

**IN THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF  
MISSOURI**

HARBINGER, LLC d/b/a BREWERY  
EMPERIAL,

Plaintiff,

v.

THE CINCINNATI INSURANCE COMPANY,  
INC.,

Defendant.

Case No. \_\_\_\_\_

COMPLAINT

DEMAND FOR JURY TRIAL

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Harbinger, LLC d/b/a Brewery Emperial (“Plaintiff”) for its Complaint against Defendant The Cincinnati Insurance Company, Inc. (“Defendant”), states and alleges as follows:

**NATURE OF ACTION**

1. This lawsuit arises from the Defendant’s failure to pay pursuant to a policy of insurance for losses sustained and expenses incurred by Plaintiff due to the COVID-19 virus and related orders from civil authorities.

**PARTIES**

2. Plaintiff is a Missouri LLC that is headquartered in Missouri and which operates a brewery and restaurant named Brewery Emperial located in downtown Kansas City, Mo. The brewery operates an indoor restaurant and an outdoor biergarten and brews well regarded beers, such as its Biscuit beer. All members of the Harbinger, LLC are residents of Kansas, Missouri or Oregon.

3. Defendant The Cincinnati Insurance Company, Inc., is an Ohio corporation, with its principal place of business in Cincinnati, Ohio.

## **JURISDICTION AND VENUE**

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a)(1) in that is an action where the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs, and Plaintiff and Defendant are citizens of different States.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events giving rise to Plaintiff's causes of action occurred in this judicial district and division. The Policy at issue covers Plaintiff's facilities located in Kansas City, Mo.

## **FACTUAL BACKGROUND**

6. To protect its ongoing business, Plaintiff purchased from Defendant insurance coverage (the "Policy"), which included, but was not limited to, Defendant's Building and Personal Property Coverage and Business Income (and Extra Expense) Coverage that promised to pay Plaintiff compensation for expenses and lost revenue if its business were to be interrupted, as stated in Exhibit A, P31, attached hereto.

7. Plaintiff is a Named Insured under the Policy.

8. Defendant is the effective and liable insurer of the Policy.

9. The Policy was in effect at the time of the COVID-19 outbreak and remains in effect today.

10. Plaintiff paid all premiums required by the Policy.

### **Key Policy Provisions**

11. The Policy provides coverage for several different types of losses arising from COVID-19 that are relevant here.

12. The Policy, in its Building and Property Coverage Form, promises to

pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

Ex. A, P34.

13. The Defendant's Policy promises to pay, as a Coverage Extension to its Building and Property Coverage Form, "**Business Income**" coverage as follows:

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

Ex. A, P49.

14. The Defendant's Policy separately includes a Business Income (And Extra Expense) Coverage Form, that promises to pay Business Income coverage as follows:

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 "loss" to property at "premises" which are described in the Declarations. The "loss" must be caused by or the result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

Ex. A, P130.

15. The Defendant's Policy further promises to pay, as a Coverage Extension to its Building and Property Coverage Form, "**Extended Business Income**" coverage for losses sustained for an additional 60 days after normal "operations" are resumed. Ex. A, P51.

16. The Defendant's Policy separately includes a Business Income (And Extra Expense) Coverage Form that promises to pay Extended Business Income coverage for up to 60 days after "operations" are resumed. Ex. A, P132.

17. The Defendant's Policy further promises to pay, as a Coverage Extension to its Building and Property Coverage Form, "**Extra Expense**" coverage as follows:

We will pay you Extra Expenses you sustain during the “period of restoration”. Extra Expense means necessary expenses you sustain (as described in Paragraphs (2)(b), (c) and (d)) during the “period of restoration” that you would not have sustained if there had been no direct “loss” to property caused by or resulting from a Covered Cause of Loss.

Ex. A, P.50.

18. The Defendant’s Policy separately includes a Business Income (And Extra Expense)

Coverage Form, that promises to pay Extra Expense coverage as follows:

Extra Expense means necessary expenses you sustain (as described in Paragraphs 2.c, d. and e.) during the “period of restoration” that you would not have sustained if there had been no direct “loss” to property caused by or resulting from a Covered Cause of Loss.

Ex. A, P.130.

