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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WALTERS & MASON RETAIL, INC., d/b/a  
ALTAR'D STATE,

*Plaintiff,*

v.

HARTFORD FIRE INSURANCE  
COMPANY,

*Defendant.*

Civil Action No.

Jury Trial Demanded

**COMPLAINT FOR DECLARATORY JUDGMENT, BREACH OF CONTRACT,  
AND STATUTORY REMEDIES**

Plaintiff Walters & Mason Retail, Inc., doing business as Altar'd State ("Altar'd State" or "plaintiff"), by and through undersigned counsel, files this complaint for declaratory judgment, breach of contract, and statutory remedies against defendant Hartford Fire Insurance Company ("Hartford" or "defendant"), alleging upon knowledge as to its own acts and on information and belief as to all other matters, as follows:

**Introduction**

1. Altar'd State, founded over a decade ago in 2009, is a rapidly growing women's fashion brand with 119 boutiques in 37 states. Altar'd State purchased a comprehensive program of business interruption insurance from Hartford and paid significant premiums to protect its business.

2. This dispute arises from Hartford's wrongful denial of coverage with respect to millions of dollars in covered business interruption losses sustained by Altar'd State at its retail stores throughout the United States that were required to close for business, among other reasons, by orders of civil authorities as the result of the Novel Coronavirus 2019 ("COVID-19").

3. On or about January 30, 2020, Hartford issued an "all risk" insurance policy to Altar'd State that provides various coverages for business income losses and extra expenses including, but not limited to, when access to an Altar'd State retail store is specifically prohibited by order of a civil authority as the direct result of a covered cause of loss to property in the immediate area of the retail store. Covered causes of loss under the policy means direct physical loss or direct physical damage unless it is excluded or limited in the policy. In exchange for this "Civil Authority" coverage and other business interruption coverages included in its "all-risk" policy, as set forth below, Altar'd State paid substantial policy premiums.

4. In late January 2020, the United States confirmed its first case of COVID-19 in the State of Washington. COVID-19 spread rapidly throughout the country, including in the immediate area of Altar'd State's covered retail stores. COVID-19 has caused and continues to cause direct physical loss of or damage to Altar'd State's insured property, to property that is contiguous to Altar'd State's insured property, as well as to property in the immediate area of Altar'd State's insured property, by and through its proclivity to attach to surfaces of property for sustained periods of time thus rendering the property useless or uninhabitable and by causing an imminent threat or risk of the spread of COVID-19.

5. In response, various state, municipal and other governmental authorities ("Civil Authorities") across the country issued orders and supplemental orders specifically prohibiting access to "non-essential" or "non-life-sustaining" business properties, including Altar'd State's

retail stores, often finding the physical loss of or damage to property caused by COVID-19 as bases for the orders.

6. For example, on March 6, 2020, the Governor of the Commonwealth of Pennsylvania issued an order proclaiming the existence of a disaster emergency throughout the Commonwealth pursuant to a state statute, which confers upon the Governor the power to make such a proclamation “*upon finding* that a disaster has occurred or *that the occurrence or the threat of a disaster is imminent.*” 35 Pa. C.S. § 7101 (emphasis added). The order itself also stated that, “with 2 presumed positive cases in the Commonwealth as of March 6, 2020, the possible *increased threat from COVID-19* constitutes a *threat of imminent disaster* to the health of the citizens of the Commonwealth.” (Emphasis added). On this basis and finding of an imminent threat of the spread of COVID-19, among others, the Governor issued an order on March 19, 2020 that specifically prohibited access to non-life-sustaining businesses, which includes Altar’d State’s retail stores. As a result of this order and subsequent orders, Altar’d State was forced to close its stores, to limit its stores’ total occupancy, and to otherwise limit the number of employees and customers within its stores to respond to social distancing requirements.

7. In addition to this statewide prohibition, civil authorities in cities and counties throughout the Commonwealth issued orders further finding physical loss of or damage to property caused by COVID-19. For example, the City of Philadelphia stated “COVID-19 may remain viable for hours to days on surfaces made from a variety of materials located in businesses and other places, thus contaminating certain property and places.” (Emphasis added). The City of Pittsburgh stated that the “[w]orldwide outbreak of COVID-19 continues to *threaten* the life and health of our people and remains a *public disaster affecting* life, health, *property* and the public peace.” (Emphasis added).

