

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) TILL METRO ENTERTAINMENT,	)	
D/B/A/ The Vanguard	)	
Individually and on behalf of all others	)	Case No.: 4:20-cv-00255-JFH-JFJ
similarly situated	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	JURY TRIAL DEMANDED
(1) Covington Specialty Insurance Company,	)	
A New Hampshire Stock Company	)	[PROPOSED] CLASS ACTION
	)	
Defendant.	)	ATTORNEY LIEN CLAIMED

**FIRST AMENDED COMPLAINT**

Plaintiff Till Metro Entertainment LTD (d/b/a/ THE VANGUARD)(hereinafter “Plaintiff “or “Till Metro”), individually and on behalf of the other members of the below-defined Nationwide and Oklahoma Classes (collectively, the “Class”), brings this class action against Defendant Covington Specialty Insurance Company, A New Hampshire Stock Company (“Covington”), and in support thereof states the following:

**I. NATURE OF THE ACTION**

1. Plaintiff Till Metro owns and operates The Vanguard, a concert venue, located in Tulsa, Oklahoma. The Vanguard’s continued existence is now threatened by COVID-19 (a.k.a. the “coronavirus” or “SARS-CoV-2”).

2. To protect its businesses in the event that it suddenly had to suspend operations for reasons outside of its control, or if it had to act in order to prevent further property damage, Plaintiff purchased insurance coverage from Covington, including special property coverage, as set forth

in Covington’s Business Income (and Extra Expense) Coverage Form (Form CP 00 30 10 02) (“Business Income (and Extra Expense) Coverage Form”).

3. Covington’s Business Income (and Extra Expense) Coverage Form provides “Business Income” coverage, which promises to pay for loss due to the necessary suspension of operations following loss or damage to covered property.

4. Covington’s Special Property Coverage Form also provides “Civil Authority” coverage, which promises to pay for loss caused by the action of a civil authority that prohibits access to the insured premises.

5. Covington’s Business Income (and Extra Expense) Coverage Form also provides “Extra Expense” coverage, which promises to pay the expense incurred to minimize the suspension of business and to continue operations.

6. Covington’s Business Income (and Extra Expense) Coverage Form, under a section entitled “Duties in the Event of Loss” mandates that Covington’s insured “must see that the following are done in the event of loss. . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.” This is commonly referred to as “Sue and Labor” coverage.

7. Unlike many policies that provide Business Income coverage (also referred to as “business interruption” coverage), Covington’s Business Income (and Extra Expense) Coverage Form does not include, and is not subject to, any exclusion for losses caused by the spread of viruses or communicable diseases.

8. Plaintiff was forced to suspend or reduce business at The Vanguard due to COVID-19 and the resultant closure orders issued by civil authorities in Oklahoma.

9. Upon information and belief, Covington has, on a widescale and uniform basis, refused to pay its insureds under its Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages for losses suffered due to COVID-19, any orders by civil authorities that have required the necessary suspension of business, and any efforts to prevent further property damage or to minimize the suspension of business and continue operations. Indeed, Covington has denied Plaintiff's claim under its Covington policy.

10. Under the applicable law and the terms of the Policy, service of process on Defendant may be effectuated by serving the Senior Claims Officer of RSUI at 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160, or the Oklahoma Insurance Commissioner.

## **II. JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, because Defendant and at least one member of the Class are citizens of different states and because: (a) the Class consists of at least 100 members; (b) the amount in controversy exceeds \$5,000,000 exclusive of interest and costs; and (c) no relevant exceptions apply to this claim.

12. This Court also has subject matter jurisdiction under 28 U.S. Code § 1332 as the parties hereto are citizens of different states and, upon information and belief, Plaintiff's claim exceeds the sum or value of \$75,000, exclusive of interest and costs.

13. This Court also has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

14. Venue is proper in this District under 28 U.S.C. § 1391, because a substantial portion of the acts and conduct giving rise to the claims occurred within this District.

## **III. THE PARTIES**

15. Plaintiff Till Metro is a Oklahoma corporation, with its principal place of business

in Tulsa, Oklahoma. Till Metro owns and operates The Vanguard concert venue in Tulsa.

