

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

ERIK TAUBE, DMD, DBA TAUBE)
FAMILY DENTAL, on behalf of himself)
and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
HARTFORD FINANCIAL SERVICES)
GROUP, INC, DBA THE HARTFORD, a)
Delaware Corporation, and TWIN CITY)
FIRE INSURANCE COMPANY, an)
Indiana Corporation,)
)
Defendants.)
)

Case No. 3:20-cv-00565-SMY

**ANSWER AND AFFIRMATIVE DEFENSES OF TWIN CITY FIRE INSURANCE
COMPANY TO PLAINTIFF’S AMENDED CLASS ACTION COMPLAINT**

Defendant Twin City Fire Insurance Company (“Twin City”) files this Answer and Affirmative Defenses to the Amended Class Action Complaint of Erik Taube, DMD, dba Taube Family Dental (“Plaintiff”) and states the following:

PRELIMINARY STATEMENT

Defendant Hartford Financial Services Group, Inc. has moved to dismiss the claims against it in Plaintiff’s Amended Class Action Complaint. As a result, Defendant Hartford Financial Services Group, Inc. takes no part in this Answer.

ANSWER TO PLAINTIFF’S ALLEGATIONS

This Answer includes the text of the allegations in Plaintiff’s Amended Class Action Complaint and Twin City’s responses to them in bolded text. Any allegations or characterizations in headings or the introduction to Plaintiff’s Amended Class Action Complaint

are denied. Any and all allegations not expressly and specifically admitted in this Answer are also denied. Further, Twin City notes that Plaintiff has improperly defined Defendant Hartford Financial Services Group, Inc. as “The Hartford.” Twin City states that “The Hartford” is a trade name and not a company and has taken no actions relevant to this case. To the extent Plaintiff is attempting to impute actions of “The Hartford” to Defendant Hartford Financial Services Group, Inc. through allegations about “The Hartford,” Twin City denies those allegations.

I. NATURE OF ACTION

1. Erik Taube, DMD, is a dentist practicing in Mascoutah, Illinois. To make sure that he would be protected if he was forced to temporarily cease his practice by unanticipated events beyond his control, he purchased a commercial insurance policy from The Hartford. That policy is attached hereto as Exhibit A.

Answer: Twin City states that “The Hartford” is a trade name and not a company and that this trade name did not sell any insurance policies to Plaintiff. Twin City admits that Plaintiff purchased a business insurance policy from Twin City. The terms, conditions, and exclusions of that policy speak for themselves. Twin City admits that the policy is attached as Exhibit A to Plaintiff’s Amended Class Action Complaint. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the remaining allegations in Paragraph 1, and therefore denies the same.

2. Such an event, namely the worst health crisis to hit the State of Illinois, the United States, and indeed the world in over a century, arrived in early 2020 in the form of a worldwide pandemic of a disease called COVID-19, causing a massive number of illnesses and numerous deaths.

Answer: The allegations of Paragraph 2 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City admits the existence of COVID-19 and that a pandemic has been declared as a result of COVID-19, which has caused illness and death. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the remaining allegations in Paragraph 2, and therefore denies the same.

3. Like Plaintiff, many other dental practices have purchased insurance from The Hartford to protect against losses from catastrophic events like the current unforeseen COVID-19 pandemic. These policies promise to indemnify the policyholder for actual business losses incurred when business operations are involuntarily suspended, interrupted, or curtailed because of direct physical loss of or damage to the property. This coverage is commonly known as “business interruption” or “business income” coverage.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Twin City insures dental practices, among other businesses. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 3 about the reasons that other businesses purchased insurance. The allegations about businesses coverages assert legal conclusions to which no response is required. The terms, conditions, and exclusions of these policies, including the policy issued to Plaintiff, speak for themselves. To the extent a response is required to these allegations or any of the remaining allegations in Paragraph 3, Twin City denies them.

4. Insurance is a way to manage risk, providing protection from financial loss. It is particularly appropriate – indeed, vital – for protection against losses that, while unlikely to

occur, would be financially devastating if they do occur. Or as The Hartford explains on its website, insurance protects you from the unexpected:

Popular Business Insurance Solutions

Business insurance, also known as commercial insurance, helps protect business owners from unexpected losses.

Answer: Twin City states that “The Hartford” is a trade name and not a company.

Twin City admits that Paragraph 4 purports to quote a statement from the thehartford.com website. The content of this website speaks for itself. Twin City admits that insurance is a way to manage risk. Twin City denies the remaining allegations in Paragraph 4.

5. The Hartford’s website includes a clever video to explain why businesses should purchase insurance:



The narrator begins by saying: “Most business owners don’t think they’ll ever need to use their insurance,” while a hand draws the company’s symbol and the word “Business” as shown above.



He continues: “But within a 10-year span, over 40% experience an event that leads to a claim.”



Continuing: “Making sure unfortunate events won’t cost you your livelihood ...



“... is just one way The Hartford can help you prevail when the unexpected strikes.”



“At The Hartford we offer broad protection for small, mid-sized and enterprise-level businesses across a wide range of industries.”

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Paragraph 5 purports to quote statements from a video on the thehartford.com website. The content of this website and video speaks for itself. Twin City denies any remaining allegations in Paragraph 5.

6. The COVID-19 pandemic is the epitome of the unexpected catastrophic event – especially for dentists. As a result of it, on March 17, 2020, the State of Illinois asked dental offices “to postpone elective procedures, surgeries and non-urgent visits, but be available for

emergencies.”¹ On that date, Plaintiff shut down his practice except for emergency visits, something he never expected to have to do.

Answer: The allegations of Paragraph 6 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City admits that the State of Illinois issued guidance related to COVID-19. Twin City admits that the website cited in footnote 1 exists and states that the content of the website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of any remaining allegations in Paragraph 6 and its accompanying footnote 1, and therefore denies the same.

7. On March 16, 2020, the American Dental Association (“ADA”) and the Illinois State Dental Society (“ISDA”) recommended the cessation of day-to-day dental procedures. On March 17, 2020, the State of Illinois, through its Department of Public Health, likewise issued guidance that dental offices “postpone elective procedures, surgeries and non-urgent visits, but be available for emergencies.”² On March 23, 2020, the Centers for Disease Control (“CDC”) and ADA both recommended to all dentists in the United States that elective, or non-urgent dental procedures be postponed to help reduce the risk of spreading COVID-19.³ On April 1, 2020, the ISDA recommended that the cessation of in-person dental treatment except for dental emergencies continue “until further notice.”⁴

Answer: The allegations of Paragraph 7 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City admits that the American Dental Association, Illinois State Dental Society, and Centers for

¹ <https://www.dph.illinois.gov/covid19/community-guidance/oral-and-dental-care-guidance> (accessed 6/15/2020).

² https://www.dph.illinois.gov/sites/default/files/COVID-19_Oral-DentalCare20200504.pdf (accessed 6/15/2020).

³ <https://content.govdelivery.com/accounts/MODIFP/bulletins/282c1ac> (accessed 5/8/2020).

⁴ <https://www.isds.org/news-details/2020/04/01/4.1.2020-press-release> (accessed 8/26/2020).

Disease Control and Prevention and American Dental Association issued guidance and recommendations related to COVID-19. Twin City admits that the websites cited in footnotes 2-4 exist and states that the content of these websites speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of any remaining allegations in Paragraph 7 and its accompanying footnotes 2-4, and therefore denies the same.

8. On May 8, 2020, Illinois' Department of Public Health issued guidance for resuming routine oral and dental care on May 11, 2020.

Answer: The allegations of Paragraph 8 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City admits that the Illinois Department of Public Health issued guidance related to COVID-19. The content of this guidance speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of any remaining allegations in Paragraph 8, and therefore denies the same.

9. Accordingly, beginning on March 17, 2020, and continuing for approximately two months, in response to these recommendations and because of the risk of continuing his dental practice during the COVID-19 pandemic, Plaintiff shut down his practice. During that period, he saw only a handful of patients and only for urgent problems.

Answer: The allegations of Paragraph 9 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 9, and therefore denies the same.

10. According to surveys conducted by the American Dental Association, all or virtually all other dental practices in Illinois also completely ceased seeing patients for elective or non-urgent visits for the same reasons.

Answer: The allegations of Paragraph 10 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 10 purports to describe surveys conducted by American Dental Association. The results of the surveys speak for themselves. Twin City without knowledge or information sufficient to form a reasonable belief regarding the truth of any remaining allegations in Paragraph 10, and therefore denies the same.

11. However, despite the provision of business income coverage in its policies, Defendants are refusing to comply with their obligation to pay for business income losses and covered expenses incurred by policyholders as a result of the physical loss and damage to their insured property arising from the COVID-19 pandemic.

Answer: Twin City denies each and every of the allegations in Paragraph 11.

12. Defendants seek to justify their decision to unilaterally and preemptively deny coverage owed to their insureds on grounds that are patently specious. They state that there is no coverage because a virus cannot cause physical loss or damage to property as required by the policy. However, beginning in 2006, Defendants' policy specifically excluded certain types of property loss or damage caused by viruses (though not the type of losses sustained by Plaintiff). If viruses could not cause property loss or damage, there would have been no reason to exclude them from the policy because they wouldn't have been covered to begin with. Defendants are grasping at straws and know that there is coverage for Plaintiff's losses, as well as those of other dental practices.

Answer: Twin City admits that Plaintiff’s policy contains an exclusion related to viruses. Twin City denies each and every of the remaining allegations in Paragraph 12 and denies that Plaintiff is entitled to coverage under the insurance policy issued by Twin City.

13. Plaintiff brings this action on behalf of a class of Illinois dental practices (as defined below) that purchased standard Hartford commercial property insurance policies that provide for business income loss and extra expense coverage and do not exclude coverage for pandemics, and who have suffered business income and extra expense losses.

Answer: Twin City states that “The Hartford” is a trade name and not a company and that this trade name did not sell any insurance policies to Plaintiff or any members of the putative classes. Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders that are dental practices. Twin City denies the remaining allegations in Paragraph 13 and denies that Plaintiff is entitled to coverage under the insurance policy issued by Twin City.

14. This action also seeks a declaratory judgment that Hartford is contractually obligated to pay these losses. In addition, Plaintiff seeks damages, attorneys’ fees and costs, and any other relief that this Court deems equitable and just, arising out of Hartford’s breach of contract and wrongful conduct alleged herein.

Answer: Twin City admits that Plaintiff purports to seek the relief specified. Twin City denies each and every of the remaining allegations in Paragraph 14 and denies that Plaintiff is entitled to coverage under the insurance policy issued by Twin City, or to the relief sought in this action.

II. THE PARTIES

15. Plaintiff, a licensed dentist, operates a dental practice at 104 East Main, Mascoutah, IL 62258, in St. Clair County.

Answer: The allegations of Paragraph 15 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City admits that the address of Plaintiff listed in in his Policy is 104 East Main, Mascoutah, Illinois 62258, in St. Clair County. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 15, and therefore denies the same.

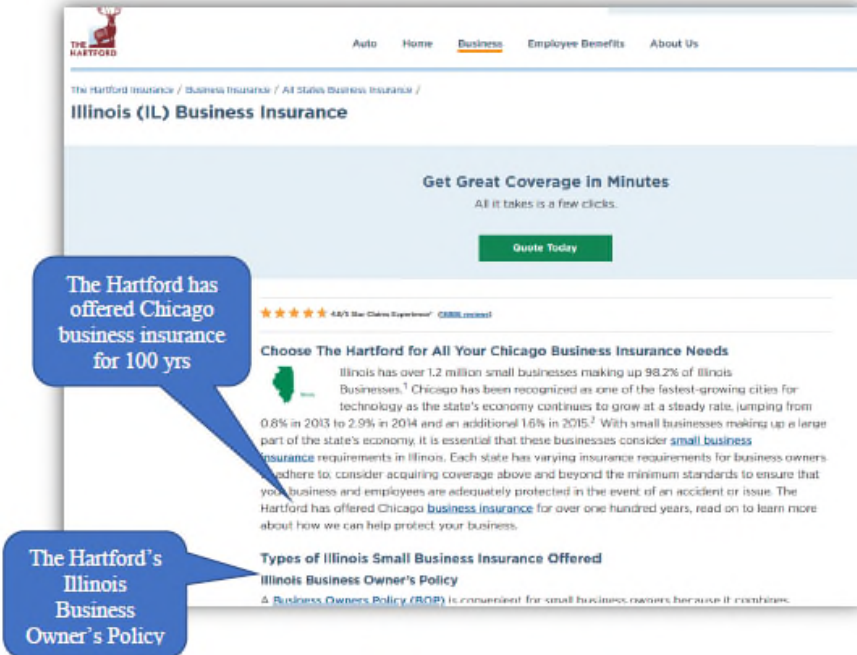
16. Dr. Taube has practiced dentistry at that address for over five years. Aside from giving his patients regular examinations and teeth cleaning, the treatments he provides include teeth whitening, cosmetic contouring, fillings, dental implants, veneers, crowns and bridges, invisalign aligners, root canal therapy, and treatment of toothaches.