19. The Defendant’s Policy further promises to pay, as a Coverage Extension to its Building and Property Coverage Form, “**Civil Authority**” coverage as follows:

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

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) 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.

Ex. A, P50.

20. The Defendant’s Policy separately includes a Business Income (And Extra Expense)

Coverage Form, that promises to pay Civil Authority coverage as follows:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the “premises”, we will pay for the actual loss of “Business Income” you sustain and necessary Extra Expense you sustain caused by action of

civil authority that prohibits access to the “premises”, provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) 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.

Ex. A, P131.

21. The Defendant’s Policy further promises to pay, as a Coverage Extension to its Building and Property Coverage Form, provided via its Craft Beverage Commercial Property Endorsement,

“**Ingress and Egress**” coverage for Business Income loss as follows:

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 the prevention of existing ingress or egress at a “premises” shown in the COMMERCIAL COVERAGE PART DECLARATIONS as the result of direct “loss” by a Covered Cause of Loss at a location contiguous to such “premises”.

Ex. A, P80.

22. The Defendant’s Policy further promises to pay, as a Coverage Extension to its Building and Property Coverage Form, provided via its Craft Beverage Commercial Property Endorsement,

“**Ingress and Egress**” coverage for Extra Expenses as follows:

We will pay for the actual and necessary Extra Expense you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by the prevention of existing ingress or egress at a “premises” shown in the Declarations as the result of direct “loss” by a covered Cause of Loss at a location contiguous to such “premises.”

Ex. A, P80.

23. The Defendant's Policy separately includes a Business Income (And Extra Expense) Coverage Form, that promises to pay Ingress and Egress coverage for business income loss and extra expenses as follows:

We will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by the prevention of existing ingress or egress at a "premises" shown in the Declarations due to direct "loss" by a Covered Cause of Loss at a location contiguous to such "premises".

Ex. A, P133.

24. The Defendant's Policy promises to pay, as a Coverage Extension to its Building and Property Coverage Form provided via its Craft Beverage Commercial Property Endorsement, "**Dependent Properties**" coverage as follows:

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 "loss" to "dependent property" caused by or resulting from any Covered Cause of Loss.

Ex. A, P77.

25. The Defendant's Policy further promises, via its Craft Beverage Commercial Property Endorsement, to pay **Excess Coverage** for Business Income, Extra Expense, and Ingress and Egress. Ex. A, P.73-77.

26. The Defendant's Policy, in its Building and Property Coverage Form, also provides "Sue and Labor" coverage as follows:

Take all reasonable steps to protect the Covered Property from further damage. If feasible, set the damage property aside and in the best possible order for examination. Keep a record of your expenses necessary to protect the Covered Property for consideration in the settlement of the claim.

Ex. A, P61-62.

## **“Crisis Event Coverage”**

27. The Defendant’s Policy, in its Building and Property Coverage form, via its Crisis Event Expense Coverage Endorsement, provides for **Crisis Event Business Income and Extra Expense** coverage as follows:

(a) Crisis Event Business Income

We will pay for the actual loss of “crisis event business income” you sustain due to the necessary “suspension” of your “operations” during the “crisis event period of restoration”. The “suspension” must be caused by or result from a “covered crisis event” at your “covered location”. ...

(b) Extended Business Income

If the necessary “suspension” of your “operations” caused by or resulting from a “covered crisis event” produces a “crisis event business income” “loss” payable under this endorsement, we will pay for the actual loss of “crisis event business income” you incur during the period ...

(c) Crisis Event Extra Expense

We will pay “crisis event extra expenses” you incur during the “crisis event period of restoration” caused by or resulting from a “covered crisis event” to:

- 1) Avoid or minimize the “suspension” of your business and to continue “operations” at the “premises” or at replacement or temporary locations, including relocation expenses and costs to equip and operate the replacement or temporary location; or
- 2) Minimize the “suspension” of business if you cannot continue “operations”.

Ex. A., P101.

28. The Defendant’s Policy, in its Building and Property Coverage form, via its Crisis Event Expense Coverage Endorsement, provides for Post Crisis Event Expense coverage as follows:

We will pay your “post crisis event expense” resulting from a “covered crisis event” at your “covered location”. ...

Ex. A, P100.