16. Defendant Covington is an insurance company organized under the laws of the State of New Hampshire, with its principal place of business, based on information and belief, in Atlanta, Georgia. It is authorized to write, sell, and issue insurance policies providing property and business income coverage in Oklahoma, as well as other states. At all times material hereto, Covington conducted and transacted business through the selling and issuing of insurance policies within Oklahoma, including, but not limited to, selling and issuing property coverage to Plaintiff.

#### **IV. FACTUAL BACKGROUND**

##### ***A. The Business Income (and Extra Expense) Coverage Form***

17. In return for the payment of a premium, Covington issued Policy No. VBA698565 00 to Plaintiff for a policy period of May 25, 2019 to May 25, 2020. Policy No. VBA698565 includes a Business Income (and Extra Expense) Coverage Form (CP 00 30 10 12). The Covered Premises under Policy No. PC-6606802 is the The Vanguard at 222 NORTH MAIN STREET, TULSA, OK 74103. Policy No. VBA698565 00 is attached hereto as Exhibit A.

18. Plaintiff has performed all its obligations under Policy No. PC-6606802, including the payment of premiums.

19. In many parts of the world, property insurance is sold on a specific peril basis. Such policies cover a risk of loss if that risk of loss is specifically listed (e.g., hurricane, earthquake, H1N1, etc.). Most property policies sold in the United States, however, including those sold by Covington, are “all-risk” property damage policies. These types of policies cover all risks of loss except for risks that are expressly and specifically excluded. In the Business Income (and Extra Expense) Coverage Form provided to Plaintiff, under the heading “Covered Causes of Loss,”

Covington agreed to “pay for direct physical loss” to Covered Property “unless the loss is excluded or limited by” the policy.

20. In the policy, Covington did not exclude or limit coverage for losses from the spread of viruses. The Policy only contains an “Exclusion of Pathogenic or Poisonous Biological or Chemical Materials,” which are not defined in the Policy. This exclusion only applies to an escape of contaminants from a place of containment, such as a storage tank or cell, not the natural spread of a virus.

21. Losses due to COVID-19 are a Covered Cause of Loss under Covington policies with the Business Income (and Extra Expense) Coverage Form.

22. In the Business Income (and Extra Expense) Coverage Form , Covington agreed to pay for its insureds’ “actual loss of Business Income [] sustained due to the necessary ‘suspension’ of [] operations during the ‘period of restoration’” where the suspension is “caused by direct physical loss of or damage to” property at the covered premises. A “slowdown or cessation” of business activities at the Covered Property is a “suspension” under the policy, for which Covington agreed to pay for loss of Business Income during the “period of restoration” that begins within 72 hours after the time of direct physical loss or damage.

23. “Business Income” means net income (or loss) before tax that Plaintiff and the other Class members would have earned “if no physical loss or damage had occurred” as well as continuing normal operating expenses incurred.

24. The presence of virus or disease constitutes physical loss or damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry drafting arm, ISO, circulated a statement to state insurance regulators that included the following:

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.

25. In the Business Income (and Extra Expense) Coverage Form, Covington also agreed to pay necessary Extra Expense that its insureds incur during the “period of restoration” that the insureds would not have incurred if there had been no direct physical loss or damage to the Covered Property.

26. “Extra Expense” includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

27. Covington also agreed to “pay for the actual loss of Business Income” that Plaintiff sustains “and any Extra Expense caused by action of civil authority that prohibits access to” the Covered Property when a Covered Cause of Loss causes damage to property near the Covered Property, the civil authority prohibits access to property immediately surrounding the damaged property, the Covered Property is within the prohibited area, and the civil authority action is taken “in response to dangerous physical conditions.”

28. Covington’s Business Income (and Extra Expense) Coverage Form, under a section entitled “Duties in the Event of Loss” mandates that Covington’s insured “must see that the following are done in the event of loss. . . [t]ake all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.” This is commonly referred to as “Sue and Labor”

coverage.

29. Physical losses and damage to the Covered Property caused by COVID-19 and the related orders issued by local, state, and federal authorities triggered the Business Income, Extra Expense, Civil Authority, and Sue and Labor provisions of the Covington policy.

***B. The Covered Cause of Loss***

30. The presence of COVID-19 has caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiff's business (the "Closure Orders").

**1. The Tulsa and Oklahoma Closure Orders**

31. In response to the rapid spread of COVID-19 throughout Oklahoma and the United States, the City of Tulsa and the State of Oklahoma issued emergency orders requiring the closure of non-essential business, like The Vanguard.