Answer: The allegations of Paragraph 16 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 16, and therefore denies the same.

17. The Hartford is an insurance company incorporated in Delaware with its principal place of business at One Hartford Plaza, Hartford, CT 06155. On its website, it has a page entitled, “Illinois (IL) Business Insurance.”⁵ On that page, it states: “The Hartford has offered Chicago business insurance for over one hundred years,” It also describes the “Types of Illinois Small business Insurance Offered,” including “Illinois Business Owner’s Policy.”⁶

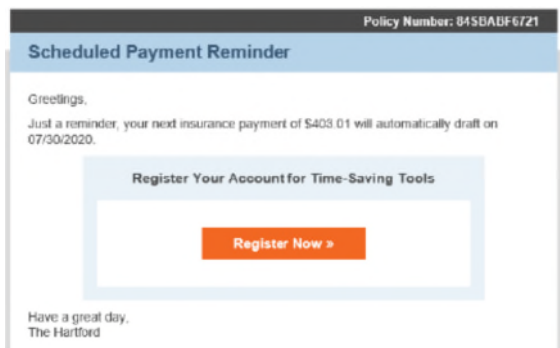
⁵ <https://www.thehartford.com/business-insurance/illinois> (accessed 8/24/2020).

⁶ *Id.*



Answer: The allegations in Paragraph 17 appear to be directed at Defendant The Hartford Financial Services Group, Inc. Defendant The Hartford Financial Services Group, Inc. has filed a motion to dismiss and does not join this Answer. To the extent a response is required from Twin City, Twin City states that “The Hartford” is a trade name and not a company, and that “The Hartford” is not synonymous with The Hartford Financial Services Group, Inc.. Twin City admits that the principal place of business of Hartford Financial Services Group Inc. is at the specified address. Further, Defendants admit that Paragraph 17 purports to quote statements on the thehartford.com website that is cited in footnotes 5-6. The content of this website speaks for itself. Twin City denies the remaining allegations in Paragraph 17, and denies that the Hartford Financial Services Group is an insurer.

18. The Hartford regularly sent Plaintiff emailed reminders that it will be withdrawing his payment from his bank account. Those emails are signed, “The Hartford,” and do not mention Twin City. Here is an example:



Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Paragraph 18 purports to show a scheduled payment reminder emailed to Plaintiff. The content of the email speaks for itself. Twin City denies the remaining allegations in Paragraph 18.

19. Plaintiff pays his premiums to Defendants by ACH withdrawal from his bank account directly to The Hartford.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Plaintiff purchased a policy from Twin City and paid a premium for the policy. Twin City denies the remaining allegations in Paragraph 19.

20. Twin City is an insurance company incorporated in Indiana with its principal place of business at One Hartford Plaza, Hartford, CT 06155.

Answer: Twin City admits the allegations in Paragraph 20.

III. JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity between Defendants and at least one member of the class; there are more than one hundred members of the class; and the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 and is authorized to grant declaratory relief under these statutes.

Answer: Paragraph 21 asserts 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. Twin City states that The Hartford Financial Services Group, Inc. has moved to dismiss the claims against it based on a lack of subject matter jurisdiction, among other grounds, and denies that the Court has subject matter jurisdiction over the claims asserted against this entity. It also denies that this Court has personal jurisdiction over the Hartford Financial Services Group. Twin City also denies that this action has been appropriately brought as class action and that class certification is appropriate and denies that it owes the sums alleged, or any other sum. Twin City denies any remaining allegations in Paragraph 21.

22. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part, if not all, of the acts and omissions complained of in this action took place in this district.

Answer: Paragraph 22 states legal conclusions to which no response is required. To the extent a response is required, Twin City does not contest venue in this District. Twin City states that The Hartford Financial Services Group, Inc. has moved to dismiss the claims against it, and denies that venue is appropriate in this district with respect to this entity. Twin City denies the remaining allegations of Paragraph 22.

IV. FACTUAL ALLEGATIONS

A. The Global COVID-19 Pandemic

23. According to the World Health Organization (“WHO”) COVID-19 is an infectious disease for which there are no vaccines or treatments.⁷ It spreads easily from person-to-person.⁸

⁷ https://www.who.int/health-topics/coronavirus#tab=tab_1 (accessed 6/15/2020).

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html#:~:text=On%20March%2011%2C%20the,of%20new%20influenza%20viruses.> (accessed 6/15/20)

Answer: The allegations of Paragraph 23 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 23 purports to describe certain statements by the World Health Organization and the Centers for Disease Control and Prevention that are contained on the websites cited in footnotes 8-9. Twin City admits that these websites exist and states that the content of these websites speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 23 and its accompanying footnotes 8-9, and therefore denies the same.

24. When an infected person coughs, sneezes, or even just talks, droplets with the infectious agent fly into the air from the person's nose or mouth and can thereby infect others. This can occur even if the person is asymptomatic.⁹ As WebMD states, "Some people who don't know they've been infected can give it to others. This is called asymptomatic spread. You can also pass it on before you notice any signs of infection, called presymptomatic spread."¹⁰

Answer: The allegations of Paragraph 24 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 24 purports to describe certain statements by WebMD that are contained on the website cited in footnotes 9-10. Twin City admits that this website exists and state that the content of the website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 24 and its accompanying footnotes 9-10, and therefore denies the same.

25. Thus, absent testing, there is no way to know whether a person with whom one comes into contact might be spreading the disease.

⁹ <https://www.webmd.com/lung/coronavirus-transmission-overview#1> (accessed 6/15/2020).

¹⁰ *Id.*

Answer: The allegations of Paragraph 25 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 25.

26. The coronavirus can live in the air for up to three hours, be breathed in by others, and get into their lungs, where it can infect them.¹¹

Answer: The allegations of Paragraph 26 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 26 purports to describe certain statements by WebMD that are contained on the website cited in footnote 11. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 26 and its accompanying footnote 11, and therefore denies the same.

27. The coronavirus can also infect people who touch surfaces, such as countertops, doorknobs – and, of course, dental equipment – that contain the virus. It can live on plastic and stainless steel for up to three days.¹²

Answer: The allegations of Paragraph 27 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 27 purports to describe certain statements by WebMD that are contained on the website cited in footnote 12. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 27 and its accompanying footnote 12, and therefore denies the same.

¹¹ *Id.*

¹² *Id.*

28. COVID-19 is a new disease. The first known outbreak was a cluster of cases of pneumonia in Wuhan, Hubei Province in China in December 2019.¹³ The disease did not even have an official name when WHO declared a “Public Health Emergency of International concern” on January 30, 2020.¹⁴ The disease was given its name by WHO on February 11, 2020, short for “coronavirus disease 2019.”¹⁵

Answer: The allegations of Paragraph 28 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 35 purports to describe certain statements by the World Health Organization that are contained on the websites cited in footnotes 13-15. Twin City admits that these websites exist and states that the content of these websites speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 28 and its accompanying footnotes 13-15, and therefore denies the same.

29. After it was first discovered, COVID-19 spread rapidly. On March 11, 2020, “[d]eeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction, WHO made the assessment that COVID-19 can be characterized as a pandemic.”¹⁶

Answer: The allegations of Paragraph 29 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 29 purports to describe certain statements by the World Health Organization that are contained on the website cited in footnote 16. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or

¹³ <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19> (accessed 6/15/2020).

¹⁴ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> (accessed 6/15/2020).

¹⁵ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200211-sitrep-22-ncov.pdf?sfvrsn=fb6d49b1_2 (accessed 6/15/2020).

¹⁶ <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19> (accessed 6/15/2020).

information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 29 and its accompanying footnote 16, and therefore denies the same.

30. A pandemic is “an outbreak of a disease that occurs over a wide geographic area and affects an exceptionally high proportion of the population.”¹⁷ To be classified as a pandemic, WHO requires “the worldwide spread of a new disease.”¹⁸

Answer: The allegations of Paragraph 30 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 30 purports to describe certain statements by Merriam-Webster and the World Health Organization that are contained on the websites cited in footnotes 17-18. Twin City admits that these websites exist and states that the content of these websites speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 30 and its accompanying footnotes 17-18, and therefore denies the same.

31. At the point that WHO labeled COVID-19 a pandemic on March 11, 2020, the number of cases outside China in just the past two weeks had increased by 13-fold to 118,000 in 114 countries; more than 4,000 people had lost their lives, and as the Director-General of WHO stated, “[t]housands more [were] fighting for their lives in hospitals.”¹⁹

Answer: The allegations of Paragraph 31 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 31 purports to describe certain statements by the Director-General of the World Health

¹⁷ <https://www.merriam-webster.com/dictionary/pandemic> (accessed 5/11/2020) (accessed 6/15/2020).

¹⁸ https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/ (accessed 6/15/2020).

¹⁹ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (accessed 6/15/2020).

Organization that are contained on the website cited in footnote 19. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 31 and its accompanying footnote 19, and therefore denies the same.

32. According to the COVID Tracking Project, 1,672 patients at that point had tested positive in the United States, and 43 patients had died.²⁰ From March 11 on, the number of cases and deaths increased rapidly. By March 23, 2020, the number of cases had increased more than 28 times to 47,013 and the number of deaths had increased by 12 times to 521.

Answer: The allegations of Paragraph 32 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 32 purports to describe certain statements by the COVID Tracking Project that are contained on the website cited in footnote 20. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 32 and its accompanying footnote 20, and therefore denies the same.

33. As of August 24, 2020, according to the New York Times, 5.71 million Americans had tested positive for COVID-19, and 177,000 had died from the disease.²¹ That was more than any other country in the world and the 8th and 11th highest on a per capita basis in those two metrics, respectively.²²

Answer: The allegations of Paragraph 33 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 33

²⁰ <https://covidtracking.com/data/us-daily> (accessed 6/15/2020).

²¹ <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (accessed 8/24/2020).

²² *Id.*

purports to describe certain statements by the *New York Times* that are contained on the website cited in footnotes 21-22. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 33 and its accompanying footnotes 21-22, and therefore denies the same.

34. Illinois was hit hard by COVID-19, and the number of people affected has climbed rapidly. As of March 11, 2020, when COVID-19 was first declared a worldwide pandemic, there were 26 COVID-19 cases and no deaths in this state. By March 23, those numbers had grown to 1,273 cases and 12 deaths. One month later, there were more than 100,000 Illinois cases, and nearly 5,000 Illinois residents had died of the disease. By August 24, those numbers had climbed to 222,000 and 8,100 respectively.²³

Answer: The allegations of Paragraph 34 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 34 purports to describe certain statements by the COVID Tracking Project that are contained on the website cited in footnotes 23. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 34 and its accompanying footnote 23, and therefore denies the same.

35. St. Clair County has been significantly affected. As of August 24, there were 5,370 cases and 17,326 deaths, representing 1 in 48 persons and 1 in 1,501 respectively.²⁴

²³ <https://covidtracking.com/data/state/illinois#historical> (accessed 8/24/2020).

²⁴ <https://www.nytimes.com/interactive/2020/us/illinois-coronavirus-cases.html>(accessed 8/24/2020).

