

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

LEAL, INC.,

Plaintiff,

vs.

TWIN CITY FIRE INSURANCE
COMPANY,

Defendant.

No. 3:20-cv-00917-AVC

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT
TO PLAINTIFF'S COMPLAINT

Twin City Fire Insurance Company ("Twin City"), by and through its counsel, hereby answers and responds to the Complaint ("Complaint") of Plaintiff Leal, Inc. ("Plaintiff").

Plaintiff's Complaint includes a prefatory paragraph. To the extent a response is required, Twin City admits that Plaintiff filed the Complaint but denies that Plaintiff is entitled to any relief whatsoever from Twin City.

Nature of Case¹

1. This is a civil class action for declaratory relief and breach of contract arising from Plaintiff's contract of insurance with the Defendant.

ANSWER: Twin City admits that Twin City and Plaintiff entered into a contract of insurance, Business Owner's Policy No. 33 SBA AD3737 effective June 17, 2019 through June 17, 2020 (the "Policy"), and that Plaintiff seeks declaratory relief in this action. Twin City denies that Plaintiff or the putative Class are entitled to any relief whatsoever from Twin City.

¹ For ease of reference, this Answer uses the headings and subheadings that Plaintiff included in its Complaint. The use of such headings is not an admission by Twin City of the truth of any allegations contained in the headings or subheadings. Twin City denies any suggestions implied by the headings and subheadings.

2. At the direction of local, state, and/or federal authorities, Plaintiff was forced to temporarily close its retail clothing store beginning on March 23, 2020, causing an interruption to and loss of Plaintiff's business income.

ANSWER: Twin City admits that Plaintiff claims that the directions of local, state, and/or federal authorities required it to temporarily close its retail clothing store beginning on March 23, 2020. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 2 as stated, and therefore denies same.

3. Plaintiff and the Class purchased and paid for an "all-risk" Commercial Property Coverage insurance policy from Defendant, which provides broad property insurance coverage for all non-excluded, lost business income, including the losses asserted here.

ANSWER: Paragraph 3 states legal conclusions to which no response is required. To the extent a response is required, Twin City states that the terms of the Policy speak for themselves. To the extent the allegations of Paragraph 3 are inconsistent with the terms of the Policy, Twin City denies them.

4. Plaintiff submitted timely notice of its claim to Defendant, but Defendant has refused to provide the purchased coverage to its insured, and has denied Plaintiff's claim for benefits under the policy.

ANSWER: Twin City admits that Plaintiff submitted a claim for coverage to Twin City in or around April, 2020. Twin City admits that it sent a letter to Plaintiff denying Plaintiff's claim on April 22, 2020, and refers to the letter for its contents. To the extent the allegations of Paragraph 4 are inconsistent with the content of the letter, Twin City denies them. Twin City denies the remaining allegations of Paragraph 4.

5. Defendant has similarly refused to, or will refuse to, honor its obligations under the "all-risk" policy(ies) purchased by Plaintiff and the other members of the putative Class of insureds.

ANSWER: Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, Twin City admits that it sent a letter to Plaintiff denying Plaintiff's claim on April 22, 2020, and refers to the letter for its

contents. To the extent the allegations of Paragraph 5 are inconsistent with the content of the letter, Twin City denies them. Twin City denies the remaining allegations of Paragraph 5.

The Parties

6. Plaintiff, Leal, Inc., is an Ohio corporation headquartered in Upper Arlington, Ohio, and is a citizen of Ohio. Plaintiff operates a boutique clothing store, located at 2128 Arlington Ave, Columbus, Ohio (“Covered Property”).

ANSWER: Upon information and belief, Twin City admits the allegations of Paragraph 6.

7. Defendant, THE HARTFORD FINANCIAL SERVICES GROUP, INC. d/b/a/ THE HARTFORD (“THE HARTFORD”) is a Delaware corporation with its principal place of business in Hartford, Connecticut, and is a citizen of Connecticut. It owns subsidiaries, directly and indirectly, that issue, among other things, commercial property insurance.

ANSWER: Twin City admits the allegations of Paragraph 7, but denies that The Hartford Financial Services Group, Inc. (“HFSG”) is a proper party to this action. HFSG is a financial holding company for a group of insurance and non-insurance subsidiaries. HFSG does not issue policies or administer claims on policies. Further, HFSG has no contractual relationship to Plaintiff.

8. Defendant TWIN CITY FIRE INSURANCE COMPANY (“TWIN CITY”) is a Indiana corporation with its principal place of business in Indianapolis, Indiana, and is a citizen of Indiana. TWIN CITY is a subsidiary of THE HARTFORD and a member of The Hartford group of insurance companies.

ANSWER: Twin City admits that Twin City is an Indiana corporation and that Twin City is a citizen of Indiana. Twin City states that that Twin City is a wholly-owned subsidiary of Hartford Fire Insurance Company, which is itself a wholly-owned subsidiary of HFSG. Twin City denies the remaining allegations of Paragraph 8. Twin City’s principal place of business is Hartford, Connecticut.