32. The City of Tulsa issued Civil Emergency Authority Order Executive Order 2020-2 on March 17, 2020, requiring the closure of indoor performance venues in the City of Tulsa, in addition to bars, restaurants, theaters, and most other commercial establishments and places of public accommodation. This order remained in full effect through May 1, 2020.

33. On April 24, 2020, the Governor of the State of Oklahoma issued the Fourth Amended Executive Order 2020-13 to implement the Open Up and Recover Safely (OURS) Plan, a three-phased approach to open Oklahoma's economy back up starting April 24, 2020.

34. Gatherings of more than fifty (50) people, which is the business of Till Metro, remained banned in the City of Tulsa through May 31, 2020 under Executive Order 2020-08.

35. As of June 1, 2020, venues such as The Vanguard could reopen in the City of Tulsa, so long as they operated in compliance with the State of Oklahoma's OURS Plan.

36. Phase 3 of the OURS Plan, which remains in effect in the State of Oklahoma, requires the Vanguard to encourage customers and employees to follow Centers for Disease Control Social Distancing Guidelines of maintaining six feet of physical distance.<sup>1</sup> Such distancing does not allow The Vanguard to operate at full capacity.

37. Violations of the City of Tulsa and State of Oklahoma Orders are punishable by fine, imprisonment, or both.

**2. The Impact of COVID-19 and the Closure Orders**

38. The presence of COVID-19 caused direct physical loss of or damage to the Covered Property under the Plaintiff's policies, and the policies of the other Class members, by denying use of and damaging the covered property, and by causing a necessary suspension of operations during a period of restoration.

39. The Closure Orders, including the issuance of Oklahoma and City of Tulsa Closure Orders, prohibited access to Plaintiff and the other Class members' Covered Property, and the area immediately surrounding Covered Property, in response to dangerous physical conditions resulting from a Covered Cause of Loss.

40. As a result of the presence of COVID-19 and the Closure Orders, Plaintiff and the other Class members lost Business Income and incurred Extra Expense.

41. Till Metro submitted a claim for loss to Covington under its policy due to the presence of COVID-19 and the Closure Orders, and Covington denied that claim.

**V. CLASS ACTION ALLEGATIONS**

35. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure, individually and on behalf of all others similarly

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<sup>1</sup> <https://www.okcommerce.gov/wp-content/uploads/Entertainment-and-Sporting-Venue-Guidance.pdf>



situated.

36. Plaintiff seeks to represent Oklahoma and nationwide classes defined as:

**Business Income Breach Class:** All persons and entities (or alternatively, “in Oklahoma”) that: (a) had Business Income coverage under a property insurance policy issued by Covington; (b) suffered a suspension of business related to COVID-19, at the premises covered by their Covington property insurance policy; (c) made a timely claim under their property insurance policy issued by Covington; and (d) were denied Business Income coverage by Covington for the suspension of business resulting from the presence or threat of COVID-19 (the “Business Income Breach Class”).

**Civil Authority Breach Class:** All persons and entities (or alternatively, “in Oklahoma”) that: (a) had Civil Authority coverage under a property insurance policy issued by Covington; (b) suffered loss of Business Income and/or Extra Expense caused by action of a civil authority; (c) made a claim under their property insurance policy issued by Covington; and (d) were denied Civil Authority coverage by Covington for the loss of Business Income and/or Extra Expense caused by a Closure Order (the “Civil Authority Breach Class”).

**Extra Expense Breach Class:** All persons and entities (or alternatively, “in Oklahoma”) that: (a) had Extra Expense coverage under a property insurance policy issued by Covington; (b) sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their Covington property insurance policy; (c) made a claim under their property insurance policy issued by Covington; and (d) were denied Extra Expense coverage by Covington despite their efforts to minimize the suspension of business caused by COVID-19 (the “Extra Expense Breach Class”).

**Sue and Labor Breach Class:** All persons and entities (or alternatively, “in Oklahoma”)

that: (a) had a Sue and Labor provision under a property insurance policy issued by Covington; (b) sought to prevent property damage caused by COVID-19 by suspending or reducing business operations, at the premises covered by their Covington property insurance policy; (c) made a claim under their property insurance policy issued by Covington; and (d) were denied Sue and Labor coverage by Covington in connection with the suspension of business caused by COVID-19 (the “Sue and Labor Breach Class”).