8. These Civil Authority orders, among hundreds of others, specifically prohibiting access, in various ways, to properties, including Altar'd State's retail stores, resulted in significant business income losses and extra expenses for Altar'd State with its stores remaining closed for business, or otherwise severely interrupted, for months.

9. Altar'd State also sustained business interruption losses as a result of (a) direct physical loss of or damage to its insured property caused by or resulting from COVID-19 at its retail stores; (b) the specific prohibition of ingress or egress to one or more of Altar'd State's retail stores as the result of direct physical loss of or damage to property at premises that are contiguous to Altar'd State's stores; and (c) the necessary suspension of Altar'd State's operations with dependent properties, including, for example, malls which attracted customers to its premises.

10. Altar'd State timely provided notice of these covered losses to its insurer Hartford. Nevertheless, only three days later and without any reasonable justification, Hartford denied coverage for all of these losses.

11. Altar'd State seeks a declaration that Hartford must pay all current and future business income losses, extra expenses, extended income, and future earnings that Altar'd State has paid or incurred, or will pay or incur in the future, related to: (a) direct physical loss of or damage to its insured property caused by or resulting from COVID-19; (b) Civil Authority closures of its covered retail stores as a direct result of physical loss of or damage caused by COVID-19 to property in the immediate areas of the covered retail stores; (c) specific prohibitions of ingress or egress to one or more of its retail stores as the result of physical loss of or damage to property at premises that are contiguous to its retail stores; and (d) the necessary suspension of Altar'd State's operations with dependent properties. Altar'd State seeks breach of contract damages plus interest, costs and fees as damages under the policy. Altar'd State also seeks damages under 42 Pa. Stat.

Ann. § 8371.

### **The Parties**

12. Plaintiff Walters & Mason Retail, Inc., doing business as Altar'd State, is a corporation organized under the laws of Tennessee with its principal place of business in Maryville, Tennessee. Altar'd State is the named insured under the Policy (as defined herein). Four of the retail stores covered under the Policy (as defined herein) are located in the Commonwealth of Pennsylvania, including in King of Prussia Mall, located in Montgomery County, within this judicial district.

13. Defendant Hartford Fire Insurance Company is an insurance company organized under the laws of Connecticut with its principal place of business in Hartford, Connecticut. At all relevant times, Hartford was authorized to underwrite and issue insurance policies covering risks in the Commonwealth of Pennsylvania. Hartford has, at all relevant times, conducted business in this judicial district, including selling insurance and investigating claims involving policyholders, property, or activities located in this judicial district.

### **Jurisdiction and Venue**

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), as the amount in controversy exceeds, exclusive of interest and costs, seventy-five thousand dollars (\$75,000), and there is complete diversity of citizenship between plaintiff and defendant.

15. Venue in this district is proper under 28 U.S.C. § 1391(b) as the events or omissions giving rise to the claim occurred in this judicial district, and/or a property that is the subject of the action is situated in this judicial district.

### **Factual Background**

#### **A. The Policy**

16. On or about January 30, 2020, Hartford issued Policy No. 61 UUN HN3281 for the policy period January 30, 2020 to January 30, 2021 (the “Policy,” attached hereto as Exhibit A), whereby Hartford agreed to indemnify Altar’d State for losses, including but not limited to, business income losses and extra expenses at the company’s retail store properties (the “Scheduled Premises”). In return, Altar’d State paid the policy premiums.

17. The Scheduled Premises covered under the Policy include, but are not limited to, over one hundred Altar’d State retail stores in shopping malls in various states in the United States, including four retail stores in the Commonwealth of Pennsylvania. The Scheduled Premises are listed in the Policy and specifically identified as insured property.

18. The Policy is an “all-risk” policy in that it defines “Covered Causes of Loss” as “direct physical loss *or* direct physical damage that occurs during the Policy Period and in the Coverage Territory *unless* the loss or damage is excluded or limited in this policy.” (Emphasis added).

19. Altar’d State paid policy premiums to Hartford to provide business income coverage, under the Policy’s “Property Choice - Business Income and Extra Expense Coverage Form (Business Interruption),” “for the actual loss of Business Income [it] sustain[s] and the actual, necessary and reasonable Extra Expense [it] incur[s] due to the necessary interruption of [its] business operations during the Period of Restoration due to direct physical loss of or direct physical damage to property caused by or resulting from a Covered Cause of Loss at ‘Scheduled Premises’.” “Business Income” includes the loss of “net income” and “continuing normal operating expenses incurred, including Payroll Expenses.”