29. The Defendant's Policy's Crisis Event Expense Coverage Endorsement is the only part of its Policy the Defendant chose to include any kind of clause approaching an exclusion for viruses or pandemics. It specifically includes such an exclusion only its definition of the term "Covered communicable diseases", in the Crisis Event Expense Coverage Endorsement. **The Defendant declares this clause applies "only with respect to coverages provided by this endorsement."** Ex. A, P105 (emphasis supplied).

30. The Defendant chose to include no similar virus or pandemic exclusion in any other part of its Policy other than to its Crisis Event Expense Coverage Endorsement.

### **Definitions**

31. The Defendant's definition of "covered crisis event" as applied to Crisis Expense Coverage Endorsement includes "Premises Contamination," another defined term that does not exclude viruses or pandemics from its coverage. Ex. A, P105.

32. The Defendant's Policy defines "Dependent Properties" to mean a "property operated by others whom you depend on to: a. Deliver materials or services to you or to others for your account (Contributing Locations)...b. Accept your products or services; c. Manufacture products for delivery to your customers under contract of sale; or d. Attract customers to your business." Ex. A, P78.

33. The Defendant's Policy defines "Covered Causes of Loss" to mean:  
direct "loss" unless the "loss" is excluded or limited in this Coverage Part.

Ex. A, P36.

34. The Defendant's Policy defines "loss" as "accidental physical loss or accidental physical damage." Ex. A, P.69, 138

35. The Defendant’s Policy does not define “physical loss” or “physical damage” or “direct ‘loss.’”

36. Because the Policy does not define a direct “physical loss,” the Court should “rely on the plain and ordinary meaning of the phrase.” *Vogt v. State Farm Life Ins. Co.*, 963 F.3d 753, 763 (8<sup>th</sup> Cir. 2020)(applying Missouri law).

37. Merriam-Webster dictionary defines “direct” in part as “characterized by close logical, causal, or consequential) al relationship.” Merriam-Webster, [www.merriam-webster.com/dictionary/direct](http://www.merriam-webster.com/dictionary/direct) (last visited December 1, 2020).

38. Merriam-Webster dictionary defines “physical” as “having material existence: perceptible especially through the senses and subject to the laws of nature.” [www.merriam-webster.com/dictionary/physical](http://www.merriam-webster.com/dictionary/physical) (last visited December 1, 2020).

39. Merriam-Webster defines “loss” in relevant part as “the act of losing possession” and “deprivation.” [www.merriam-webster.com/dictionary/loss](http://www.merriam-webster.com/dictionary/loss)(last visited December 1, 2020).

### **COVID-19**

40. COVID-19 is a highly contagious virus that is physically present in viral fluid particles that float in the air and can persist in the air and on inert physical surfaces or objects on which it alights.

41. In early 2020, the novel coronavirus, SARS-CoV-2, a physical virus that causes the lethal disease COVID 19, became ubiquitous in the United States, spreading uncontrollably throughout the United States, as well as Kansas City, Mo., where at present more than 23,000 cases have been reported and 290 deaths, according to databases maintained by the New York Times.

42. According to the Center for Disease Control (“CDC”), everyone is at risk of getting COVID-19. The virus can spread by respiratory droplets when an infected person coughs, sneezes, or talks. A person can become infected from respiratory droplets, or even by touching a surface or

object that has the virus on it and then touching the mouth, nose, or eyes. The virus can live on surfaces for several days if not longer.

43. In addition, a number of scientific publications have reported finding COVID-19 in the air. The New England Journal of Medicine reported its finding that experimentally produced aerosols containing the virus remained infectious in tissue-culture assays, with only a slight reduction in infectivity during a 3-hour period of observations. “Aerosols from infected persons may therefore pose an inhalation threat even at considerable distances and in enclosed spaces....”

44. A consensus appears to be emerging that COVID-19 can also travel through the air via aerosols. For example, aerosol scientist Lidia Morawska of the Queensland University of Technology in Brisbane, Australia told *Nature* that, “In the minds of scientists working on this, there’s absolutely no doubt that the virus spreads in the air. This is a no-brainer.”