**Business Income Declaratory Judgment Class:** All persons and entities (or alternatively, “in Oklahoma”) with Business Income coverage under a property insurance policy issued by Covington that suffered a suspension of business due to COVID-19 at the premises covered by the business income coverage (the “Business Income Declaratory Judgment Class”).

**Civil Authority Declaratory Judgment Class:** All persons and entities (or alternatively, “in Oklahoma”) with Civil Authority coverage under a property insurance policy issued by Covington that suffered loss of Business Income and/or Extra Expense caused by a Closure Order (the “Civil Authority Declaratory Judgment Class”).

**Extra Expense Declaratory Judgment Class:** All persons and entities (or alternatively, “in Oklahoma”) with Extra Expense coverage under a property insurance policy issued by Covington that sought to minimize the suspension of business in connection with COVID-19 at the premises covered by their Covington property insurance policy (the “Extra Expense Declaratory Judgment Class”).

**Sue and Labor Declaratory Judgment Class:** All persons and entities (or alternatively, “in Oklahoma”) with a Sue and Labor provision under a property insurance policy issued by Covington that sought to prevent property damage caused by COVID-19 by suspending or reducing business operations, at the premises covered by their Covington property insurance policy

(the “Sue and Labor Declaratory Judgment Class”).

42. Excluded from each defined Class is Defendant and any of its members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; and the Court staff assigned to this case and their immediate family members. Plaintiff reserves the right to modify or amend each of the Class definitions, as appropriate, during the course of this litigation.

43. This action has been brought and may properly be maintained on behalf of each Class proposed herein under the criteria of Rule 23 of the Federal Rules of Civil Procedure.

44. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The members of each defined Class are so numerous that individual joinder of all Class members is impracticable. While Plaintiff is informed and believes that there are thousands of members of each Class, the precise number of Class members is unknown to Plaintiff but may be ascertained from Defendant’s books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, internet postings, and/or published notice.

45. **Commonality and Predominance—Federal Rules of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting only individual Class members, including, without limitation:

- a. Covington issued all-risk policies to the members of the Class in exchange for payment of premiums by the Class members;
- b. whether the Class suffered a covered loss based on the common policies issued to members of the Class;
- c. whether Covington wrongfully denied all claims based on COVID-19;

- d. whether Covington’s Business Income coverage applies to a suspension of business caused by COVID-19;
- e. whether Covington’s Civil Authority coverage applies to a loss of Business Income caused by the orders of state governors requiring the suspension of business as a result of COVID-19;
- f. whether Covington’s Extra Expense coverage applies to efforts to minimize a loss caused by COVID-19;
- g. whether Covington’s Sue and Labor provision applies to require Covington to pay for efforts to reduce damage caused by COVID-19;
- h. whether Covington has breached its contracts of insurance through a blanket denial of all claims based on business interruption, income loss or closures related to COVID-19 and the related closures; and
- i. whether Plaintiff and the Class are entitled to an award of reasonable attorney fees, interest and costs.

46. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiff’s claims are typical of the other Class members’ claims because Plaintiff and the other Class members are all similarly affected by Defendant’s refusal to pay under its Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages. Plaintiff’s claims are based upon the same legal theories as those of the other Class members. Plaintiff and the other Class members sustained damages as a direct and proximate result of the same wrongful practices in which Defendant engaged.

47. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate Class representative because their interests do not conflict with the interests of the other Class members who they seek to represent, Plaintiff has retained counsel competent

and experienced in complex class action litigation and insurance bad-faith litigation, and Plaintiff intends to prosecute this action vigorously. The interests of the above-defined Classes will be fairly and adequately protected by Plaintiff and their counsel.

48. **Inconsistent or Varying Adjudications and the Risk of Impediments to Other Class Members' Interests—Federal Rule of Civil Procedure 23(b)(1).** Plaintiff seeks class-wide adjudication as to the interpretation, and resultant scope, of Defendant's Business Income, Civil Authority, Extra Expense, and Sue and Labor coverages. The prosecution of separate actions by individual members of the Classes would create an immediate risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the Defendant. Moreover, the adjudications sought by Plaintiff could, as a practical matter, substantially impair or impede the ability of other Class members, who are not parties to this action, to protect their interests.

49. **Declaratory and Injunctive Relief—Federal Rule of Civil Procedure 23(b)(2).** Defendant acted or refused to act on grounds generally applicable to Plaintiff and the other Class members, thereby making final injunctive relief and declaratory relief appropriate, as described below, with respect to the Class members.

