

CASE NO. 20-CI-_____

JEFFERSON CIRCUIT COURT
BUSINESS COURT DOCKET
DIVISION _____
JUDGE _____

**AL J. SCHNEIDER CO.; SCHNEIDER HOTELS,
LLC; SCHNEIDER FAIRGROUNDS, LLC;
SCHNEIDER WATERFRONT, LLC;
SCHNEIDER RIVERFRONT, LLC;
SCHNEIDER PARKING, LLC; and LE CENTRE
ON FOURTH LLC,**

PLAINTIFFS

v.

**HARTFORD FIRE INSURANCE COMPANY,
C T Corporation System
67 Burnside Ave.
East Hartford, CT 06108-3408**

DEFENDANT

**Through:
Kentucky Secretary of State**

COMPLAINT AND JURY DEMAND

1. This is a business dispute relating to a denied property insurance coverage claim involving COVID-19. Plaintiffs seek a declaration of rights and obligations under Kentucky law and other relief as set forth in this Complaint. Plaintiffs, AL J. SCHNEIDER CO. (“ALJSCO”); SCHNEIDER HOTELS, LLC (“Schneider Hotels”); SCHNEIDER FAIRGROUNDS, LLC (“Schneider Fairgrounds”); SCHNEIDER WATERFRONT, LLC (“Schneider Waterfront”); SCHNEIDER RIVERFRONT, LLC (“Schneider Riverfront”); SCHNEIDER PARKING, LLC (“Schneider Parking”); and LE CENTRE ON FOURTH LLC (“Le Centre”) (collectively “Plaintiffs” or “AJS Companies”) bring this Complaint against Defendant HARTFORD FIRE INSURANCE COMPANY (“Hartford”). The AJS Companies seek a declaratory judgment pursuant to the Kentucky Declaratory Judgment Act and Kentucky Rules of Civil Procedure. They request a judgment confirming the scope of insurance coverage available for their losses under the

Hartford Policy No. 33 UFJ AE3AAF (the “Policy”). The AJS Companies also bring related claims for damages arising from breach of contract, common law and statutory bad faith, and other violations of Kentucky law.

2. This insurance litigation is unique and distinct from other COVID-19 insurance litigation. Upon information and belief, the AJS Companies are among a small collection of insured companies that purchased coverage under Hartford’s new Property Elite Policy for Hospitality. Hartford issued the Property Elite form for the first time in early 2020. As issued to the AJS Companies, the Policy expressly includes coverage for loss arising from virus and disease. For example, the Policy grants coverage up to \$500,000,000 for Business Income loss and Extra Expense incurred due to a Crisis Event. The Policy’s definition¹ of Crisis Event confirms coverage for loss from:

- d. The release or imminent release of a hazardous substance that is likely to result in bodily injury or death to persons at an **Insured Premises**;
- e. The release or imminent release of bacteria or virus that is likely to result in bodily injury or death to persons at an **Insured Premises**;
- f. Food contamination or other public health hazard as determined by an appropriate governmental body that is likely to result in bodily injury or death to persons at an **Insured Premises**; or

3. To date, the AJS Companies have suffered in excess of \$21,000,000 in business income and extra expense loss because of the release or imminent release of COVID-19 in Kentucky, including diagnosed cases of COVID-19 at properties insured by the Policy. Multiple government organizations have declared public health hazards threatening persons at insured properties. COVID-19 is likely to result in bodily injury or death.

4. The Policy is valid and enforceable, and the AJS Companies timely notified Hartford of their claim.

¹ Apparently because this is a new insurance form for Hartford, subpart “e” includes a typographical or drafting error. The phrase “that is likely to result in bodily injury or death to hazardous substance” seems to be a mistake in the form.

5. Hartford denied coverage outright after an unexplained period of delay and despite clear and express grants of coverage for virus and disease in the Policy. While there are other portions of the Policy that may apply (e.g., Attraction Properties), Hartford should have at least investigated, accepted and paid the claim under the Crisis Event coverage. Instead, Hartford denied based on a misrepresentation of its own Policy, claiming that a “malicious act” was required for the COVID-19 occurrences to qualify as Crisis Events. Hartford’s denial is wrongful, contrary to its obligations under the Policy and Kentucky law, and continues to cause significant damage to the AJS Companies in amounts to be proven at trial.

PARTIES

6. Plaintiff AL J. Schneider Co. is a real estate development company located in Louisville, Kentucky that owns and/or operates hotels and restaurants and has separate real estate and lumber divisions.

7. Plaintiff Schneider Hotels, LLC is a limited liability company organized under the laws of the State of Kentucky, has its principal place of business in Louisville, Kentucky, and is wholly owned by Plaintiff AL J. Schneider. Schneider Hotels LLC owns and operates the Galt House Hotel in Louisville, Kentucky.

8. Plaintiff Schneider Fairgrounds, LLC is a limited liability company organized under the laws of the State of Kentucky, has its principal place of business in Louisville, Kentucky, and is wholly owned by Plaintiff AL J. Schneider. Schneider Fairgrounds LLC owns and operates the Crowne Plaza hotel located near the Louisville, Kentucky airport.

9. Plaintiff Schneider Waterfront, LLC is a limited liability company organized under the laws of the State of Kentucky, has its principal place of business in Louisville, Kentucky. Schneider Waterfront owns the 3-tower, 25-story Waterfront Plaza, located at 321 W. Main St.

10. Plaintiff Schneider Riverfront, LLC is a limited liability company organized under the laws of the State of Kentucky, has its principal place of business in Louisville, Kentucky. Schneider Riverfront owns the 23-story, 341,363 square foot One Riverfront Plaza office building located at 401 W. Main St.

