



5. Paragraph 5 asserts legal conclusions to which no response is required. To the extent a response is required, Twin City does not dispute the allegations within paragraph 5.

6. In response to paragraph 6, Twin City responds by stating that Hartford Fire Insurance Company has been dismissed from this case without prejudice. Accordingly, no response to paragraph 6 is required. To the extent a response is or may be deemed required, the allegations contained in paragraph 6 are denied except to admit that Hartford Fire Insurance Company is a foreign insurer.

7. In response to paragraph 7, Twin City responds by stating that Hartford Fire Insurance Company has been dismissed from this case without prejudice. Accordingly, Twin City responds to the allegations of the Complaint solely on its own behalf.

#### **SUBJECT MATTER AND PERSONAL JURISDICTION**

8. Paragraph 8 asserts a legal conclusion to which no response is required. To the extent a response is or may be deemed required, Twin City is without knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies same.

9. Paragraph 9 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, the allegations contained in paragraph 9 are denied except to admit that Twin City it conducts business in Louisiana.

#### **FACTS**

10. In response to paragraph 10, Twin City admits that it issued the referenced Policy, subject to its terms, conditions and exclusions. Twin City is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 10, and therefore denies same.

11. The allegations contained in paragraph 11 are denied except to admit that the referenced Policy is in effect. The Policy, being a written document, is the best evidence of its terms, conditions and exclusions. The remainder of the allegations contained in paragraph 11 are denied to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

12. Twin City admits the allegations of paragraph 12.

13. Paragraph 13 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 13 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

14. Paragraph 14 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 14 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

15. Paragraph 15 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 15 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

16. Paragraph 16 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the

allegations of paragraph 16 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

17. Paragraph 17 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 17 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

18. Paragraph 18 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, the allegations contained in paragraph 18 are denied except to admit that Twin City admits that the United States of America has been affected by COVID-19, or the coronavirus.

19. Paragraph 19 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, the allegations contained in paragraph 19 are denied except to admit that the United States of America has been affected by COVID-19, or the coronavirus. The remainder of the allegations contained in paragraph 19 are denied.

20. Paragraph 20 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 20 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

21. Twin City denies the allegations of paragraph 21.

22. Paragraph 22 asserts legal conclusions to which no response is required. To the extent a response is required, Twin City admits that Louisiana Governor Edwards and New Orleans Mayor Cantrell issued proclamations, but denies the remaining allegations of paragraph 22.

23. Paragraph 23 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 23 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

24. Paragraph 24 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 24 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

25. Paragraph 25 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 25 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

26. Paragraph 26 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 26 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

27. Paragraph 27 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City responds that the Policy, being a written document, is the best evidence of its terms, conditions and exclusions. Twin City denies the allegations of paragraph 27 to the extent that Plaintiffs have misquoted or mis-characterized the Policy.

28. Twin City denies the allegations of paragraph 28.

29. Twin City denies the allegations of paragraph 29.

30. Twin City denies the allegations of paragraph 30.

31. Twin City is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31, and therefore denies same.

32. In response to paragraph 32, Twin City admits that Plaintiffs made a demand for coverage under the Policy, and further admits that it denied coverage for Plaintiffs' demand pursuant to the terms, conditions and exclusions of the Policy. The remainder of the allegations contained in paragraph 32 are denied.

33. The allegations contained in paragraph 33 are denied except to admit that Twin City sent a letter to Plaintiffs on March 24, 2020, acknowledging receipt of Plaintiffs' request for coverage. The March 24, 2020 letter, being a written document, is the best evidence of its contents. The remainder of the allegations contained in paragraph 33 are denied.

34. The allegations contained in paragraph 34 are denied except to admit that Twin City sent a letter to Plaintiffs on March 27, 2020, denying coverage for Plaintiffs' claim. The March 27, 2020, being a written document, is the best evidence of its contents. The remainder of the allegations contained in paragraph 34 are denied.

35. In response to paragraph 35, Twin City admits that it sent a letter to Plaintiffs on March 27, 2020, which speaks for itself. Twin City denies the remaining allegations of paragraph 35.

36. In response to paragraph 36, Twin City admits that it sent a letter to Plaintiffs on March 27, 2020, which speaks for itself. Twin City denies the remaining allegations of paragraph 36.

37. In response to paragraph 37, Twin City admits that it sent a letter to Plaintiffs on March 27, 2020, which speaks for itself. Twin City denies the remaining allegations of paragraph 37.

38. Paragraph 38 asserts legal conclusions to which no response is required. To the extent a response is or may be deemed required, Twin City denies the allegations of paragraph 38.

39. Paragraph 39 asserts legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of paragraph 39.

40. Paragraph 40 asserts legal conclusions to which no response is required. To the extent a response is required, Twin City denies the allegations of paragraph 40.

41. In response to paragraph 41, Twin City admits that Plaintiffs make a demand for damages and other relief, but denies that Plaintiffs are entitled to any of the relief requested in paragraph 41.

