

YES NO

EXHIBITS

CASE NO. 2020 CH 5360

DATE: 8/12/2020

CASE TYPE: Declaratory Judgment

PAGE COUNT: 22

CASE NOTE

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – CHANCERY DIVISION**

10076970

FIREBIRDS INTERNATIONAL, LLC

Plaintiff,

v.

ZURICH AMERICAN INSURANCE CO.,

Defendant.

2020CH05360

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT AND BREACH OF CONTRACT

Plaintiff, FIREBIRDS INTERNATIONAL, LLC (“Firebirds”), by and through its undersigned attorneys, complains against Defendant, ZURICH AMERICAN INSURANCE CO. (“Zurich”), as follows:

THE CASE IN BRIEF

1. This breach of contract and declaratory judgment action arises out of Firebirds’ pursuit of—and Zurich’s failure to provide—insurance coverage for Firebirds’ significant losses incurred as a result of the novel SARS-CoV-2 (“COVID-19”) outbreak.

2. Firebirds owns 54 “Wood Fired Grill” restaurants throughout the United States, and, like virtually every other business across the country, has been ravaged by the current global COVID-19 pandemic.

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3. In preparation for disasters like this pandemic, Firebirds purchased Zurich EDGE Policy Number ERP 0191571-03 which was effective for the policy period of March 30, 2019 to March 30, 2020. It subsequently purchased an identical renewal policy, Zurich EDGE Policy Number ERP 0191571-04, for the policy period effective March 30, 2020 to March 30, 2021. Both policies are attached hereto, respectively, as **Exhibits A and B** (“the Policies”).

4. In exchange for significant annual premiums, the Policies provide for \$146 million per occurrence in coverage for property damage and business interruption losses.

5. In pertinent part, the Policies provide coverage for:

- a. Business income, or “Time Element” coverage, including gross earnings, extended period of liability, extra expense, and leasehold interest;
- b. Loss caused by loss or damage to property;
- c. Loss caused by restriction of access to property, including loss of access caused by an order issued by a Civil Authority; and
- d. Costs incurred for actions to temporarily protect and preserve insured property.

6. Importantly, the business interruption or “Time Element” section of the Policies provides broad coverage. There is no “contamination” or “virus” exclusion within this portion of the Policies that could possibly exempt Zurich from providing Firebirds full payment thereunder.

7. The Policies explicitly provide a limit of liability of \$146 million per occurrence for Property Damage and Time Element loss combined. Simply put, Firebirds is owed the full amount of coverage available under the Policies, which includes coverage for the losses suffered by Firebirds as a result of the global COVID-19 pandemic.

8. Zurich has, by written communication to Firebirds, refused to pay its insured a single dollar of the Policies’ coverages for losses suffered due to the COVID-19 pandemic. In so

doing, Zurich has materially breached the parties' insurance contracts and is liable for the full amount of coverage afforded by the Policies.

THE PARTIES

9. Plaintiff Firebirds International, LLC is a North Carolina corporation with its principal place of business located at 13850 Balntyn Corporate Place, Charlotte, North Carolina 28277.

10. Defendant Zurich American Insurance Co. is an insurance company organized under the laws of the State of New York with its principal place of business located in Schaumburg, Illinois.

JURISDICTION & VENUE

11. Defendant Zurich maintains its principal place of business at 1229 Zurich Way, Schaumburg, Illinois 60196.

12. Pursuant to 735 ILCS § 5/2-102(a), Zurich is a resident of Cook County, Illinois and venue is therefore proper pursuant to 735 ILCS § 5/2-101.

FACTUAL BACKGROUND

I. The COVID-19 Outbreak and Firebirds' Losses

13. Firebirds owns and operates "Wood Fired Grill" restaurants across the United States. It has 50 restaurants across 19 states.

14. On January 21, 2020, the United States reported its first case of the novel coronavirus: COVID-19. By this time, the virus had already spread across Asia and Europe. On

January 31, 2020, the World Health Organization (“WHO”) declared COVID-19 a “public health emergency of international concern”.

15. As of the time Firebirds filed this action, there have been over 5 million confirmed COVID-19 cases in the United States, and 162,407 Americans lives have tragically been lost as a result.

