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

11 JDR Enterprises LLC,

12 Plaintiff,

13 v.

14 Sentinel Insurance Company Limited and The
Hartford Insurance Companies,

15 Defendant.
16

NO. CV-20-00270-TUC-JGZ

**DEFENDANT SENTINEL
INSURANCE COMPANY
LIMITED’S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF’S COMPLAINT**

17 Defendant Sentinel Insurance Company Limited (“Sentinel”), by undersigned counsel and
18 answering only on behalf of itself, hereby responds to Plaintiff’s Complaint as follows:¹

19 **PARTIES**²

20
21 Sentinel admits that it sold an insurance policy (the “Policy”) that is at issue in this
22 litigation to Plaintiff, and that Plaintiff seeks declaratory relief in this action. Sentinel denies that
23 Plaintiff is entitled to any relief whatsoever from Sentinel.

24 _____
25 ¹ Plaintiff has voluntarily dismissed without prejudice its claims against the other
named defendant in this action pursuant to Rule 41(a), Fed. R. Civ. P. See Dkt. #10.

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27 ² For ease of reference, this Answer uses the headings that Plaintiff included in the
28 Complaint. The use of such headings is not an admission by Sentinel of the truth of any
allegations contained in the headings. Sentinel denies any suggestions implied by the
headings.

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

3 Paragraph 3 calls for a legal conclusion to which no response is required. To the extent a
4 response is required, Sentinel denies the allegations of paragraph 3.

5 Paragraph 4 calls for a legal conclusion to which no response is required. To the extent a
6 response is required, Sentinel denies the allegations of paragraph 4.

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8 **JURISDICTION**

9 Paragraph 5 calls for a legal conclusion to which no response is required. To the extent a
10 response is required, Sentinel is without knowledge or information sufficient to form a belief as to
11 the truth of the allegations of paragraph 5, and therefore denies same.

12 Paragraph 6 calls for a legal conclusion to which no response is required. To the extent a
13 response is required, Sentinel admits that it does business in Arizona, and that it sold the Policy to
14 Plaintiff. The terms, conditions and exclusions of that policy speak for themselves. Sentinel
15 denies any remaining allegations of paragraph 6.

16 Paragraph 7 calls for a legal conclusion to which no response is required. To the extent a
17 response is required, Sentinel admits that it does business in Arizona, and that it sold the Policy to
18 Plaintiff. The terms, conditions and exclusions of that policy speak for themselves. Sentinel
19 denies any remaining allegations of paragraph 7.

20 Sentinel admits the allegations of the first and second sentences of paragraph 8 on
21 information and belief. Sentinel is without knowledge or information sufficient to form a belief
22 as to the truth of the remaining allegations of paragraph 8, and therefore denies same.

23 The allegations of paragraph 9 are not directed at Sentinel, and therefore no response is
24 required. To the extent a response is required, Sentinel responds that “Hartford” is a brand name
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1 only, did not issue any policy at issue in this litigation, and therefore is not a proper party in this
2 action. “Hartford” has been dismissed from this action.

3 Sentinel admits the allegations of paragraph 10.

4 Sentinel admits the allegations of the first and second sentences of paragraph 11,
5 answering only for itself. Sentinel denies the remaining allegations of paragraph 11 to the extent
6 they are inconsistent with the terms, conditions and exclusions of the Policy, which speak for
7 themselves. “Hartford” has been dismissed from this action.

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9 In response to paragraph 12, Sentinel admits that the referenced Policy is in effect. The
10 terms, conditions and exclusions of the Policy speak for themselves. Sentinel denies the
11 allegations of paragraph 12 to the extent that Plaintiff has misquoted or mis-characterized the
12 Policy.

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14 In response to paragraph 13, Sentinel admits that Plaintiff submitted a claim for coverage
15 to Sentinel, and that Sentinel sent a letter to Plaintiff denying Plaintiff’s claim on March 25, 2020.
16 The March 25, 2020 letter is a written document that speaks for itself. Sentinel denies the
17 allegations of paragraph 13 to the extent that plaintiff has misquoted or mis-characterized the
18 March 25, 2020 letter. Sentinel denies the remaining allegations of paragraph 13. “Hartford” has
19 been dismissed from this action.