11. Plaintiff Schneider Parking, LLC is a limited liability company organized under the laws of the State of Kentucky, has its principal place of business in Louisville, Kentucky. Schneider Parking owns a parking deck in downtown Louisville, KY.

12. Plaintiff Le Centre on Fourth LLC is a limited liability company organized under the laws of the State of Delaware, has its principal place of business in Louisville, Kentucky, and is 95% owned by Plaintiff AL J. Schneider through its subsidiary 501 Fourth Street, LLC. Le Centre on Fourth LLC owns and operates the Embassy Suites in downtown Louisville.

13. Hartford is a stock insurance company organized under the laws of Connecticut with its principal place of business in Hartford, Connecticut. Hartford is authorized to provide insurance coverage in the state of Kentucky.

14. Hartford issued the Policy to the AJS Companies in Kentucky.

VENUE AND JURISDICTION

15. Venue is proper in this Court pursuant to KRS 454.210(4), KRS 452.445, and KRS 452.450, because the AJS Companies are located in Jefferson County, Kentucky, and the transactions and acts giving rise to the causes of action asserted herein occurred in Jefferson County, Kentucky.

16. This case is appropriate for the Jefferson County Business Court in accordance with the Business Court Docket Rules of Practice. The gravamen of this dispute relates to insurance of a business entity.

17. This Court has personal jurisdiction over Hartford because it is authorized to sell or write insurance in Kentucky, contracted to insure persons, property, or risk located within Kentucky at the time of contracting by issuing the policy in question, and thereby insured the covered risks of Kentucky citizens. KRS 454.210(2)(a)(1), (7).

18. Subject matter jurisdiction is proper pursuant to KRS 23A.010, KRS 418.040, and KRS 418.045.

FACTUAL BACKGROUND

Hartford's New Elite Policy Tailored for the AJS Companies, Including Virus and Disease Coverage

19. The AJS Companies are long-time businesses and property owners, tracing their roots to the late Mr. Al J. Schneider, a developer, philanthropist, and longtime champion of Louisville and her success. Their property portfolio includes the historic Galt House hotel, along with other hotels, restaurants, office buildings, and a parking deck in Jefferson County as more specifically described below. These properties depend on Louisville's hospitality and entertainment industry, and the AJS Companies face significant risk if their own properties or other Jefferson County hospitality or entertainment properties are shutdown or limited by unanticipated events.

20. The AJS Companies worked with a broker to find comprehensive commercial property coverage, including tailored coverage to protect against the risk of loss or damage due to unanticipated widespread loss. The prior property coverage with another insurer was due to expire on March 1, 2020.

21. Meanwhile, Hartford was introducing a new insurance product to the market for 2020. In late 2019, Hartford pushed marketing material out to insurance brokers that introduced the new Property Elite program, including "seamless, tailored" coverage for Hospitality. Hartford

advertised coverage for “broad, all risk perils,” including “catastrophic cover.” A true and correct copy of the Hartford marketing materials for the Property Elite program is attached hereto as Exhibit A.

22. After weeks of negotiations, the AJS Companies elected to bind coverage with the Hartford. The AJS Companies paid \$661,700.00 in total premium for Hartford’s Property Elite Policy for Hospitality. The effective date of the Policy is March 1, 2020. The Policy Limit is \$500,000,000. A true and correct copy of the Policy is attached as Exhibit B and incorporated fully by reference.

23. The Policy provides that the Insureds under the Policy are:

Insured includes AL J SCHNEIDER CO and any subsidiary, and the interest of AL J SCHNEIDER CO in any partnership or joint venture in which AL J SCHNEIDER CO has management control, ownership, or is obligated to insure, as now constituted or hereafter is acquired, as the respective interest of each may appear; including legal representatives.

Ex. B at 2.

24. Each of the AJS Companies is an Insured under the Policy.

25. The Policy is an “all risk” property policy.

26. In the main Policy form, Form PEG 00 02 01 20, Hartford provides Crisis Management coverage within the Time Element section of the Policy as follows:

4. Crisis Management

We will pay the actual **Business Income** loss you sustain and **Extra Expense** you incur due to a **Crisis Event**.

Coverage begins at the time of the **Crisis Event** and ends the earlier of:

- a. The time that the **Insured Premises** could be reopened for business; or
- b. The number of consecutive days (shown in the Declarations) after the date of the **Crisis Event**.

Exhibit B at 30.

27. Crisis Event is specifically defined in the Policy as follows:

J. Crisis Event means a malicious act:

1. Committed on or within one mile of your **Insured Premises** against any person that results in physical injury or death to such person;
2. Attempted or threatened to be committed on or within one mile of your **Insured Premises** against any person that is likely to result in physical injury or death to such person, and reported to law enforcement;
3. Committed on or within one mile of your **Insured Premises** that results in direct physical loss or damage to Covered Property at your **Insured Premises**; or
4. Attempted or threatened to be committed on or within one mile of your **Insured Premises** that is likely to result in direct physical loss or damage to Covered Property at an **Insured Premises**, and is reported to law enforcement.
5. **Crisis Event** also includes:
 - a. Explosion, fire or equipment failure at an **Insured Premises** that results in or is likely to result in bodily injury, death or property damage;
 - b. Workplace or construction accidents at an **Insured Premises** that results in or is likely to result in bodily injury, death or property damage;
 - c. Suicide or attempted suicide at an **Insured Premises**;
 - d. The release or imminent release of a hazardous substance that is likely to result in bodily injury or death to persons at an **Insured Premises**;
 - e. The release or imminent release of bacteria or virus that is likely to result in bodily injury or death to hazardous substance that is likely to result in bodily injury or death to persons at an **Insured Premises**;
 - f. Food contamination or other public health hazard as determined by an appropriate governmental body that is likely to result in bodily injury or death to persons at an **Insured Premises**; or
 - g. The actual or threat of abduction, kidnapping, stalking, sexual assault, or criminal use of a firearm at an **Insured Premises** directed at you, your employees, occupants or visitors to your **Insured Premises**.