16. State and local governments have taken drastic actions in an effort to curb the spread of the disease. Each of the nineteen states in which Firebirds owns restaurants have issued separate and distinct closure and stay-at-home orders:

- a. **Alabama:** On March 19, 2020, the Alabama State Health Officer issued a statewide shutdown of all dine-in restaurants, banning the on-premises consumption of food or drinks.
- b. **Arizona:** On March 19, 2020, Governor Douglas Ducey issued Executive Order 2020-09, prohibiting restaurants from offering dine-in services.
- c. **Delaware:** On March 16, 2020, Governor John Carney issued a modified Declaration of a State of Emergency prohibiting restaurants from offering dine-in services.
- d. **Florida:** On March 17, 2020, Governor Ron DeSantis issued Executive Order 20-68 restricting restaurants to limit their occupancy to 50%. On March 20, 2020, Governor DeSantis issued a second Executive Order, 20-71, prohibiting restaurants from offering dine-in services.
- e. **Georgia:** On April 2, 2020, Governor Brian Kemp issued Executive Order 4.02.20.01, prohibiting restaurants from offering dine-in services.

- f. **Indiana:** On March 23, 2020, Governor Eric Holcomb issued Executive Order 20-10, prohibiting restaurants from offering dine-in services.
- g. **Iowa:** On March 17, 2020, Governor Kim Reynolds issued a Proclamation of Disaster Emergency prohibiting restaurants from offering dine-in services.
- h. **Kansas:** On March 30, 2020, Governor Laura Kelly issued Executive Order 20-16 which prohibited restaurants from offering dine-in services, which was later affirmed on April 11, 2020 by Kansas's Emergency Management & Homeland Security Department.
- i. **Maryland:** On March 16, 2020, Governor Larry Hogan issued an Executive Order, entitled "Prohibiting Large Gatherings and Events and Closing Senior Centers". This Order prohibited restaurants from offering dine-in services.
- j. **Missouri:** On March 21, 2020, Governor Mike Parson issued guidelines prohibiting restaurants from offering dine-in service.
- k. **Nebraska:** On March 19, 2020, Governor Pete Ricketts issued Executive Order 20-06 prohibiting restaurants from offering dine-in services.
- l. **New Jersey:** On March 16, 2020, Governor Phil Murphy issued Executive Order 104 prohibiting restaurants from offering dine-in services.
- m. **North Carolina:** On March 17, 2020, Governor Roy Cooper issued Executive Order No. 118, prohibiting restaurants from offering dine-in services.
- n. **Ohio:** On March 15, 2020, the Ohio Department of Health Director issued a Public Health Order prohibiting restaurants from offering dine-in services.
- o. **Oklahoma:** On March 17, 2020, Governor Kevin Stitt issued Executive Order 202-07 prohibiting restaurants from offering dine-in services.

- p. **Pennsylvania:** On March 16, 2020, Governor Tom Wolf issued guidelines prohibiting restaurants from offering dine-in services.
- q. **South Carolina:** On March 17, 2020, Governor Henry McMaster issued Executive Order 2020-10 prohibiting restaurants from offering dine-in services.
- r. **Tennessee:** On March 22, 2020, Governor Bill Lee issued Executive Order No. 17 prohibiting restaurants from offering dine-in services.
- s. **Virginia:** On March 23, 2020, Governor Ralph Northam issued Executive Order EO-53 prohibiting restaurants from offering dine-in services.

17. Each of the 50 restaurants Firebirds operates across the United States have seen their gross revenues destroyed and have incurred additional extra expenses in order to deep clean, sanitize or otherwise make their restaurants safe for workers and customers alike.

