

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

THE KIRKLAND GROUP, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:20-cv-496-DPJ-FKB
)	
SENTINEL INSURANCE GROUP LTD.,)	
D/B/A THE HARTFORD,)	
)	
Defendant.)	
)	

**DEFENDANT SENTINEL INSURANCE GROUP LTD.’S
ANSWER TO PLAINTIFF’S COMPLAINT AND AFFIRMATIVE DEFENSES**

Sentinel Insurance Group Ltd. (“Sentinel” or “Defendant”) by and through its counsel, hereby answers and responds to the Complaint (“Complaint”) of Plaintiff The Kirkland Group, Inc. (“Plaintiff”).

ANSWER TO PLAINTIFF’S ALLEGATIONS

For ease of reference, this Answer uses the headings that Plaintiff included in the Complaint. Any allegations or characterizations in headings to the Complaint are denied. Any allegations not expressly and specifically admitted in this Answer are also denied.

In addition, Plaintiff has asserted that Sentinel does business as the “The Hartford.” Defendant states that the “The Hartford” is a trade name and not a company. As result, Defendant denies allegations that suggest or infer that “The Hartford” is any more than a trade name used by Defendant.

INTRODUCTION

1. The allegations in Paragraph 1 are not directed at conduct of Defendant, and therefore no response is required. To the extent that a response is required, Defendant is without

knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 1, and therefore denies the same.

2. The allegations in Paragraph 2 are not directed at conduct of Defendant, and therefore no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth of the allegations in Paragraph 2, and therefore denies the same.

3. The allegations in Paragraph 3 are not directed at conduct of Defendant, and therefore no response is required. To the extent that a response is required, Defendant admits that various jurisdictions across the country, including the State of Mississippi, have issued various orders as a result of COVID-19. The contents of the orders speak for themselves. To the extent that Plaintiff's characterizations of these orders are inconsistent with their terms, Defendant denies them. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the allegations concerning the effects of these orders on Plaintiff, and therefore denies the remaining allegations in Paragraph 3.

4. Defendant admits that it issued a Business Owner's Policy ("Policy") to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the remaining allegations in Paragraph 4, and therefore denies the same.

5. Paragraph 5 contains legal conclusions to which no response is required. To the extent a response is required, the terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 5 are inconsistent with the terms of the Policy, Defendant denies them. Defendant admits that various jurisdictions across the country, including Mississippi, have issued various orders as a result of COVID-19. The contents of the

orders speak for themselves. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the remaining allegations in Paragraph 5, and therefore denies same.

6. Paragraph 6 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies Plaintiff is entitled to any recovery under the terms of the Policy. The terms, conditions, and exclusions of the Policy speak for themselves. Defendant admits Plaintiff tendered an insurance claim to Defendant under the Policy and states that Defendant properly denied coverage for Plaintiff's claim because there is no coverage under the Policy.

7. Defendant admits that March 19, 2020 is a date within the Policy Period associated with the Policy issued to Plaintiff. Defendant admits that Mississippi Governor Reeves issued orders on March 19, 2020 and March 24, 2020 related to COVID-19. The contents of the orders speak for themselves. To the extent that Plaintiff's characterizations of these orders are inconsistent with their terms, Defendant denies them. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the remaining allegations in Paragraph 7, and therefore denies them.

8. The allegations in Paragraph 8 are not directed at conduct of Defendant, and therefore no response is required. To the extent that a response is required, Defendant admits that Mississippi Governor Reeves issued orders on March 19, 2020 and March 24, 2020 related to COVID-19. The contents of the orders speak for themselves. To the extent that Plaintiff's characterizations of these orders are inconsistent with their terms, Defendant denies them. Defendant is without knowledge or information sufficient to form a reasonable belief regarding any remaining allegations in Paragraph 8, and therefore denies them.

9. The allegations in Paragraph 9 are not directed at conduct of Defendant, and therefore no response is required. To the extent that a response is required, Defendant admits the CDC has issued various guidance and recommendations regarding COVID-19 and that Plaintiff purports to summarize some of the guidance and recommendations in Paragraph 9. The contents of the cited guidance and recommendations speak for themselves. To the extent that Plaintiff's characterizations of the guidance and recommendations are inconsistent with their terms, Defendant denies the same. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth of any remaining allegations in Paragraph 9, and therefore denies the same.

10. The allegations in Paragraph 10 are not directed at conduct of Defendant, and therefore no response is required. To the extent that a response is required, Defendant admits the CDC has issued various guidance and recommendations regarding COVID-19 and that Plaintiff purports to summarize some of the guidance and recommendations in Paragraph 10. The contents of the cited guidance and recommendations speak for themselves. To the extent that Plaintiff's characterizations of the guidance and recommendations are inconsistent with their terms, Defendant denies the same. Defendant is 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. The allegations in Paragraph 11 are not directed at conduct of Defendant, and therefore no response is required. To the extent that a response is required, Defendant admits that Mississippi Governor Reeves issued various orders regarding COVID-19. The contents of the orders speak for themselves. To the extent that Plaintiff's characterizations of these orders are inconsistent with their terms, Defendant denies the same. Defendant is without knowledge or

information sufficient to form a reasonable belief regarding the remaining allegations in Paragraph 11, and therefore denies them.