42. Paragraph 42 asserts legal conclusions to which no response is required. To the extent a response is required, Twin City does not oppose and joins Plaintiffs' request for a jury trial on all issues.

43. The final, unnumbered paragraph of Plaintiffs' Complaint constitutes a prayer for relief to which no response is required. To the extent a response is or may be deemed required, Twin City denies that Plaintiffs are entitled to any of the relief requested.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

(Lack of personal jurisdiction)

The Court may lack personal jurisdiction over Defendant.

**SECOND AFFIRMATIVE DEFENSE**

(Failure to state a claim)

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

**THIRD AFFIRMATIVE DEFENSE**

(Virus Exclusion)

The Policy contains an exclusion titled "Limited Fungi, Bacteria Or Virus Coverage." Form SS 40 93 07 05 at 1. Plaintiffs' claims are barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by this exclusion.

**FOURTH AFFIRMATIVE DEFENSE**

(Virus-Limited Additional Coverage-Limits)

The Policy contains a provision titled "Limited Coverage For 'Fungi', Wet Rot, Dry Rot, Bacteria and Virus." Form SS 40 93 07 05 at 2-3. Plaintiffs' 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 provision.

**FIFTH AFFIRMATIVE DEFENSE**

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

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



SIXTH AFFIRMATIVE DEFENSE

(Merger clause)

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

SEVENTH 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.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to comply with Policy)

Plaintiffs' claims are barred or limited, in whole or in part, to the extent that Plaintiffs failed to perform their obligations under the Policy.

NINTH AFFIRMATIVE DEFENSE

(Losses not covered by Policy)

Plaintiffs' claims are barred or limited, in whole or in part, to the extent Plaintiffs seek relief for damages or losses not covered by the Policy.

TENTH AFFIRMATIVE DEFENSE

(Other insurance)

Plaintiffs' 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.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to exhaust other insurance coverage)

Plaintiffs' claims are barred or limited, in whole or in part, because Plaintiffs have not demonstrated exhaustion of coverage for losses under other more specific insurance policies.

TWELFTH AFFIRMATIVE DEFENSE  
(Deductibles, Sub-limits)

Plaintiffs' 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.

THIRTEENTH AFFIRMATIVE DEFENSE  
(Outside Period of Restoration)

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

FOURTEENTH AFFIRMATIVE DEFENSE  
(Law or Public Policy)

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

FIFTEENTH AFFIRMATIVE DEFENSE  
(Conditions precedent and subsequent)

Plaintiffs' 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.

SIXTEENTH AFFIRMATIVE DEFENSE  
(Offset)

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

SEVENTEENTH AFFIRMATIVE DEFENSE  
(Valuation Clause)

Plaintiffs' claims are limited, in whole or in part, by the valuation provisions in the Policy.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No “direct physical loss”)

Plaintiffs’ 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.

NINETEENTH AFFIRMATIVE DEFENSE

(No “direct physical loss” – Business Interruption)

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

TWENTIETH AFFIRMATIVE DEFENSE

(Covered Cause of Loss)

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Ordinance or Law-Limits)

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Pollution Exclusion)

The Policy contains an exclusion titled “Pollution.” Form SS 00 07 07 05 at 17-18. Plaintiffs’ 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-THIRD AFFIRMATIVE DEFENSE  
(Consequential Losses Exclusion)

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE  
(Civil Authority- Limits)

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE  
(Business Income from Dependent Properties-Limits)

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE  
(Extended Business Income-Limits)

The Policy contains an Additional Coverage provision for “Extended Business Income.” Form SS 00 07 07 05 at 11. Plaintiffs’ claims are 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-SEVENTH AFFIRMATIVE DEFENSE  
(Acts or Decisions)

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

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No bad faith)

Plaintiffs' claims are barred or limited, in whole or in part, because Twin City has at all relevant times acted reasonably and in good faith.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(No bad faith – Claim was properly handled)

Plaintiffs' claims are barred or limited, in whole or in part, because Twin City conducted a thorough and timely investigation of all bases of Plaintiffs' insurance claim.

THIRTIETH AFFIRMATIVE DEFENSE

(No bad faith – Reasonable grounds)

Plaintiffs' claims are barred or limited, in whole or in part, to the extent that Twin City had reasonable grounds to deny Plaintiffs' insurance claim.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Failure to mitigate)

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Reservation of future defenses)

Plaintiffs' 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 this case progresses to the full extent permissible by law.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**  
(Uncovered locations)

Plaintiffs' claims are barred or limited to the extent that Plaintiffs seek coverage for locations that are not insured by or under the Policy.

**PRAYER FOR RELIEF**

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

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

**JURY DEMAND**

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

Respectfully submitted:

/s/ Nicole M. Babb

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**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing pleading has been served upon all counsel of record through the Court's CM/ECF system on this 10th day of August, 2020

*/s/ Nicole M. Babb*

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Nicole M. Babb