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21 **FACTUAL BACKGROUND**

22 Paragraph 14 asserts legal conclusions to which no response is required. To the extent a
23 response is required, Sentinel admits that Plaintiff paid premiums for the Policy, the terms,
24 conditions and exclusions of which speak for themselves. Sentinel denies that Plaintiff is entitled
25 to coverage under the Policy for the claim at issue in this litigation.

1 In response to paragraph 15, Sentinel states that the terms, conditions and exclusions of
2 the Policy speak for themselves. Sentinel denies the allegations of paragraph 15 to the extent that
3 Plaintiff has misquoted or mis-characterized the Policy.

4 In response to paragraph 16, Sentinel states that the terms, conditions and exclusions of
5 the Policy speak for themselves. Sentinel denies the allegations of paragraph 16 to the extent that
6 Plaintiff has misquoted or mis-characterized the Policy.

7 Paragraph 17 asserts legal conclusions to which no response is required. To the extent a
8 response is required, Sentinel states that the terms, conditions and exclusions of the Policy speak
9 for themselves. Sentinel denies the allegations of paragraph 17 to the extent that Plaintiff has
10 misquoted or mis-characterized the Policy.

11 Sentinel denies the allegations of paragraph 18.

12 The allegations of paragraph 19 are not directed at Sentinel, and therefore no response is
13 required. To the extent a response is required, Sentinel denies the allegations of paragraph 19.

14 The allegations of paragraph 20 are not directed at Sentinel, and therefore no response is
15 required. To the extent a response is required, Sentinel is without knowledge or information
16 sufficient to form a belief as to the truth of the allegations of paragraph 20, and therefore denies
17 same.

18 The allegations of paragraph 21 are not directed at Sentinel, and therefore no response is
19 required. To the extent a response is required, Sentinel responds that any “guidance” issued by
20 the CDC speaks for itself.

21 The allegations of paragraph 22 are not directed at Sentinel, and therefore no response is
22 required. To the extent a response is required, Sentinel is without knowledge or information
23 sufficient to form a belief as to the truth of the allegations of paragraph 22, and therefore denies
24 same.

1 The allegations of paragraph 23 are not directed at Sentinel, and therefore no response is
2 required. To the extent a response is required, Sentinel is without knowledge or information
3 sufficient to form a belief as to the truth of the allegations of paragraph 23, given their generality
4 and vagueness, and therefore denies same.

5 Sentinel is without knowledge of information sufficient to form a belief as to the truth of
6 the allegations of paragraph 24, and therefore denies same.

7 Sentinel is without knowledge of information sufficient to form a belief as to the truth of
8 the allegations of paragraph 25, and therefore denies same.

9 Sentinel is without knowledge of information sufficient to form a belief as to the truth of
10 the allegations of paragraph 26, and therefore denies same.

11 Sentinel is without knowledge of information sufficient to form a belief as to the truth of
12 the allegations of paragraph 27, and therefore denies same.

13 Sentinel admits that Plaintiff submitted a claim for coverage to Sentinel on March 23,
14 2020. Sentinel is without knowledge of information sufficient to form a belief as to the truth of
15 the remaining allegations of paragraph 28, and therefore denies same.

16 In response to paragraph 29, Sentinel states that any statements or comments by President
17 Trump have no application or impact on the interpretation of the Policy, the terms, conditions and
18 exclusions of which speak for themselves. Sentinel denies the allegations of paragraph 29 to the
19 extent that Plaintiff asserts that the statements or comments by President Trump somehow have
20 application to its claim at issue or upon the interpretation of the Policy.

21 In response to paragraph 30, Sentinel states that any statements or comments by President
22 Trump have no application or impact on the interpretation of the Policy, the terms, conditions and
23 exclusions of which speak for themselves. Sentinel denies the allegations of paragraph 30 to the

1 extent that Plaintiff asserts that the statements or comments by President Trump somehow have
2 application to its claim at issue or upon the interpretation of the Policy.

3 Paragraph 31 calls for legal conclusions to which no response is required. To the extent a
4 response is required, Sentinel denies the allegations of paragraph 31.