20. Altar’d State also paid policy premiums to Hartford, specifically to provide “Additional Coverages” under the “Property Choice Business Income and Extra Expense

Coverage Form,” including, as is pertinent here, “Civil Authority,” “Dependent Properties,” “Extended Income,” “Future Earnings,” and “Ingress or Egress” additional coverages.

21. Under the Policy, the “Civil Authority” additional coverage has a per occurrence “time limit” of “30 consecutive days,” which applies with respect to each order or each supplemental order impacting each insured Scheduled Premises. With a “time limit” but no specified dollar amount sublimit, the Policy’s “business income and extra expense” limit applies, as to each occurrence, which is \$28,884,000 per occurrence (after a 72 hour “waiting period”).

22. Under the Policy, the “Civil Authority” additional coverage provides, in pertinent part, that the Policy “is extended to apply to the actual loss of Business Income you sustain and the actual, necessary and reasonable Extra Expense you incur when access to your Scheduled Premises is specifically prohibited by order of a Civil Authority as the direct result of a Covered Cause of Loss to property in the immediate area of your Scheduled Premises.”

23. The “Civil Authority” coverage for “Business Income” begins after a “waiting period” of 72 hours after the order of a Civil Authority and ends at the earlier of (1) when access is permitted to a “Scheduled Premises” or (2) 30 consecutive days after the order of the Civil Authority.

24. The “Civil Authority” coverage for “Extra Expense” begins immediately after the order of a Civil Authority and ends at the earlier of (1) when access is permitted to the “Scheduled Premises” or (2) 30 consecutive days after the order of the Civil Authority.

25. Under the Policy, the “Dependent Properties” additional coverage, with its \$100,000 per occurrence limit (from all dependent properties) provides coverage for business income losses and extra expense incurred due to “the necessary suspension of [Altar’d State’s] operations” caused by direct physical loss of or direct physical damage to a Dependent Property,

or “property at premises owned and operated by others that [Altar’d State] depend[s] on to: . . . [a]ttract customers to [its] business premises.”

26. Under the Policy, the “Ingress or Egress” additional coverage, with its per occurrence “time limit” of “30 consecutive days,” provides coverage for business income losses sustained “when ingress or egress to [Altar’d State’s] ‘Scheduled Premises’ is specifically prohibited as the direct result of a Covered Cause of Loss to property at premises that is contiguous to [Altar’d State’s] ‘Scheduled Premises’.”

27. The business income losses described above may also be expanded by the “Extended Income” additional coverage, which provides up to 180 days of additional business income loss, and by the “Future Earnings” coverage, which provides up to two years of additional business income, from the date the loss occurred.

28. The Policy recognizes that “two or more coverages in this policy [may] apply to the same loss,” in which case, “[Hartford] will not pay more than the actual amount of loss or damage.”

29. Finally, the Policy also provides, per the “Liberalization” provision, that “[i]f [Hartford] adopts any revision that would broaden this Coverage Part, without additional premium, within 45 days prior to inception of this policy or during this policy period, the broadened coverage will immediately apply to [Altar’d State].”

**B. COVID-19 is a Covered Cause of Loss under the Policy**

30. In late January 2020, the United States confirmed its first case of COVID-19 in the State of Washington. COVID-19 spread rapidly throughout the country causing significant physical loss of or damage to property, including to Altar’d State’s property, property at premises that is contiguous to its retail stores, and property in the immediate area of its retail stores.



31. COVID-19 is a “Covered Cause of Loss” under the Policy in that it causes direct physical loss of or damage to property by its proclivity to attach to surfaces of property for sustained periods of time thus rendering the property useless or uninhabitable **and** by causing an imminent threat or risk of the spread of COVID-19.

