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Company

8  
9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF ARIZONA**

11 Forflex LLC dba Supercuts,

12 Plaintiff,

13 v.

14 Hartford Underwriters Insurance Company;  
15 the Hartford Financial Services Group, Inc.  
dba The Hartford; and Twin City Fire  
16 Insurance Company,

17 Defendants.

NO. 2:20-cv-01068-DWL

**DEFENDANT TWIN CITY FIRE  
INSURANCE COMPANY’S  
ANSWER TO PLAINTIFF’S  
COMPLAINT**

18  
19 **TWIN CITY FIRE INSURANCE COMPANY, INC.’S**  
20 **ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

21 Defendant Twin City Fire Insurance Company (“Twin City”), by undersigned  
22 counsel and answering only on behalf of itself, hereby responds to Plaintiff’s Complaint  
23 as follows:<sup>1</sup>  
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27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff has voluntarily dismissed without prejudice its claims against the other  
named defendants in this action pursuant to Rule 41 (a), Fed. R. Civ. P. See Dkt. # 17.

**PARTIES**

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2 1. Twin City is without knowledge or information sufficient to form a belief as  
3 to the truth of the allegations of paragraph 1, and therefore denies same.  
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5 2. Twin City is without knowledge or information sufficient to form a belief as  
6 to the truth of the allegations of paragraph 2, and therefore denies same.

7 3. Paragraph 3 calls for a legal conclusion to which no response is required.  
8 To the extent a response is required, Twin City denies the allegations of paragraph 3.  
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10 4. Paragraph 4 calls for a legal conclusion to which no response is required.  
11 To the extent a response is required, Twin City denies the allegations of paragraph 4.  
12

**JURISDICTION**

13 5. Paragraph 5 calls for a legal conclusion to which no response is required.  
14 To the extent a response is required, Twin City is without knowledge or information  
15 sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore  
16 denies same.  
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18 6. Paragraph 6 calls for a legal conclusion to which no response is required.  
19 To the extent a response is required, Twin City admits that it does business in Arizona,  
20 and that it sold an insurance policy (“Policy”) that is at issue in this litigation to Plaintiff.  
21 The terms, conditions and exclusions of that policy speaks for itself. Twin City denies  
22 any remaining allegations of paragraph 6.  
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24 7. Paragraph 7 calls for a legal conclusion to which no response is required.  
25 To the extent a response is required, Twin City admits that it does business in Arizona,  
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1 and that it sold the Policy to Plaintiff. The terms, conditions and exclusions of that policy  
2 speaks for itself. Twin City denies any remaining allegations of paragraph 7.

3 8. Twin City admits the allegations of paragraph 8 on information and belief.

4 9. Twin City is without knowledge or information sufficient to form a belief as  
5 to the truth of the allegations of paragraph 9, and therefore denies same.

6 10. The allegations of paragraph 10 are not directed at Twin City, and therefore  
7 no response is required. To the extent a response is required, Twin City responds that  
8 “The Hartford” is a brand name only, did not issue any policy at issue in this litigation,  
9 and therefore is not a proper party in this action.

10 11. Twin City denies the allegations of the first, third and fourth sentences of  
11 paragraph 11. Twin City admits that it issued the Policy identified in paragraph 12 to  
12 Plaintiff. Twin City denies any remaining allegations of paragraph 11.

13 12. Twin City admits the allegations of paragraph 12, answering only for itself.  
14 Twin City denies the remaining allegations of paragraph 12.

15 13. In response to paragraph 13, Twin City admits that the referenced Policy is  
16 in effect. The terms, conditions and exclusions of the Policy speak for themselves. Twin  
17 City denies the allegations of paragraph 13 to the extent that Plaintiffs have misquoted or  
18 mis-characterized the Policy.

19 14. Twin City admits the allegations of paragraph 14, answering only for itself.  
20 Twin City denies the remaining allegations of paragraph 14.

**FACTUAL BACKGROUND**

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2           15. Paragraph 15 asserts legal conclusions to which no response is required. To  
3 the extent a response is required, Twin City admits that Plaintiff paid premiums for the  
4 Policy, the terms, conditions and exclusions of which speak for themselves. Twin City  
5 denies that Plaintiff is entitled to coverage under the Policy for the claim at issue in this  
6 litigation.  
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8           16. In response to paragraph 16, Twin City states that the terms, conditions and  
9 exclusions of the Policy speak for themselves. Twin City denies the allegations of  
10 paragraph 16 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.  
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12           17. In response to paragraph 17, Twin City states that the terms, conditions and  
13 exclusions of the Policy speak for themselves. Twin City denies the allegations of  
14 paragraph 16 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.  
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16           18. Paragraph 18 asserts legal conclusions to which no response is required. To  
17 the extent a response is required, Twin City denies the allegations of paragraph 18.  
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19           19. The allegations of Paragraph 19 are not directed at Twin City, and therefore  
20 no response is required. To the extent a response is required, Twin City denies the  
21 allegations of paragraph 19.