18. The administrative and legislative orders of many communities, including at least one community in which a Firebirds is located, have tied the closure orders to the loss and damage that COVID-19 inflicts on property: N.Y.C. Emergency Exec. Order No. 100, 2 (Mar. 16, 2020) (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”)¹; Broward Cty. Administrator’s Emergency Order No. 20-01, 2 (Mar. 22, 2020) (noting that COVID-19 “constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Broward County.”)²; Harris Cty. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, 2 (Mar. 24, 2020) (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”)³; Napa Cty. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)

¹ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

² <https://www.broward.org/CoronaVirus/Documents/BerthaHenryExecutiveOrder20-01.pdf>

³ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf

(issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus.”)⁴; City of Key West State of Local Emergency Directive 2020-03, 2 (Mar. 21, 2020) (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.”)⁵; City of Oakland Park, Fla. Local Public Emergency Action Directive, 2 (Mar. 19, 2020) (COVID-19 is “physically causing property damage”)⁶; Panama City, Fla. Resolution No. 20200318.1 (Mar. 18, 2020) (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”)⁷; Exec. Order of the Hillsborough Cty. Emergency Pol’y Group, 2 (Mar. 27, 2020) (in addition to COVID-19’s creation of a “dangerous physical condition”, it also creates “property or business income loss and damage in certain circumstances”)⁸; Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, 1 (Mar. 26, 2020) (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”)⁹; Sixth Supp. to Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020) (“This order and the previous orders issued during this emergency have all been issued . . . also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time.”)¹⁰; City of Durham, Second Amendment to Declaration of State of Emergency, 8 (effective Mar. 26, 2020) (prohibiting entities that provide food services from allowing food to be eaten at the site where it

⁴ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

⁵ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf

⁶ <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

⁷ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

⁸ <https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/saferathomeorder.pdf>

⁹ <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

¹⁰ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf

is provided “due to the virus’s propensity to physically impact surfaces and personal property.”)¹¹.

19. The COVID-19 pandemic has devastated Firebirds’ business.

II. The Zurich Policies

20. At all relevant times, Firebirds’ businesses were covered by the following renewal policies issued by Zurich: a) Policy No. ERP0191571-03, effective March 30, 2019 to March 30, 2020; and b) Policy No. ERP019571-04, effective March 30, 2020 to March 30, 2021. Both Policies are “Zurich Edge” Policies. *See Exhibits A and B.*

III. Zurich Improperly Denied Firebirds’ Claim

21. In accordance with the terms of the Policies, Firebirds submitted a timely claim to Zurich adjusters for losses caused by the COVID-19 pandemic.

22. On April 27, 2020, Zurich adjusters responded and denied the claim, explaining that the COVID-19 pandemic does not constitute “direct physical loss or damage to property”. Zurich also took the position that the “Contamination” exclusion within the Policies applies to the COVID-19 pandemic and is therefore fatal to Firebirds’ claim. This letter is attached hereto as **Exhibit C**.

23. Zurich’s interpretation of the Policies is entirely incorrect.

24. Due to the COVID-19 pandemic, Firebirds’ properties have suffered direct physical loss or damage resulting from COVID-19.

25. Like all other places where people congregate, people have spread COVID-19 to the surfaces of Firebirds’ properties through breathing, sneezing, coughing, and talking.

¹¹ https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL

26. Firebirds' properties have become unsafe for their intended purpose and have thus suffered physical loss and/or damage.

27. The business functions of Firebirds' properties' have undoubtedly been impaired.

28. If Firebirds were to conduct business as usual, the disease and virus spread would be inevitable, and Firebirds' workers and customers would become infected.

29. In their current condition, Firebirds' properties are not functional for their intended business purposes because of the changed physical environment.

30. The actual presence of the disease or virus constitutes physical loss or damage as well.

31. The presence of the disease or virus also poses an imminent threat to every one of Firebirds' properties.

32. These losses are not non-physical or remote—they constitute direct physical loss under the plain and ambiguous terms of Policies.

33. Because the loss involved is a direct physical loss, Zurich is required to pay the actual Time Element loss sustained. Specifically, the Policies explain that Zurich "will pay for the actual Time Element loss the Insured sustains as provided in the Time Element Coverages, during the Period of Liability". See **Exhibits A and B** at p. 24.

34. Zurich is also contractually obligated to afford Firebirds coverage under the Policies' Civil Authority Coverage. See *id.* at pp. 30-31.

35. The closure orders within 19 of the states which house Firebirds restaurants, as described above, were issued in response to the direct physical damage, and/or the imminent threat thereof, caused by COVID-19.

36. Under the Policies, Zurich is contractually obligated to afford Firebirds coverage for Time Element loss sustained by an order of Civil Authority. *See id.* at pp. 30-31. All conditions necessary to trigger Zurich's obligation to afford Firebirds coverage for the Time Element loss sustained under the Civil Authority Coverage have been fully satisfied.