45. An April 2020 study published in the journal *Emerging Infectious Diseases* found a wide distribution of COVID-19 on surfaces and in the air about 13 feet from patients in two hospital wards in Wuhan, China, leading the authors to conclude that the virus spreads in aerosols in addition to large respiratory droplets. The investigators found evidence of the virus in swabs of floors, computer mice, trash bins, bed handrails, patients’ face masks, health workers’ personal protective equipment, and air vents.

46. The authors also surmised that the high rate of positivity for floor samples in the hospital strongly suggest that droplets fall to the ground and then are spread via patients’ shoes. The authors also surmised that the high rate of positivity for floor samples in the hospital strongly suggest that droplets fall to the ground and then are spread via patients’ shoes. For example, every sample tested from the pharmacy floor tested positive for COVID-19 even though no patients were housed there

47. Another study conducted in Wuhan indicates that staff movement, floor cleaning, and the removal of personal protective equipment could transmit the virus through the re-suspension of virus-contaminated aerosols.

48. Kimberly Prather, an aerosol chemist at the University of California, San Diego told *Science* magazine: “I’m relieved to see aerosolization is accepted. This added airborne pathway helps explain why it is spreading so fast.”

49. Aerosol particles are held in the air by physical and chemical forces. The suspended particles remain for hours or more, depending on factors such as heat and humidity. If virus particles can be suspended in air for more than a few seconds, like, for instance, the measles virus can, then anyone passing through could become infected by a pathogenic aerosol cloud. And the virus can travel long distances and land on surfaces, only to be stirred back up into the air later by cleaning or other disturbances.

50. The SARS virus that caused a 2003 epidemic is a coronavirus and is similar to COVID-19 (technically named SARS-CoV-2). As a result, the behavior of SARS during the 2003 epidemic provided evidence about aerosol risk from COVID-19.

51. A 2014 analysis of SARS published in the journal *Clinical Infectious Diseases* investigated a seemingly puzzling outbreak in a Hong Kong apartment complex whose residents had not been in close contact with each other. The study found that “airborne spread was the most likely explanation, and the SARS coronavirus could have spread over a distance of 200 meters,” or about 600 feet.

52. The implications of airborne spread of the virus are extremely serious. Airborne spread means that the virus can travel long distances from any infected person. It can then infect someone who unknowingly walks through a pathogenic cloud. It can also infect someone by settling on a

physical surface, which someone touches and later becomes infected. And regardless of the transmission method, the evidence suggests that COVID-19 can be transmitted by shoes even once it reaches the ground.

53. The risk of a virus like COVID-19 was foreseeable to, if not foreseen by, insurance companies like the Defendant. The Insurance Services Office (“ISO”), an organization that provides policy writing services to insurers, has recognized for years that a virus can constitute physical damage to property. Specifically, in 2006, the ISO announced the submission of an exclusion of loss “due to disease-causing agents such as viruses and bacteria.”

54. In connection with circulating the virus exclusion, the ISO sent the following statement to state insurance regulators:

Disease-causing agents may render a product impure (change its quality or substance), or 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 of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

55. Despite the availability of a specific exclusion for viruses, pandemics or communicable diseases, Plaintiff chose to include only one such clause approaching such an exclusion for application to its Crisis Event Expense Coverage Endorsement, and specifically limited the clause’s applicability to that endorsement.

#### **Civil Authority “Stay-at-home” Orders**

56. The Mayor of Kansas City on March 12, 2020, issued the first of several proclamations declaring a state of emergency an ordering restaurants to stop serving customers inside in order to slow the physical spread of the Sars-CoV-2 virus, and then later, to maintain only limited

occupancy inside. On March 21, 2020, the Kansas City mayor also ordered citizens to stay home. On November 16, 2020, Kansas City issued the city's 11<sup>th</sup> Amended Order, limiting the number of indoor occupants at restaurants to 50-percent capacity and ordering all establishments to close by 10 p.m. All patrons must be masked except when actively eating or drinking. All parties are limited to 10 or fewer people and must be spaced at least six feet apart.

57. COVID-19 and the Stay at Home Orders have forced Plaintiff to suspend its operations. Plaintiff's facilities are located in Jackson County, Missouri, and Johnson County, Kansas. The departments of health for Kansas and Missouri have reported more than 20,000 combined cases of COVID-19 as of the date of this filing, several thousand of which have been in the Kansas City metropolitan area.