12. Defendant admits that Plaintiff has paid premiums under its Policy. The remainder of Paragraph 12 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies Plaintiff is entitled to any recovery for its alleged losses or “work shut down” under the terms of the Policy. In addition, the terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 12 are inconsistent with the terms of the Policy, Defendant denies them.

13. Defendant admits that Plaintiff tendered an insurance claim to Defendant under the Policy and that Defendant issued a denial of that claim. Defendant denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses. Paragraph 13 purports to recite the terms of the Policy. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 13 are inconsistent with the terms of the Policy, Defendant denies them. Defendant also denies the remaining allegations in Paragraph 13.

14. Defendant admits the quoted language is included in the Policy. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 14 are inconsistent with the terms of the Policy, Defendant denies them. Defendant also denies that Plaintiff is entitled to any coverage under the quoted provision or any other provision of the Policy for its alleged losses.

15. Paragraph 15 contains legal conclusions to which no response is required. To the extent a response is required to these legal conclusions, Defendant denies them. Defendant admits that Plaintiff tendered an insurance claim to Defendant under the Policy and that Defendant issued a denial of that claim. Defendant admits that various jurisdictions across the country, including

Mississippi, have issued various orders as a result of COVID-19. The contents of the orders speak for themselves. To the extent that Plaintiff's characterizations of these orders are inconsistent with their terms, Defendant denies the same. Defendant denies the remaining allegations in Paragraph 15. Defendant also denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses.

16. Paragraph 16 contains legal conclusions to which no response is required. To the extent a response is required to these legal conclusions, Defendant denies them. Paragraph 16 also purports to recite the contents of the Policy. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 16 are inconsistent with the terms of the Policy, Defendant denies them. Defendant also denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses. Defendant further denies the remaining allegations in Paragraph 16.

17. Paragraph 17 contains legal conclusions to which no response is required. To the extent a response is required to these legal conclusions, Defendant denies them. Paragraph 17 also purports to recite the contents of the Policy. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 17 are inconsistent with the terms of the Policy, Defendant denies them. Defendant also denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses. Defendant further denies the remaining allegations in Paragraph 17.

18. Defendant admits that Plaintiff has filed this action seeking various relief. Defendant denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses or any of the requested relief in this action. Defendant denies any remaining allegations in Paragraph 18

19. The allegations in Paragraph 19 are not directed at conduct of Defendant, and therefore no response is required. Paragraph 19 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies that it violated any duty of “good faith and fair dealing.”

PARTIES

21. Defendant admits that it issued the Policy to Plaintiff bearing the Policy Number 43 SBA BG4913. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 21 are inconsistent with the terms of the Policy, Defendant denies them. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth of the remaining allegations in Paragraph 21, and therefore denies the same.¹

22. Defendant states that the “The Hartford” is a trade name and not a company. As result, Defendant denies the allegations in Paragraph 22 that suggest or infer that “The Hartford” is any more than a trade name used by Defendant. Defendant admits the remaining allegations in Paragraph 22.

JURISDICTION & VENUE

23. Paragraph 23 contains legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest that this Court has subject matter jurisdiction.

24. Paragraph 24 contains legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest that this Court has personal jurisdiction over Defendant. Defendant denies the remaining allegations in Paragraph 24.

¹ The Complaint does not contain a “Paragraph 20.”

25. Paragraph 25 contains legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest that this Court has jurisdiction to issue declaratory relief. Defendant denies the remaining allegations in Paragraph 25.

26. Paragraph 26 contains legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest that venue is proper in this district.

FACTUAL ALLEGATIONS

27. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 27 are inconsistent with the terms of the Policy, Defendant denies them. Defendant denies any remaining allegations in Paragraph 27.

28. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 28 are inconsistent with the terms of the Policy, Defendant denies them. Defendant also explicitly denies that the Policy does not exclude losses from viruses or pandemics. Defendant denies any remaining allegations in Paragraph 28.

29. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 29 are inconsistent with the terms of the Policy, Defendant denies them. Defendant denies any remaining allegations in Paragraph 29.

30. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 30 are inconsistent with the terms of the Policy, Defendant denies them. Defendant denies any remaining allegations in Paragraph 30.