9. According to Defendants' 10-K filed with the Securities and Exchange Commission for the fiscal year ended on December 31, 2019, THE HARTFORD had earned premiums of approximately \$8.3 Billion.

ANSWER: In response to the allegations of Paragraph 9, Twin City states that HFSG's 10-K speaks for itself. To the extent the allegations of Paragraph 9 are inconsistent with that document, Twin City denies them.

Jurisdiction

10. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), the Class Action Fairness Act, which affords federal courts with original jurisdiction over cases where any member of the plaintiff class is a citizen of a state different from any defendant (*i.e.*, so-called "minimum diversity of citizenship,") and where the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. Here, there exists minimal diversity of citizenship because Plaintiff (as well as some members of the Class) and Defendant are citizens of different states, and the aggregated claims of the putative Class members exceed \$5,000,000, exclusive of interest and costs.

ANSWER: Paragraph 10 states legal conclusions to which no response is required. To the extent a response is required, Twin City does not contest that this Court has subject matter jurisdiction under 28 U.S.C. §1332(d), but denies that this case is appropriate for class certification, or that Plaintiff and the alleged class are entitled to any relief. It denies the remaining allegations of Paragraph 10.

11. The Court has personal jurisdiction over Defendant because at all relevant times it has engaged in substantial business activities in Connecticut. At all relevant times, Defendant transacted, solicited, and conducted business in Connecticut through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Connecticut. Additionally, Defendant THE HARTFORD is a citizen of Connecticut.

ANSWER: Paragraph 11 states legal conclusions to which no response is required. To the extent a response is required, Twin City admits that the Court has personal

jurisdiction over Twin City because its principal place of business is in Hartford, Connecticut, and admits that it engages in business activities in Connecticut, but denies that the Court has personal jurisdiction over Twin City because it has engaged in substantial business activities in Connecticut. Twin City denies that HFSG is a proper party to this action. HFSG is a financial holding company for a group of insurance and non-insurance subsidiaries. HFSG does not issue policies or administer claims on policies. Further, HFSG has no contractual relationship to Plaintiff.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, in this District.

ANSWER: Paragraph 12 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 12.

Factual Background

Plaintiff Purchased an “All-Risk” Policy of Property Insurance That Broadly Provides Coverage for Loss of Business Income, Among Other Things

13. Plaintiff purchased a contract of insurance from Defendant, whereby Plaintiff agreed to make payments (in the form of premiums) to Defendant in exchange for Defendant’s promise to indemnify Plaintiff for losses at the Covered Property, including, but not limited to, business income losses.

ANSWER: Twin City admits that Twin City and Plaintiff entered into the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 13 are inconsistent with the terms of the Policy, Twin City denies them. Twin City denies the remaining allegations of Paragraph 13.

14. Plaintiff’s contract of insurance with Defendant bears Policy Number 33 SBA AD3737 SA (the “Policy”) and is effective for the period of June 17, 2019 to June 17, 2020 (the “Policy Term”). The Policy is attached hereto as Exhibit A.

ANSWER: Twin City admits the allegations of Paragraph 14.

15. Plaintiff paid all premiums owed to Defendant under the Policy, and Defendant accepted all such premiums from Plaintiff.

ANSWER: Twin City admits the allegations of Paragraph 15.

16. The Policy is a form policy issued by Defendant.

ANSWER: Twin City admits that it issued the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 16 are inconsistent with the terms of the Policy, Twin City denies them. Twin City denies the remaining allegations of Paragraph 16.

17. The Policy is an “all-risk” policy, which provides the broadest property insurance coverage available.

ANSWER: In response to the allegations of Paragraph 17, Twin City states that the terms of the Policy speak for themselves. To the extent the allegations of Paragraph 17 are inconsistent with the terms of the Policy, Twin City denies them. Twin City denies the remaining allegations of Paragraph 17.

18. The Policy provides coverage for “direct physical loss of or physical damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss.”

ANSWER: Twin City admits that Paragraph 18 contains an incomplete and inaccurate quote from the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 18 are inconsistent with the terms of the Policy, Twin City denies them.

19. The Policy does not define the phrase “direct physical loss of or physical damage to”

ANSWER: Twin City admits the allegations of Paragraph 19.

20. However, the use of the disjunctive “or” in the phrase “direct physical loss of or physical damage to” means that coverage is triggered if either a physical loss of property or damage to property occurs. The concepts are separate and distinct and cannot be conflated.

ANSWER: Paragraph 20 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 20.

21. Physical loss of, or physical damage to, property may be reasonably interpreted to occur when a covered cause of loss threatens or renders property unusable or unsuitable for its intended purpose or unsafe for normal human occupancy and/or continued use.

ANSWER: Paragraph 21 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 21.

22. The Policy provides Plaintiff with, inter alia, various business income and extra expense coverages during the Policy Term.