32. COVID-19 causes physical loss of or damage to property due to its high propensity to spread from person to person and its proclivity to attach to surfaces of property for sustained periods of time, including for up to 28 days according to scientific studies. The virus does not spread because it is merely “at” a property. The Pennsylvania Supreme Court recognized this nature of COVID-19 and its property-damaging characteristics in a recent case, *Friends of Danny DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100 (Pa. Apr. 13, 2020) (emphasis added), stating as follows:

“COVID-19 does **not** spread because the virus is “**at**” a particular location. Instead it spreads because of **person-to-person contact**, as it has an incubation period of up to fourteen days and that one in four carriers of the virus are asymptomatic [and the fact that] [t]he **virus can live on surfaces for up to four days and can remain in the air within confined areas and structures.**”

The court held that due to its propensity to spread and proclivity to attach to surfaces of property, “any location (including the Petitioners’ businesses) where two or more people can congregate is within the disaster area.”

33. In addition, due to the virus’s propensity to spread from person to person and proclivity to attach to surfaces of property for sustained periods of time, COVID-19 renders the property unusable, uninhabitable, or otherwise eliminates or destroys the function of the property. The United States Court of Appeals for the Third Circuit has found instructive, when analyzing whether physical loss of or damage to property triggered a policy, cases where sources unnoticeable to the naked eye have reduced the use of property to a substantial degree. *See, e.g.,*

*Motorists Mut. Ins. Co. v. Hardinger*, 131 F. App'x 823, 826-27 (3d Cir. 2005) (predicting Pennsylvania law and holding that summary judgment was not proper because there was “a genuine issue of fact whether the functionality of the [insureds’] property was nearly eliminated or destroyed, or whether their property was made useless or uninhabitable”).

34. COVID-19 also causes physical loss of or damage to property by causing an ***imminent threat or risk*** of the spread of COVID-19. In addition to assessing whether a property’s function is nearly eliminated or destroyed, or the structure is made useless or uninhabitable so as to trigger coverage under a first-party, all-risk policy, a court may *also* consider whether there exists ***an imminent threat*** of the spread of, for example, COVID-19, that would cause such loss of utility.

**C. Civil Authority Orders Specifically Prohibit Access to Scheduled Premises**

35. In response, Civil Authorities across the country issued orders specifically prohibiting access to non-essential or non-life-sustaining business properties, such as Altar’d State’s retail stores, as a direct result of the physical loss of or damage to property caused by COVID-19 in those states.

36. Altar’d State’s retail stores and insured properties were subject variously to one or more Civil Authority orders that specifically prohibited access to its properties, *i.e.*, Scheduled Premises. The orders were issued in part because COVID-19 causes physical loss of or damage to property due to its tendency to attach to surfaces for prolonged periods of time rendering the properties useless or uninhabitable and due to the fact that it causes an imminent threat or risk of the spread of COVID-19. Attached hereto as Exhibit B is a chart showing relevant Civil Authority orders for each of Altar’d State’s Scheduled Premises.

37. The orders identified in Exhibit B as well as any additional, supplemental, or future

orders (not identified in Exhibit B), that may extend the effective time periods of the orders, amend the orders, or supplement the orders, implicate the “Civil Authority” additional coverage under the Policy.

38. The Civil Authority Orders, in various ways, specifically prohibited access to Altar’d State’s Scheduled Premises. Altar’d State seeks the maximum amount of Civil Authority coverage available under the Policy.

39. By way of example, Civil Authorities in the Commonwealth of Pennsylvania issued orders specifically prohibiting access, in various ways, to Altar’d State’s Scheduled Premises Nos. 41, 60, 83, and 106, as follows:

- a. On March 6, 2020, the Governor of the Commonwealth of Pennsylvania proclaimed the existence of a disaster emergency throughout the Commonwealth as a result of COVID-19. The Governor renewed this proclamation on June 3, 2020 for a period of 90 days. Civil Authorities at the local level, including for example the Mayor of the City of Pittsburgh, also declared disaster emergencies, finding that, for example, the outbreak of COVID-19 is a public disaster affecting property.
- b. On March 19, 2020, based on the finding of an imminent threat of the spread of COVID-19, among other bases, the Governor issued an order prohibiting the operation of businesses in the Commonwealth that are not life sustaining, which specifically prohibited access to Altar’d State’s Scheduled Premises Nos. 41, 60, 83, and 106.
- c. After nearly two months, the Governor began to permit the “reopening” of businesses in the Commonwealth through orders in “phases”; however, these Civil Authority orders, in many cases, continued to specifically prohibit access to Altar’d

State's Scheduled Premises.