50. **Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## **VI. CLAIMS FOR RELIEF**

### **COUNT I**

#### **BREACH OF CONTRACT -- BUSINESS INCOME COVERAGE (Claim Brought on Behalf of the Business Income Breach Class)**

51. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

52. Plaintiff brings this Count individually and on behalf of the other members of the Business Income Breach Class.

53. Plaintiff's Covington policy, as well as those of the other Business Income Breach Class members, are contracts under which Covington was paid premiums in exchange for its promise to pay Plaintiff and the other Business Income Breach Class members' losses for claims covered by the policy.

54. In the Business Income (and Extra Expense) Coverage Form, Covington agreed to pay for its insureds' actual loss of Business Income sustained due to the necessary suspension of its operations during the "period of restoration."

55. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the policy, for which Covington agreed to pay for loss of Business Income during the "period of restoration" that begins within 72 hours after the time of direct physical loss or damage.

56. "Business Income" means net income (or loss) before tax that Plaintiff and the other Business Income Breach Class members would have earned "if no physical loss or damage had occurred" as well as continuing normal operating expenses incurred.

57. COVID-19 caused direct physical loss and damage to Plaintiff and the other Business Income Breach Class members' Covered Properties, requiring suspension of operations

at the Covered Properties. Losses caused by COVID-19 thus triggered the Business Income provision of Plaintiff and the other Business Income Breach Class members' Covington policies.

58. Plaintiff and the other Business Income Breach Class members have complied with all applicable provisions of their policies and/or those provisions have been waived by Covington or Covington is estopped from asserting them, and yet Covington has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms.

59. By denying coverage for any Business Income losses incurred by Plaintiff and the other Business Income Breach Class members in connection with the COVID-19 pandemic, Covington has breached its coverage obligations under the policies.

60. As a result of Covington's breaches of the policies, Plaintiff and the other Business Income Breach Class members have sustained substantial damages for which Covington is liable, in an amount to be established at trial.

**COUNT II**  
**BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE**  
**(Claim Brought on Behalf of the Civil Authority Breach Class)**

61. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

62. Plaintiff brings this Count individually and on behalf of the other members of the Civil Authority Breach Class. Plaintiff's Covington insurance policy, as well as those of the other Civil Authority Breach Class members, are contracts under which Covington was paid premiums in exchange for its promise to pay Plaintiff and the other Civil Authority Breach Class members' losses for claims covered by the policy.

63. Covington agreed to "pay for the actual loss of Business Income" that Plaintiff

sustains “and any Extra Expense caused by action of civil authority that prohibits access to” the Covered Property when a Covered Cause of Loss causes damage to property near the Covered Property, the civil authority prohibits access to property immediately surrounding the damaged property, the Covered Property is within the prohibited area, and the civil authority action is taken “in response to dangerous physical conditions.”

64. The Closure Orders triggered the Civil Authority provision under Plaintiff and the other members of the Civil Authority Breach Class’s Covington insurance policies.

65. Plaintiff and the other members of the Civil Authority Breach Class have complied with all applicable provisions of the policies, and/or those provisions have been waived by Covington, or Covington is estopped from asserting them, and yet Covington has abrogated its insurance coverage obligations pursuant to the Policies’ clear and unambiguous terms.

66. By denying coverage for any business losses incurred by Plaintiff and other members of the Civil Authority Breach Class in connection with the Closure Orders and the COVID-19 pandemic, Covington has breached its coverage obligations under the policies.

67. As a result of Covington’s breaches of the policies, Plaintiff and the other members of the Civil Authority Breach Class have sustained substantial damages for which Covington is liable, in an amount to be established at trial.

**COUNT III**  
**BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**  
**(Claim Brought on Behalf of the Extra Expense Breach Class)**

68. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

69. Plaintiff brings this Count individually and on behalf of the other members of the Extra Expense Breach Class.



70. Plaintiff's Covington insurance policy, as well as those of the other Extra Expense Breach Class members, are contracts under which Covington insurance was paid premiums in exchange for its promise to pay Plaintiff and the other Extra Expense Breach Class members' losses for claims covered by the policy.

71. In the Business Income (and Extra Expense) Coverage Form, Covington also agreed to pay necessary Extra Expense that its insureds incur during the "period of restoration" that the insureds would not have incurred if there had been no direct physical loss or damage to the Covered Property.