ANSWER: Twin City admits that Twin City and Plaintiff entered into the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 22 are inconsistent with the terms of the Policy, Twin City denies them.

23. Under the Policy, Defendant agrees to pay: **“the actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’ The suspension must be caused by direct physical loss of or physical damage to property at the ‘scheduled premises’ . . . caused by or resulting from a Covered Cause of Loss”** The Policy describes the “schedule premises” as “2128 Arlington Ave; Columbus, OH 43221,” the Covered Property, and coverage is listed for “Business Income and Extra Expense Coverage with a Limit of Insurance of “12 Months Actual Loss Sustained.”

ANSWER: Paragraph 23 contains incomplete and in some cases inaccurate quotations from the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 23 are inconsistent with the terms of the Policy, Twin City denies them.

24. Additional coverage is provided under the Policy for business income losses resulting from an “order of a civil authority” which prohibits access to the Covered Property, related to a “Covered Cause of Loss” at property other than the Covered Property: **“This insurance is extended to apply to the actual loss of Business Income you sustain when**

access to your ‘scheduled premises’ is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your ‘scheduled premises’.”

ANSWER: Twin City admits that Paragraph 24 contains incomplete quotations from the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 24 are inconsistent with the terms of the Policy, Twin City denies them.

25. The Policy also provides coverage for “actual loss of Business Income you sustain due to physical loss or physical damage at the premises of a Dependent Property caused by or resulting from a Covered Cause of Loss.” The Policy defines “Dependent Property” as: “[P]roperty owned, leased or operated by others whom you depend on to: a) deliver materials or services to you or to others for your account . . . ; b) Accept your products or services; c) Manufacture your products for delivery to your customers under contract of sale; or d) Attract customers to your business premises.”

ANSWER: Twin City admits that Paragraph 25 contains incomplete and in some cases inaccurate quotations from the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 25 are inconsistent with the terms of the Policy, Twin City denies them.

26. Members of the Class also purchased a policy of insurance from Defendant providing for the same business income coverage, and using the same form policy provisions.

ANSWER: Twin City admits that Plaintiff purport to bring this action on behalf of themselves and others similarly situated. Twin City denies the remaining allegations of Paragraph 26 and denies that certification of any class is proper under Rule 23. Twin City denies the remaining allegations of Paragraph 26.

In Response to Covid-19, Ohio and Other State Governments Issue Sweeping Orders Shutting Down “Non-Essential” Businesses

27. Severe acute respiratory syndrome coronavirus 2 (“COVID-19”) has spread, and continues to spread, rapidly across the United States and has been declared a pandemic by the

World Health Organization. See <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center> (last accessed May 6, 2020).

ANSWER: Twin City states that the cited declaration by the World Health Organization speaks for itself, and refers to the declaration for its contents. To the extent the allegations of Paragraph 27 are inconsistent with the declaration, Twin City denies them. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations of Paragraph 27 as stated, and therefore denies same.

28. The global COVID-19 pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials for many days.

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 28 as stated, and therefore denies same.

29. According to a study published in *The New England Journal of Medicine*, COVID-19 is widely accepted as a cause of real physical loss and damage. It remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last accessed May 6, 2020).

ANSWER: Twin City denies the first sentence of Paragraph 29. It is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations of Paragraph 29 as stated, and therefore denies same.

30. Another study, published in the *Journal of Hospital Infection*, found: “Human coronaviruses can remain infectious on inanimate surfaces at room temperature for up to 9 days. At a temperature of 30°C or more the duration of persistence is shorter.” See <https://www.inverse.com/science/coronavirus-4-studies-explain-how-covid-19-sticks-to-surfaces> (last accessed May 6, 2020).

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 30 as stated, and therefore denies same.

31. In response to the COVID-19 public health emergency, on March 9, 2020, the Governor of Ohio, Mike DeWine, declared a “State of Emergency” throughout the State of Ohio to control ingress and egress to and from property within the state and the movement of persons within it.

ANSWER: Twin City admits that Governor DeWine made an emergency proclamation on March 9, 2020, the text of which speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations of Paragraph 31 as stated, and therefore denies same.

32. On March 22, 2020, the Director of the Ohio Department of Health issued an Order closing all non-essential businesses within the State of Ohio, including Plaintiff’s business. Specifically, the Executive Order, which became effective as of 11:59 p.m. on March 23, mandated that “[a]ll businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State”
See Amy Acton, “Director’s Stay at Home Order,” (Mar. 22, 2020)
https://content.govdelivery.com/attachments/OHOOD/2020/03/22/file_attachments/1407840/Stay%20Home%20Order.pdf (“**Ohio Executive Order**”).

ANSWER: Twin City admits that the Director of the Ohio Department of Health issued a Stay at Home order, the text of which speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations of Paragraph 32 as stated, and therefore denies same.

33. The Ohio Executive Order also mandated that “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this Order.”

ANSWER: Twin City admits that the Director of the Ohio Department of Health issued a Stay at Home order, the text of which speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations of Paragraph 33 as stated, and therefore denies same.