Answer: The allegations of Paragraph 35 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 35 purports to describe certain statements by the *New York Times* that are contained on the website cited in footnote 24. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City denies that there have been 17,326 deaths in St. Clair County. It is without knowledge or information sufficient to form a reasonable belief regarding the truth of the remaining allegations and statements in Paragraph 35 and its accompanying footnote 24, and therefore denies the same.

B. Standards and Recommendations Related to the Pandemic for Dental Practices

36. Beginning in mid-March dental and orthodontics practitioners had no choice but to suspend their usual practices because of the COVID-19 pandemic.

Answer: The allegations of Paragraph 36 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 36, and therefore denies the same.

37. On March 16, 2020 the ADA recommended that its members “halt day-to-day non-emergency procedures.”²⁵ On that date, ADA President Chad P. Gehani stated: “[T]he ADA recommends dentists nationwide postpone elective procedures for the next three weeks.”²⁶

Answer: The allegations of Paragraph 37 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 37 purports to describe certain recommendations and statements by the American Dental

²⁵ <https://www.dentalproductsreport.com/dental/article/ada-isds-announce-recommendations-practices-close-due-coronavirus> (accessed 6/15/2020).

²⁶ <https://www.dentalproductsreport.com/dental/article/ada-isds-announce-recommendations-practices-close-due-coronavirus> (accessed 6/15/2020).

Association and its president that are contained on the websites cited in footnotes 25-26. Twin City admits that these websites exist and state that the content of these websites speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 37 and its accompanying footnotes 25-26, and therefore denies the same.

38. On March 16, 2020, the Illinois State Dental Society (“ISDS”), the state-ADA affiliate, recommended that Illinois dental offices close on March 17 and stay closed for the next two weeks. The ISDS “cite[d] the high-risk dental professionals are placed in due to their proximity to patients as one of the reasons for this recommendation.” The group stated: “Dentists are in one of the highest risk categories for transmission and contraction of the virus, with many routine dental procedures potentially transmitting the virus via aerosolization of fluids.”²⁷

Answer: The allegations of Paragraph 38 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 37 purports to describe certain recommendations and statements by the Illinois State Dental Society that are contained on the website cited in footnote 27. Twin City admits that this website exists and state that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 38 and its accompanying footnote 27, and therefore denies the same.

39. On March 17 the State issued guidance for dental offices to postpone elective procedures, surgeries and non-urgent visits.”²⁸ As the Illinois Department of Public Health (“IDPH”) stated,

²⁷ <https://www.cds.org/news/2020/03/16/isds-issues-recommendations-for-dental-offices-regarding-covid-19> (accessed 8/18/2020); <https://www.dentalproductsreport.com/dental/article/ada-isds-announce-recommendations-practices-close-due-coronavirus> (accessed 8/14/2020).

²⁸ https://www.dph.illinois.gov/sites/default/files/COVID-19_Oral-DentalCare20200504.pdf (accessed 8/14/2020).

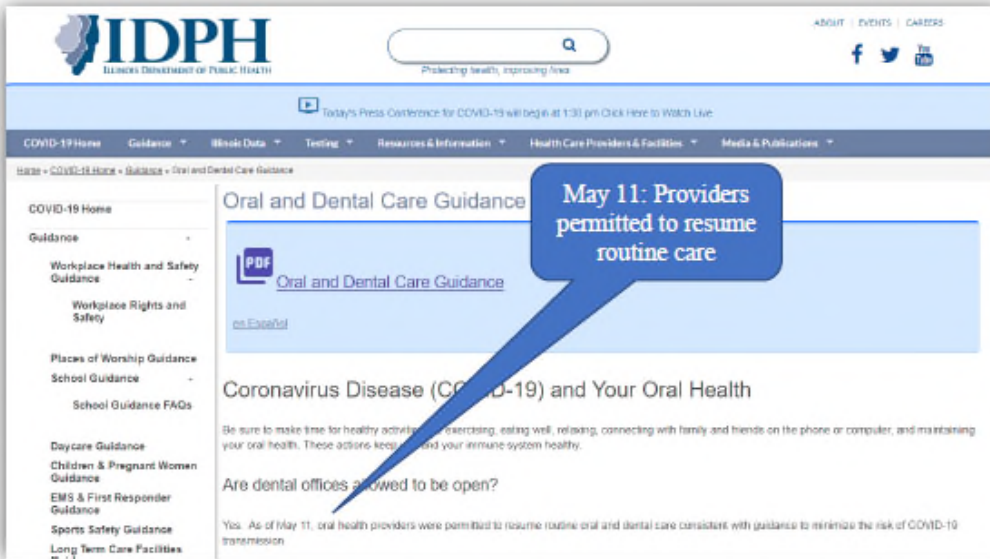
the reason for this recommendation was that “[m]any dental procedures produce an aerosol. When this occurs in patients with COVID-19, there is risk of spread to dental office staff and patients. This measure supports recommendations to stay-at-home and conserves masks and other PPE for urgent procedures and front-line health care workers.”²⁹

Answer: The allegations of Paragraph 39 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 39 purports to describe certain recommendations and statements by the Illinois Department of Public Health that are contained on the websites cited in footnotes 28-29. Twin City admits that these websites exist and state that the content of these websites speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 39 and its accompanying footnotes 28-29, and therefore denies the same.

40. The IDPH made clear that compliance was not optional, as shown by its statement that dental offices “were permitted to resume routine oral and dental care” as of May 11.³⁰

²⁹ https://www.dph.illinois.gov/sites/default/files/COVID-19_Oral-DentalCare20200504.pdf (accessed 8/14/2020).

³⁰ <https://www.dph.illinois.gov/covid19/community-guidance/oral-and-dental-care-guidance> (accessed 8/18/2020; emphasis added).



Answer: The allegations of Paragraph 40 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 40 purports to describe certain recommendations and statements by the Illinois Department of Public Health that are contained on the website cited in footnote 30. Twin City admits that this website exists and state that the content of this website speaks for itself. Twin City denies the remaining allegations of Paragraph 40.

41. Similarly, as of March 18 the CDC had issued a similar recommendation.³¹

Answer: The allegations of Paragraph 41 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 41 purports to describe certain statements by the Centers for Disease Control and Prevention that are contained on the website cited in footnote 31. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the

³¹ https://aonaffinity-blob-cdn.azure-edge.net/affinitytemplate-dev/media/dentistsadvantagedev/media/risk/alerts/rmalert_coronavirus_march2020.pdf (accessed 8/14/2020)

allegations and statements in Paragraph 41 and its accompanying footnote 31, and therefore denies the same.

42. The CDC explained that these recommendations were based on the risk of infection in dental offices, especially because of the spatter of bodily fluids and microorganisms:

The practice of dentistry involves the use of rotary dental and surgical instruments (e.g., handpieces or ultrasonic scalers) and air-water syringes. These instruments create a visible spray that contains large particle droplets of water, saliva, blood, microorganisms, and other debris. This spatter travels only a short distance and settles out quickly, landing on the floor, nearby operatory surfaces, dental health care personnel (DHCP), or the patient. The spray also might contain certain aerosols.³²

Answer: The allegations of Paragraph 42 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 42 purports to describe certain statements by the Centers for Disease Control and Prevention that are contained on the website cited in footnote 32. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 42 and its accompanying footnote 32, and therefore denies the same.

43. CDC went on to explain that the precautions it recommended in other healthcare settings were not possible for dental practices because dental settings “are not designed for or equipped to provide this standard of care. For example, most dental settings do not have airborne infection isolation rooms or single-patient rooms, do not have a respiratory protection program, and do not routinely stock N95 respirators.”³³

³² <https://web.archive.org/web/20200327164143/https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html> (accessed 6/15/2020) (footnote omitted).

³³ <https://web.archive.org/web/20200327164143/https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html> (accessed 6/15/2020).

Answer: The allegations of Paragraph 43 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 43 purports to describe certain statements by the Centers for Disease Control and Prevention that are contained on the website cited in footnote 33. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 43 and its accompanying footnote 33, and therefore denies the same.

44. Accordingly, CDC recommended that “[s]ervices should be limited to urgent and emergency visits only during this period of the pandemic. These actions help staff and patients stay safe, preserve personal protective equipment and patient care supplies, and expand available health system capacity.”³⁴

Answer: The allegations of Paragraph 44 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 44 purports to describe certain statements by the Centers for Disease Control and Prevention that are contained on the website cited in footnote 34. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 44 and its accompanying footnote 34, and therefore denies the same.

45. On March 20, 2020, Governor Pritzker issued his first stay-at-home order for Illinois.³⁵

³⁴ *Id.*

³⁵

Answer: The allegations of Paragraph 45 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City admits that Illinois Governor Pritzker issued a Stay at Home Order. The terms of that Stay at Home Order speak for themselves. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 45, and therefore denies the same.

46. The CDC reiterated its recommendations to stop non-urgent oral health treatments on April 7, 2020. In doing so, it noted that the United States Occupational Safety and Health Administration had said that oral healthcare professionals were at very high risk of COVID-19 “as their jobs are those with high potential for exposure to known or suspected sources of the virus that causes COVID-19 during specific procedures.”³⁶

Answer: The allegations of Paragraph 46 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 46 purports to describe certain statements by the Centers for Disease Control and Prevention that are contained on the website cited in footnote 36. Twin City admits that this website exists and states that the content of the website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 46 and its accompanying footnote 36, and therefore denies the same.

³⁶ <https://web.archive.org/web/20200414014847/https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html> (accessed 6/1/2020).

47. CDC did not provide recommendations for resuming non-emergency dental care until May 19, 2020. When it did so it stated: “Dental settings have unique characteristics that warrant specific infection control considerations.”³⁷ Its specific recommendations included:

- a. Practice universal source control and actively screen for fever and symptoms of COVID-19 for all people who enter the dental facility.
- b. If patients do not exhibit symptoms consistent with COVID-19, provide dental treatment only after you have assessed the patient and considered both the risk to the patient of deferring care and the risk to DHCP of healthcare-associated disease transmission.
- c. Ensure that you have the appropriate amount of personal protective equipment (PPE) and supplies to support your patient volume. If PPE and supplies are limited, prioritize dental care for the highest need, most vulnerable patients first.³⁸

Answer: The allegations of Paragraph 47 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 47 purports to describe certain statements by the Centers for Disease Control and Prevention that are contained on the websites cited in footnotes 37-38. Twin City admits that these websites exist and states that the content of these websites speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 47 and its accompanying footnotes 37-38, and therefore denies the same.

48. When the Illinois Department of Public Health allowed Illinois oral healthcare providers to begin re-opening their offices on May 11, 2020, they did so consistent with “guidance for

³⁷ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html> (accessed 6/15/2020).

³⁸ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html> (accessed 6/15/2020; emphasis added).

minimizing risk of transmission of COVID-19 in an oral healthcare setting”; that guidance included use of certain protective equipment such as portable HEPA filters and appropriate personal protective equipment (“PPE”).³⁹

Answer: The allegations of Paragraph 48 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 48 purports to describe certain statements by the Illinois Department of Public Health that are contained on the website cited in footnote 39. Twin City admits that this website exists and states that the content of the website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 48 and its accompanying footnote 39, and therefore denies the same.

49. However, dentists had difficulty opening up at that time because of the unavailability of sufficient PPE. Dr. Terri Tiersky, president of the Chicago Dental Society, was quoted on May 15, 2020, saying “N95 masks and gowns are extremely hard to get, as are suitable face shields.”⁴⁰

Answer: The allegations of Paragraph 49 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 49 purports to describe certain statements in the *Chicago Tribune* that are contained on the website cited in footnote 40. Twin City admits that this website exists and states that the content of the website speaks for itself. Twin City is without knowledge or information

³⁹ https://www.isds.org/docs/librariesprovider3/default-document-library/20200508_covid-19_interim_guidance_r.pdf?sfvrsn=0 (accessed 6/15/2020).

⁴⁰ <https://www.chicagotribune.com/coronavirus/ct-coronavirus-dentists-reopen-20200516-f5opw56zzf5fjmqdgcjnl7mq-story.html> (accessed 6/15/2020).

sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 49 and its accompanying footnote 40, and therefore denies the same.