22           20. The allegations of Paragraph 20 are not directed at Twin City, and therefore  
23 no response is required. To the extent a response is required, Twin City is without  
24 knowledge or information sufficient to form a belief as to the truth of the allegations of  
25 paragraph 20, and therefore denies same.  
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1           21.    The allegations of Paragraph 21 are not directed at Twin City, and therefore  
2 no response is required. To the extent a response is required, Twin City responds that any  
3 “guidance” issued by the CDC speaks for itself.  
4

5           22.    The allegations of Paragraph 22 are not directed at Twin City, and therefore  
6 no response is required. To the extent a response is required, Twin City is without  
7 knowledge or information sufficient to form a belief as to the truth of the allegations of  
8 paragraph 22, and therefore denies same.  
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10          23.    The allegations of Paragraph 23 are not directed at Twin City, and therefore  
11 no response is required. To the extent a response is required, Twin City is without  
12 knowledge or information sufficient to form a belief as to the truth of the allegations of  
13 paragraph 23, given their generality and vagueness, and therefore denies same.  
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15          24.    Twin City is without knowledge of information sufficient to form a belief as  
16 to the truth of the allegations of paragraph 24, and therefore denies same.  
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18          25.    Twin City is without knowledge of information sufficient to form a belief as  
19 to the truth of the allegations of paragraph 25, and therefore denies same.  
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21          26.    Twin City is without knowledge of information sufficient to form a belief as  
22 to the truth of the allegations of paragraph 26, and therefore denies same.  
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24          27.    Twin City is without knowledge of information sufficient to form a belief as  
25 to the truth of the allegations of paragraph 27, and therefore denies same.  
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27          28.    Twin City admits the allegations of paragraph 28.  
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          29.    Twin City is without knowledge or information sufficient to form a belief as  
to the truth of the allegations of paragraph 29, and therefore denies same.

1           30. In response to paragraph 30, Twin City states that any statements or  
2 comments by President Trump have no application or impact on the interpretation of the  
3 Policy, the terms, conditions and exclusions of which speak for themselves. Twin City  
4 denies the allegations of paragraph 30 to the extent that Plaintiff asserts that the statements  
5 or comments by President Trump somehow have application to its claim at issue or upon  
6 the interpretation of the Policy.  
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8           31. In response to paragraph 31, Twin City states that any statements or  
9 comments by President Trump have no application or impact on the interpretation of the  
10 Policy, the terms, conditions and exclusions of which speak for themselves. Twin City  
11 denies the allegations of paragraph 31 to the extent that Plaintiff asserts that the statements  
12 or comments by President Trump somehow have application to its claim at issue or upon  
13 the interpretation of the Policy.  
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15           32. Paragraph 32 calls for legal conclusions to which no response is required.  
16 To the extent a response is required, Twin City denies the allegations of paragraph 32.  
17 Twin City further responds that any “Orders and proclamations” have no application or  
18 impact on the interpretation of the Policy, the terms, conditions and exclusions of which  
19 speak for themselves.  
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21           33. Twin City is without knowledge or information sufficient to form a belief as  
22 to the truth of the allegations of paragraph 33, and therefore denies same.  
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24           34. Twin City is without knowledge or information sufficient to form a belief as  
25 to the truth of the allegations of paragraph 34, and therefore denies same.  
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1           35. Twin City is without knowledge or information sufficient to form a belief as  
2 to the truth of the allegations of paragraph 35, and therefore denies same.

3           36. Twin City is without knowledge or information sufficient to form a belief as  
4 to the truth of the allegations of paragraph 36, and therefore denies same.

5           37. Twin City is without knowledge or information sufficient to form a belief as  
6 to the truth of the allegations of paragraph 37, and therefore denies same.

7           38. Twin City denies the allegations of paragraph 38.

8           39. Twin City denies the allegations of paragraph 39, and further denies that  
9 Plaintiff is entitled to any of the requested relief.

10           40. In response to paragraph 40, Twin City realleges and reincorporates its  
11 responses to paragraphs 1-39 as if set forth fully herein.

12           41. Paragraph 41 calls for a legal conclusion to which no response is required.

13           42. Paragraph 42 asserts legal conclusions to which no response is required. To  
14 the extent a response is required, Twin City admits that Plaintiff seeks declaratory relief,  
15 but denies that Plaintiff is entitled to the relief requested, and further denies the remaining  
16 allegations of paragraph 42.