34. Most other states, including those in which the putative Class members reside and/or do business, have issued similar compulsory shut-down orders for “non-essential” businesses, or businesses deemed not to be “life sustaining.”

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 34 as stated, and therefore denies same.

35. The closure of all “non-life-sustaining businesses” evidences an awareness on the part of both state and local governments that COVID-19 causes loss of or damage to property. This is particularly true in places where business is conducted, as the contact and interaction necessarily incident to such businesses causes a heightened risk of the property becoming contaminated.

ANSWER: Twin City denies the allegations of Paragraph 35.

36. For example, a New York City Executive Order entered on March 16, 2020 specifically acknowledged that: “[COVID-19] physically is causing property loss and damage.” See <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf> (last accessed May 6, 2020).

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 36 as stated, and therefore denies same.

37. Similarly, in a March 16, 2020 proclamation, the City of New Orleans acknowledged COVID-19’s “propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain

circumstances.” See <https://nola.gov/mayor/executive-orders/emergency-declarations/03162020-mayoral-proclamation-to-promulgate-emergency-orders-during-the-state-of-emergency-due-to-co/> (last accessed May 6, 2020).

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 37 as stated, and therefore denies same.

38. In upholding the Governor of Pennsylvania’s Proclamation of a state-wide disaster and the Executive Orders mandating the closure of businesses within Pennsylvania, the Pennsylvania Supreme Court noted the significant risk of the spread of the COVID-19 virus, even in locations where the disease has not been detected:

Covid-19 does not spread because the virus is “at” a particular location. Instead it spreads because of person-to-person contact, as it has an incubation period of up to fourteen days and that one in four carriers of the virus are asymptomatic. Respondents’ Brief at 4 (citing Coronavirus Disease 2019, “Symptoms,” CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last accessed 4/9/2020)). The virus can live on surfaces for up to four days and can remain in the air within confined areas and structures. *Id.* (citing National Institutes of Health, “Study suggests new coronavirus may remain on surfaces for days,” (Mar. 27, 2020) <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last accessed 4/9/2020) and Joshua Rabinowitz and Caroline Bartman, “These Coronavirus Exposures Might be the Most Dangerous,” *The New York Times* (Apr. 1, 2020) <https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html>).

Friends of DeVito v. Wolf, ___ A. 3d ___, 2020 WL 1847100, *15-16 (Pa. April 13, 2020).

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 38 as stated, and therefore denies same.

39. Because the COVID-19 virus can survive on surfaces for up to fourteen days, the Pennsylvania Supreme Court ultimately concluded that “any location . . . where two or more people can congregate is within the disaster area.”

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 39 as stated, and therefore denies same.

Plaintiff Submits a Claim Under Its “All-Risk” Policy, and Defendant Wrongly Fails and Refuses To Honor Its Obligations Respecting Same

40. As a result of the orders governing Plaintiff, the Covered Property closed on March 23, 2020 and remained completely closed until May 12, 2020 at which time it has been able to resume significantly limited operations, which are well short of Plaintiff’s normal operating environment.

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 40 as stated, and therefore denies same.

41. Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 41 as stated, and therefore denies same.

42. On or around April 15, 2020 Plaintiff provided notice to Defendant of its claim for the interruption to its business.

ANSWER: Twin City denies the allegation in Paragraph 42. Plaintiff provided notice of a claim for coverage to Twin City in or around April, 2020

43. Defendant denied Plaintiff’s claim by letter dated April 22, 2020. The letter is attached hereto as **Exhibit B**. In its denial letter, Defendant posited that (i) Plaintiff’s losses do not arise from “property damage at your place of business or in the immediate area” (ignoring that coverage can be triggered under the Policy by either “physical loss of” or “damage to”

property); and (ii) Plaintiff's claim is barred by the policy's so-called "Virus Exclusion" set forth in the Policy.

ANSWER: Twin City states that Plaintiff filed its claim in or around April, 2020. Twin City denies the remaining allegations of Paragraph 43.

Contrary To Defendant's Position, Plaintiff's Losses Arise From Direct Physical Loss Or Damage

44. Plaintiff's Covered Property suffered "direct physical loss or damage" due to the Ohio Executive Order (and other local governmental orders) mandating that Plaintiff discontinue its primary use of the Covered Property as a clothing store. The Ohio Executive Order, in and of itself, constitutes a Covered Cause of Loss within the meaning of the Policy.

ANSWER: Paragraph 44 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 44.

45. Alternatively, and to the extent the Ohio Executive Order does not constitute a Covered Cause of Loss within the meaning of the Policy, the COVID-19 pandemic and the ubiquitous nature of the COVID-19 virus caused a direct physical loss of or damage to Plaintiff's Covered Property.

ANSWER: Paragraph 45 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 45.