50. Nationwide, during the week of May 18, 53.2% of dentists who were closed except for emergencies reported that the reason was an inadequate supply of PPE.⁴¹

Answer: The allegations of Paragraph 50 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 50 purports to describe certain statements by the Health Policy Institute that are contained on the website cited in footnote 41. Twin City admits that this website exists and states that the content of the website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 50 and its accompanying footnote 41, and therefore denies the same.

51. In fact, as the ISDS noted on May 1, 2020, “[t]he major hurdle for Dentists” in re-opening their practices was the availability of adequate and proper PPE. It stated to its members “The current system for acquiring PPE is controlled by FEMA [the Federal Emergency Management Agency], which allocates supplies to the states based on perceived need and then distributes them through the Public Health System. Dentistry is at the low end of the priority list for receiving needed PPE.”⁴²

Answer: The allegations of Paragraph 51 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 51 purports to describe certain statements by the Illinois State Dental Society that are contained on the website cited in footnote 42. Twin City admits that this website exists and

⁴¹ Health Policy Institute, COVID-19: Economic Impact on Dental Practices (Week of May 18 Results), available at <https://surveys.ada.org/reports/RC/public/YWRhc3VydMv5cy01ZWMyYjAzMzYxMWNmMTAwMTBiZWU4NDgtVVJfNWJWDFFU01IdmNDU1VO> (accessed 6/15/2020) at 21.

⁴² <https://www.isds.org/news-details /2020/05/01/actionrequiredforicare> (accessed 6/15/2020).

states that the content of the website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 51 and its accompanying footnote 42, and therefore denies the same.

C. The Devastating Impact of the COVID-19 Pandemic on Dental Practices

52. In the face of the Covid-19 pandemic, Plaintiff and other Illinois dentists had no choice but to shut down their practices except to see patients for non-elective and urgent care. Any reasonable dentist would have shut down except for such emergencies.

Answer: The allegations of Paragraph 52 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 52, and therefore denies the same.

53. For example, Plaintiff's practice was completely shut down except for a handful of emergency patients from March 17, 2020, when the ADA issued its recommendation, until May 14, when he opened for half a day. He opened full-time the next day.

Answer: The allegations of Paragraph 53 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 53, and therefore denies the same.

54. As would be expected, these shutdowns had a terrible economic impact on dentists.

Answer: The allegations of Paragraph 54 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is

without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 54, and therefore denies the same.

55. On April 15, 2020, Marko Vujicic, Ph. D., chief economist and vice president of the ADA's Health Policy Institute ("HPI"), was quoted as saying that "the coming two to three months represent a critical juncture for the economic sustainability of many dental practices."⁴³

Answer: The allegations of Paragraph 55 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 55 purports to describe certain statements by Dr. Marko Vujicic that are contained on the website cited in footnote 43. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 55 and its accompanying footnote 43, and therefore denies the same.

56. And in fact, April was devastating to dentists' practices. A good example is what happened during the week of April 20. According to an ADA national survey, that week 79.4 % of dental practices were closed except for emergency patients, and another 17.2% were closed completely, meaning that 96.6% of dentists in the United States were completely shut down except possibly for emergencies; the other few were open but had lower volume than usual.⁴⁴

Answer: The allegations of Paragraph 56 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 56 purports to describe certain statements by the American Dental Association that are

⁴³ <https://us.dental-tribune.com/news/dentists-report-financial-impact-of-covid-19-on-their-practices/> (accessed 6/15/2020)

⁴⁴ Health Policy Institute, COVID-19: Economic Impact on Dental Practices (Week of April 20 Results) ("Economic Impact"), available at <https://surveys.ada.org/reports/RC/public/YWRhc3VydmV5cy01ZTlkYjFIMTRIZDkxOTAwMTU4NTU4ZmItVVJfNWlJWDFFU01IdmNDUIVO> (accessed 6/15/2020) at 1, 6.

contained on the website cited in footnote 44. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 56 and its accompanying footnote 44, and therefore denies the same.

57. In Illinois that week, 84.7% of dentists were seeing only emergency patients, and 14.7% were completely closed. Only 0.3% reported to the survey that his or her practice was open with business as usual.⁴⁵

Answer: The allegations of Paragraph 57 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 57 purports to describe certain statements by the Health Policy Institute that are contained on the website cited in footnote 45. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 57 and its accompanying footnote 45, and therefore denies the same.

58. Nationwide, dentists reported that their patient volume had plummeted. In the week of April 20, more than 96.0% were either completely closed or seeing only emergency patients. Total patient volume was less than 5% of what was typical for 86.0% and between 5 and 10% for another 7.7%⁴⁶

Answer: The allegations of Paragraph 58 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 58 purports to describe certain statements by the Health Policy Institute that are contained on

⁴⁵ Economic Impact at 4.

⁴⁶ Economic Impact at 6.

the website cited in footnote 46. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 58 and its accompanying footnote 46, and therefore denies the same.

59. The condition of Illinois dental practices was typical. More than 99% of Illinois dentists that week were either completely closed or seeing only emergency patients; 89.8% saw their patient volume at 5% of what was typical and for 4.9% it was between 5 and 10%.⁴⁷

Answer: The allegations of Paragraph 59 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 59 purports to describe certain statements by the Health Policy Institute that are contained on the website cited in footnote 47. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 59 and its accompanying footnote 47, and therefore denies the same.

60. Not surprisingly, the financial impact on dentists has been overwhelming. That same week of April 20, 76.9% of dentists nationwide collected less than 5% in fees compared to what was typical in their practice, and another 13.0% collected between 5 and 10%.⁴⁸

Answer: The allegations of Paragraph 60 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 60 purports to describe certain statements by the Health Policy Institute that are contained on the website cited in footnote 48. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information

⁴⁷ Economic Impact at 12.

⁴⁸ Economic Impact at 6.

sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 60 and its accompanying footnote 48, and therefore denies the same.

61. Again, Illinois was typical, with 77.5% collecting less than 5% of the typical amount, and another 13.4% collecting between 5-10% during the week of April 20. Only 2.5% collected even 76% or more of what was typical.⁴⁹

Answer: The allegations of Paragraph 61 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 61 purports to describe certain statements by the Health Policy Institute that are contained on the website cited in footnote 49. Twin City admits that this website exists and states that the content of this website speaks for itself. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations and statements in Paragraph 61 and its accompanying footnote 49, and therefore denies the same.

62. In addition, dentists have had to incur extra expenses to re-open. Plaintiff has had to buy High Efficiency Air (“HEPA”) filters for each room, protective gowns, seat covers, N95 masks, and higher level disinfection chemicals and sprays, among other things. In addition, his staff has spent extra time each day calling and screening patients for virus-like symptoms, and his appointment times have been changed from 45 minutes per cleaning to a full hour because of extra paperwork and disinfection time.

Answer: The allegations of Paragraph 62 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 62, and therefore denies the same.

⁴⁹ Economic Impact at 14.

D. Hartford's Spectrum Business Owner's Insurance Policy

63. In exchange for premiums paid by Plaintiff to Defendants, Plaintiff obtained a Spectrum Business Owner's Policy issued by The Hartford, with Twin City as the "insurer," Policy Number 84 SBA BF6721 SA, covering a Policy Period from 9/10/2019 to 9/10/2020 (Exhibit A) ("the policy").

Answer: Twin City states that "The Hartford" is a trade name and not a company and that this trade name did not sell any insurance policies to Plaintiff. Twin City admits that Plaintiff purchased a Spectrum Business Owner's Policy from Twin City as the "insurer" with Policy Number 84 SBA BF6721 SA, covering a Policy Period from 9/10/2019 to 9/10/2020. Twin City admits that this policy was attached to Plaintiff's Amended Class Action Complaint as Exhibit A, the terms, conditions, and exclusions of which speak for themselves. Twin City otherwise denies the allegations in Paragraph 63.

64. The first page of the policy makes clear that it comes from The Hartford. *See* E A at 1 (page numbers refer to the page of the pdf file, not counting the cover page). That page is headed, "IMPORTANT NOTICE TO OUR POLICYHOLDERS." It states, "ENCLOSED IS YOUR SPECTRUM POLICY FROM THE HARTFORD":



IMPORTANT NOTICE TO OUR POLICYHOLDERS

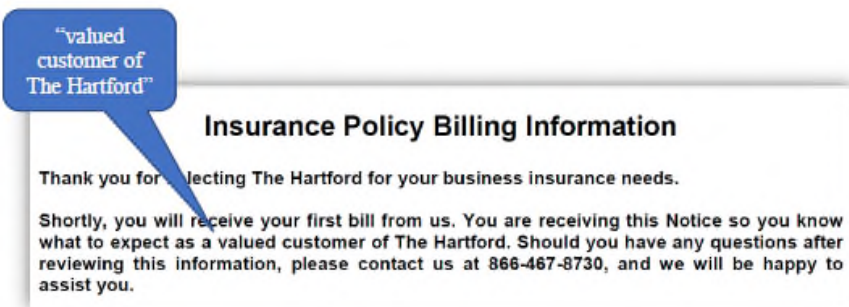
ENCLOSED IS YOUR SPECTRUM POLICY FROM THE HARTFORD. WE ARE PROVIDING YOU WITH A COMPLETE SET OF POLICY FORMS, NOTICES AND BROCHURES. IN THE INTEREST OF PAPER CONSERVATION AND TO REDUCE EXPENSES, AT RENEWAL OF THIS POLICY WE WILL BE PROVIDING YOU ONLY WITH THOSE DOCUMENTS WHICH HAVE CHANGED FROM THOSE NOW BEING PROVIDED. YOU SHOULD RETAIN ALL OF THESE DOCUMENTS INDEFINITELY, SO THAT YOU WILL HAVE A COMPLETE SET OF POLICY FORMS AT ALL TIMES FOR YOUR REFERENCE.

IF YOU HAVE QUESTIONS, OR IF AT ANY TIME YOU NEED COPIES OF ANY OF THE FORMS LISTED ON YOUR POLICY, PLEASE CALL YOUR HARTFORD AGENT OR BROKER, OR THE OFFICE OF THE HARTFORD IDENTIFIED ON YOUR POLICY, AS APPROPRIATE.

Answer: Twin City states that "The Hartford" is a trade name and not a company and that this trade name did not sell any insurance policies to Plaintiff. Twin City admits that Paragraph 64 purports to quote a portion of the policy, the terms conditions, and

exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 64.

65. The second page of the policy, headed, “Insurance Policy Billing Information,” Ex. A at 2, also makes clear that this policy is issued by The Hartford. It thanks the customer for selecting The Hartford and refers to him as “a valued customer of The Hartford”:



Answer: Twin City states that “The Hartford” is a trade name and not a company and that this trade name did not sell any insurance policies to Plaintiff. Twin City admits that Paragraph 65 purports to quote a portion of the policy, the terms conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 65.

66. In all, the policy, which consists of 225 pages, refers to “The Hartford” more than 100 times (not even counting the many appearances of the corporate logo, which consists of the words, “The Hartford,” below a reindeer):



Answer: Twin City states that “The Hartford” is a trade name and not a company and that this trade name did not sell any insurance policies to Plaintiff. Twin City admits that the words “The Hartford” appear repeatedly in the Policy. The Policy also discloses that Twin City was the issuer of the Policy, and nowhere mentions Hartford Financial Services Group. The terms conditions, and exclusions of the Policy speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 66.

67. By contrast, the policy refers to Twin City all of six times.

Answer: Twin City admits that the Policy refers to Twin City, and identifies it as the only insurance company that issued the Policy. The terms conditions, and exclusions of the Policy speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 67.

68. The policy’s Special Property Coverage Form states that the coverage is “for direct physical loss of or physical damage to Covered Property at the premises described in the Declarations (also called ‘scheduled premises’ in this policy) caused by or resulting from a Covered Cause of Loss.” Ex. A at 28.

Answer: Twin City admits that the policy includes a Special Property Coverage Form, the terms, conditions, and exclusions of which speak for themselves. Twin City otherwise denies the allegations in Paragraph 68.