58. On April 3, 2020, the State of Missouri issued a Stay at Home Order "to protect public health and prevent the further spread of COVID-19." The Stay at Home Order required individuals residing in Missouri to avoid leaving their homes except as necessary to perform limited activities and to practice social distancing at all times. Starting May 3, 2020, Missouri lifted the restrictions placed on leaving home, but left in place other substantial restrictions, including requirements for social distancing and limitation on the number of people permitted in an establishment to just 25% of capacity.

59. On April 27, 2020, Missouri issued the Recovery Order.<sup>8</sup> Although the Recovery Order lifted the restriction placed on leaving home for non-essential activities, it still imposed substantial restrictions on all Missourians. For example, it continued to require residents to practice social distancing at all times. The Recovery Order imposed upon individuals performing job duties that require contact with other people closer than six feet to "take enhanced precautionary measures to mitigate the risks of contracting or spreading COVID-19." The order further directed Plaintiff,

among other businesses, to pay special care to “[s]anitation, including disinfection of common and high-traffic areas” and to “follow” any guidance provided by the [CDC].”

60. On March 24, 2020, Jackson County, Missouri issued a Stay at Home Order similarly requiring individuals in the county to avoid leaving their homes except as necessary to perform limited activities and to practice social distancing at all times. On May 1, 2020, Jackson County extended the order through May 11, 2020.

61. State and local governments have determined that without stay at home orders, COVID-19 could spread rampant throughout the community.

62. The Stay at Home Orders in and around Plaintiff’s places of business also explicitly acknowledge that COVID-19 causes direct physical damage and loss to property:

- a. the City of Kansas City, Missouri, issued Order 20-01 in response to the pandemic, which stated that “the City wishes to employ all means available under the law to protect public life, health, safety and **property** to limit the development, contraction and spread of COVID-19” (emphasis added).

#### **COVID’s impact on Plaintiff.**

63. COVID-19 was present on Plaintiff’s premises, and has highly likely been present since February of 2020 to present, and caused Plaintiff to cease and/or severely curtail indoor and outdoor dining.

64. COVID-19’s physical presence in Plaintiff’s premises, and likely physical presence, physically altered the premises and rendered them unusable for their intended purpose.

65. Civil authorities have issued orders that have prohibited use of indoor facilities at restaurants and have at other times severely curtailed such use, directly resulting in dramatic reduction in Plaintiff’s business.

66. The presence and highly probable presence of COVID-19 at contiguous and nearby properties rendered ingress and egress from Plaintiff's premise unsafe, and in addition, caused civil authorities to issue orders limiting and/or preventing ingress and egress to Plaintiff's premises.

67. The physical presence of COVID-19, the high probability that it was present at any given time, and/or the threat of its presence altered Plaintiff's property, making Plaintiff's property unusable and unsafe, thereby resulting in direct physical loss to the premises and property.

68. The physical presence of COVID-19 at properties that accepted Plaintiff's goods and services, or delivered materials and services to Plaintiff, or attracted customers to Plaintiff's business, created direct physical losses at those locations that caused Plaintiff to suspend operations, incur lost business income and to incur expenses.

69. Generally, under property insurance policies like those issued by Defendant to Plaintiff, the insuring agreements provide coverage for all risks of physical loss or damage to property, unless specifically excluded.

70. The Policy is an "all-risk" policy. It covers "direct 'loss' unless the 'loss' is excluded or limited" by the Policy. Ex. A, P34.

71. The Policy does not generally exclude or limit coverage for losses from a virus, like COVID-19, or pandemics.

72. Because damage due to viruses constitutes physical damage and loss under the Policy, and/or the Stay at Home Orders have caused Plaintiff to have lost the use of its premises for their intended purpose, Plaintiff's losses are covered under the Policy.

73. Plaintiff held up its end of the bargain, paying its annual premium to Defendant, which Defendant accepted and used for its own profit and purposes.

74. Plaintiff presented a claim to Defendant and provided evidence of damages, a description of COVID-19's presence in its facilities, relevant court orders, and copies of relevant orders of civil authorities.