46. Further, and as an additional basis for coverage under the Policy, the ubiquitous nature of the COVID-19 virus caused direct physical loss of or damage to property other than Plaintiff's Covered Property, and such loss or damage resulted in an "order by civil authority" prohibiting access to Plaintiff's Covered Property, within the meaning of the Policy.

ANSWER: Paragraph 46 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 46.

47. Additionally, Plaintiff's "Dependent Property" suffered direct physical loss or damage (as a result of the governmental shutdown orders or, alternatively, the ubiquitous nature of the COVID-19 virus), resulting in lost business income to Plaintiff, within the meaning of the Policy.

ANSWER: Paragraph 47 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 47.

Contrary To Defendant's Position, The Virus Exclusion Does Not Apply

48. The Policy includes a coverage enhancement titled "Limited Fungi, Bacteria or Virus Coverage." This enhancement adds a coverage exclusion under the Policy for "Fungi, Wet Rot, Dry Rot, Bacteria and Virus," which purports to apply to "loss or damage caused directly or indirectly by . . . [p]resence, growth, proliferation, spread or any activity of 'fungi', wet rot, dry rot, bacteria or virus." (the "Virus Exclusion").

ANSWER: Twin City admits that Paragraph 48 contains an incomplete quotation from the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 48 are inconsistent with the terms of the Policy, Twin City denies them.

49. The Virus Exclusion does not preclude coverage for Plaintiff's claim under the Policy.

ANSWER: Paragraph 49 states a legal conclusion to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 49.

50. First, to the extent that the governmental orders, in and of themselves, constitute direct physical loss of or damage to Plaintiff's Covered Property, the Virus Exclusion simply does not apply.

ANSWER: Paragraph 50 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 50.

51. Further, to the extent that the coverage under the policy derives from direct physical loss or damage caused by the COVID-19 virus, either to Plaintiff's Covered Property or to property other than Plaintiff's Covered property (including Plaintiff's Dependent Property), Defendant should be estopped from enforcing the Virus Exclusion, on principles of regulatory estoppel, as well as general public policy.

ANSWER: Paragraph 51 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 51.

52. In 2006, two insurance industry trade groups, Insurance Services Office, Inc. ("ISO") and the American Association of Insurance Services ("AAIS"), represented hundreds of insurers in a national effort to seek approval from state insurance regulators for the adoption of various virus exclusion provisions.

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 52 as stated, and therefore denies same.

53. In their filings with the various state regulators (including Ohio), on behalf of the insurers, ISO and AAIS represented that the adoption of the virus exclusion provisions was only meant to "clarify" that coverage for "disease-causing agents" has never been in effect, and was never intended to be included, in the property policies.

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 53 as stated, and therefore denies same.

54. Specifically, in its "ISO Circular" dated July 6, 2006 and entitled "New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria," ISO represented to the state regulatory bodies that:

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the

specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage to create sources of recovery for such losses, contrary to policy intent.

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 54 as stated, and therefore denies same.

55. Similarly, AAIS, in its “Filing Memorandum” in support of the adoption of virus exclusion provisions, represented:

Property policies have not been, nor were they intended to be, a source of recovery for loss, cost or expense caused by disease-causing agents. With the possibility of a pandemic, there is concern that claims may result in efforts to expand coverage to create recovery for loss where no coverage was originally intended . . .

This endorsement clarifies that loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress is excluded . . .

ANSWER: Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations of Paragraph 55 as stated, and therefore denies same.

56. The foregoing representations made by the insurance industry were false. By 2006, the time of the state applications to approve the Virus Exclusion, courts had repeatedly found that property insurance policies covered claims involving disease-causing agents, and had held on numerous occasions that any condition making it impossible to use property for its intended use constituted “physical loss or damage to such property.”

ANSWER: Twin City denies that it made any misrepresentations. It is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations of Paragraph 56 as stated, and therefore denies same.

57. The foregoing assertions by the insurance industry (including Defendant), made to obtain regulatory approval of the virus exclusion provisions, were in fact misrepresentations and for this reason, among other public policy concerns, insurers should now be estopped from enforcing the Virus Exclusion to avoid coverage of claims related to the COVID-19 pandemic.

ANSWER: Paragraph 57 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies that it made any misrepresentations, and denies each and every of the allegations of Paragraph 57.

58. In securing approval for the adoption of the virus exclusions by misrepresenting to the state regulators that such provisions would not change the scope of coverage, the insurance industry effectively narrowed the scope of the insuring agreement without a commensurate reduction in premiums charged. Under the doctrine of regulatory estoppel, the Court should not permit the insurance industry to benefit from this type of duplicitous conduct before the state regulators.

ANSWER: Paragraph 58 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies it made any misrepresentation, and denies each and every of the allegations of Paragraph 58.

59. Upon information and belief, Defendant has denied, or will deny, other Class members' claims for coverage under their "all-risk" property damage policies issued by Defendant.

ANSWER: Twin City admits that Plaintiff purport to bring this action on behalf of itself and others similarly situated. Twin City denies the remaining allegations of Paragraph 59 and denies that certification of any class is proper under Rule 23.