17           43. Paragraph 43 asserts legal conclusions to which no response is required. To  
18 the extent a response is required, Twin City admits that Plaintiff seeks declaratory relief,  
19 but denies that Plaintiff is entitled to the relief requested, and further denies the remaining  
20 allegations of paragraph 43.

21           44. Paragraph 44 asserts legal conclusions to which no response is required. To  
22 the extent a response is required, Twin City admits that Plaintiff seeks declaratory relief,  
23 but denies that Plaintiff is entitled to the relief requested, and further denies the remaining  
24 allegations of paragraph 43.

1 but denies that Plaintiff is entitled to the relief requested, and further denies the remaining  
2 allegations of paragraph 44.

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4 45. In response to paragraph 45, Twin City admits that Plaintiffs make a  
5 demand for damages and other relief, but deny that Plaintiffs are entitled to any of the  
6 relief requested in paragraph 45.

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8 46. Twin City denies that Plaintiff is entitled to any relief requested in  
9 Plaintiff's Prayer for Relief.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 (Failure to state a claim)

13 The Complaint fails to state a cause of action upon which relief may be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 (Virus Exclusion)

16 The Policy contains an exclusion titled "Exclusion – Fungi, Bacteria, And  
17 Viruses." Form SS 40 93 07 05 at 1. Plaintiff's claims are barred or limited, in whole or  
18 in part, to the extent that the alleged loss or damage, if any, is excluded by this exclusion.  
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20 **THIRD AFFIRMATIVE DEFENSE**

21 (Virus-Limited Additional Coverage-Limits)

22 The Policy contains a provision titled "Limited Coverage For 'Fungi', Wet Rot,  
23 Dry Rot, Bacteria and Virus." Form SS 40 93 07 05 at 2-3. Plaintiff's claims may be  
24 barred or limited, in whole or in part, by the time period and/or sub-limits applicable to  
25 the Limited Coverage for 'Fungi', Wet Rot, Dry Rot, Bacteria and Virus provision.  
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FOURTH AFFIRMATIVE DEFENSE  
(Comparative fault, waiver, estoppel, and unclean hands)

Plaintiff’s claims may be barred or limited, in whole or in part, by the doctrines of comparative fault, waiver, estoppel, and/or unclean hands.

FIFTH AFFIRMATIVE DEFENSE  
(Merger clause)

The Policy is the sole agreement between Plaintiff and Twin City, and Twin City did not breach any Policy terms.

SIXTH AFFIRMATIVE DEFENSE  
(Terms of the Policy are controlling)

Twin City’s obligations in the Policy are defined, limited, and controlled by the terms and conditions of the Policy, including, but not limited to, the coverages, limits, sub-limits, exclusions, endorsements, conditions, and all other terms set forth therein.

SEVENTH AFFIRMATIVE DEFENSE  
(Failure to comply with Policy)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to perform its obligations under the Policy.

EIGHTH AFFIRMATIVE DEFENSE  
(Losses not covered by Policy)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks relief for damages or losses not covered by the Policy.

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NINTH AFFIRMATIVE DEFENSE

(Other insurance)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent other insurance or contributing insurance is applicable to the alleged loss or damage.

TENTH AFFIRMATIVE DEFENSE

(Failure to exhaust other insurance coverage)

Plaintiff’s claims may be barred or limited, in whole or in part, because Plaintiff has not demonstrated exhaustion of coverage for losses under other more specific insurance policies.

ELEVENTH AFFIRMATIVE DEFENSE

(Deductibles, Sub-limits)

Plaintiff’s claims may be barred or limited, in whole or in part, by applicable deductibles, retentions, and/or limits and sub-limits (including per occurrence limits) contained in the Policy.

TWELFTH AFFIRMATIVE DEFENSE

(Outside Period of Restoration)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks to recover for loss incurred outside the Period of Restoration.

THIRTEENTH AFFIRMATIVE DEFENSE

(Law or Public Policy)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent coverage is excluded by express provisions of law or public policy.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Conditions precedent and subsequent)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that conditions precedent and subsequent to the availability of insurance coverage under the Policy have not been satisfied.

FIFTEENTH AFFIRMATIVE DEFENSE

(Offset)

Twin City’s obligation to Plaintiff, if any, is subject to offset for recoveries by Plaintiff from other persons or entities.

SIXTEENTH AFFIRMATIVE DEFENSE

(Valuation Clause)

Plaintiff’s claims may be limited, in whole or in part, by the valuation provisions in the Policy.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No “direct physical loss”)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent there is no direct physical loss of or direct physical damage to covered property.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No “direct physical loss” – Business Interruption)

Plaintiff’s claims may be barred or limited, in whole or in part, because the interruption to Plaintiff’s business, if any, was not due to the direct physical loss of or direct physical damage to property caused by or resulting from a covered cause of loss.