37. Regardless of whether COVID-19 caused direct physical damage or loss to Firebirds' properties, Zurich is obligated to afford Firebirds coverage for actual Time Element loss under the Civil Authority coverage due to the closure orders which have prohibited Firebirds' access to its properties and that have mandated Firebirds to suspend its business activities. *See id.*

38. The Policies also provide coverage for costs incurred by Firebirds for actions implemented to temporarily protect or preserve its properties due to actual or imminent physical loss or damage. *See id.* at p. 39. This coverage is afforded both for costs incurred and gross earnings loss as a result of steps taken to preserve or protect insured property.

39. In addition to the physical loss of the insured properties, Firebirds was forced to shutter its businesses to protect and preserve the properties from actual and imminent physical loss or damage, causing Firebirds to incur costs and suffer a gross earnings loss.

IV. Zurich's Arguments to Support Its Claim Denial are Flawed

40. By letter dated, April 27, 2020, Zurich represented to Firebirds that it was denying coverage, in part, based on a "Contamination" exclusion within the Policies wherein Contamination is defined to include contamination by a "virus". *See Exhibit C.*

41. However, read in their entirety, the Policies explain that this "Contamination" exclusion does not apply if the "Contamination" results from direct physical loss or damage.

42. The policies specifically provide as follows:

3.03.	EXCLUSIONS
	The following exclusions apply unless specifically stated elsewhere in this Policy:
3.03.01.	This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.
3.03.01.01.	Contamination , and any cost due to Contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.

43. As described above, the presence of COVID-19 and SARS-CoV-2 is direct physical loss or damage and any “contamination,” results from one or the other, to the extent “contamination” is defined to include “virus”.

44. In addition, the Contamination definition of the Policies does not even include the term “virus” because it has been amended by endorsement to remove the term “virus”.

45. Specifically, one of the Amendatory Endorsements to the Policies changes the definition of “Contamination” as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
1.	SECTION III – PROPERTY DAMAGE, C. EXCLUSIONS, paragraph 3.03.01.01.is deleted in its entirety and replaced by the following:
3.03.01.01.	Contamination or asbestos, and any cost due to Contamination or asbestos including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.

Id. at p. 110

46. The Policies replace the former definition of “Contamination” with the definition of “Contamination” as set forth below:

11. The following is deleted from SECTION VII - DEFINITIONS	
	Contamination(Contaminated) - Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus , mold or mildew.
	and replaced by the following:
	Contamination(Contaminated) - Any condition of property due to the actual presence of any Contaminant(s) .

47. Based on this endorsement—which changes the definition of “Contamination”—“virus” is clearly removed from the definition of “Contamination”.

48. The Policies must be construed in conjunction with their endorsements.

49. Where, as here, there is a conflict between the main policy and an endorsement, the endorsement controls.

50. The Amendatory Endorsement modifying the definition of “Contamination” is in direct conflict with the definition of “Contamination” initially provided at Section III of the Policies.

51. The Amendatory Endorsement’s removal of the term “virus” applies to the Policies as a whole and controls.

52. Thus, Zurich’s reliance on the “Contamination” exclusion in the Policies is fatally flawed and Zurich cannot reasonably rely on this exclusion to refuse to provide coverage to Firebirds.

53. Finally, insurers including Zurich, have long understood that pollution and contamination exclusions are ineffective ways to exclude loss caused by disease and virus. That’s why they sought permission from state regulators to include specific virus exclusions in their insurance policies.

54. In 2005-2006, insurers, through a policy drafting organization to which many including on information and belief Zurich and/or its affiliates belong, submitted a circular to state regulators seeking permission to include a specific virus exclusion in certain of their insurance policies. In doing so, they acknowledged that pollution (including contamination) exclusions were an ineffective way to exclude losses resulting from virus and disease. *See* The 2006 Insurance Services Office (“ISO”) Circular attached hereto as **Exhibit D**.

55. Zurich's ongoing refusal to provide coverage under the Policies is in direct breach of the parties' contracts and Firebirds' reasonable expectation of coverage and, consequently, has caused Firebirds to incur significant damages.

56. In contrast, Firebirds has paid all required premiums and has otherwise fully complied with all terms and conditions of the Policies.