Covered Crisis Event does not include any acts, attempts or threats committed by you, or any of your partners, directors, officers or trustees.

Exhibit B at 40.

28. The Policy contains multiple additional extensions of coverage that may also apply beyond the Crisis Management coverage, including but not limited to Attraction Properties coverage, Civil Authority coverage, Contingent Business Interruption coverage, Extra Expense coverage, and Ingress and Egress coverage. The Policy also offers separate “Communicable Disease” coverage for an outbreak of disease at an insured property.

Hartford’s Invalid Attempt to Add a Virus Exclusion

29. On March 11, 2020, Hartford sent a copy of the issued Policy to the broker. That copy contained the virus, disease and public health hazard coverage discussed above. On the last page, however, the Policy included Form PEGM 00 06 03 20, which appears to be an endorsement form created in March of 2020, after the effective date of the Policy. See Ex. B. The heading of the endorsement is “Exclusion of Loss Due to Virus or Bacteria for: Al J Schneider Co.” The endorsement states that it “does not apply to a Communicable Disease Contamination – Coverage

Extension endorsement.” The endorsement does not address the other affirmative virus coverage offered under the Policy’s definition of Crisis Event. The endorsement does not accurately reflect the intent or agreement of the parties.

30. Hartford never discussed any virus exclusion with the AJS Companies or, on information and belief, with the broker. Instead, it appears that Hartford tried to slip a virus exclusion into the Policy after the effective date, just as COVID-19 was making its way into the United States. Notably, Hartford did not adjust the premium when it tried to reduce coverage through an afterthought virus exclusion.

31. The AJS Companies did not agree to any virus exclusion in the Policy. They would not have agreed to it because it would render the virus coverage they were already paying for illusory.

The Release of COVID-19

32. COVID-19 is unique. The clinical features of COVID-19 vary from asymptomatic forms to fatal conditions of severe respiratory failure that require ventilation and support in an intensive care unit (“ICU”). Pneumonia has been the most frequent severe manifestation of COVID-19, with symptoms of fever, cough, dyspnea, and bilateral infiltrates on chest imaging.² There are no specific treatments established for COVID-19, and no vaccine is currently available.³

² See Francesco Di Gennaro et al., MDPI: International Journal of Environmental Research and Public Health, *Coronavirus Diseases (COVID-19) Current Status and Future Perspectives a Narrative Review* (Apr. 1, 2020), <https://www.mdpi.com/1660-4601/17/8/2690>.

³ See *id.* (The treatment is symptomatic, and oxygen therapy represents the major treatment intervention for patients with severe infection. Mechanical ventilation may be necessary in cases of respiratory failure refractory to oxygen therapy, whereas hemodynamic support is essential for managing septic shock. Different strategies can be used depending on the severity of the patient and local epidemiology. Home management is appropriate for asymptomatic or paucisintomatic patients. They need a daily assessment of body temperature, blood pressure, oxygen saturation and respiratory symptoms for about 14 days. Management of such patients should focus on prevention of transmission to others and monitoring for clinical status with prompt hospitalization if needed.).

33. COVID-19 has several modes of transmission. Pursuant to a “Situation Report” released by the WHO, the virus can be transmitted through symptomatic transmission, pre-symptomatic transmission, and asymptomatic transmission. Symptomatic transmission refers to transmission by a person experiencing symptoms associated with the virus who then transfers COVID-19 to another. Data from published studies provide evidence that COVID-19 is primarily transmitted from symptomatic persons to others who are in close contact through respiratory droplets, by direct contact with infected persons, or by contact with contaminated objects and surfaces.⁴

34. The incubation period for COVID-19 – the time between exposure to the virus (becoming infected) and symptom onset – is an average of 5-6 days, but can take up to 14 days.⁵ During this period, also known as the “pre-symptomatic” period, some infected persons can be contagious. Along with respiratory symptoms, gastrointestinal symptoms (*e.g.*, nausea and diarrhea) have also been reported, and in some patients, they may be the presenting complaint.

35. An individual who does not develop symptoms – known as an asymptomatic case of COVID-19 – can still transmit the virus to another.

36. Not only is COVID-19 transmitted via human-to-human contact, but the WHO and scientific studies have confirmed that the virus can live on contaminated objects or surfaces. According to a study in *The New England Journal of Medicine*, COVID-19 was detectable in aerosols for up to 3 hours, up to 4 hours on copper, up to 24 hours on cardboard, and up to 2-3

⁴ See *id.* (Data from clinical and virologic studies that have collected repeated biological samples from confirmed patients provide evidence that shedding of the COVID-19 virus is highest in the upper respiratory tract (nose and throat) early in the course of the disease. That is, within the first three days from onset of symptoms. Preliminary data suggests that people may be more contagious around the time of symptom onset as compared to later on in the disease.).

⁵ See *id.*

days on plastic and stainless steel.⁶ All of these materials are used in the preparation and service of food by restaurants and in the operation of hotels and office buildings. The results of the study suggest that individuals could get COVID-19 through indirect contact with surfaces or objects used by an infected person, whether or not they were symptomatic.