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NINETEENTH AFFIRMATIVE DEFENSE  
(Covered Cause of Loss)

Plaintiff’s claims may be barred or limited, in whole or in part, to the extent Plaintiff cannot demonstrate a Covered Cause of Loss, as defined in the Policy. Form SS 00 07 07 05 at 2.

TWENTIETH AFFIRMATIVE DEFENSE  
(Ordinance or Law-Limits)

The Policy contains an Additional Coverage provision for “Ordinance or Law.” Form SS 00 07 07 05 at 7-8. Plaintiffs’ claims may be barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Ordinance or Law provision.

TWENTY-FIRST AFFIRMATIVE DEFENSE  
(Pollution Exclusion)

The Policy contains an exclusion titled “Pollution.” Form SS 00 07 07 05 at 17-18. Plaintiffs’ claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Pollution exclusion.

TWENTY-SECOND AFFIRMATIVE DEFENSE  
(Consequential Losses Exclusion)

The Policy contains an exclusion titled “Consequential Losses.” Form SS 00 07 07 05 at 17. Plaintiffs’ claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damages, if any, are excluded by the Consequential Losses exclusion.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Civil Authority- Limits)

The Policy contains an Additional Coverage provision for “Civil Authority.” Form SS 00 07 07 05 at 11. Plaintiffs’ claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Civil Authority provision.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Business Income from Dependent Properties-Limits)

The Policy contains an Additional Coverage provision for “Business Income from Dependent Properties.” Form SS 00 07 07 05 at 11-12. Plaintiffs’ claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Business Income from Dependent Properties provision.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Extended Business Income-Limits)

The Policy contains an Additional Coverage provision for “Extended Business Income.” Form SS 00 07 07 05 at 11. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Extended Business Income provision.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Acts or Decisions)

The Policy contains an exclusion titled “Acts or Decisions.” (See Form SS 00 07 07 05 at 18). Plaintiff’s claims are barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Acts or Decisions exclusion.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No bad faith)

Plaintiff's claims may be barred or limited, in whole or in part, because Twin City has at all relevant times acted reasonably and in good faith.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No bad faith - Claim was properly handled)

Plaintiff's claims may be barred or limited, in whole or in part, because Twin City conducted a thorough investigation of all bases of Plaintiff's insurance claim.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(No bad faith - Reasonable grounds)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that Twin City had reasonable grounds to deny Plaintiff's insurance claim.

THIRTIETH AFFIRMATIVE DEFENSE

(Failure to mitigate)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to mitigate damages, if any. To the extent Plaintiff failed to take reasonable steps to mitigate Plaintiff's alleged damages, if any, Plaintiff should be denied any recovery in this action.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Reservation of future defenses)

Plaintiff's claims may be barred or limited, in whole or in part, by additional defenses that cannot now be articulated because of the generality of the pleadings, and other presently undeveloped information. Accordingly, Twin City reserves the right to supplement the foregoing defenses as this case progresses to the full extent permissible by law.

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THIRTY-SECOND AFFIRMATIVE DEFENSE  
(No “direct physical loss” – Business Interruption)

Plaintiff’s claims may be barred or limited, in whole or in part, because the interruption to Plaintiff’s business, if any, was not due to the direct physical loss of or direct physical damage to property caused by or resulting from a covered cause of loss.

THIRTY-THIRD AFFIRMATIVE DEFENSE  
(Two or More Coverages)

The Policy contains a General Condition titled "Insurance Under Two or More Coverages." Form SS 00 05 12 06 at 2. Plaintiff's claims may be limited, in whole or in part, to the extent the Insurance Under Two or More Coverages provision is applicable to the loss or damage.

**PRAYER FOR RELIEF**

WHEREFORE, based on the above answers and defenses, Twin City respectfully requests that the Court enter an order:

- i. denying Plaintiff the relief sought in the Complaint;
- ii. dismissing the Complaint in its entirety with prejudice;
- iii. awarding Defendant its costs and expenses, including its attorneys’ fees; and
- iv. awarding Defendant such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Twin City hereby requests a trial by jury on all issues so triable.

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DATED this 7th day of August, 2020.

JONES, SKELTON & HOCHULI, P.L.C.

By: /s/ Lori L. Voepel  
Donald L. Myles, Jr.  
Lori L. Voepel  
Jefferson T. Collins  
40 North Central Avenue, Suite 2700  
Phoenix, Arizona 85004  
Attorneys for Defendant Twin City Fire  
Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of August, 2020, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

/s/ Ginger Stahly