69. The scheduled premises are 104 E. Main St., Mascoutah IL 62258, which is where Plaintiff maintains and conducts his dental practice. Ex, A at 12.

Answer: Twin City admits that the scheduled premises under the policy is defined in the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City otherwise denies the allegations of Paragraph 69.

70. “Covered Property” means the buildings and structures at that address, including fixtures, machinery, and certain other property. In other words, the Covered Property is the office suite where Plaintiff conducts his business. Ex. A at 28.

Answer: Twin City admits that “Covered Property” under the policy is defined in the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City otherwise denies the allegations of Paragraph 70.

71. The inability of Plaintiff and his patients to access the property because of the COVID-19 pandemic constituted a direct physical loss of the Covered Property at the scheduled premises.

Answer: Twin City denies the allegations in Paragraph 71 and denies Plaintiff is entitled to coverage under the policy.

72. The coverage provided by the policy includes loss of Business Income:

We will pay for 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’, including personal property in the open (or in a vehicle) within 1,000 feet of the ‘scheduled premises,’ caused by or resulting from a Covered Cause of Loss.

Ex. A at 37.

Answer: Twin City admits that Paragraph 72 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 72.

73. “Operations” means “your business activities occurring at the ‘scheduled premises’”

Ex. A at 51. In other words, that is Plaintiff’s practice of dentistry.

Answer: Twin City admits that Paragraph 73 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 73.

74. “Period of restoration” means the period “begin[ning] with the date of direct physical loss or physical damage caused by or resulting from a Covered Cause of Loss at the ‘scheduled premises’” and ending when the property is restored. Ex. A at 51. Here, the period of restoration began when Plaintiff first experienced loss of the property because of the COVID-19 pandemic.

Answer: Twin City admits that Paragraph 74 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 74.

75. The policy provides that, for purposes of the above provision, “suspension” includes “[t]he partial slowdown or complete cessation of your business activities.” Ex. A at 38. Because Plaintiff’s business activities suffered a partial slowdown or complete cessation, Plaintiff experienced a suspension.

Answer: Twin City admits that Paragraph 75 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 75.

76. COVID-19 is a “covered cause of loss” under the policy. Covered Causes of Loss are defined as follows:

RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

- a. Excluded in Section **B., EXCLUSIONS**; or
- b. Limited in Paragraph A.4. Limitations

Ex. A at 29. Because the COVID-19 pandemic created a risk of direct physical loss, it is a “covered cause of loss” unless excluded or limited. None of the Exclusions in Section B or the Limitations in Paragraph A.4 apply to COVID-19. Ex. A at 29, 43-45. Therefore, COVID-19 is a covered cause of loss.

Answer: Twin City admits that Paragraph 76 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 76.

77. The policy contains a “Virus Exclusion,” but that does not apply to Plaintiff’s loss due to the COVID-19 pandemic: [sic]

Answer: Twin City admits that Plaintiff’s policy contains a Virus Exclusion, which speaks for itself. Twin City states that the Virus Exclusion bars coverage for Plaintiff’s claims under the policy, denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 77.

78. The virus exclusion states:

- i. **"Fungi", Wet Rot, Dry Rot, Bacteria And Virus**

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

(1) *Presence*, growth, proliferation, spread or any activity of ‘fungi’, wet rot, dry rot, bacteria or *virus*.

Ex. A at 127 (emphasis added).

Answer: Twin City admits that Paragraph 78 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City states that the virus exclusion bars Plaintiff’s claims. It denies that Plaintiff is entitled to coverage under the policy and otherwise denies the remaining allegations in Paragraph 78.

79. However, the virus exclusion does not apply to Plaintiff’s losses (as The Hartford knows because, as shown below, it did not include it on its website as a reason for refusing coverage for losses due to the COVID-19 pandemic). Plaintiff’s losses were not caused by the presence of viruses in their premises. There is no evidence that the virus has ever been in their premises. Plaintiff’s losses were caused by the worldwide pandemic and, as recommended by the State, the CDC, and dental organizations, the need to prevent it from spreading to their employees, patients and others.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City states that the virus exclusion bars Plaintiff’s claim. It denies Plaintiff’s assertion that the virus exclusion in his insurance policy does not apply to his purported losses. Twin City lacks information or knowledge sufficient to admit the truth of the allegation “There is no evidence that the virus has ever been in their premises.” It denies the remaining allegations of Paragraph 79.

80. If The Hartford had intended to exclude losses that might be related to a pandemic or to a virus in another location than the insured’s property, it could have so provided but did not.

Answer: Twin City states that “The Hartford” is a trade name and not a company. The allegations of Paragraph 80 are a legal conclusion to which no answer is required. To

the extent that an answer is required, Twin City denies each and every of the allegations in Paragraph 80.

81. Moreover, even if the Virus Exclusion were applicable to Plaintiff's losses (and those of the other members of the proposed class), under the principles of regulatory estoppel and general public policy, Defendants should be estopped from enforcing it.

Answer: Twin City denies the allegations in Paragraph 81.

82. Specifically, in 2006, two insurance industry trade groups, the Insurance Service Office ("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 the Virus Exclusion.

Answer: The allegations of Paragraph 82 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 82, and therefore denies the same.

83. In filings with state regulators, ISO and AAIS, on behalf of insurers, represented that the adoption of the Virus Exclusion 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: The allegations of Paragraph 83 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 83 purports to describe filings with Insurance Service Office Circular and American Association of Insurance Services, the contents of which speak for themselves. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 83, and therefore denies the same.

84. In a July 6, 2006, “ISO Circular” entitled “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” ISO represented to the state regulatory bodies:

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: The allegations of Paragraph 84 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 84 purports to describe certain statements in a July 6, 2006, Insurance Service Office Circular entitled “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” the contents of which speak for themselves. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 84, and therefore denies the same.

85. Similarly, AAIS, in its “Filing Memorandum” in support of the Virus Exclusion, 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: The allegations of Paragraph 85 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Paragraph 85 purports to describe certain statements by the American Association of Insurance Services, the contents of which speak for themselves. Twin City is without knowledge or information

sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 85, and therefore denies the same.

86. These representations made by the insurance industry were false.

Answer: The allegations of Paragraph 86 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 86, and therefore denies the same.

87. 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: The allegations of Paragraph 87 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City is aware of various court decisions concerning coverage under property insurance policies. The contents of these court decisions speak for themselves. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 87, and therefore denies the same.

88. Upon information and belief, the state insurance departments relied on the industry’s and The Hartford’s representation in approving the Virus Exclusion for inclusion in standard comprehensive policies without a reduction in premiums to balance a reduction in coverage.

Answer: The allegations of Paragraph 88 are not directed at conduct of Twin City, and therefore no response is required. To the extent a response is required, Twin City states that “The Hartford” is a trade name and not a company. Twin City denies the

allegations in Paragraph 88 related to it. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the remaining allegations in Paragraph 88, and therefore denies the same.

89. The assertions made by the insurance industry and The Hartford to obtain regulatory approval of the Virus Exclusion were misrepresentations and for this reason, among other public policy concerns, The Hartford should be estopped from enforcing the Virus Exclusion to avoid coverage of claims related to the COVID-19 pandemic.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City denies each and every of the allegations in Paragraph 89.

90. In securing approval for the adoption of the Virus Exclusion by misrepresenting to the state regulators that the Virus Exclusion would not change the scope of coverage, The Hartford effectively narrowed the scope of the insuring agreement without a commensurate reduction in premiums charged.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City denies each and every of the allegations in Paragraph 90.

91. Under the doctrine of regulatory estoppel, the Court should not permit The Hartford to benefit from this type of duplicitous conduct before the state regulators.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City denies each and every of the allegations in Paragraph 91.

92. Plaintiff’s policy also covers Plaintiff’s “Extra Expense” for expenditures made necessary by the COVID-19 pandemic. Ex. A at 37-38. Specifically, the policy states:

(1) We will pay reasonable and necessary Extra Expense you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct physical loss or physical damage to property at the ‘scheduled premises’...caused by or resulting from a Covered Cause of Loss.

(3) Extra Expense means expense incurred:

(a) To avoid or minimize the suspension of business and to continue 'operations':

(i) At the 'scheduled premises'; ...

(b) To minimize the suspension of business if you cannot continue "operations".

(c) (i) To repair or replace any property; or

(ii) ... to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage o., Business Income.

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or physical damage. This Additional Coverage is not subject to the Limits of Insurance.

Answer: Twin City admits that Paragraph 92 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 92.

93. The policy also covers Plaintiff's Extended Business Income for losses that occur after the property is restored, as follows:

(1) If the necessary suspension of your 'operations' produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and 'operations' are resumed; and

(b) Ends on the earlier of:

(i) The date you could restore your ‘operations’ with reasonable speed, to the condition that would have existed if no direct physical loss or damage occurred;

or

(ii) 30 consecutive days after the date determined in (1)(a) above.

Loss of Business Income must be caused by direct physical loss or physical damage at the ‘scheduled premises’ caused by or resulting from a Covered Cause of Loss.

(2) With respect to the coverage provided in this Additional Coverage, suspension means:

(a) The partial slowdown or complete cessation of your business activities; and

(b) That a part or all of the ‘scheduled premises’ is rendered untenable as a result of a Covered Cause of Loss.

Ex. A at 38.

Answer: Twin City admits that Paragraph 93 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 93.

94. Plaintiff and Class Members are entitled to coverage under the above provisions.

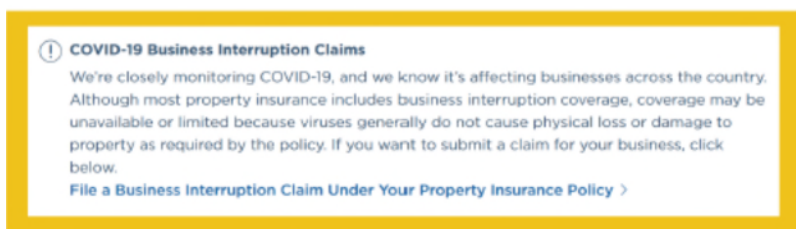
Answer: Twin City denies the allegations in Paragraph 94 and denies that Plaintiff or any putative class members are entitled to coverage under any insurance policy issued by Twin City.

E. Defendants’ Attempts to Discourage Claims by Publicly Denying that COVID-19 Business Losses Are Covered

95. Defendants publicly deny that the COVID-19 pandemic is a covered cause of loss and refuse to provide any coverage whatsoever.

Answer: Twin City admits that it denied Plaintiff’s claim for coverage under the policy. Twin City is without knowledge or information sufficient to form a reasonable belief regarding the truth of the remaining allegations in Paragraph 95, and therefore denies the same.

96. Defendants state the basis of their denial of coverage in a large bordered box on their web site, reproduced in the screenshot below:⁵⁰



Answer: Twin City admits that Paragraph 96 purports to quote a statement from the thehartford.com website that is cited in footnote 50. The content of this website speaks for itself. Twin City denies the remaining allegations in Paragraph 96.

97. This explanation is a sham because Defendants have blatantly mis-paraphrased the language of the policy to create the impression that the loss must be “to” the property. As quoted above, the policy covers “direct physical loss *of* or physical damage to Covered Property” Ex. A at 28 (emphasis added). The loss of the property occurred because Plaintiff and his patients physically lost the property for purposes of Plaintiff’s business, dental treatment.

Answer: Twin City admits that Paragraph 97 purports to quote a statement from the thehartford.com website. The content of this website speaks for itself.. Twin City denies the remaining allegations in Paragraph 97.

98. Furthermore, Defendants know that viruses can cause physical loss or damage to property under the policy. For that reason, the policy includes a virus exclusion, which excludes some

⁵⁰ <https://www.thehartford.com/commercial-property-insurance/claims> (accessed 5/13/2020) (emphasis added).

coverages resulting from viruses. That exclusion, which was added to the policy in or about 2006, appears on a page headed with this statement: “THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.” Ex. A at 135.

Answer: Twin City admits that Paragraph 98 purports to quote a portion of the policy, the terms, conditions, and exclusions of which speak for themselves. Twin City denies that Plaintiff is entitled to coverage under the policy and otherwise denies the allegations in Paragraph 98.