37. The *Journal of Hospital Infection* has found that human coronaviruses, such as SARS-CoV and MERS-CoV, can remain infectious on inanimate surfaces at room temperature for up to nine days. At a temperature of 30 degrees Celsius or more, the duration of persistence is shorter. Contamination of frequently touched surfaces is, therefore, a potential source of viral transmission. Though this study was not conclusive as to COVID-19, scientists are still grappling with the implications.

38. Without a vaccine to protect against COVID-19, effective control of the release of the virus relies on measures designed to reduce human-to-human and surface-to-human exposure. Recent information on the CDC's website provides that COVID-19 spreads when people are within six feet of each other or when a person comes in contact with a surface or object that

⁶ See News Release, National Institutes of Health, *New coronavirus stable for hours on surfaces* (Mar. 17, 2020), <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>; see also World Health Organization, *Modes of transmission of virus causing COVID-19: implications for IPC* (Mar. 29, 2020), <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (Airborne transmission of COVID-19 “may be possible in specific circumstances and settings in which procedures or support treatments that generate aerosols are performed; *i.e.*, endotracheal intubation, bronchoscopy, open suctioning, administration of nebulized treatment, manual ventilation before intubation, turning the patient to the prone position, disconnecting the patient from the ventilator, non-invasive positive-pressure ventilation, tracheostomy, and cardiopulmonary resuscitation.”).

has the virus on it.⁷ Various other sources state that close contact with a person with the virus or surfaces where the virus is found can transmit the virus.⁸

39. The secondary exposure of humans to contaminated surfaces is particularly acute in places where the public gathers to socialize, eat, drink, shop, find entertainment, and recreate. This is why the CDC recommends that in viral outbreaks individuals who are infected stay at home and those who are not sick engage in preventive measures such as constant hand washing and avoiding activities that would bring them into the close proximity of people with the virus or surfaces where the virus may reside. However, because these recommendations have proven ineffective to minimize the spread of COVID-19, containment efforts have led to civil authorities issuing orders closing or otherwise limiting non-essential business establishments, including restaurants, bars, theaters, personal care salons, gyms, and schools, and mandating social distancing among the population. This has caused the cancelation of sporting events, parades, and concerts, the closure of amusement parks, and substantial travel restrictions. In addition, to conserve medical supplies, orders have been issued prohibiting the performance of non-urgent or non-emergency elective procedures and surgeries, forcing the suspension of operations at many medical, surgical, therapeutic, and dental practices.

40. The first confirmed case of the virus outside China was diagnosed on January 13, 2020, in Bangkok, Thailand with the number of cases rapidly increasing worldwide.

⁷ See Centers for Disease Control and Prevention, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-COVID-spreads.html> (last visited Apr. 27, 2020).

⁸ See G. Kampf et al., *Journal of Hospital Infection*, *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, (Jan. 31, 2020), <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3> (remains infectious from 2 hours to 28 days depending on conditions).

41. On January 30, 2020, WHO declared that the SARS-COV-2 outbreak constituted a public health emergency of international concern.

42. On January 31, 2020, the U.S. Department of Health and Human Services declared a nationwide public health emergency due to confirmed cases of the Coronavirus Disease 2019 (“COVID-19”).

43. By February 11, 2020, the novel coronavirus was named “COVID-19” by the WHO Director-General.⁹

44. On March 6, 2020, Kentucky Governor Andy Beshear issued Executive Order 2020-215, declaring a State of Emergency in response to the COVID-19 outbreak. The Executive Order stated that the virus that causes the disease is a “new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person,” and which can “result[] in serious illness or death.”

45. On March 11, 2020, the same day that Hartford issued a copy of the Policy and tried to add a virus exclusion, the World Health Organization’s (“WHO”) Director General, Tedros Adhanom Ghebreyesus, declared the COVID-19 spread a worldwide pandemic: “WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction. We have therefore made the assessment that COVID-19 can be characterized as a pandemic.” *See* World Health Organization, *WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁹ *See id.*

46. Government authorities in Louisville and Kentucky followed suit and determined COVID-19 was a public health hazard. State and local authorities issued “stay at home,” “shelter in place,” and other orders directly impacting the AJS Companies, causing significant revenue loss. An illustrative but not exclusive collection of those orders is attached as Exhibit C.

47. On March 13, 2020, Louisville and Jefferson County Metro Government Mayor Greg Fischer issued Executive Order 2020-001, declaring a State of Emergency in response to the COVID-19 pandemic. On March 24, 2020, Mayor Fischer issued Executive Order 2020-002, extending the State of Emergency until May 1, 2020.

48. On March 17, 2020, the Kentucky Cabinet for Health and Family Services, Department of Public Health, issued an order directing that with certain exceptions, “all public-facing businesses...[must] cease all in-person operations.”

49. On March 22, 2020, and in response to the increasing spread of COVID-19 in Kentucky, Governor Beshear issued Executive Order 2020-246, ordering the closure of all “in-person retail businesses that are not life-sustaining....”

50. On March 25, 2020, Governor Beshear issued Executive Order 2020-247, ordering the closure of all businesses that “are not life-sustaining....” Under the Order, restaurants are permitted to remain open only for “carry-out, delivery, and drive-through food and beverage sales....”

51. On March 30, 2020, Governor Beshear issued Executive Order 2020-258, instructing Kentucky residents not to travel into any other state except for limited purposes, and requiring Kentucky residents returning from another state to self-quarantine for 14 days.

52. On July 27, 2020, Governor Beshar issued an Executive Order closing bars for two weeks and limiting restaurants to 25% of pre-pandemic capacity indoors.