72. "Extra Expense" includes expenses to avoid or minimize the suspension of business, continue operations, and to repair or replace property.

73. Due to COVID-19 and the Closure Orders, Plaintiff and the other members of the Extra Expense Breach Class incurred Extra Expense at Covered Property.

74. Plaintiff and the other members of the Extra Expense Breach Class have complied with all applicable provisions of the policies and/or those provisions have been waived by Covington or Covington is estopped from asserting them, and yet Covington has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms.

75. By denying coverage for any business losses incurred by Plaintiff and the other members of the Extra Expense Breach Class in connection with the Closure Orders and the COVID-19 pandemic, Covington has breached its coverage obligations under the policies.

76. As a result of Covington's breaches of the policies, Plaintiff and the other members of the Extra Expense Breach Class have sustained substantial damages for which Covington is liable, in an amount to be established at trial.

**COUNT IV  
BREACH OF CONTRACT – SUE AND LABOR COVERAGE**

**(Claim Brought on Behalf of the Sue and Labor Breach Class)**

77. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

78. Plaintiff brings this Count individually and on behalf of the other members of the Sue and Labor Breach Class.

79. Plaintiff's Covington policy, as well as those of the other Sue and Labor Breach Class members, are contracts under which Covington was paid premiums in exchange for its promise to pay Plaintiff and the other Sue and Labor Breach Class members' losses for claims covered by the policy.

80. In the Business Income (and Extra Expense) Coverage Form, Covington agreed to give due consideration in settlement of a claim to expenses incurred in taking all reasonable steps to protect Covered Property from further damage.

81. In complying with the Closure Orders and otherwise suspending or limiting operations, Plaintiff and other members of the Sue and Labor Breach Class incurred expenses in connection with reasonable steps to protect Covered Property.

82. Plaintiff and the other members of the Sue and Labor Breach Class have complied with all applicable provisions of the policy and/or those provisions have been waived by Covington, or Covington is estopped from asserting them, and yet Covington has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms.

83. By denying coverage for any Sue and Labor expenses incurred by Plaintiff and the other members of the Sue and Labor Breach Class in connection with the Closure Orders and the COVID-19 pandemic, Covington has breached its coverage obligations under the policies.

84. As a result of Covington's breaches of the policies, Plaintiff and the other members

of the Sue and Labor Breach Class have sustained substantial damages for which Covington is liable, in an amount to be established at trial.

**COUNT V**  
**DECLARATORY JUDGMENT – BUSINESS INCOME COVERAGE**  
**(Claim Brought on Behalf of the Business Income Declaratory Judgment Class)**

85. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

86. Plaintiff brings this Count individually and on behalf of the other members of the Business Income Declaratory Judgment Class.

87. Plaintiff's Covington policy, as well as those of the other Business Income Declaratory Judgment Class members, are contracts under which Covington was paid premiums in exchange for its promise to pay Plaintiff and the other Business Income Declaratory Judgment Class members' losses for claims covered by the policy.

88. Plaintiff and the other Business Income Declaratory Judgment Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Covington, or Covington is estopped from asserting them, and yet Covington has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the other Business Income Declaratory Judgment Class members are entitled.

89. Covington has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

90. An actual case or controversy exists regarding Plaintiff and the other Business Income Declaratory Judgment Class members' rights and Covington's obligations under the

policies to reimburse Plaintiff for the full amount of Business Income losses incurred by Plaintiff and the other Business Income Declaratory Judgment Class members in connection with suspension of their businesses stemming from the COVID-19 pandemic.

91. Pursuant to 28 U.S.C. § 2201 and 12 O.S. § 1651, Plaintiff and the other Business Income Declaratory Judgment Class members seek a declaratory judgment from this Court declaring the following:

- i. Plaintiff and the other Business Income Declaratory Judgment Class members' Business Income losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies; and
- ii. Covington is obligated to pay Plaintiff and the other Business Income Declaratory Judgment Class members for the full amount of the Business Income losses incurred and to be incurred in connection with the Closure Orders during the period of restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT VI**  
**DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE**  
**(Claim Brought on Behalf of the Civil Authority Declaratory Judgment Class)**

92. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

93. Plaintiff brings this Count individually and on behalf of the other members of the Civil Authority Declaratory Judgment Class.