99. If a virus, even one that was present or active in the property, does not cause physical loss or damage to the property, there would have been absolutely no reason for Defendants to change the policy by excluding viruses under certain conditions or to state in the policy that the provision changes the policy. The fact that Defendants felt the need to include an exclusion for viruses shows that Defendants know that viruses most certainly can cause loss or damage to the property.

Answer: Twin City denies each and every of the allegations in Paragraph 99.

100. In or about May 2020, Plaintiff submitted a formal claim for coverage of his losses to The Hartford, which rejected the claim by letter dated June 3, 2020, signed by Gregory Waller (Exhibit B hereto), along with a four-page attachment, explaining the basis of its decision (“the Explanation”).

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Plaintiff attached to his Amended Class Action Complaint as Exhibit B a June 3, 2020 letter sent from Gregory Waller, on behalf of Twin City as the “Writing Company,” to Plaintiff. The contents of that letter speak for themselves. Twin City also

states that the contents of Plaintiff’s insurance policy speak for themselves. Twin City denies the remaining allegations in Paragraph 100.

101. The Explanation states that The Hartford based its decision on the language of the policy that states, in part, “We will pay for direct physical *loss of* or physical damage to Covered Property” Explanation at 1 (emphasis added).

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Plaintiff attached to his Amended Class Action Complaint as Exhibit B a June 3, 2020 letter sent from Gregory Waller, on behalf of Twin City as the “Writing Company,” to Plaintiff. The contents of that letter speak for themselves. Twin City also states that the contents of Plaintiff’s insurance policy speak for themselves. Twin City denies the remaining allegations in Paragraph 101.

102. However, although The Hartford quoted the policy accurately, it then misparaphrased it by stating, “You have not identified any direct physical loss to any property at a scheduled premises.” The policy covers a loss “of” the property, not *to* the property. What it covers that happens “to” the property is damage. As described above, there was a necessary suspension of Plaintiff’s operations caused by a loss “of” the property resulting from a Covered Cause of Loss—namely the worldwide pandemic.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Plaintiff attached to his Amended Class Action Complaint as Exhibit B a June 3, 2020 letter sent from Gregory Waller, on behalf of Twin City as the “Writing Company,” to Plaintiff. The contents of that letter speak for themselves. Twin City also states that the contents of Plaintiff’s insurance policy speak for themselves. Twin City denies the remaining allegations in Paragraph 102.

103. The Explanation also speculates that “even if coverage were otherwise available for loss caused by coronavirus, the pollution exclusion *could* further bar coverage for the loss.” *Id.* at 3 (emphasis added). This was not a ground for rejection of the claim.

Answer: Twin City admits that Plaintiff attached to his Amended Class Action Complaint as Exhibit B a June 3, 2020 letter sent from Gregory Waller, on behalf of Twin City as the “Writing Company,” to Plaintiff. The contents of that letter speak for themselves. Twin City also states that the contents of Plaintiff’s insurance policy speak for themselves. Twin City denies the remaining allegations in Paragraph 103.

104. The Explanation further states that “[t]o the extent you are claiming physical loss or physical damage caused by loss of use or loss of market, coverage would be precluded” *Id.* at 3. The Explanation does not explain what is meant by “loss of market,” which is not a defined term in the policy. Furthermore, this was not an explanation it offered in its SEC filings, which was limited to its contention regarding the “loss of or damage to” coverage.

Answer: Twin City admits that Plaintiff attached to his Amended Class Action Complaint as Exhibit B a June 3, 2020 letter sent from Gregory Waller, on behalf of Twin City as the “Writing Company,” to Plaintiff. The contents of that letter speak for themselves. Twin City also states that the contents of Plaintiff’s insurance policy speak for themselves. Twin City denies the remaining allegations in Paragraph 104.

105. As a last purported basis, The Explanation refers to the policy’s virus exclusion. As described above, that purported basis is left out of the explanation The Hartford makes public on its website for why COVID-19 business losses are not covered.

Answer: Twin City states that “The Hartford” is a trade name and not a company. Twin City admits that Plaintiff attached to his Amended Class Action Complaint as Exhibit

B a June 3, 2020 letter sent from Gregory Waller, on behalf of Twin City as the “Writing Company,” to Plaintiff. The contents of that letter speak for themselves. Twin City also states that the contents of Plaintiff’s insurance policy speak for themselves. Twin City denies the remaining allegations in Paragraph 105.

V. CLASS ALLEGATIONS

106. As stated above, the Virus Exclusion does not exclude Plaintiff’s losses, but if they did, Defendant’s should be barred from relying on it by regulatory estoppel.

Answer: Twin City denies the allegations in Paragraph 106 and denies Plaintiff is entitled to coverage under the policy.

107. Plaintiff brings this action on behalf of himself and as a representative of all others who are similarly situated. Pursuant to Rules 23(a), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure, Plaintiff seeks certification of the following classes:

a. All persons and entities operating dental practices in Illinois with Business Income (including Extended Business Income) coverage issued by Defendants that made claims with either Defendant for suspension (i.e., the partial slowdown or complete cessation of their business activities) of business related to COVID-19, and for which Defendants have denied a claim for the losses or has otherwise failed to acknowledge or accept as a covered loss, or pay for the covered losses (the “Business Income Coverage Class”).

b. All persons and entities operating dental practices in Illinois with Extra Expense coverage issued by Defendants that made claims with either Defendant for Extra Expense Coverage related to COVID-19 and for which Defendants have denied a claim for the expenses or have otherwise failed to acknowledge or accept as a covered expense, or pay for the covered expenses (the “Extra Expense Coverage Class”).

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders, and that Paragraph 107 purports to define the proposed classes. Twin City denies the remaining allegations in Paragraph 107 and denies that certification of these classes, or any other class is proper under Rule 23.

108. Excluded from each of the above Classes are Defendants, including any entity in which Defendants have a controlling interest, is a parent or subsidiary, or which is controlled by Defendants, as well as the officers, directors, affiliates, legal representatives, predecessors, successors, and assigns of Defendants. Also excluded are the judges and court personnel in this case and any members of their immediate families.

Answer: Twin City admits that Plaintiff purports to bring this case on behalf of a class as defined in the Amended Class Action Complaint and that Paragraph 108 seeks to exclude certain persons from the class definitions. Twin City denies the remaining allegations in Paragraph 108 and denies that certification of any class is proper under Rule 23.

109. Plaintiff reserves the right to amend or modify the Class definitions with greater specificity or division into subclasses after having had an opportunity to conduct discovery.

Answer: Twin City admits that Plaintiff purports to reserve the right to amend or modify the class definitions. Twin City denies the remaining allegations in Paragraph 109 and denies that certification of any class is proper under Rule 23.

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

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders. The remaining allegations of Paragraph 110 state legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies the remaining allegations in Paragraph 110 and denies that certification of any class is proper under Rule 23.

111. **Numerosity.** Fed. R. Civ. P. 23(a)(1). The members of each Class are so numerous that joinder of all members is impractical. The precise number of Class members can be ascertained from Defendants' records.

Answer: Paragraph 111 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies the allegations in Paragraph 111, denies that any class may be certified, and denies that Plaintiff is entitled to coverage under the policy.

112. **Commonality and Predominance.** Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact common to each Class, which predominate over any questions affecting individual members of each respective Class. These common questions of law and fact include, without limitation:

- a. Whether Plaintiff and the Class members suffered a covered loss under the common policies issued to members of the Class;
- b. Whether Defendants wrongfully denied all claims based on COVID-19;
- c. Whether Defendants' Business Income coverage applies to a suspension of business caused by COVID-19 and/or in response to the presence or threat of COVID-19;
- d. Whether Defendants' Extra Expense coverage applies to efforts to avoid or minimize a loss caused by COVID-19;
- e. Whether Defendants have breached their contracts of insurance through a uniform and blanket denial of all claims for business losses and extra expense related to COVID-19;
- f. Whether Defendants' conduct has been vexatious and unreasonable.
- g. Whether Plaintiff and the Class members suffered damages as a result of Defendants' actions.

Answer: Paragraph 112 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies the allegations in Paragraph 112, including each and every subpart, denies that any class may be certified, and denies that Plaintiff is entitled to coverage under the policy.

113. **Typicality.** Fed. R. Civ. P. 23 (a)(3). Plaintiff's claims are typical of the claims of the Class he seeks to represent. Plaintiff and all Class members were exposed to uniform practices and sustained injuries arising out of and caused by Defendants' unlawful conduct.

Answer: Paragraph 113 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies the allegations in Paragraph 113, denies that any class may be certified, and denies that Plaintiff is entitled to coverage under the policy.

114. **Adequacy.** Fed. R. Civ. P. 23(a)(4). Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

Answer: Paragraph 114 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies the allegations in Paragraph 114, denies that any class may be certified, and denies that Plaintiff is entitled to coverage under the policy.

115. **Superiority.** Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Defendants, no Class member could afford to seek legal redress

individually for the claims alleged herein. Therefore, absent a class action, Class members will continue to suffer losses and Defendants' misconduct will proceed without remedy. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard that might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court. Finally, Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

Answer: Paragraph 115 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies each and every of the allegations in Paragraph 115, denies that any class may be certified, and denies that Plaintiff is entitled to coverage under the policy.

116. **Injunctive and Declaratory Relief.** Fed. R. Civ. P. 23(b)(2). Defendants' unlawful and unfair conduct is uniform as to all members of each Class. Defendants have acted or refused to act on grounds that apply generally to each Class, so that final injunctive relief or declaratory relief is appropriate with respect to each Class as a whole.

Answer: Paragraph 116 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies each and every of the allegations in Paragraph 116, denies that any class may be certified, and denies that Plaintiff is entitled to coverage under the policy.

VI. JURY DEMAND

117. Plaintiff demands trial by jury on all claims so triable.

Answer: Twin City admits that Plaintiff demands a trial by jury on all claims so triable, and otherwise denies the allegations in Paragraph 117.

COUNT I: Business Income Breach of Contract (By Plaintiff and the Business Income Coverage Class)

118. Plaintiff realleges and incorporates by reference the allegations contained in all prior paragraphs of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

Answer: Twin City restates and incorporates by reference Twin City's responses to the proceeding paragraphs as if fully set forth herein. The remaining allegations in Paragraph 118 state legal conclusions to which no response is required. To the extent any further response is required, Twin City admits that Plaintiff purports to plead this cause of action in the alternative and otherwise denies the allegations in Paragraph 118.

119. Plaintiff brings this claim individually and on behalf of the Business Income Coverage Class against Defendants under Illinois law.

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders. Twin City denies the remaining allegations in Paragraph 119 and denies that certification of any class is proper under Rule 23.

120. Plaintiff's Policy and the policies of other Business Income Coverage Class members are insurance contracts under which Defendants were paid premiums in exchange for promises to pay Plaintiff for his covered losses under the Policy and for Class members' covered losses.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City and paid a premium for the policy. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 120.

121. In Plaintiff's policy, Defendants expressly agree to pay for losses of Business Income incurred as a result of causes not excluded, including losses caused by the COVID-19 pandemic. Specifically, Defendants promise to pay for losses of Business Income (including Extended Business Income) sustained as a result of a business suspension.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 121 and denies that Plaintiff is entitled to coverage under the policy.

122. A covered loss has resulted in business suspensions, which have caused Plaintiff and Class members lost Business Income and Extended Business Income.

Answer: Twin City denies each and every of the allegations in Paragraph 122 and denies that Plaintiff or any members of the putative classes are entitled to coverage under the policies.

123. The business suspensions and losses triggered the Business Income and Extended Business Income coverage under Plaintiff's policy and other Class members' policies.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 123 and denies that Plaintiff or any members of the putative classes are entitled to coverage under the policies.

124. Plaintiff and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

Answer: Twin City admits that the Plaintiff paid a premium for the policy. Twin City denies each and every of the remaining allegations in Paragraph 124.

125. Defendants, without justification, have refused performance under Plaintiff's policy and other Class members' policies by denying coverage for these losses. Accordingly, Defendants are in breach of the policy and other Class members' policies.