31. On information and belief, Defendant admits the allegations in Paragraph 31.

32. Defendant admits that Mississippi Governor Reeves issued an order on March 19, 2020 related to COVID-19. The contents of the order speak for themselves. To the extent that Plaintiff's characterizations of this order are inconsistent with its terms, Defendant denies them. Defendant denies any remaining allegations in Paragraph 32.

33. Defendant admits that Mississippi Governor Reeves issued an order on March 19, 2020 related to COVID-19. The contents of this order speak for themselves. To the extent that Plaintiff's characterizations of this order are inconsistent with its terms, Defendant denies them. Defendant denies that Plaintiff experienced any "physical property damage or loss under the Policies." In addition, the terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 33 are inconsistent with the terms of the Policy, Defendant denies them. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the remaining allegations in Paragraph 33, and therefore denies the them.

35. Defendant admits that Mississippi Governor Reeves issued an order on March 24, 2020 related to COVID-19. The contents of the order speak for themselves. To the extent that Plaintiff's characterizations of this order are inconsistent with its terms, Defendant denies them. Defendant denies the remaining allegations in Paragraph 35.²

36. Defendant admits that Mississippi Governor Reeves issued an order on March 24, 2020 related to COVID-19. The contents of the order speak for themselves. To the extent that Plaintiff's characterizations of this order are inconsistent with its terms, Defendant denies them. Defendant denies that Plaintiff is entitled to coverage under the Policy. In addition, the terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in

² The Complaint does not contain a "Paragraph 34."

Paragraph 36 are inconsistent with the terms of the Policy, Defendant denies them. Sentinel denies any remaining allegations in Paragraph 36.

37. Defendant denies that any alleged losses incurred or suffered by Plaintiff are covered under the Policy. Defendant also denies that it owes Plaintiff under the Policy for any alleged losses. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the remaining allegations in Paragraph 37, and therefore denies them.

38. Defendant admits that Plaintiff tendered an insurance claim to Defendant under the Policy and that Defendant denied that claim. Defendant denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses. Defendant denies the remaining allegations in Paragraph 38.

COUNT I: DECLARATORY JUDGMENT

39. Defendant restates and incorporates by reference its responses to Paragraphs 1-38 as if fully set forth herein.

40. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 40 are inconsistent with the terms of the Policy, Defendant denies them. Defendant admits that Plaintiff paid premiums under the Policy. Defendant denies any remaining allegations in Paragraph 40.

41. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 41 are inconsistent with the terms of the Policy, Defendant denies them. Defendant admits that Plaintiff paid premiums under the Policy. Defendant denies any remaining allegations in Paragraph 41.

42. Defendant denies the allegations in Paragraph 42. Defendant also denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses.

43. Paragraph 43 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 43.

44. Paragraph 44 contains a declarative description of the relief sought by Plaintiff to which no response is required. To the extent a response is required, Defendant admits that Plaintiff seeks declaratory relief. Defendant denies Plaintiff is entitled to any relief whatsoever in this action. Defendant also denies any remaining allegations in Paragraph 44.

COUNT II: BREACH OF CONTRACT

45. Defendant restates and incorporates by reference its responses to Paragraphs 1-44 as if fully set forth herein.

46. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 46 are inconsistent with the terms of the Policy, Defendant denies them. Defendant admits that Plaintiff paid premiums under the Policy. Defendant denies any remaining allegations in Paragraph 46.

47. Defendant admits that it issued the Policy to Plaintiff. The terms, conditions, and exclusions of the Policy speak for themselves. To the extent the allegations in Paragraph 47 are inconsistent with the terms of the Policy, Defendant denies them. Defendant admits that Plaintiff paid premiums under the Policy. Defendant denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses. Defendant also denies the remaining allegations in Paragraph 47.

48. Defendant denies the allegations in Paragraph 48. Defendant also denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses.

49. Defendant denies the allegations in Paragraph 49. Defendant also denies that Plaintiff is entitled to any coverage under the Policy for its alleged losses.

**COUNT III: STATUTORY PENALTY FOR BAD FAITH DENIAL OF INSURANCE
UNDER MISS. CODE ANN. § 11-1-65**

50. Defendant restates and incorporates by reference its responses to Paragraphs 1-49 as if fully set forth herein.

51. Defendant denies the allegations in Paragraph 51.

52. Defendant denies the allegations in Paragraph 52.

53. Defendant denies the allegations in Paragraph 53.

54. Paragraph 54 contains a description of the relief sought by Plaintiff in this action to which no response is required. To the extent a response is required, Defendant admits that Plaintiff seeks the described relief in this action. Defendant denies Plaintiff is entitled to any relief whatsoever in this action.

55. Paragraph 55 contains a description of the relief sought by Plaintiff in this action to which no response is required. To the extent a response is required, Defendant admits that Plaintiff seeks the described relief in this action. Defendant denies Plaintiff is entitled to any relief whatsoever in this action.