- d. For example, on May 14, 2020, the Governor ordered that Allegheny County (the location of two Scheduled Premises) would enter the "yellow" phase of reopening on May 15, 2020; however, during the "yellow" phase, a business in an indoor mall must continue to suspend in-person operations. Such order specifically prohibited access to Scheduled Premises Nos. 41 and 83, both located in indoor malls.
- e. On June 4, 2020, the Governor ordered that Allegheny County would enter the "green" phase of reopening on June 5, 2020; however, during the "green" phase, a business in an indoor mall, while it may open, it must only operate at up to 50% of the total occupancy. By requiring such a limitation on the occupancy, such order also specifically prohibited access to Scheduled Premises Nos. 41 and 83.
- f. The Governor moved Montgomery County and Lehigh County into the "yellow" phase on June 5, 2020 and into the "green" phase on June 26, 2020. Such orders specifically prohibited access to Scheduled Premises Nos. 60 and 106 respectively.

40. These Civil Authority orders specifically prohibited access to Altar'd State's Scheduled Premises by, among other ways, prohibiting the operation of non-life-sustaining businesses, requiring businesses to operate at limited occupancies (including, for example, 50% occupancy), and requiring social distancing of employees and customers (effectively limiting the occupancy).

41. Similarly, orders issued by Civil Authorities in other states specifically prohibited access to Altar'd State's Scheduled Premises as a result of direct physical loss of or damage by COVID-19 to property in the immediate area of the Scheduled Premises. The following are examples of such Civil Authority orders in other states:

- a. **Alabama** – On March 28, 2020, the State Health Officer for Alabama issued a statewide order requiring “non-essential” businesses, including clothing retail stores, to close.
- b. **Arkansas** – On April 6, 2020, the Governor of Arkansas required that all businesses limit the number of people who can enter into the facility at any one time to maintain a minimum of six-foot distance from one another. By limiting the number of people in a business facility, such order prohibited access to the Scheduled Premises in Arkansas.
- c. **California** – On March 19, 2020, the Governor of California ordered that all residents are directed to abide by the state public health directive, which ordered “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.” By requiring all individuals living in the state of California to stay home except as needed to maintain continuity of operations of the “federal critical infrastructure sectors,” such order prohibited access to the Scheduled Premises in California.
- d. **Colorado** – On March 26, 2020, the Governor of Colorado directed all businesses other than “critical businesses” to close. One of the amended orders, dated April 8, 2020, found that “COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time.”
- e. **Connecticut** – On March 19, 2020, the Governor of Connecticut ordered the closure of “Large Shopping Malls,” which was defined to include the SoNo

Collection in Norwalk, which is the mall in which a Scheduled Premises is located.

Also, on March 23, 2020, the Governor required that all non-essential businesses reduce their in-person workforces at any workplace locations by 100%.

- f. **Florida** – On March 30, 2020, the Governor of Florida ordered certain counties (including Miami-Dade, Broward, and Palm Beach) to restrict public access to businesses and facilities deemed non-essential. At the local level, certain counties also issued orders requiring the closure of non-essential or non-critical businesses. For example, on March 27, 2020, Broward County, in which one of the Scheduled Premises is located, ordered that all nonessential retail business locations close, finding that such order “is necessary because of the propensity of the virus to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.”
- g. **Georgia** – On April 3, 2020, the Governor of Georgia ordered that all businesses that are not “critical infrastructure” shall only engage in “minimum basic operations.” Counties also issued orders requiring businesses to, for example, restrict their occupancies to maintain social distancing or otherwise limit the hours of their operation. Such orders specifically prohibited access to the Scheduled Premises in those localities.
- h. **Illinois** – On March 21, 2020, the Governor of Illinois ordered that all non-essential businesses must cease all activities within the State.
- i. **Indiana** – On March 24, 2020, the Governor of Indiana ordered that all non-essential businesses and operations must cease all activities within the State.
- j. **Iowa** – On March 26, 2020, the Governor of Iowa ordered that nonessential retail

establishments, including clothing stores, shall be closed.