Answer: Paragraph 125 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 in Paragraph 125.

126. Due to Defendants' breach of the policy and other Class members' policies, Plaintiff and other members of the Business Income Coverage Class have suffered actual and substantial damages for which Defendants are liable, in an amount to be proved at trial.

Answer: Twin City admits that Plaintiff seeks relief in this action. Twin City denies each and every of the remaining allegations in Paragraph 126 and denies that Plaintiff or the purported class are entitled to coverage under the policies or entitled to any of the requested relief.

**COUNT II: Damages Pursuant to 215 ILCS 5/155
(By Plaintiff and the Business Income Coverage Class)**

127. Plaintiff realleges and incorporates by reference the allegations contained in all prior paragraphs of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

Answer: Twin City restates and incorporates by reference Twin City's responses to the proceeding paragraphs as if fully set forth herein. The remaining allegations in

Paragraph 127 state legal conclusions to which no response is required. To the extent any further response is required, Twin City admits that Plaintiff purports to plead this cause of action in the alternative and otherwise denies the allegations in Paragraph 127.

128. Plaintiff brings this claim individually and on behalf of the Business Income Coverage Class against Defendants under Illinois law.

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders. Twin City denies each and every of the remaining allegations in Paragraph 128 and denies that certification of any class is proper under Rule 23.

129. Pursuant to Section 155 of the Illinois Insurance Code, 215 ILCS 5/155, in an action against an insurance company over coverage of insurance policies or amounts payable thereunder, the insured is entitled to recover costs, attorneys' fees, and an additional allowance specified by statute if the action or delay on the part of the insurance company is vexatious and unreasonable.

Answer: Paragraph 129 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies each and every of the allegations in Paragraph 129 and denies that Plaintiff is entitled to coverage under the policy.

130. As set forth above, Defendants' actions and delay in denying Plaintiff and the Business Income Coverage Class coverage under the applicable policy has been vexatious and unreasonable, in one or more of the following respects:

- a. By failing to provide insurance coverage at the time Defendants' knew or reasonably should have known Plaintiff and the Class were entitled to such insurance coverage;
- b. By failing to objectively evaluate the claim of Plaintiff and the Class;

- c. By interpreting the provisions of the insurance policy in an unreasonable manner;
- d. By interpreting the factual circumstances in an unreasonable manner;
- e. By interpreting the policy provisions and factual circumstances so as to resolve ambiguities and uncertainties against Plaintiff and the Class and in favor of their own interest;
- f. By misrepresenting policy provisions;
- g. By failing to provide a reasonable explanation of the basis for denial of coverage for Plaintiff and the Class' claims;
- h. By unreasonably failing to conduct a prompt, fair, balanced and thorough investigation of all of the bases of Plaintiff and the Class' claims;
- i. By unreasonably engaging in a pattern and practice of failing to conduct a prompt, fair, balanced and thorough investigation of all of the bases of claims made under Plaintiff and the Class' policies;
- j. By unreasonably failing to diligently search for and consider evidence that supports coverage of Plaintiff's and the Class' claims;
- k. By unreasonably engaging in a pattern and practice of failing to diligently search for and consider evidence that supports coverage of Plaintiff's and the Class' claims;
- l. By unreasonably failing to conduct an investigation to determine the efficient proximate cause (predominant cause) of Plaintiff's and the Class' losses;
- m. By unreasonably engaging in a pattern and practice of failing to conduct an investigation to determine the efficient proximate cause (predominant cause) on claims made by insureds;
- n. By unreasonably failing to give at least as much consideration to the interests of Plaintiff and the Class as they give to their own interests; and/or

- o. By forcing Plaintiff and the Class to file suit to obtain the benefits under the policy.

Answer: Paragraph 130 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies each and every of the allegations in Paragraph 130, including subparts, and denies that Plaintiff or any putative class members is entitled to coverage under the policies.

131. As a result of Defendants' vexatious and unreasonable conduct, Plaintiff and the Business Income Coverage Class are entitled to the relief provided in Section 155 of the Illinois Insurance Code, including penalties, reasonable attorneys' fees, and costs, and for such further relief as the Court deems just and proper.

Answer: Twin City admits that Plaintiff seeks relief in this action. Twin City denies each and every of the remaining allegations in Paragraph 131 and denies that Plaintiff or the purported class are entitled to coverage under their policies or entitled to any of the requested relief.

**COUNT III: Declaratory Relief Applicable to Business Income
(By Plaintiff and the Business Income Coverage Class)**

132. Plaintiff realleges and incorporates by reference the allegations contained in all prior paragraphs of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

Answer: Twin City restates and incorporates by reference Twin City's responses to the proceeding paragraphs as if fully set forth herein. The remaining allegations in Paragraph 132 state legal conclusions to which no response is required. To the extent any further response is required, Twin City admits that Plaintiff purports to plead this cause of action in the alternative and otherwise denies the allegations in Paragraph 132.

133. Plaintiff brings this claim individually and on behalf of the Business Income Coverage Class against Defendants under Illinois law.

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders. Twin City denies each and every of the remaining allegations in Paragraph 133 and denies that certification of any class is proper under Rule 23.

134. This Court has jurisdiction to declare the rights and other legal relations pursuant to 28 U.S.C. §§ 2201-2202.

Answer: Twin City does not contest the Court's jurisdiction under 28 U.S.C. §§ 2201 and 2202. Twin City denies each and every of the remaining allegations in Paragraph 134.

135. Plaintiff's Policy and the policies of other Business Income Coverage Class members are insurance contracts under which Defendants were paid premiums in exchange for promises to pay Class members' losses for claims covered by the policy.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City and paid a premium for the policy. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 135.

136. In the Policy, Defendants expressly agreed to pay for loss of Business Income and Extended Business Income incurred as a result of the causes not excluded under the policy. Specifically, Defendants promised to pay for losses of business income sustained as a result of a business suspension.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 136 and denies that Plaintiff is entitled to coverage under the policy.

137. A covered loss has resulted in business suspensions, which have caused Plaintiff and Class members losses.

Answer: Twin City denies the allegations in Paragraph 137 and denies that Plaintiff is entitled to coverage under the policy.

138. The business suspensions and losses triggered the Business Income and Extended Business Income coverage under the policy and other Class members' policies.

Answer: Twin City denies each and every of the allegations of Paragraph 138.

139. Plaintiff and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

Answer: Twin City admits that Plaintiff paid a premium for the policy. Twin City denies each and every of the remaining allegations in Paragraph 139.

140. Defendants, without justification, have refused performance under the policy and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendants are in breach of the policy and other Class members' policies.

Answer: Paragraph 140 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 140.

141. Plaintiff and the Class members seek a judicial determination of whether the policies provide coverage for Plaintiff's and Class members' losses.

Answer: Twin City admits that Plaintiff seeks a judicial determination. Twin City otherwise denies that Plaintiff is entitled to a determination in its favor, and denies each and every remaining allegations in Paragraph 141.

142. An actual case or controversy exists regarding Class members' rights and Defendants' obligations under the terms of the Class members' policies.

Answer: Paragraph 142 states legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of Paragraph 142.

**COUNT IV: Extra Expense Breach of Contract
(By Plaintiff and the Extra Expense Coverage Class)**

143. Plaintiff realleges and incorporates by reference the allegations contained in all prior paragraphs of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

Answer: Twin City restates and incorporates by reference Twin City's responses to the proceeding paragraphs as if fully set forth herein. The remaining allegations in Paragraph 143 state legal conclusions to which no response is required. To the extent any further response is required, Twin City admits that Plaintiff purports to plead this cause of action in the alternative and otherwise denies the allegations in Paragraph 143.

144. Plaintiff brings this claim individually and on behalf of the Extra Expense Coverage Class against Defendants under Illinois law.

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders. Twin City denies each and every of the remaining allegations in Paragraph 144 and denies that certification of any class is proper under Rule 23.

145. Plaintiff's policy and the policies of other Extra Expense Coverage Class members are insurance contracts under which Defendants were paid premiums in exchange for promises to pay Class members' losses for claims covered by the Policy.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City and paid a premium for the policy. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 145.

146. In Plaintiff's policy and the policies of other Extra Expense Coverage Class members, Defendants expressly agree to pay for extra expenses incurred as a result of the causes not excluded under the policies. Specifically, Defendants promise to pay amounts to avoid or minimize the losses from suspension of business and to continue 'operations' at Plaintiff's and Class members' premises, to repair or replace any property, and other expenses.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 146 and denies that Plaintiff is entitled to coverage under the policy.

147. A covered loss has resulted in a business suspension. These suspensions have caused Plaintiff and Class members to incur extra expenses.

Answer: Twin City denies each and every of the allegations in Paragraph 147 and denies that Plaintiff or any members of the putative classes are entitled to coverage under the policies.

148. The extra expenses triggered the extra expense coverage under Plaintiff's policy and other Class members' policies.

Answer: Twin City denies each and every of the allegations of Paragraph 148.

149. Plaintiff and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

Answer: Twin City admits that the Plaintiff paid a premium for the policy. Twin City denies each and every of the remaining allegations in Paragraph 149.

150. Defendants, without justification, have refused performance under the policy and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendants are in breach of the policy and other Class members' policies.

Answer: Paragraph 150 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 in Paragraph 150.

151. Due to Defendants' breach of the policy and other Class member policies, Plaintiff and other Class members have suffered actual and substantial damages for which Defendants are liable, in an amount to be proved at trial.

Answer: Twin City admits that Plaintiff seeks relief in this action. Twin City denies each and every of the remaining allegations in Paragraph 151 and denies that Plaintiff or the purported class are entitled to coverage under the policies or entitled to any of the requested relief.

**COUNT V: Damages Pursuant to 215 ILCS 5/155
(By Plaintiff and the Extra Expense Coverage Class)**

152. Plaintiff realleges and incorporates by reference the allegations contained in all prior paragraphs of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

Answer: Twin City restates and incorporates by reference Twin City's responses to the proceeding paragraphs as if fully set forth herein. The remaining allegations in Paragraph 152 state legal conclusions to which no response is required. To the extent any further response is required, Twin City admits that Plaintiff purports to plead this cause of action in the alternative and otherwise denies the allegations in Paragraph 152.

153. Plaintiff brings this claim individually and on behalf of the Extra Expense Coverage Class against Defendants under Illinois law.

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders. Twin City denies each and every of the remaining allegations in Paragraph 153 and denies that certification of any class is proper under Rule 23.

154. Pursuant to Section 155 of the Illinois Insurance Code, 215 ILCS 5/155, in an action against an insurance company over coverage of insurance policies or amounts payable thereunder, the insured is entitled to recover costs, attorneys' fees, and an additional allowance specified by statute if the action or delay on the part of the insurance company is vexatious and unreasonable.

Answer: Paragraph 154 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies each and every of the allegations in Paragraph 154 and denies that Plaintiff is entitled to coverage under the policy.

155. As set forth above, Defendants' actions and delay in denying Plaintiff and the Extra Expense Class coverage under the applicable policy has been vexatious and unreasonable, in one or more of the following respects:

- a. By failing to provide insurance coverage at the time Defendants' knew or reasonably should have known Plaintiff and the Class were entitled to such insurance coverage;
- b. By failing to objectively evaluate the claim of Plaintiff and the Class;
- c. By interpreting the provisions of the insurance policy in an unreasonable manner;
- d. By interpreting the factual circumstances in an unreasonable manner;
- e. By interpreting the policy provisions and factual circumstances so as to resolve ambiguities and uncertainties against Plaintiff and the Class and in favor of their own interest;
- f. By misrepresenting policy provisions;
- g. By failing to provide a reasonable explanation of the basis for denial of coverage for Plaintiff and the Class' claims;
- h. By unreasonably failing to conduct a prompt, fair, balanced and thorough investigation of all of the bases of Plaintiff and the Class' claims;
- i. By unreasonably engaging in a pattern and practice of failing to conduct a prompt, fair, balanced and thorough investigation of all of the bases of claims made under Plaintiff and the Class' policies;
- j. By unreasonably failing to diligently search for and consider evidence that supports coverage of Plaintiff's and the Class' claims;
- k. By unreasonably engaging in a pattern and practice of failing to diligently search for and consider evidence that supports coverage of Plaintiff's and the Class' claims;
- l. By unreasonably failing to conduct an investigation to determine the efficient proximate cause (predominant cause) of Plaintiff's and the Class' losses;

- m. By unreasonably engaging in a pattern and practice of failing to conduct an investigation to determine the efficient proximate cause (predominant cause) on claims made by insureds;
- n. By unreasonably failing to give at least as much consideration to the interests of Plaintiff and the Class as they give to their own interests; and/or
- o. By forcing Plaintiff and the Class to file suit to obtain the benefits under the policy.

