Claim is attached as Ex. 6)

23. At Defendant’s request, TPI provided Defendant with further information pertaining to the Claim. (TPI’s additional items of correspondence with Defendant are attached as Exhibits 7-24) Nevertheless, Defendant denied coverage for any element of TPI’s Claim. (Defendant’s denial letter is attached as Exhibit 25.)

24. Among its cited bases for denial was Defendant’s determination that TPI had not sustained any “direct physical loss of or damage to” its property.

25. Under the terms of the Policy, TPI has suffered both “direct physical loss of” and “damage to” its property as a result of the Executive Orders, other restrictions and the resulting public isolation.

26. The Policy does not define “damage” or “loss;” therefore, under well-recognized, undisputed rules of construction, those terms are to be given their generally understood meaning.

and any ambiguity should be construed in favor of coverage for TPI and against Defendant, who selected the language for inclusion in its adhesion contracts.

27. Common dictionary definitions of "loss" include "deprivation" and "the harm or privation resulting from loss or separation." See <https://www.merriam-webster.com/dictionary/loss>. Common dictionary definitions of "damage" include the "harm caused to something in such a way as to impair its value, usefulness or normal function."

28. The events described herein have obviously deprived TPI of access to, and the full use of, its business. Additionally, these events have impaired the value and usefulness of the business and prevented it from serving its normal function. Therefore, under commonly accepted English usage, TPI has suffered both "loss of" and "damage to" its insured premises.

29. TPI's losses and damage are "direct" in that they were directly caused by the Executive Orders and reaction thereto and have been continuous and unwavering; and they are "physical" in that consumers and employees have been physically unable to be present in the space. Put simply, TPI has suffered direct physical loss of and damage to its property in that TPI and its customers have been deprived of access to the insured property, causing the function and value of TPI's property to be nearly eliminated or destroyed.

30. Because TPI suffered loss of income from interruption of its business due to direct physical loss of and damage to its property, TPI is entitled to reimbursement under the Policy.

31. For these same reasons, Defendant is obligated to provide coverage under the "Civil Authority" provision in the Policy. Numerous establishments in the vicinity of TPI's facilities have suffered physical loss of and damage to their premises. Accordingly, the "Civil Authority" provision of the Policy is triggered.

32. Further, coverage is similarly provided under the "Ingress/Egress" provision of the Policy, as ingress and egress to TPI's premises were prevented or restricted by limitations imposed after direct physical loss of or damage to other businesses located within the vicinity.

Policy Exclusions

33. In its denial, Defendant also asserted that TPI might not be entitled to coverage due to several exclusions that might apply, such as an exclusion for contaminants or pollutants, one for consequential loss, and one for loss during a period when business could not have been conducted regardless of the direct physical loss or damage.

34. Defendant bears the burden of establishing the application of any of these exclusions, and none of them applies.

35. None of the exclusions cited by Defendant applies to this Claim.

COUNT ONE

BREACH OF CONTRACT: COVERAGE OF PROPERTY DAMAGE CLAIMS

36. TPI repeats and realleges the allegations of paragraphs 1 through 35 as if fully set forth herein.

37. The Policy is an insurance contract under which TPI paid premiums in exchange for Defendant's promise to pay claims for losses covered by the Policy, such as business losses incurred as a result of government orders and resulting actions impairing Plaintiff's business operations.

38. The Policy requires Defendant to pay TPI for loss sustained as a result of the business interruption suffered by TPI.

39. TPI has complied with all applicable provisions of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the Policy's clear and unambiguous terms.

40. By denying coverage for any losses or damage incurred by TPI in connection with the Executive Orders and the COVID-19 pandemic, Defendant has breached its coverage obligations under the Policy.

COUNT TWO

BREACH OF CONTRACT: COVERAGE OF CIVIL AUTHORITY CLAIMS

41. TPI repeats and realleges the allegations of paragraphs 1 through 40 as if fully set forth herein.

42. The Policy is an insurance contract under which TPI paid premiums in exchange for Defendant's promise to pay claims for losses covered by the Policy, such as business losses incurred as a result of government orders impairing TPI's business operations.