53. On August 24, 2020, Governor Beshear issued an Executive Order regarding landlords and nonpayment of rent. Among other things, landlords, like the AJS Companies, are limited in their ability to evict tenants for non-payment of rent and are not able to charge late fees or interest related to nonpayment of rent from March 6, 2020 to the end of the year.

54. Governor Beshear has continued to issue Executive Orders relating to the COVID-19 pandemic, which are available at <https://governor.ky.gov/covid19>, and many of his Executive Orders remain in effect until further notice.

55. As of October 30, 2020, Kentucky had at least 105,517 reported cases of COVID-19 and 1,524 deaths from the disease, with 24,134 cases and 331 deaths in Jefferson County.

The Impact of this Crisis Event on the AJS Companies

56. The COVID-19 pandemic has had, and continues to have, a devastating effect on Plaintiffs' business operations, including the suspension or limitation of many of their operations at their restaurants and hotels. There is physical loss and damage at insured locations and attraction properties. As a result, Plaintiffs have sustained significant losses of business income and extra expense.

57. Schneider Hotels owns and operates the Galt House Hotel in downtown Louisville, which was re-established by Plaintiff as part of Louisville's Riverfront Urban Renewal Project. ALJSCO and Schneider Hotels have sustained significant losses of business income due to the cancellation of reservations at the Galt House Hotel and a significant reduction of new reservations at the hotel. These losses are estimated to exceed \$13,000,000.

58. Schneider Fairgrounds owns and operates the Crowne Plaza hotel located near the Louisville, Kentucky airport. ALJSCO and Schneider Fairgrounds have sustained significant losses of business income due to the cancellation of reservations at the Crown Plaza hotel and a

significant reduction of new reservations at the hotel. These losses are estimated to exceed \$3,000,000.

59. Le Centre owns and operates the Embassy Suites in downtown Louisville. ALJSCO and Le Centre have sustained significant losses of business income due to the cancellation of reservations at the Embassy Suites hotel and a significant reduction of new reservations at the hotel. These losses are estimated to exceed \$ 4,000,000.

60. Schneider Waterfront owns the 3-tower, 25-story Waterfront Plaza, located at 321 W. Main St, in Louisville, KY. Tenants at Schneider Waterfront have delayed in paying or failed to pay their rent, resulting in sustained significant losses of business income to ALJSCO and Schneider Waterfront.

61. Schneider Riverfront owns the 23-story, 341,363 square foot One Riverfront Plaza office building located at 401 W. Main St, in Louisville, KY. Tenants at Schneider Riverfront have delayed in paying or failed to pay their rent, resulting in sustained significant losses of business income to ALJSCO and Schneider Riverfront.

62. Schneider Parking owns a parking deck in downtown Louisville, KY. ALJSCO and Schneider Parking have suffered sustained significant losses of business income.

63. The AJS Companies have also lost business income because they have lost the opportunity to invest the funds they would have earned had they not suffered significant losses of business income.

64. Plaintiffs' properties have had confirmed cases of COVID-19. Plaintiffs' employees have tested positive for COVID-19, including employees at each of the properties.

65. Plaintiffs have had to incur extra expense to clean and modify the premises, including the construction of plexiglass barriers and social distancing signage.

66. Plaintiffs’ business relies heavily on tourism and hospitality. The hotel revenue is strongly tied to events held in Louisville.

67. For example, the Kentucky Derby, which is held at Churchill Downs, was postponed from May until September. The Derby week is the biggest event of the year for the AJS Companies and attracts thousands of guests to their properties. Facilities owned by the AJS Companies are at full capacity for the Derby week (which includes various horseraces and other activities) and host numerous parties and events, which are very profitable for the AJS Companies. The AJS Companies were hoping to mitigate some loss with a surge in bookings for the rescheduled Derby in September. However, on August 21, 2020, Churchill Downs announced that fans would not be allowed at the September Derby. This announcement followed an announcement by Churchill Downs that there had been 47 positive tests for COVID-19 conducted at Churchill Downs on its staff, vendors, and horsemen. Following the announcement of no fans for the Derby, the AJS Companies saw a surge of cancellations for those properties. The AJS Companies estimate this additional occurrence has caused substantial additional business income loss and extra expense.

68. The AJS Companies’ losses continue. Due to the COVID-19 pandemic and related government orders, numerous events have been canceled or postponed, resulting in cancellations and lost revenue and income at Plaintiffs’ properties. The cancellations include, but are not limited to:

EVENT LOCATION	DATE	EVENT NAME	STATUS
Bell of Louisville	4/29/2020	Great Steamboat Race	Canceled
Broadway	4/30/2020	Pegasus Parade	Canceled
Cardinal Stadium	7/9/2020	Rolling Stones Concert	Canceled