60. Defendant's denial of lost business income claims has left Plaintiff and the Class without vital coverage acquired to ensure the survival of their businesses during this temporary suspension of operations.

ANSWER: Twin City admits that Plaintiff purport to bring this action on behalf of themselves and others similarly situated. Twin City denies that certification of any class is proper under Rule 23. Twin City denies the remaining allegations of Paragraph 60.

CLASS ACTION ALLEGATIONS

61. Plaintiff brings this action individually and as a class action on behalf of the Class, defined as follows:

All policyholders in the United States who purchased commercial property coverage, including business or interruption income (and extra expense) coverage from Defendant and who have been denied coverage under their policy for lost business income after being ordered by a governmental entity, in response to the COVID-19 pandemic, to shut down or otherwise curtail or limit in any way their business operations.

ANSWER: Twin City admits that Plaintiff purports to bring this case on behalf of a class as defined in the Complaint. Twin City denies that certification of any class is proper under Rule 23. It denies that it has improperly denied coverage to Plaintiff or members of the putative class.

62. Excluded from the Class are Defendant and its officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class are any judicial officer presiding over this matter, members of their immediate family, and members of their staff.

ANSWER: Twin City admits that Plaintiff purports to bring this case on behalf of a class as defined in the Complaint and that Paragraph 62 seeks to exclude certain persons from the class definition. Twin City denies that certification of any class is proper under Rule 23.

63. The members of the Class are so numerous and geographically dispersed that joinder would be impracticable. Class members are readily identifiable from information and records in Defendant's possession, custody, or control.

ANSWER: Paragraph 63 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 63 and denies that class treatment under Rule 23 is appropriate in this case.

64. There is a well-defined community of interest in the common questions of law and fact affecting the Class members. These common legal and factual questions include, but are not limited to:

- a. whether Defendant owed coverage to Plaintiff and the Class;
- b. whether any exclusions to coverage apply;
- c. whether Plaintiff and members of the Class are entitled to damages and, if so, the measure of such damages; and
- d. whether Plaintiff and members of the Class are entitled to equitable, declaratory and/or other relief, and if so, the nature of such relief.

ANSWER: Paragraph 64 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 64 and denies that class treatment under Rule 23 is appropriate in this case.

65. Plaintiff's claims are typical of the claims of the absent class members and have a common origin and basis. Plaintiff and absent Class members are all injured by Defendant's refusal to afford the purchased coverage. Plaintiff's claims arise from the same practices and course of conduct giving rise to the claims of the absent Class members and are based on the same legal theories, namely the refusal to provide insurance coverage for the loss. If prosecuted individually, the claims of each Class member would necessarily rely upon the same material facts and legal theories and seek the same relief. Plaintiff's claims arise from the same practices and course of conduct that give rise to the other Class members' claims and are based on the same legal theories.

ANSWER: Paragraph 65 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 65 and denies that class treatment under Rule 23 is appropriate in this case.

66. Plaintiff will fully and adequately assert and protect the interests of the absent Class members and has retained Class counsel who are experienced and qualified in prosecuting class action cases similar to this one. Neither Plaintiff nor Plaintiff's attorneys has any interests contrary to or conflicting with the interests of absent Class members.

ANSWER: Paragraph 66 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 66 and denies that class treatment under Rule 23 is appropriate in this case.

67. The questions of law and fact common to all Class members predominate over any questions affecting only individual class members.

ANSWER: Paragraph 67 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 67 and denies that class treatment under Rule 23 is appropriate in this case.

68. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the absent Class members' claims is economically infeasible and procedurally impracticable. Class members share the same factual and legal issues and litigating the claims together will prevent varying, inconsistent, or contradictory judgments, and will prevent delay and expense to all parties and the court system through litigating multiple trials on the same legal and factual issues. Class treatment will also permit Class members to litigate their claims where it would otherwise be too expensive or inefficient to do so. Plaintiff knows of no difficulties in managing this action that would preclude its maintenance as a class action.

ANSWER: Paragraph 68 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 68 and denies that class treatment under Rule 23 is appropriate in this case.

69. Additionally, the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class

members that would establish incompatible standards of conduct for Defendant. Such individual actions would create a risk of adjudications that would be dispositive of the interests of other Class members and impair their interests. Defendant, through its uniform conduct, acted or refused to act on grounds generally applicable to the Class as a whole, making declaratory relief appropriate to the Class as a whole.

ANSWER: Paragraph 69 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 69 denies that class treatment under Rule 23 is appropriate in this case, and denies that Plaintiff or other members of the putative Class are entitled to any relief whatsoever from Twin City.

COUNT I
DECLARATORY RELIEF

70. Plaintiff incorporates by reference each and every allegation set forth above.

ANSWER: Twin City restates and incorporates by reference its responses to Paragraphs 1-69 as if fully set forth herein.

71. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

ANSWER: Twin City admits that the statement in Paragraph 71 is an incomplete quote from the Declaratory Judgment Act, 28 U.S.C. § 2201(a), and refers to the statute for the full text of the provision.

72. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties in that Plaintiff contends and Defendant disputes and denies that the Policy provides coverage to Plaintiff for any current and future lost business income, subject to the limit of liability, for the temporary suspension of Plaintiff’s operations.

ANSWER: Paragraph 72 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 72 and denies that Plaintiff is entitled to any relief whatsoever from Twin City.

73. The Policy provides coverage for “direct physical loss of or physical damage to” the Covered Property.

ANSWER: Twin City admits that Paragraph 73 contains an incomplete and inaccurate quote from the Policy. The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 73 are inconsistent with the terms of the Policy, Twin City denies them.

74. Plaintiff’s loss of use, loss of access, and loss of functionality of the Covered Property when government shutdown orders made it unlawful for Plaintiff to fully access, use, and operate its business at the Covered Property, constitutes a direct physical loss of the Covered Property under the Policy. Alternatively, the ubiquitous nature of the COVID-19 virus caused direct physical loss or physical damage to the Covered Property by preventing Plaintiff from using the Covered Property for its intended purpose.

ANSWER: Paragraph 74 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies each and every of the allegations of Paragraph 74.

75. Additionally, the government shutdown orders or, alternatively, the ubiquitous nature of the COVID-19 virus, caused direct physical loss of or physical damage to property other than the Covered Property, thereby invoking coverage under the Policy’s “Civil Authority” provision for “actual loss of Business Income when access to your [Covered Property] is specifically prohibited by order of a civil authority”

ANSWER: Paragraph 75 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies each and every of the allegations of Paragraph 75.

76. Further, the government orders or, alternatively, the ubiquitous nature of the COVID-19 virus, caused direct physical loss of or physical damage to Plaintiff’s Dependent

Property, thereby invoking coverage under the Policy’s “Business Income From Dependent Properties” provision, which provides for the payment of lost Business Income when a Covered Cause of Loss damages “dependent property.”

ANSWER: Paragraph 76 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies each and every of the allegations of Paragraph 76.

77. Plaintiff suffered lost Business Income as a result of loss or damage to Dependent Property by a Covered Cause of Loss, within the meaning of the Policy. Specifically, Plaintiff generated significant revenue from customers who worked in the geographic area surrounding Plaintiff’s business. The government shutdown orders prevented many of those customers from working, thereby greatly reducing the likelihood that they would visit and make purchases at Plaintiff’s retail clothing store.

ANSWER: Paragraph 77 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies each and every of the allegations of Paragraph 77.

78. The Policy constitutes a valid and binding agreement obligating the Defendant to indemnify Plaintiff for covered losses.

ANSWER: Paragraph 78 states legal conclusions to which no response is required. To the extent a response is required, Twin City states that the terms of the Policy speak for themselves. To the extent the allegations of Paragraph 78 are inconsistent with the terms of the Policy, Twin City denies them.

79. Plaintiff has substantially performed or otherwise satisfied all conditions precedent to bringing this action and obtaining coverage pursuant to the Policy and applicable law, or alternatively, Plaintiff has been excused from performance by Defendant’s acts, representations, conduct, or omissions.

ANSWER: Paragraph 79 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies each and every of the allegations of Paragraph 79.

80. Defendant has failed to indemnify Plaintiff for its covered losses.

ANSWER: Paragraph 80 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 80.

81. No exclusion to coverage, including the Virus Exclusion, applies.

ANSWER: Paragraph 81 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 81.

82. Plaintiff has suffered and continues to suffer a covered loss under the Policy.

ANSWER: Paragraph 82 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 82.

83. Plaintiff, individually and on behalf of the Class, seeks a Declaratory Judgment that there is coverage for its business interruption losses under the Policy.

ANSWER: Twin City admits that Plaintiff seeks declaratory relief in this action on behalf of itself and others similarly situated. Twin City denies that Plaintiff or other members of the putative Class are entitled to any relief whatsoever from Twin City.

COUNT II
BREACH OF CONTRACT

84. Plaintiff incorporates by reference each and every allegation set forth above.

ANSWER: Twin City restates and incorporates by reference its responses to Paragraphs 1-83 as if fully set forth herein.

85. Plaintiff and Defendant entered into a contract of insurance; here, the Policy.

ANSWER: Twin City admits that Plaintiff and Twin City entered into the Policy. Twin City denies that HFSG has any contractual relationship with Plaintiff.

86. The Class members entered into a substantially identical policy with Defendant.

ANSWER: Twin City denies the allegations of Paragraph 86 and denies that certification of any class is proper under Rule 23.

87. Under the Policy, Defendant agreed to indemnify Plaintiff and the Class for their business losses as a result of a covered loss.

ANSWER: The terms of the Policy speak for themselves. To the extent the allegations of Paragraph 87 are inconsistent with the terms of the Policy, Twin City denies them.