- k. **Kansas** – On March 24, 2020, Johnson County (the location of both of the Scheduled Premises in the state of Kansas), upon finding that COVID-19 conditions endanger property within the border of Johnson County, Kansas, issued an order that required that individuals stay home and leave their residence *only* to perform “essential activities.” This Civil Authority order prohibits access to the Scheduled Premises.
- l. **Kentucky** – On March 23, 2020, the Governor of Kentucky ordered that all in-person retail businesses that are not life sustaining must close.
- m. **Louisiana** – On March 23, 2020, the Governor of Louisiana ordered that nonessential businesses, including all malls (except for stores in malls that provide essential services and products), must close to the public and members. In the order, the Governor found that “these measures relating to closure of certain businesses and to limit the operations of non-essential businesses are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and because of physical contamination of property due to its ability to attach to surfaces for prolonged periods of time.”
- n. **Maryland** – On March 19, 2020, the Governor of Maryland ordered that retail establishments, within “enclosed malls” that are only accessible to the general public from interior areas are closed to the general public.
- o. **Massachusetts** – On March 24, 2020, the Governor of Massachusetts ordered that all businesses that do not provide COVID-19 essential services shall close their physical workplaces to workers, customers, and the public.

- p. **Michigan** – On March 24, 2020, the Governor of Michigan ordered that no person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent those workers are necessary to sustain or protect life or to conduct minimum basic operations. On March 21, 2020, Oakland County ordered that all shopping malls close.
- q. **Minnesota** – On March 27, 2020, the Governor of Minnesota ordered that all persons living within the state are ordered to stay at home or in their place of residence except to engage in the “activities and critical sector” work.
- r. **Mississippi** – On April 3, 2020, the Governor of Mississippi ordered that all non-essential businesses and operations must cease operation and all activities.
- s. **Missouri** – On April 6, 2020, the Director of Missouri’s Department of Health and Senior Services ordered that any entity that does not employ individuals to perform essential worker functions shall adhere to the limitations on social gatherings and social distancing. Such limitations in the “stay at home” order specifically prohibit access to the Scheduled Premises in Missouri. Cities and counties also issued orders prohibiting access. For example, on March 26, 2020, the Mayor of the City of Springfield ordered that all non-essential businesses and operations must cease.
- t. **Nevada** – On March 20, 2020, the Governor of Nevada ordered that any other such non-essential business shall close.
- u. **New Hampshire** – On March 27, 2020, the Governor of New Hampshire ordered that all businesses that do not provide essential services shall close their physical workplaces and facilities to workers, customers, and the public and cease all in person operations.



- v. **New Jersey** – On March 21, 2020, the Governor of New Jersey ordered recreational and entertainment businesses, including all indoor portions of retail shopping malls, must close to the public.
- w. **New Mexico** – On March 19, 2020, the Cabinet Secretary of New Mexico’s Department of Health ordered that indoor shopping malls close.
- x. **New York** – On March 19, 2020, the Governor of New York ordered that all indoor common portions of retail shopping malls with excess of 100,000 square feet of retail space available for lease shall close and cease access to the public.
- y. **North Carolina** – On March 30, 2020, the Governor of North Carolina ordered that businesses that are not COVID-19 essential businesses and operations are required to cease all activities within the State.
- z. **Ohio** – On March 23, 2020, the Director of Ohio’s Department of Health ordered that non-essential business and operations must cease.
- aa. **Oklahoma** – On March 25, 2020, the Governor of Oklahoma ordered that all businesses not identified as being within a “critical infrastructure sector” or defined as “essential” shall close to the public.
- bb. **Oregon** – On March 24, 2020, the Governor of Oregon ordered that indoor and outdoor malls and boutiques, that is, businesses “for which close personal contact is difficult or impossible to avoid,” are prohibited from operating.
- cc. **South Carolina** – On April 6, 2020, the Governor of South Carolina ordered that non-essential businesses, including clothing retail stores, shall be closed to non-employees and shall not be open for access or use by the public.
- dd. **South Dakota** – On March 26, 2020, the City of Sioux Falls, South Dakota (where

one Scheduled Premises is located) ordered that any enclosed retail business that promotes public gathering shall modify its business practices in order to ensure that not more than 10 patrons are on the premises at any given time. By limiting the occupancy of retail businesses, the order specifically prohibits access to the Scheduled Premises.