57. Each of Firebirds' 50 covered restaurants has experienced a significant loss of business income and has been forced to incur additional extra expenses to protect and preserve its property as a result of the COVID-19 pandemic.

V. Claims for Relief

COUNT I

BREACH OF CONTRACT – TIME ELEMENT COVERAGE

58. Firebirds repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

59. The Zurich Edge Policies are contracts under which Zurich was paid premiums in exchange for its promise to pay Firebirds losses for claims covered by the Policies.

60. Under the Policies, Zurich agreed to pay for its insured's loss of income sustained due to partial or total interruption of business resulting directly from loss or damage to insured property.

61. COVID-19 caused direct physical loss and damage to Firebirds' insured properties, thereby requiring the necessary suspension of operations at the properties. Losses caused by COVID-19 thus triggered the Time Element coverage in the Policies.

62. Firebirds has complied with all applicable provisions of the Policies and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them. Yet, Zurich

has evaded its insurance coverage obligations in direct contravention of the Policies' clear and unambiguous terms.

63. By denying Firebirds coverage for losses Firebirds incurred in connection with the COVID-19 pandemic, Zurich has materially breached its coverage obligations under the Policies.

64. As a result of Zurich's breach of the Policies, Firebirds has sustained substantial damages for which Zurich is liable in an amount to be established at trial.

COUNT II

BREACH OF CONTRACT – CIVIL AUTHORITY COVERAGE

65. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

66. The Zurich Edge Policies are contracts under which Zurich was paid premiums in exchange for its promise to pay Firebirds losses for claims covered by the Policies.

67. Under the Policies, Zurich agreed to pay for its insured's loss of income sustained as a result of an action of Civil Authority which prohibits access to the insured properties when a Civil Authority action is taken in response to direct physical loss or damage and/or imminent physical loss or damage.

68. The statewide closure orders as described above triggered the Civil Authority provision under the Policies.

69. Civil Authority orders issued in response to direct physical loss or damage and/or imminent physical loss or damage restricted Firebirds' access to its properties. Losses caused by the Civil Authority orders thus triggered coverage under the Policies.

70. Firebirds has complied with all applicable provisions of the Policies and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them. Yet, Zurich has evaded its insurance coverage obligations in direct contravention of the Policies' clear and unambiguous terms.

71. By denying Firebirds coverage for losses Firebirds incurred in connection with the COVID-19 pandemic, Zurich has materially breached its coverage obligations under the Policies.

72. As a result of Zurich's breach of the Policies, Firebirds has sustained substantial damages for which Zurich is liable in amount to be established at trial

COUNT III

BREACH OF CONTRACT – PROTECTION AND PRESERVATION OF PROPERTY COVERAGE

73. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

74. The Zurich Edge Policies are contracts under which Zurich was paid premiums in exchange for its promise to pay Firebirds losses for claims covered by the Policies.

75. Under the Policies, Zurich agreed to pay for its insured's reasonable and necessary costs and gross earnings loss incurred for actions taken to temporarily protect or preserve insured property, made necessary due to actual or imminent physical loss or damage.

76. COVID-19 caused direct physical loss and damage to Firebirds' insured properties and, consequently, required the suspension of operations at the insured properties.

77. The direct physical loss or damage and/or imminent physical loss or damage caused Firebirds to incur costs and suffer gross earnings loss to protect and preserve insured

property. Losses caused by COVID-19 have thus triggered the Protection and Preservation coverage afforded by the Policies.

78. Firebirds has fully complied with all applicable provisions of the Policies and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them. Yet, Zurich has evaded its insurance coverage obligations in direct contravention of the Policies' clear and unambiguous terms.

79. By denying Firebirds coverage for losses Firebirds incurred in connection with the COVID-19 pandemic, Zurich has materially breached its coverage obligations under the Policies.

80. As a result of Zurich's breach of the Policies, Firebirds has sustained substantial damages for which Zurich is liable in amount to be established at trial.

COUNT IV

DECLARATORY JUDGMENT – TIME ELEMENT COVERAGE

81. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

82. The Zurich Edge Policies are contracts under which Zurich was paid premiums in exchange for its promise to pay Firebirds losses for claims covered by the Policies.