Answer: Paragraph 155 states legal conclusions to which no answer is required. To the extent an answer is required, Twin City denies each and every of the allegations in Paragraph 155, including subparts, and denies that Plaintiff or any putative class members is entitled to coverage under the policies.

156. As a result of Defendants' vexatious and unreasonable conduct, Plaintiff and the Extra Expense Coverage Class are entitled to the relief provided in Section 155 of the Illinois Insurance Code, including penalties, reasonable attorneys' fees, and costs, and for such further relief as the Court deems just and proper.

Answer: Twin City admits that Plaintiff seeks relief in this action. Twin City denies each and every of the remaining allegations in Paragraph 156 and denies that Plaintiff or the purported class are entitled to coverage under the policies or entitled to any of the requested relief.

**COUNT VI: Declaratory Relief Applicable to Extra Expense
(By Plaintiff and the Extra Expense Coverage Class)**

157. Plaintiff realleges and incorporates by reference the allegations contained in all prior paragraphs of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

Answer: Twin City restates and incorporates by reference Twin City's responses to the proceeding paragraphs as if fully set forth herein. The remaining allegations in

Paragraph 157 state legal conclusions to which no response is required. To the extent any further response is required, Twin City admits that Plaintiff purports to plead this cause of action in the alternative and otherwise denies the allegations in Paragraph 157.

158. Plaintiff brings this claim individually and on behalf of the Extra Expense Coverage Class against Defendants under Illinois law.

Answer: Twin City admits that Plaintiff purports to bring this action on behalf of himself and other Illinois policyholders. Twin City denies each and every of the remaining allegations in Paragraph 158 and denies that certification of any class is proper under Rule 23.

159. This Court has jurisdiction to declare the rights and other legal relations pursuant to 28 U.S.C. §§ 2201-2202.

Answer: Twin City does not contest the Court's jurisdiction under 28 U.S.C. §§ 2201 and 2202. Twin City denies each and every of the remaining allegations in Paragraph 159.

160. Plaintiff's policy and the policies of other Extra Expense Coverage Class members are insurance contracts under which Defendants were paid premiums in exchange for promises to pay Class members' losses for claims covered by the policies.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City and paid a premium for the policy. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 160.

161. In Plaintiff's policy and the policies of other Extra Expense Coverage Class members, Defendants expressly agree to pay extra expenses incurred as a result of the causes not

excluded under the policies. Specifically, Defendants promise to pay amounts to avoid or minimize the losses from suspension of business and to continue “operations” at Plaintiff’s and Class members’ premises, to repair or replace any property, and other expenses.

Answer: Twin City admits that the Plaintiff purchased an insurance policy from Twin City. The terms, conditions, and exclusions of the policy speak for themselves. Twin City denies each and every of the remaining allegations in Paragraph 161 and denies that Plaintiff or any members of the putative class are entitled to coverage under the policies.

162. The COVID-19 pandemic has caused Plaintiff and the Extra Expense Coverage Class covered losses.

Answer: Twin City denies each and every of the allegations in Paragraph 162 and denies that Plaintiff or any members of the putative class are entitled to coverage under the policies.

163. These covered losses have resulted, and will result, in extra expenses, which have caused Plaintiff’s and Class members losses.

Answer: Twin City denies each and every of the allegations in Paragraph 163 and denies that Plaintiff or any members of the putative class are entitled to coverage under the policies.

164. The extra expenses triggered the Extra Expense coverage under Plaintiff’s policy and other Class members’ policies.

Answer: Twin City denies each and every of the allegations of Paragraph 164.

165. Plaintiff and the other Class members have complied with all applicable provisions of their respective policies, including payment of premiums.

Answer: Twin City admits that Plaintiff paid a premium for the policy. Twin City denies each and every of the remaining allegations in Paragraph 165.

166. Defendants, without justification, have refused performance under Plaintiff's policy and other Class members' policies by denying coverage for these losses and expenses. Accordingly, Defendants are in breach of Plaintiff's policy and other Class members' policies.

Answer: Paragraph 166 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 166.

167. Plaintiff and the Class members seek a judicial determination of whether the Extra Expense provisions of the policies provide coverage for Plaintiff's and Class members' losses.

Answer: Twin City admits that Plaintiff seeks relief in this action. Twin City denies that Plaintiff is entitled to the relief sought, denies that Plaintiff or the purported class are entitled to coverage under the policies or any of the requested relief.

168. An actual case or controversy exists regarding Extra Expense Coverage Class members' rights and Defendants' obligations under the terms of the Extra Expense provisions of Plaintiff's policy and other Class members' policies.

Answer: Paragraph 168 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 168.

VII. PRAYER FOR RELIEF

Twin City denies that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

Twin City asserts the below affirmative defenses and reserves all rights to amend or supplement these defenses when and if amended or additional defenses become appropriate or available in this action, including, in the event any class is certified, the right to advance additional defenses pertinent to class members. 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.

FIRST AFFIRMATIVE DEFENSE

(Failure to state a claim)

The Amended Class Action Complaint fails to state a cause of action upon which relief is granted.

SECOND AFFIRMATIVE DEFENSE

(Virus Exclusion)

The policy contains an exclusion titled “‘Fungi’, Wet Rot, Dry Rot, Bacteria And Virus.” *See* Doc. 27-1 at 127. Plaintiff’s claims are barred or limited, in whole or in part, by the “‘Fungi’, Wet Rot, Dry Rot, Bacteria And Virus” exclusion.

THIRD AFFIRMATIVE DEFENSE

(Virus – Limited Additional Coverage Limits)

The policy contains a provision titled “Limited Coverage for ‘Fungi’, Wet Rot. Dry Rot, Bacteria and Virus.” *See* Doc. 27-1 at 128-129. Plaintiff’s claims are 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” provisions.

FOURTH AFFIRMATIVE DEFENSE

(No “direct physical loss”)

Plaintiff’s claims are 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.

FIFTH AFFIRMATIVE DEFENSE

(Business Interruption – Not caused by “direct physical loss”)

Plaintiff’s claims are barred or limited, in whole or in part, because the interruption to Plaintiff’s businesses, if any, was not due to the “direct physical loss of or physical damage to Covered Property ... caused by or resulting from a Covered Cause of Loss.” *See* 27-1 at 29.

SIXTH AFFIRMATIVE DEFENSE

(Covered Cause of Loss)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent Plaintiff cannot demonstrate a “Covered Cause of Loss,” as defined in the policy. *See* Doc. 27-1 at 30.

SEVENTH AFFIRMATIVE DEFENSE

(Merger clause)

The policy is the sole agreement between Plaintiff and Twin City, and Twin City did not breach any terms of the policy. Any written directive, order, or other writing not between Twin

City and its policyholder cannot change, amend, or supplement the contractual arrangement between the parties.

EIGHTH 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.

NINTH AFFIRMATIVE DEFENSE

(Losses not covered by Policy)

Plaintiff's claims are barred or limited, in whole or in part, to the extent Plaintiff seeks relief for damages or losses not covered by the policy.

TENTH AFFIRMATIVE DEFENSE

(Two or more coverages)

The policy contains a General Condition titled "Insurance Under Two Or More Coverages." *See* Doc. 27-1 at 25. Plaintiff's claims are limited, in whole or in part, to the extent the "Insurance Under Two Or More Coverages" provision is applicable to the loss or damage.

ELEVENTH AFFIRMATIVE DEFENSE

(Other insurance)

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

TWELFTH AFFIRMATIVE DEFENSE

(Failure to exhaust other insurance coverage)

Plaintiff's claims are barred or limited, in whole or in part, to the extent that Plaintiff has not demonstrated exhaustion of coverage for losses under other more specific insurance policies.

THIRTEENTH AFFIRMATIVE DEFENSE

(Deductibles, Sub-limits)

Plaintiff's claims are 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.

FOURTEENTH AFFIRMATIVE DEFENSE

(Outside Period of Restoration)

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

FIFTEENTH AFFIRMATIVE DEFENSE

(Law or Public Policy)

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

SIXTEENTH AFFIRMATIVE DEFENSE

(Conditions precedent and subsequent)

Plaintiff's claims are 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Offset)

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

EIGHTEENTH AFFIRMATIVE DEFENSE

(Valuation Clause)

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

NINETEENTH AFFIRMATIVE DEFENSE

(Ordinance or Law - Limits)

The policy contains an "Ordinance or Law" provision. *See* Doc. 27-1 at 35-36. 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 Additional Exclusions portion of the "Ordinance or Law" provision.

TWENTIETH AFFIRMATIVE DEFENSE

(Pollution Exclusion)

The policy contains an exclusion titled "Pollution." *See* Doc. 27-1 at 45-46. 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 "Pollution" exclusion.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Consequential Losses Exclusion)

The policy contains an exclusion titled “Consequential Losses.” *See* Doc. 27-1 at 45. 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 “Consequential Losses” exclusion.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Civil Authority – Limits)

The policy contains an Additional Coverage provision for “Civil Authority.” *See* Doc. 27-1 at 39. Plaintiff’s claims are barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Civil Authority provision.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Extra Expense – Limits)

The policy contains an Additional Coverage provision for “Extra Expense.” *See* Doc. 27-1 at 38-39. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the “Extra Expense” provision.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Business Income – Limits)

The policy contains an Additional Coverage provision for “Business Income.” *See* Doc. 27-1 at 38. 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” provision.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Extended Business Income – Limits)

The policy contains an Additional Coverage provision for “Extended Business Income.” *See* Doc. 27-1 at 39. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the “Extended Business” Income provision.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Acts, Errors or Omissions – Exclusion)

The policy contains an exclusion titled “Acts, Errors or Omissions.” *See* Doc. 27-1 at 153. 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, Errors or Omissions” exclusion.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Acts or Decisions - Exclusion)

The policy contains an exclusion titled “Acts or Decisions.” *See* Doc. 27-1 at 46. Plaintiff’s claims are barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the “Acts or Decisions” exclusion.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No private right of action)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent that the applicable statutes do not provide for a private right of action.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Named or additional insured)

Plaintiff’s claims are barred or limited, in whole or in part, to the extent that Plaintiff is not a named or additional insured under the policy.

THIRTIETH AFFIRMATIVE DEFENSE

(Comparative fault, waiver, estoppel, and unclean hands)

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Failure to comply with Policy)

Plaintiff's claims are barred or limited, in whole or in part, to the extent that Plaintiff failed to perform his obligations under the policy.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Failure to mitigate)

Plaintiff's claims are 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-THIRD AFFIRMATIVE DEFENSE

(Class claims cannot be certified)

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Defenses as to 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-FIFTH AFFIRMATIVE DEFENSE

(Reservation of future defenses)

Plaintiff's claims are 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, having fully answered the Amended Class Action Complaint, Twin City prays that this Court:

- a) deny the relief sought in the Amended Class Action Complaint;
- b) dismiss the Amended Class Action Complaint in its entirety with prejudice;
- c) enter judgment in favor of Twin City, and against Plaintiff;
- d) award Twin City costs and expenses, including attorneys' fees; and
- e) award Twin City such other and further relief as the Court deems just and proper.

Dated this 9th day of September 2020.

Respectfully submitted,

/s/ Patrick J. Kenny
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*Attorneys for Twin City Fire Insurance
Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of September 2020, a true and accurate copy of the foregoing was served electronically using the Court's CM/ECF system to all counsel of record and parties receiving electronic notice of pleadings filed in this case.

/s/ Patrick J. Kenny

Patrick J. Kenny