EVENT LOCATION	DATE	EVENT NAME	STATUS
Churchill Downs	4/30/2020	Thurby	Postponed to September 3, 2020 - No fans allowed
Churchill Downs	5/1/2020	Kentucky Oaks	Postponed to September 4, 2020 - No fans allowed
Churchill Downs	5/2/2020	Kentucky Derby	Postponed to September 5, 2020 - No fans allowed
Churchill Downs	6/19/2020	Day at the Races	Canceled
Galt House	4/4/2020	Fillies Derby Ball	Canceled
Galt House	4/17/2020	64th Annual They're Off! Luncheon	Canceled
Galt House	9/4/2020	Trifecta Gala	Canceled
Kentucky Exposition Center	3/26/2020	2020 Mid-America Trucking Show	Canceled
Kentucky Exposition Center	4/2/2020	Kentucky National Dairy Show and Sale	Canceled
Kentucky Exposition Center	4/3/2020	JVA World Challenge	Canceled
Kentucky Exposition Center	5/8/2020	National Archery in the Schools National Tournament	Canceled
Kentucky Exposition Center	5/20/2020	Kentucky Flea Market Memorial Day Spectacular	Canceled
Kentucky Exposition Center	6/3/2020	American Association of Woodturners	Canceled
Kentucky Exposition Center	6/13/2020	Kentucky Funeral Directors Association State Convention	Canceled
Kentucky Exposition Center	6/22/2020	Skills USA 2020 National Conference	Canceled
Kentucky Exposition Center	6/28/2020	Kentucky 4-H Horse Show	Canceled
Kentucky Exposition Center	7/2/2020	National Junior Summer Spectacular and Conference	Canceled

EVENT LOCATION	DATE	EVENT NAME	STATUS
Kentucky Exposition Center	7/4/2020	Run for the Roses	Canceled
Kentucky Exposition Center	7/9/2020	Junior National Show	Canceled
Kentucky Exposition Center	7/10/2020	Battle in the Boro	Canceled
Kentucky Exposition Center	7/17/2020	All-In Hoopfest	Canceled
Kentucky Exposition Center	7/24/2020	Simmental Breeders Sweepstakes	Canceled
Kentucky Exposition Center	8/20/2020	Kentucky State Fair	Held with increased restrictions and reduced capacity
Kentucky Exposition Center	8/28/2020	Great Balloon Glow	Canceled
Kentucky Exposition Center	9/12/2020	Hometown Rising	Canceled
Kentucky Exposition Center	9/18/2020	Louder Than Life	Canceled
Kentucky Exposition Center	9/25/2020	Bourbon and Beyond	Canceled
Kentucky International Convention Center	3/6/2020	Heartland Payment	Canceled
Kentucky International Convention Center	3/13/2020	JamFest	Canceled
Kentucky International Convention Center	3/16/2020	23rd Annual Applied Ergonomics Conference	Canceled

EVENT LOCATION	DATE	EVENT NAME	STATUS
Kentucky International Convention Center	3/20/2020	NFAA Indoor National Championships	Canceled
Kentucky International Convention Center	3/26/2020	MagicFest	Canceled
Kentucky International Convention Center	3/29/2020	CLMA Knowledge Lab	Canceled
Kentucky International Convention Center	4/6/2020	Kentucky Spinal Cord Injury Research Center	Canceled
Kentucky International Convention Center	4/7/2020	Reliable Plant Conference and Exhibition	Canceled
Kentucky International Convention Center	4/14/2020	Together for the Gospel	Canceled
Kentucky International Convention Center	4/17/2020	U.S. Finals – Cheerleading Competition	Canceled
Kentucky International Convention Center	4/24/2020	Environment for the Aging	Canceled
Kentucky International Convention Center	4/25/2020	Da'Ville Drumline Showcase	Canceled
Kentucky International Convention Center	5/5/2020	RTI At Work Institute 2020 Solution Tree	Canceled
Kentucky International Convention Center	5/8/2020	Applause Talent – Dance Competition	Canceled

EVENT LOCATION	DATE	EVENT NAME	STATUS
Kentucky International Convention Center	5/13/2020	Society of Gastroenterology Nurses	Canceled
Kentucky International Convention Center	5/16/2020	Battle of the Bluegrass 2020	Rescheduled to October 10, 2020
Kentucky International Convention Center	5/30/2020	Community Transportation Association	Canceled
Kentucky International Convention Center	6/4/2020	Dink Pickelball	Canceled
Kentucky International Convention Center	6/6/2020	JCPS Deeper Learning Conference	Canceled
Kentucky International Convention Center	6/10/2020	IWDC	Canceled
Kentucky International Convention Center	7/19/2020	Vault in the Ville	Canceled
Louisville Slugger Field	4/21/2020	Taste of Derby Festival	Canceled
Louisville Slugger Field	6/30/2020	Louisville Bats Minor League Baseball Season	Canceled
Private Residence	9/4/2020	Barnstable Brown Derby-eve Gala	Canceled
Waterfront Park	3/7/2020	Chick-fil-A Louisville Triple Crown of Running 2020	Canceled
Waterfront Park	4/18/2020	Thunder Over Louisville	Canceled
Waterfront Park	4/24/2020	Waterfront Jam Concert Series	Canceled

EVENT LOCATION	DATE	EVENT NAME	STATUS
Waterfront Park	4/25/2020	Kentucky Derby Festival miniMarathon, Marathon and Rely	Canceled
Waterfront Park	6/24/2020	WFPK Waterfront Wednesday	Canceled
Waterfront Park	7/4/2020	Waterfront Park Fourth of July	Canceled
Waterfront Park	7/17/2020	Forecastle Festival	Canceled
Waterfront Park	7/29/2020	WFPK Waterfront Wednesday	Canceled
Waterfront Park	8/5/2020	Bourbonville	Canceled
Waterfront Park	8/26/2020	WFPK Waterfront Wednesday	Canceled
Waterfront Park	8/27/2020	Fest-a-Ville	Canceled
Waterfront Park	8/30/2020	Tour de Lou	Canceled
Waterfront Park	9/30/2020	WFPK Waterfront Wednesday	Canceled
YUM! Center	3/14/2020	Hot Wheels Monster Trucks	Rescheduled for Saturday, March 13, 2021
YUM! Center	3/20/2020	NCAA Division I Women's Basketball 1st and 2nd Rounds	Canceled
YUM! Center	3/27/2020	Dan + Shay	Rescheduled for September 23, 2021
YUM! Center	3/28/2020	Michael Buble	Rescheduled for March 17, 2021
YUM! Center	4/9/2020	Disney on Ice	Canceled
YUM! Center	4/18/2020	Funder	Canceled
YUM! Center	4/26/2020	Elton John	Rescheduled for April 16, 2022
YUM! Center	5/17/2020	Cirque du Soleil OVO	Canceled
YUM! Center	5/18/2020	WWE RAW	Canceled
YUM! Center	5/24/2020	Sturgill Simpson	Canceled
YUM! Center	6/7/2020	Dude Perfect	Rescheduled for June 18, 2021
YUM! Center	6/26/2020	James Taylor	Rescheduled for June 25, 2021
YUM! Center	8/1/2020	Janet Jackson	Canceled
YUM! Center	8/12/2020	Justin Bieber	Canceled