94. Plaintiff's Covington insurance policy, as well as those of the other Civil Authority Declaratory Judgment Class members, are contracts under which Covington was paid premiums

in exchange for its promise to pay Plaintiff and the other Civil Authority Declaratory Judgment Class members' losses for claims covered by the policy.

95. Plaintiff and the other Civil Authority Declaratory Judgment Class members have complied with all applicable provisions of the policies and/or those yet Covington has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the other Class members are entitled.

96. Covington has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

97. An actual case or controversy exists regarding Plaintiff and the other Civil Authority Declaratory Judgment Class members' rights and Covington's obligations under the policies to reimburse Plaintiff and the other Civil Authority Declaratory Judgment Class members for the full amount of covered Civil Authority losses incurred by Plaintiff and the other Civil Authority Declaratory Judgment Class members in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

98. Pursuant to 28 U.S.C. § 2201 and 12 O.S. § 1651, Plaintiff and the other Civil Authority Declaratory Judgment Class members seek a declaratory judgment from this Court declaring the following:

- i. Plaintiff and the other Civil Authority Declaratory Judgment Class Members' Civil Authority losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies; and

- ii. Covington is obligated to pay Plaintiff and the other Civil Authority Declaratory Judgment Class members the full amount of the Civil Authority losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT VII**  
**DECLARATORY JUDGMENT – EXTRA EXPENSE COVERAGE**  
**(Claim Brought on Behalf of the Extra Expense Declaratory Judgment Class)**

99. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

100. Plaintiff brings this Count individually and on behalf of the other members of the Extra Expense Declaratory Judgment Class.

101. Plaintiff's Covington insurance policy, as well as those of the other Extra Expense Declaratory Judgment Class members, are contracts under which Covington was paid premiums in exchange for its promise to pay Plaintiff and the other Extra Expense Declaratory Judgment Class members' losses for claims covered by the policy.

102. Plaintiff and the other Extra Expense Declaratory Judgment Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Covington, or Covington is estopped from asserting them, and yet Covington has abrogated its insurance coverage obligations pursuant to the policies clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff and the other Class members are entitled.

103. Covington has denied claims related to COVID-19 on a uniform and class wide

basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

104. An actual case or controversy exists regarding Plaintiff and the other Extra Expense Declaratory Judgment Class members' rights and Covington's obligations under the policies to reimburse Plaintiff and the other Extra Expense Declaratory Judgment Class members for the full amount of Extra Expense losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

105. Pursuant to 28 U.S.C. § 2201 and 12 O.S. § 1651, Plaintiff and the other Extra Expense Declaratory Judgment Class members seek a declaratory judgment from this Court declaring the following:

i. Plaintiff and the other Extra Expense Declaratory Judgment Class members' Extra Expense losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under their policies;

and

ii. Covington is obligated to pay Plaintiff and the other Extra Expense Declaratory Judgment Class members for the full amount of the Extra Expense losses incurred and to be incurred in connection with the covered losses related to the Closure Orders during the period of restoration and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT VIII**  
**DECLARATORY JUDGMENT – SUE AND LABOR COVERAGE**  
**(Claim Brought on Behalf of the Sue and Labor Declaratory Judgment Class)**

106. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

107. Plaintiff brings this Count individually and on behalf of the other members of the Sue and Labor Declaratory Judgment Class.

108. Plaintiff's Covington insurance policy, as well as those of the other Sue and Labor Declaratory Judgment Class members, are contracts under which Covington was paid premiums in exchange for its promise to pay Plaintiff and the other Sue and Labor Declaratory Judgment Class members' reasonably incurred expenses to protect Covered Property.

109. Plaintiff and the other Sue and Labor Declaratory Judgment Class members have complied with all applicable provisions of the policies and/or those provisions have been waived by Covington, or Covington is estopped from asserting them, and yet Covington has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

110. Covington has denied claims related to COVID-19 on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Class have filed a claim.

111. An actual case or controversy exists regarding Plaintiff and the other Sue and Labor Declaratory Judgment Class members' rights and Covington's obligations under the policies to reimburse Plaintiff and the other Sue and Labor Declaratory Judgment Class members for the full amount Plaintiff and the other members of the Sue and Labor Declaratory Judgment Class reasonably incurred to protect Covered Property from further damage by COVID-19.