PRAYER FOR RELIEF

The Prayer for Relief contains a description of the relief sought by Plaintiff in this action to which no response is required. To the extent a response is required, Defendant admits that Plaintiff seeks the described relief in this action. Defendant denies Plaintiff is entitled to any relief whatsoever in this action.

JURY DEMAND

Defendant admits Plaintiff demands a jury trial in this action.

DEFENDANT’S AFFIRMATIVE DEFENSES

Defendant asserts the following 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. 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 Complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Virus Exclusion)

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

The Policy contains a provision titled “Limited Coverage For ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus.” Form SS 40 93 07 05 at 2-3. Plaintiff’s claims 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.

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 business, if any, was not due to the “direct physical loss of or physical damage to property at the ‘scheduled premises’... caused by or resulting from a Covered Cause of Loss.” Form SS 00 07 07 05 at 10.

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. Form SS 00 07 07 05 at 2.

SEVENTH AFFIRMATIVE DEFENSE

(Merger clause)

The Policy is the sole agreement between the parties, and Defendant did not breach any Policy terms or conditions. Any written directive, order, or other writing between Defendant and Plaintiff cannot change, amend, or supplement the contractual agreement between the parties.

EIGHTH AFFIRMATIVE DEFENSE

(Terms of the Policy are controlling)

Defendant’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

(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 its obligations under the Policy.

TENTH AFFIRMATIVE DEFENSE

(Alleged 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.

ELEVENTH AFFIRMATIVE DEFENSE

(Two or More Coverages)

The Policy contains a Common Policy Condition titled "Insurance Under Two Or More Coverages." Form SS 00 05 10 08 at 2. 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 purported loss or damage.

TWELFTH 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.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to exhaust other insurance coverage)

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

FOURTEENTH 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.

FIFTEENTH 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 alleged loss incurred outside the Period of Restoration.

SIXTEENTH 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.

SEVENTEENTH 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.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Offset)

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

NINETEENTH AFFIRMATIVE DEFENSE

(Valuation Clause)

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

TWENTIETH AFFIRMATIVE DEFENSE

(Ordinance or Law - Limits)

The Policy contains an Additional Coverage provision for "Ordinance or Law." Form SS 00 07 07 05 at 7-9. 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 this provision or is not included in the coverage of this provision.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Pollution Exclusion)

The Policy contains an exclusion titled "Pollution." Form SS 00 07 07 05 at 17-18. Plaintiff's claims 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-SECOND AFFIRMATIVE DEFENSE

(Consequential Losses Exclusion)

The Policy contains an exclusion titled "Consequential Losses." Form SS 00 07 07 05 at 17. Plaintiff's claims 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-THIRD AFFIRMATIVE DEFENSE

(Civil Authority)

The Policy contains an Additional Coverage provision for “Civil Authority.” Form SS 00 07 07 05 at 11. Plaintiff’s claims are barred, in whole or in part, to the extent that Plaintiff cannot satisfy the requirements of the Civil Authority provision that the order of civil authority be issued as the direct result of a Covered Cause of Loss or that access to Plaintiff’s premises was prohibited by the order.

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. Plaintiff’s claims are barred or limited, in whole or in part, by the time period and/or sub-limits applicable to this provision.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Business Income – Limits)

The Policy contains an Additional Coverage provision for “Business Income.” Form SS 00 07 07 05 at 10. Plaintiff’s claims are barred or limited, in whole or in part, by the time period and/or sub-limits applicable to this 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. Plaintiff’s 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

(Business Income from Dependent Properties - Limits)

The Policy contains an Additional Coverage provision for “Business Income from Dependent Properties.” Form SS 00 07 07 05 at 11-12. Plaintiff’s claims 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-EIGHTH AFFIRMATIVE DEFENSE

(Acts or Decisions – Exclusion)

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

TWENTY-NINTH 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.

THIRTIETH 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.

THIRTY-FIRST 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-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

(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, Defendant reserves the right to supplement the foregoing defenses as may appear as this case progresses to the full extent permissible by law.

PRAYER FOR RELIEF

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

- i. denying Plaintiff the relief sought in the Complaint;
- ii. dismissing the Complaint in its entirety with prejudice;
- iii. entering judgment in favor of Defendant, and against Plaintiff;
- iv. awarding Defendant its costs and expenses, including its attorneys' fees; and
- v. awarding Defendant such other and further relief as the Court deems just and proper.

Dated: October 8, 2020

Respectfully submitted,

/s/ Thomas J. Butler

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CERTIFICATE OF SERVICE

I certify that on October 8, 2020, I e-filed the foregoing with the Clerk of the Court for the Southern District of Mississippi using the CM/ECF system, which sent notification of such filing to the following:

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Counsel for Plaintiff

/s/ Thomas J. Butler _____
Of Counsel