69. In sum, there are multiple insured occurrences causing the AJS Companies to sustain significant insured loss and damage, including but not limited to business income loss and extra expense. These losses result from the COVID-19 pandemic and the issuance of various government orders noted above, including resulting changes in consumer and tenant behavior. There is a “crisis event” as defined by the Policy. There is also “physical loss or damage” at insured locations and property owned by others upon which the AJS Companies rely, which triggers dependent property coverages contained in the Policy.

Hartford’s Denial of Coverage

70. On March 17, 2020, Plaintiffs submitted a notice of claim to Hartford seeking coverage for its ongoing business losses caused by the COVID-19 pandemic and the government orders issued as a result (hereinafter referred to as the “Claims”). A true and correct copy of the Notice of Claim is attached hereto as Exhibit D.

71. Soon after Plaintiffs submitted the Notice of Claim, Hartford verbally advised Plaintiffs that it was denying coverage and would provide a coverage denial letter.

72. Plaintiffs continually followed-up with Hartford for nearly a month seeking a written explanation of the grounds for denying coverage. On April 17, 2020, Hartford confirmed that “we do not have coverage for this event” and again promised a written determination at a later date. A true and correct copy of the written denial is attached hereto as Exhibit E.

73. Finally, on May 12, 2020, Hartford finally provided a written response, denying coverage. A true and correct copy of the written response is attached hereto as Exhibit F.

74. Hartford’s denial misrepresents policy provisions and is otherwise contrary to its own policy terms and Kentucky law.

75. At a minimum, Hartford should have accepted coverage under the Crisis Management and Event provisions described above. Instead, it denied coverage because there was

no evidence of a “malicious act,” a requirement that does not exist in the Policy. Hartford also wrongfully relied upon its after-the-fact virus exclusion and wrongfully failed to acknowledge the possibility of coverage under other provisions in the Policy.

COUNT I
DECLARATORY JUDGMENT

76. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

77. The Policy is a binding contract under which Hartford was paid premiums in exchange for its contractual agreement to pay Plaintiffs’ losses for claims covered under the Policy.

78. The COVID-19 Civil Authority Orders or Crisis Event caused direct physical loss and damage to Plaintiffs’ Covered Properties, requiring limitations, restrictions, and suspension of operations at the Covered Properties. Accordingly, losses caused by the COVID-19 Civil Authority Orders or Crisis Event triggered the Business Income provision of Plaintiffs’ Hartford policies.

79. Hartford has denied coverage for the Claims under the Hartford Policy, including its refusal to indemnify Plaintiffs for the loss of business income resulting from the COVID-19 pandemic and the government orders that were issued as a result.

80. An actual controversy exists between Plaintiffs and Hartford regarding the rights, duties and liabilities under the Policy, and Hartford’s denial of coverage for the Claims. The controversy is of sufficient immediacy and magnitude to justify declaratory relief.

81. Pursuant to Section 418.040 of the Kentucky Declaratory Judgment Act, Plaintiffs seek a judicial determination of their rights and Hartford’s duties under the Hartford Policy, and that Hartford is obligated, pursuant to the terms of the Policy, to indemnify Plaintiffs for all past and future losses relating to the Claims at issue here.

82. A binding judgment concluding the controversy may be entered by the Court.

COUNT II
BREACH OF CONTRACT

83. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

84. The Policy is a binding contract under which Hartford was paid premiums in exchange for its contractual agreement to pay Plaintiffs' losses for claims covered under the Policy.

85. Plaintiffs gave timely notice and have otherwise complied with all of their contractual obligations under the Policy.

86. Hartford has breached the insurance contract by, *inter alia*, refusing to provide coverage for the Claims resulting from the COVID-19 pandemic and the government orders that were issued in response.

87. As a result of Hartford's breach of the insurance contract, Plaintiffs have suffered significant damages, including, but not limited to, the significant loss of business income that they have incurred resulting from the COVID-19 pandemic which Hartford is required to cover under the Policy but has refused to cover.

88. Plaintiffs' damages are ongoing.

COUNT III
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

89. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

90. As the insurer under the Policy, Hartford owes Plaintiff coverage for the Claims resulting from the COVID-19 pandemic and the government orders that were issued in response.

91. Hartford denied Plaintiff coverage for its Claims and misrepresented the Policy's coverage terms.

92. Hartford has a duty to investigate claims in good faith and promptly pay valid claims.

93. Upon information and belief, Hartford conducted no investigation at all.

94. There is an implied covenant of good faith and fair dealing in every contract which requires a party to in good faith do everything necessary to effectuate the purposes of the contract and to do nothing to frustrate those purposes. Hartford has a duty to act in good faith and to deal fairly with Plaintiffs, and to attempt to effectuate a fair and reasonable settlement of Plaintiffs' claim.