112. Pursuant to 28 U.S.C. § 2201 and 12 O.S. § 1651, Plaintiff and the other Sue and Labor Declaratory Judgment Class members seek a declaratory judgment from this Court declaring



the following:

- i. Plaintiff and the other Sue and Labor Declaratory Judgment Class members reasonably incurred expenses to protect Covered Property from further damage by COVID-19 are insured losses under their policies;  
and
- ii. Covington is obligated to pay Plaintiff and the other Sue and Labor Declaratory Judgment Class members for the full amount of the expenses they reasonably incurred to protect Covered Property from further damage by COVID-19.

**COUNT IX**  
**BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**  
**(On behalf of the Business Income Breach Class, Civil Authority Breach Class, Extra Expense Breach Class, and Sue and Labor Breach Class)**

113. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

114. The agreements described in this Complaint constitute enforceable contracts under applicable state law.

115. There is implied in every contract a duty of good faith and fair dealing in its performance and enforcement.

116. At a minimum, this duty requires Defendant to perform under its contracts with Plaintiff and Class Members in a reasonable manner, consistent with state and federal law, and to protect the interests of Plaintiff and Class Members by performing the promises expressed by the agreements and imposed by law.

117. Defendant, either alone or in concert with third parties, breached this duty of good

faith and fair dealing owed to Plaintiff and Class Members through unreasonable actions and/or omissions underlying the decisions to deny the applicable coverages that frustrated or denied Plaintiff and the Class Members the benefits of their original bargain, including, but not limited to, (1) failing to adequately investigate (often not investigating at all) the claims of Plaintiff and the Class Members, (2) unreasonably withholding payment(s) due, (3) ignoring that Plaintiff's and the Class member's Policies do not contain industry standard exclusions which may be applicable to COVID-19, and (4) denying coverage without a legal or factual justification.

118. Defendant also breached this duty of good faith and fair dealing owed to Plaintiff and Class Members by other acts or omissions of which Plaintiff is presently unaware and which will be shown according to proof at trial. Plaintiff believes that Covington's management and control persons have imposed blanket denials of business interruption coverage on its agents without any investigation or justification simply to protect Covington's own profits.

119. As a proximate result of the conscious and objectively unreasonable conduct of Defendant as set forth above, which conduct was either intended, designed to or did frustrate the rights of Plaintiff and Class Members arising out of such agreements and their reasonably justified expectations based upon the requirements of the law, Plaintiff and Class Members have suffered, and/or will continue to suffer in the future, damages plus interest, and other economic and consequential damages, in an amount to be proven at trial. As a further proximate result of the conduct of Defendant, Plaintiff was compelled to retain legal counsel and to institute litigation to obtain the benefits of these agreements and covenants for the benefit of itself and all other Class Members.

## **VII. REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the other Class Members,

respectfully requests that the Court enter judgment in their favor and against Defendant as follows:

- a. Entering an order certifying the proposed Nationwide and/or the Oklahoma Classes, as requested herein, designating Plaintiff as Class representative, and appointing Plaintiff's undersigned attorneys as Counsel for the Classes;
- b. Entering judgment on Counts I-IV and IX in favor of Plaintiff Till Metro and the members of the Business Income Breach Class, the Civil Authority Breach Class, the Extra Expense Breach Class, and the Sue and Labor Breach Class; and awarding actual damages and punitive damages in an amount to be determined at trial;
- c. Entering declaratory judgments on Counts V-VIII in favor of Plaintiff and the members of the Business Income Declaratory Judgment Class, the Civil Authority Declaratory Judgment Class, the Extra Expense Declaratory Judgment Class, and the Sue and Labor Declaratory Judgment Class as follows:
  - i. Business Income, Civil Authority, Extra Expense, and Sue and Labor losses incurred in connection with COVID-19, the Closure Orders and the necessary interruption of their businesses stemming therefrom are insured losses under their policies; and
  - ii. Covington is obligated to pay for the full amount of the Business Income, Civil Authority, Extra Expense, and Sue and Labor losses incurred and to be incurred related to COVID-19, the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic;
- d. Ordering Defendant to pay both pre- and post-judgment interest on any amounts of damages awarded;

- e. Ordering Defendant to pay attorneys' fees and costs of suit; and
- f. Ordering such other and further relief as may be just and proper.

### **VIII. JURY DEMAND**

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

Respectfully submitted,

/s/ Mark A. Smith  
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