88. Plaintiff and the Class members suffered a covered loss under the Policy.

ANSWER: Paragraph 88 states a legal conclusion to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 88.

89. Plaintiff and the Class members timely submitted a notice of claim and satisfied all conditions precedent to receiving the coverage it purchased from Defendant.

ANSWER: Paragraph 89 states legal conclusions to which no response is required. To the extent a response is required, Twin City admits that Plaintiff submitted a claim for coverage to Twin City in or around April, 2020. Twin City denies each and every of the remaining allegations of Paragraph 89.

90. Defendant breached its contract with Plaintiff and the Class members by failing and refusing to provide the contracted for coverage.

ANSWER: Paragraph 90 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies each and every of the allegations of Paragraph 90.

91. Defendant's breach of the contract has caused Plaintiff and the Class to suffer damages in the amount of their unreimbursed business losses or their limits of liability, whichever is lower.

ANSWER: Paragraph 91 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 91 and denies that Plaintiff is entitled to any relief whatsoever from Twin City.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein prays as follows:

- 1) For a declaration that there is coverage under the Policy for the interruption to Plaintiff's business and the associated business income lost therefrom;
- 2) For damages, costs and attorney's fees; and
- 3) For such other relief as the Court may deem proper.

ANSWER: The paragraph following the "Prayer for Relief" contains a declarative description of the relief sought by Plaintiff, to which no response is required. To the extent a response is required, Twin City denies the allegations. Twin City denies that Plaintiff is entitled to any relief from Twin City.

TRIAL BY JURY IS DEMANDED

ANSWER: Twin City admits that Plaintiff demand a jury trial.

TWIN CITY'S AFFIRMATIVE DEFENSES

Twin City asserts the following affirmative defenses and reserves all rights to amend or supplement these defenses when and if amended or additional defenses become appropriate and/or available in this action. The statement of any defense herein does not assume the burden of proof for any issue to which the applicable law places the burden of proof on Plaintiff. Twin City further reserves the right to assert these and such other affirmative defenses as may apply to the claims of absent class members, in the event that any class is certified.

FIRST AFFIRMATIVE DEFENSE

(Failure to state a claim)

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

SECOND 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.

THIRD 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.

FOURTH AFFIRMATIVE DEFENSE

(No “direct physical loss” – Business Income from Dependent Properties)

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 physical damage at dependent property caused by or resulting from a covered cause of loss.

FIFTH AFFIRMATIVE DEFENSE

(No “direct physical loss” – Civil Authority)

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 a prohibition of access to the insured premises by an order of civil authority as a direct result of a risk of direct physical loss to property in the immediate area of the insured premises.

SIXTH AFFIRMATIVE DEFENSE

(Virus Exclusion)

The Policy contains an exclusion titled “‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus.” Form SS 40 93 07 05 at 1. 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 ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus exclusion.

SEVENTH 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.

EIGHTH 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.

NINTH 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.

TENTH 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.

ELEVENTH 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.

TWELFTH 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.

THIRTEENTH 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.

FOURTEENTH 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.

FIFTEENTH 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.

SIXTEENTH 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.

SEVENTEENTH 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.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Merger clause)

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

NINETEENTH 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.

TWENTIETH 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.

TWENTY-FIRST 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.

TWENTY-SECOND 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.

TWENTY-THIRD 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.

TWENTY-FOURTH 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.

TWENTY-FIFTH 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.

TWENTY-SIXTH 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.

TWENTY-SEVENTH 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.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Offset)

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

TWENTY-NINTH AFFIRMATIVE DEFENSE
(Valuation Clause)

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

THIRTIETH 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.

THIRTY-FIRST 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.

THIRTY-SECOND 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.

THIRTY-THIRD 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-FOURTH AFFIRMATIVE DEFENSE

(Class claims - Failure to meet requirements of Fed. R. Civ. P. 23)

Plaintiff's class claims are barred because they fail to meet the requirements for class certification under Fed. R. Civ. P. 23.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Lack of standing)

Plaintiff lacks standing to assert claims on behalf of putative class members under state laws for which Plaintiff suffered no alleged injury.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Defenses as to other putative class members)

Even if not applicable to Plaintiff, some or all of the defenses asserted above may be applicable to one or more of the putative class members whom Plaintiff may seek to represent. In the event that any attempt is made to certify a class in this action, Twin City reserves the right to identify and advance any further defenses that may apply to persons other than the named Plaintiff.

THIRTY-SEVENTH 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 may appear as this case progresses to the full extent permissible by law.

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 Twin City its costs and expenses, including its attorneys' fees; and
- iv. awarding Twin City such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Twin City hereby demands a trial by jury.

Date: September 30, 2020

Respectfully submitted,

TWIN CITY FIRE INSURANCE COMPANY

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Appearance Forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2020, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent via e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Gerald P. Dwyer, Jr.
Gerald P. Dwyer, Jr. (CT20447)