95. Hartford lacks a good faith basis to deny the claim.

96. Hartford knew that there was no reasonable basis for denying the claim.

97. Hartford's actions are outrageous, intentional wrongdoing, and in reckless disregard to Plaintiffs' rights.

98. Hartford either knew that it did not have a reasonable basis for denying coverage to Plaintiff or acted in reckless disregard of its rights.

99. Plaintiffs have suffered financial loss due to Hartford's bad faith denial of its claim.

100. Plaintiffs are entitled to compensatory and extracontractual damages for Hartford's bad faith.

COUNT IV
VIOLATION OF KENTUCKY'S
UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

101. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

102. Hartford has a duty to investigate claims in good faith and promptly pay valid claims.

103. Upon information and belief, Hartford conducted no investigation at all.

104. Hartford has a duty to act in good faith and to deal fairly with Plaintiffs, and to attempt to effectuate a fair and reasonable settlement of Plaintiffs' claim.

105. Hartford lacks a good faith basis to deny the claim.

106. Hartford's actions are outrageous, intentional wrongdoing, and in reckless disregard to Plaintiffs' rights.

107. Hartford violated the Unfair Claims Settlement Practices Act, as set forth in KRS 304.12-230 by:

- a. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- b. Failing to adopt and implement reasonable standards for a prompt investigation of claims arising under insurance policies;
- c. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- d. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- e. Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; and
- f. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

108. Hartford violated the Unfair Claims Settlement Practices Act, and Plaintiff has suffered damages as a result of the violation.

109. As a proximate result of the aforementioned wrongful conduct of Hartford, Plaintiff has suffered damages, including attorneys' fees, costs incurred, and other incidental damages.

110. By Hartford's failure to comply with to the Unfair Claims Settlement Practices Act standards and by their wanton and willful conduct in their dealings with Plaintiff, Hartford has exhibited a willful and wanton disregard of the trust imputed to it inasmuch as these actions constitute oppression, fraud, and/or malice, showing such bad faith that these acts entitle Plaintiff to statutory and punitive damages and its attorneys' fees and costs incurred in bringing this action.

COUNT V
VIOLATION OF KRS § 304.12-235

111. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

112. Hartford failed to make a good faith attempt to settle Plaintiffs' claim within thirty days of being provided notice of his claim.

113. Hartford's denial is without reasonable foundation.

114. Plaintiffs are entitled to recover his attorneys' fees and costs incurred in obtaining a claim settlement or verdict, and pre-claim payment of statutory interest at 12% from thirty days after the proof of claim was made to Hartford until the claim is paid.

IN THE ALTERNATIVE
COUNT VII
REFORMATION DUE TO MISTAKE

115. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

116. The Virus Exclusion should not apply because it would render virus coverage granted by the Policy illusory, contrary to Kentucky law. To the extent that the Virus Exclusion has any effect on the coverage determination, the Policy fails to express the intent of the parties because of a mistake of one or both parties as to the contents or effect of the Policy.

117. Particularly, one or both parties had a mistake as to the applicability of the Virus Exclusion to the Policy, including but not limited to virus coverage under the Crisis Management

coverage grant. If unilateral mistake, that mistake was accompanied by fraud or inequitable conduct sufficient to justify reformation under Kentucky law.

118. Plaintiffs are entitled to have the Policy reformed to remove the Virus Exclusion.

**IN THE ALTERNATIVE
COUNT VIII
FRAUD BY OMISSION**

119. Plaintiffs repeat the allegations set forth above as if fully set forth herein.

120. The Hartford had a duty to clearly and timely disclose that it was attempting to insert a purported Virus Exclusion into the Policy.

121. The Hartford intentionally failed to adequately or reasonably disclose that it had inserted a purported Virus Exclusion into the Policy and fraudulently attempted to add it after the meeting of the minds had occurred.

122. The Hartford intended for Plaintiffs to rely on its omission, and Plaintiffs did so to their detriment. As a result of The Hartford's fraudulent omission, Plaintiffs have suffered actual damages.

123. Plaintiffs are entitled to have the Policy reformed to remove the Virus Exclusion. Plaintiffs are also entitled to compensatory and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs AL J. Schneider Co.; Schneider Hotels, LLC; Schneider Fairgrounds, LLC; Schneider Waterfront, LLC, Schneider Riverfront, LLC, Schneider Parking, LLC, and Le Centre on Fourth, LLC respectfully request the following relief:

- A. Judgment in their favor and against Hartford on all counts of the Complaint;
- B. A declaration that the Policy's Crisis Management coverage part provides coverage for the Claims and that Hartford has a duty to indemnify Plaintiffs for the Claims under the Crisis Management coverage part of the Policy;

- C. A declaration that the Policy provides coverage for the Claims and that Hartford has a duty to indemnify Plaintiffs for the Claims under the Policy;
- D. An award for compensatory damages in an amount to be determined at the trial of this cause;
- E. An award against Hartford for bad faith or fraud, including an award of compensatory and punitive damages in the maximum amount allowed by law;
- F. An award of Plaintiffs' reasonable attorneys' fees and costs;
- G. An award of pre-judgment and post-judgment interest, as permitted by law;
- H. A trial by jury on all issues so triable;
- I. Such other further relief as the Court deems just and proper; and
- J. In the alternative, issue an order reforming the contract to remove the Virus Exclusion and providing other relief as requested above.

Respectfully submitted,

/s/ David S. Kaplan

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