43. The Policy requires Defendant to pay TPI for the loss of income caused by actions taken by a civil authority that prevent access to TPI's premises, where those actions were taken in response to direct physical loss of or damage occurring at property in the vicinity of TPI's property.

44. The Executive Orders constitute actions of civil authorities prohibiting access to TPI's property, and the Claim otherwise meets the requirements for coverage under the Civil Authority provision of the Policy.

45. TPI has complied with all applicable provisions of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the Policy.

46. By denying coverage for any losses or damage incurred by TPI in connection with the Executive Orders, Defendant has breached its coverage obligations under the Policy.

COUNT THREE

BREACH OF CONTRACT: COVERAGE OF INGRESS/EGRESS CLAIMS

47. TPI repeats and realleges the allegations of paragraphs 1 through 46 as if fully set forth herein.

48. The Policy is an insurance contract under which TPI paid premiums in exchange for Defendant's promise to pay claims for losses, such as business losses incurred as a result of government orders impairing Plaintiff's business operations.

49. The Policy requires Defendant to pay TPI for loss of income caused by a direct physical loss or damage that prevents ingress and/or egress to Plaintiff's property.

50. The Executive Orders operated as obstructions preventing ingress and egress to TPI's businesses, and the Claim otherwise meets the requirements for coverage under the Ingress/Egress provision of the Policy.

51. TPI has complied with all applicable provisions of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet Defendant has failed to fulfill its insurance coverage obligations under the Policy's clear and unambiguous terms.

52. By denying coverage for the loss and damage incurred by TPI, Defendant has breached its coverage obligations under the Policy.

COUNT FOUR

DECLARATORY JUDGMENT: THE POLICY HAS BEEN TRIGGERED BY DIRECT PHYSICAL LOSS OF AND/OR DAMAGE TO PLAINTIFF'S PROPERTY AND THE POLICY'S EXCLUSIONS DO NOT APPLY

53. TPI repeats and realleges the allegations of paragraphs 1 through 52 as if fully set forth herein.

54. The Policy requires Defendant to pay TPI for its loss of income sustained while its business was interrupted.

55. TPI has made a Claim for coverage for its lost income under the terms of the Policy.

56. Defendant has asserted that TPI is not entitled to its lost business income because it did not suffer direct physical loss of or damage to its covered property.

57. TPI suffered both direct physical loss of its property, and damage to its property, as it was deprived of access to, and the full use and value of its property.

58. Defendant has also asserted that the Claim for coverage under the Policy is precluded by exclusions in the Policy.

59. Defendant bears the burden to prove the application of any exclusions it asserts.

60. None of the exclusions raised by Defendant applies to the Claim.

61. As set forth above, a true controversy exists between the parties concerning the parties' rights and obligations under the Policy.

WHEREFORE, TPI demands judgment of the Court against Defendant(s) as follows:


1. Declaring that the Business Income, Civil Authority, and Ingress/Egress provisions of the Policy have been triggered by direct physical loss of and damage to TPI's property and the property of others, and that no exclusions apply.
2. Awarding damages to TPI in an amount in excess of \$50,000.00, including such punitive and statutory damages as may be applicable;
3. Awarding TPI its costs, disbursements and reasonable attorneys' fees and interest;
4. Awarding TPI such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: July 24, 2020

By:


Todd M. Kleinhuizen (#211370)
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ACKNOWLEDGMENT

The undersigned acknowledges that: I am familiar with the terms of Minn. Stat. § 549.211, and that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party pursuant to subd. 2 thereof, in the event a party or an attorney acts in bad faith; asserts a claim or defense that is frivolous and that is costly to another party; asserts an unfounded position solely to delay the order and course of the proceedings or to harass; or commits a fraud upon the Court.



Todd M. Kleinhuizen