75. Defendant performed no investigation.

76. Defendant did not provide promised forms for claim submissions.

77. On October 28, 2020, Defendant denied Plaintiff's claim for coverage.

**COUNT I: DECLARATORY AND INJUNCTIVE RELIEF – BUSINESS INCOME**

78. The foregoing paragraphs are incorporated by reference as if alleged herein.

79. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

80. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning the respective rights and duties of the parties under the Policy.

81. Plaintiff requested coverage for COVID-19 related losses as specified in the Policy.

82. Defendant responded with a letter denying coverage.

83. Defendant has refused other, similar claims claiming that COVID-19 losses are not covered by the Policy.

84. Defendant has breached the Policy in the following respects:

- a. Plaintiff suffered losses covered by the Business Income Coverage and Extended Business Income;
- b. Defendant is obligated to pay Plaintiff for those losses; and
- c. Defendant has failed and refused to pay Plaintiff for those losses.

85. Plaintiff seeks a declaration of the parties' respective rights and duties under the Policy and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

86. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Policy's Business Income Coverage; and ordering Defendant to comply with the terms of the Policy in regards to coverage.

## **COUNT II: BREACH OF CONTRACT – BUSINESS INCOME**

87. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

88. Plaintiff purchased a property coverage policy from Defendant.

89. The Policy is a valid and enforceable contract between Plaintiff and Defendant, formed by mutual consent, a valid offer and acceptance, and valuable consideration.

90. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

91. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

92. Plaintiff has sustained a loss under the Business Income Coverage and Extended Business Income in the Policy arising from COVID-10 virus and associated state and municipal orders.

93. Defendant has denied Plaintiff's claim for Business Income related to COVID-19, and associated state and local Stay at Home Orders, in breach of the Policy.

94. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damages in an amount to be determined at trial.

**COUNT III: DECLARATORY AND INJUNCTIVE RELIEF – CIVIL AUTHORITY**

95. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

96. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

97. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning the respective rights and duties of the parties under the Policy.

98. Plaintiff requested coverage for COVID-19 related losses as specified in the Policy.

99. Defendant responded with a letter denying coverage.

100. Defendant has refused other, similar claims claiming that COVID-19 losses are not covered by the Policy.

101. Plaintiff contends that Defendant has breached the Policy in the following respects:

- a. Plaintiff suffered losses covered by the Policy's Civil Authority Coverage;
- b. Defendant is obligated to pay Plaintiff for those losses; and
- c. Defendant has failed to pay Plaintiff for those losses.

102. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policies and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

103. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Civil Authority Coverage in the Policy; and ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

**COUNT IV: BREACH OF CONTRACT – CIVIL AUTHORITY**

104. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

105. Plaintiff purchased a property coverage policy from Defendant.

106. The Policy is a valid and enforceable contract between Plaintiff and Defendant, formed by mutual consent, a valid offer and acceptance, and valuable consideration.

107. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

108. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

109. Plaintiff has sustained a loss under the Civil Authority Coverage in the Policy arising from COVID-19 virus and associated state and municipal orders.

110. Defendant has denied Plaintiff's claim for Business Income related to COVID-19, and associated state and local Stay at Home Orders, in breach of the Policy.

111. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damages in an amount to be determined at trial.

**COUNT V: DECLARATORY AND INJUNCTIVE RELIEF – EXTRA EXPENSE**

112. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

113. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

114. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning the respective rights and duties of the parties under the Policy.

115. Plaintiff requested coverage for COVID-19 related losses as specified in the Policy.

116. Defendant responded with a letter denying coverage.

117. Defendant has refused other, similar claims claiming that COVID-19 losses are not covered by the Policy.

118. Plaintiff contends that Defendant has breached the Policy in the following respects:

- a. Plaintiff suffered losses covered by the Policy's Extra Expense Coverage;
- b. Defendant is obligated to pay Plaintiff for those losses; and
- c. Defendant has failed to pay Plaintiff for those losses.

119. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policies and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

120. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Extra Expense Coverage in the Policy; and ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

#### **COUNT VI: BREACH OF CONTRACT – EXTRA EXPENSE**

121. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

122. Plaintiff purchased a property coverage policy from Defendant.

123. The Policy is a valid and enforceable contract between Plaintiff and Defendant, formed by mutual consent, a valid offer and acceptance, and valuable consideration.

124. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

125. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

126. Plaintiff has sustained a loss under the Extra Expense Coverage in the Policy arising from COVID-10 virus and associated state and municipal orders.

127. Defendant has denied Plaintiff's claim for Business Income related to COVID-19, and associated state and local Stay at Home Orders, in breach of the Policy.

128. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damages in an amount to be determined at trial.

**COUNT VII: DECLARATORY AND INJUNCTIVE RELIEF – INGRESS AND EGRESS**

129. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

130. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

131. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning the respective rights and duties of the parties under the Policy.

132. Plaintiff requested coverage for COVID-19 related losses as specified in the Policy.

133. Defendant responded with a letter denying coverage.

134. Defendant has refused other, similar claims claiming that COVID-19 losses are not covered by the Policy.

135. Plaintiff contends that Defendant has breached the Policy in the following respects:

- a. Plaintiff suffered losses covered by the Policy's Ingress and Egress Coverage;
- b. Defendant is obligated to pay Plaintiff for those losses; and
- c. Defendant has failed to pay Plaintiff for those losses.

136. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policies and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

137. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Ingress and Egress Coverage in the Policy; and ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

**COUNT VIII: BREACH OF CONTRACT – INGRESS AND EGRESS**

138. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

139. Plaintiff purchased a property coverage policy from Defendant.

140. The Policy is a valid and enforceable contract between Plaintiff and Defendant, formed by mutual consent, a valid offer and acceptance, and valuable consideration.

141. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

142. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

143. Plaintiff has sustained a loss under the Ingress and Egress Coverage in the Policy arising from COVID-19 virus and associated state and municipal orders.

144. Defendant has denied Plaintiff's claim under the Ingress and Egress Coverage in the Policy arising from COVID-19 and associated state and local Stay at Home Orders, in breach of the Policy.

145. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damages in an amount to be determined at trial.

**COUNT IX: DECLARATORY AND INJUNCTIVE RELIEF – SUE AND LABOR**

146. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

147. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

148. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning the respective rights and duties of the parties under the Policy.

149. Plaintiff requested coverage for COVID-19 related losses as specified in the Policy.

150. Defendant responded with a letter denying coverage.

151. Defendant has refused other, similar claims claiming that COVID-19 losses are not covered by the Policy.

152. Plaintiff contends that Defendant has breached the Policy in the following respects:

- a. Plaintiff suffered losses covered by the Policy's Sue and Labor Coverage;
- b. Defendant is obligated to pay Plaintiff for those losses; and
- c. Defendant has failed to pay Plaintiff for those losses.

153. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policies and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

154. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Sue and Labor Coverage in the Policy; and ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

**COUNT X: BREACH OF CONTRACT – SUE AND LABOR**

155. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

156. Plaintiff purchased a property coverage policy from Defendant.

157. The Policy is a valid and enforceable contract between Plaintiff and Defendant, formed by mutual consent, a valid offer and acceptance, and valuable consideration.

158. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

159. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

160. Plaintiff has sustained a loss under the Sue and Labor Coverage in the Policy arising from COVID-19 virus and associated state and municipal orders.

161. Defendant has denied Plaintiff's claim under the Sue and Labor Coverage in the Policy arising from COVID-19 and associated state and local Stay at Home Orders, in breach of the Policy.

162. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damages in an amount to be determined at trial.

**COUNT XI: DECLARATORY AND INJUNCTIVE RELIEF – CRISIS EVENT**

163. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

164. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

165. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning the respective rights and duties of the parties under the Policy.

166. Plaintiff requested coverage for COVID-19 related losses as specified in the Policy.

167. Defendant responded with a letter denying coverage.

168. Defendant has refused other, similar claims claiming that COVID-19 losses are not covered by the Policy.

169. Plaintiff contends that Defendant has breached the Policy in the following respects:
- a. Plaintiff suffered losses covered by the Policy's Crisis Event Coverage;
  - b. Defendant is obligated to pay Plaintiff for those losses; and
  - c. Defendant has failed to pay Plaintiff for those losses.

170. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policies and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

171. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Crisis Event Coverage in the Policy; and ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

**COUNT XII: BREACH OF CONTRACT – CRISIS EVENT**

172. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

173. Plaintiff purchased a property coverage policy from Defendant.

174. The Policy is a valid and enforceable contract between Plaintiff and Defendant, formed by mutual consent, a valid offer and acceptance, and valuable consideration.

175. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

176. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

177. Plaintiff has sustained a loss under the Crisis Event Coverage in the Policy arising from COVID-19 virus and associated state and municipal orders.

178. Defendant has denied Plaintiff's claim under the Crisis Event Coverage in the Policy arising from COVID-19 and associated state and local Stay at Home Orders, in breach of the Policy.

179. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damages in an amount to be determined at trial.

**COUNT XIII: DECLARATORY AND INJUNCTIVE RELIEF – EXCESS COVERAGE**

180. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

181. The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, allows this Court to declare the rights and other legal relations of the parties to this dispute.

182. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning the respective rights and duties of the parties under the Policy.

183. Plaintiff requested coverage for COVID-19 related losses as specified in the Policy.

184. Defendant responded with a letter denying coverage.

185. Defendant has refused other, similar claims claiming that COVID-19 losses are not covered by the Policy.

186. Plaintiff contends that Defendant has breached the Policy in the following respects:

- a. Plaintiff suffered losses covered by the Policy's Excess Coverage for Business Income, Extra Expense, and Ingress and Egress.
- b. Defendant is obligated to pay Plaintiff for those losses; and
- c. Defendant has failed to pay Plaintiff for those losses.

187. Plaintiff therefore seeks a declaration of the parties' respective rights and duties under the Policies and requests the Court declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy so that future controversies may be avoided.

188. Pursuant to a declaration of the parties' respective rights and duties under the Policy, Plaintiff further seeks an injunction enjoining Defendant from continuing to engage in conduct in breach of the Policy in regards to coverage decisions under the Policy's Excess Coverage for Business Income, Extra Expense, and Ingress and Egress; and ordering Defendant to comply with the terms of the Policy in regards to coverage decisions.

**COUNT XIV: BREACH OF CONTRACT – EXCESS COVERAGE**

189. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

190. Plaintiff purchased a property coverage policy from Defendant.

191. The Policy is a valid and enforceable contract between Plaintiff and Defendant, formed by mutual consent, a valid offer and acceptance, and valuable consideration.

192. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

193. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

194. Plaintiff has sustained a loss under the Policy's Excess Coverage for Business Income, Extra Expense, and Ingress and Egress arising from COVID-19 virus and associated state and municipal orders.

195. Defendant has denied Plaintiff's claim under the Policy's Excess Coverage for Business Income, Extra Expense, and Ingress and Egress arising from COVID-19 and associated state and local Stay at Home Orders, in breach of the Policy.

196. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damages in an amount to be determined at trial.

**COUNT XV: VEXATIOUS REFUSAL TO PAY**

197. Plaintiff incorporates by reference the preceding paragraphs as if alleges herein.

198. Pursuant to RSMo § 375.420, an insured may recover against its insurer for vexatious refusal to pay claims.

199. Plaintiff purchased a property coverage policy from Defendant.

200. The Policy is a valid and enforceable contract between Plaintiff and Defendant.

201. Plaintiff held up its end of the bargain, performing its obligations under the Policy including giving notice of claim.

202. Defendant has waived any terms or conditions of coverage and may not assert any term or condition in the Policy as a defense to liability.

203. Defendant has refused to pay Plaintiff's claims under the Policy.

204. Defendant's refusal to pay is ongoing.

205. Defendant failed to investigate Plaintiff's claims in any meaningful way and further failed to provide forms its purported to require Plaintiff to fill.

206. Defendant possesses no reasonable cause or excuse to not pay Plaintiff's claims.

207. As a direct and proximate result of Defendant's refusal to pay, Plaintiff has sustained damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests relief and judgment against Defendant as follows:

- a. For a judgment against Defendant for the causes of action alleged against it’
- b. For compensatory damages in an amount to be proven at trial;
- c. For a declaration that Defendant’s conduct as alleged herein is unlawful and in material breach of the Policy;
- d. For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Policy;
- e. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- f. For statutory damages provided for in RSMo § 375.420;
- g. For attorney’s fees;
- h. For Plaintiff’s costs incurred; and
- i. For such other relief in law or equity as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

*/s/Dan Curry*

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