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6 Sentinel is without knowledge or information sufficient to form a belief as to the truth of
7 the allegations of paragraph 32, and therefore denies same.

8 Sentinel is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations of paragraph 33, and therefore denies same.

10 Sentinel is without knowledge or information sufficient to form a belief as to the truth of
11 the allegations of paragraph 34, and therefore denies same.

12 Sentinel is without knowledge or information sufficient to form a belief as to the truth of
13 the allegations of paragraph 35, and therefore denies same.

14 Sentinel is without knowledge or information sufficient to form a belief as to the truth of
15 the allegations of paragraph 36, and therefore denies same.

16 Sentinel denies the allegations of paragraph 37. "Hartford" has been dismissed from this
17 action.

18 Sentinel denies the allegations of paragraph 38, and further denies that Plaintiff is entitled
19 to any of the requested relief.

20 In response to paragraph 39, Sentinel realleges and reincorporates its responses to
21 paragraphs 1-38 as if set forth fully herein.

22 Paragraph 40 calls for a legal conclusion to which no response is required. To the extent a
23 response is required, Sentinel responds that the Declaratory Judgment Act, 28 U.S.C. § 2201(a),
24 speaks for itself.
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1 Paragraph 41 asserts legal conclusions to which no response is required. To the extent a
2 response is required, Sentinel admits that Plaintiff seeks declaratory relief, but denies that
3 Plaintiff is entitled to the relief requested, and further denies the remaining allegations of
4 paragraph 41.

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6 Paragraph 42 asserts legal conclusions to which no response is required. To the extent a
7 response is required, Sentinel admits that Plaintiff seeks declaratory relief, but denies that
8 Plaintiff is entitled to the relief requested, and further denies the remaining allegations of
9 paragraph 42.

10 Paragraph 43 asserts legal conclusions to which no response is required. To the extent a
11 response is required, Sentinel admits that Plaintiff seeks declaratory relief, but denies that
12 Plaintiff is entitled to the relief requested, and further denies the remaining allegations of
13 paragraph 43.

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15 In response to paragraph 44, Sentinel admits that Plaintiff makes a demand for damages
16 and other relief, but denies that Plaintiff is entitled to any of the relief requested in paragraph 44.

17 Sentinel denies that Plaintiff is entitled to any relief requested in Plaintiff's Prayer for
18 Relief.

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20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

(Failure to state a claim)

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

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24 **SECOND AFFIRMATIVE DEFENSE**

(Virus Exclusion)

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

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THIRD AFFIRMATIVE DEFENSE
(Virus-Limited Additional Coverage-Limits)

The Policy contains a provision titled “Limited Coverage For ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus.” Form SS 40 93 07 05 at 2-3. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Limited Coverage for ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus provision.

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 Sentinel, and Sentinel did not breach any Policy terms.

SIXTH AFFIRMATIVE DEFENSE
(Terms of the Policy are controlling)

Sentinel’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.

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)

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

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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.

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. Plaintiff’s 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. Plaintiff’s 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.

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TWENTY-SECOND AFFIRMATIVE DEFENSE
(Consequential Losses Exclusion)

The Policy contains an exclusion titled “Consequential Losses.” Form SS 00 07 07 05 at 17. Plaintiff’s 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.

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. 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 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. 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 Business Income from Dependent Properties provision.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Two or More Coverages)

The Policy contains a General Condition titled “Insurance Under Two or More Coverages.” Form SS 00 05 10 08 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.

TWENTY-SIXTH 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.

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TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Acts or Decisions)

The Policy contains an exclusion titled “Acts or Decisions.” 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.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No bad faith)

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

(No bad faith - Claim was properly handled)

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

THIRTIETH AFFIRMATIVE DEFENSE

(No bad faith - Reasonable grounds)

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

THIRTY-FIRST 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-SECOND 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, Sentinel reserves the right to supplement the foregoing defenses as this case progresses to the full extent permissible by law.

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PRAYER FOR RELIEF

WHEREFORE, based on the above answers and defenses, Sentinel 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.

DATED this 24th day of August, 2020.

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

By: /s/ Lori L. Voepel
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Sentinel Insurance Company

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th 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