83. Firebirds has complied with all applicable provisions of the Policies and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them. Yet, Zurich has evaded its insurance coverage obligations in direct contravention of the Policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Firebirds is entitled.

84. An actual case or controversy exists regarding Firebirds' rights and Zurich's obligations under the Policies to reimburse Firebirds for the full amount of losses incurred included under the Policies' Time Element coverage.

85. Pursuant to 735 ILCS § 5/2-701(a), Firebirds seeks a declaratory judgment from this Court finding that:

- i. Firebirds' income losses incurred in connection with the statewide closure orders and the necessary interruption of its businesses stemming from the COVID-19 pandemic are insured losses under the Time Element coverage of the Policies; and
- ii. Zurich is obligated to pay Firebirds for the full amount of Time Element loss incurred as a result of the COVID-19 pandemic during the Period of Liability at the Insured Locations.

COUNT V

DECLARATORY JUDGMENT – CIVIL AUTHORITY COVERAGE

86. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

87. The Zurich Edge Policies are contracts under which Zurich was paid premiums in exchange for its promise to pay Firebirds losses for claims covered by the Policies.

88. Firebirds has complied with all applicable provisions of the Policies and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them. Yet, Zurich has evaded its insurance coverage obligations in direct contravention of the Policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Firebirds is entitled.

89. An actual case or controversy exists regarding Firebirds' rights and Zurich's obligations under the Policies to reimburse Firebirds for the full amount of losses incurred pursuant to the Policies' Civil Authority coverage.

90. Pursuant to 735 ILCS § 5/2-701(a), Firebirds seeks a declaratory judgment from this Court finding that:

- iii. Firebirds income losses incurred in connection with the statewide closure orders which prohibited access to and necessarily interrupted their businesses stemming from the COVID-19 pandemic are insured losses pursuant to the Civil or Military Authority coverage of the Policies; and
- iv. Zurich is obligated to pay Firebirds for the full amount of Civil Authority losses incurred as a result of the COVID-19 pandemic.

COUNT VI

DECLARATORY JUDGMENT – PROTECTION AND PRESERVATION OF PROPERTY COVERAGE

91. Plaintiff repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

92. The Zurich Edge Policies are contracts under which Zurich was paid premiums in exchange for its promise to pay Firebirds losses for claims covered by the Policies.

93. Firebirds has complied with all applicable provisions of the Policies and/or those provisions have been waived by Zurich or Zurich is estopped from asserting them. Yet, Zurich has evaded its insurance coverage obligations in direct contravention of the Policies' clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Firebirds is entitled.

94. An actual case or controversy exists regarding Firebirds' rights and Zurich's obligations under the Policies to reimburse Firebirds for the full amount of losses incurred under the Policies' Protection and Preservation of Property coverage.

95. Pursuant to 735 ILCS § 5/2-701(a), Firebirds seeks a declaratory judgment from this Court finding that:

- v. Firebirds losses incurred in protecting and preserving its property as a result of the COVID-19 pandemic are insured losses under the Policies' Protection and Preservation of Property coverage; and
- vi. Zurich is obligated to pay Firebirds for the full amount of Protection and Preservation of Property losses incurred as a result of the COVID-19 pandemic.

VI. Request for Relief

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendant as follows:

- a. Entering judgment on Counts I-III in favor of Plaintiff and awarding damages for breach of contract in an amount to be determined at trial;
- b. Entering declaratory judgment on Counts IV-VI in favor of Plaintiff as follows:
 - i. The Time Element, Civil Authority, and Protection and Preservation of Property losses incurred by Plaintiff in connection with the COVID-19 pandemic and statewide closure orders are insured losses under the Policies; and
 - ii. Zurich is obligated to pay under the Policies the full amount of the Time Element, Civil Authority, and Protection and Preservation of Property

losses incurred by Plaintiff in connection with the COVID-19 pandemic
and statewide closure orders;

- c. Ordering Zurich to pay both pre and post-judgment interest on any amounts awarded;
- d. Ordering Zurich to pay attorneys' fees and costs of suit plus interest; and
- e. Ordering such other and further relief as may be just and proper.

VII. Jury Demand

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

Dated: August 12, 2020

/s/ Adam J. Levitt

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