- ee. **Tennessee** – On March 30, 2020, the Governor of Tennessee ordered that businesses that do not perform essential services shall not be open for access or use by the public or its members.
- ff. **Texas** – On April 2, 2020, the Governor of Texas ordered that “every person in Texas shall, *except* where necessary *to provide* or obtain *essential services*, minimize social gatherings and minimize in-person contact with people who are not in the same household,” thus prohibiting access to the Scheduled Premises in Texas. Counties and cities within the State also issued orders prohibiting access to the Scheduled Premises. For example, on March 24, 2020, the Cities of Austin and Dallas ordered that non-essential business operations in the cities must cease.
- gg. **Virginia** – On March 23, 2020, the Governor of Virginia ordered that any brick and mortar retail business must limit all in-person shopping to no more than 10 patrons per establishment along with proper social distancing; otherwise, such business must close. By limiting the occupancy of such businesses, this Civil Authority order prohibits access to the Scheduled Premises in Virginia.
- hh. **Washington** – On March 25, 2020, the Governor of Washington ordered that all non-essential businesses in the State must cease operations.
- ii. **West Virginia** – On March 24, 2020, the Governor of West Virginia ordered that

all non-essential businesses and operations in the state must cease.

- jj. **Wisconsin** – On March 25, 2020, the Governor of Wisconsin ordered that non-essential business and operations must cease.

**D. Other COVID-19 Related Business Interruption Losses**

42. One or more of the Scheduled Premises also sustained business interruption losses as a result of: (a) direct physical loss of or damage to Altar'd State's insured property caused by or resulting from COVID-19 at its Scheduled Premises; (b) the specific prohibition of ingress or egress to one or more of Altar'd State's Scheduled Premises as the result of physical loss of or damage to property at premises that are contiguous to Altar'd State's Scheduled Premises (including, for example, other stores in the malls or the malls themselves); and (c) the necessary suspension of Altar'd State's operations with dependent properties, including, for example, malls which attracted customers to its premises.

**E. Altar'd State's Notice and Hartford's Improper Denial of Coverage**

43. On or about March 18, 2020, Altar'd State provided timely notice to Hartford under the Policy for the covered business interruption losses it sustained at all of its retail store properties resulting from COVID-19, including as a result of the closures and lost sales.

44. Only three days later, on March 21, 2020, without any possibly sufficient investigation, Hartford's adjuster for Altar'd State's claim posted "Denial Notes" with respect to "Coverage Applicability" for the COVID-19 losses. In other words, within three days, Hartford apparently managed to determine that there was no coverage under a policy that covered 119 stores in 37 states.

45. On March 27, 2020, Hartford's general adjuster sent a letter to Altar'd State denying coverage for the claim. In the letter, Hartford stated without reservation that "there is no

coverage available for this loss” under the Policy. The Hartford denial letter further and incorrectly stated without inquiry or factual or legal basis, that “no direct physical loss or damage has occurred to property at the scheduled premises listed in your policy.” Hartford’s denial of coverage and its alleged bases for denying the claim are improper for several reasons.

46. **First**, contrary to Hartford’s position, COVID-19 **is** a covered cause of loss under the Policy. COVID-19 causes both physical loss of and physical damage to covered property because of its proclivity to attach to surfaces for sustained periods of time thus rendering a property useless or uninhabitable, and because it causes an imminent threat or risk of the spread of COVID-19. These forms of physical loss of or damage to property are not specifically excluded under that provision and are recognized to trigger coverage under Pennsylvania law and by the United States Court of Appeals for the Third Circuit.

47. **Second**, noticeably absent from Hartford’s denial letter is any reference to the Policy’s “Civil Authority” coverage, which extends coverage to the losses at issue here. Contrary to Hartford’s view, coverage under the Policy is not **only** triggered when there is physical loss of or damage to property at the Scheduled Premises; rather, “Civil Authority” coverage extends coverage where there is physical loss of or damage to property in the immediate area of the Scheduled Premises.

48. **Third**, the COVID-19 losses are **not** excluded under the Policy’s general “‘Fungus’, Wet Rot, Dry Rot, Bacteria or Virus” exclusion because, as explained above, COVID-19 does not merely “present” or “spread” at a property. Moreover, Hartford chose **not** to include in its Policy an expansive, stand-alone ISO form virus exclusion (that would exclude losses caused by or resulting from any virus that induces or is capable of inducing physical distress, illness or disease) **or** any “pandemic” exclusion. In addition, the Policy itself shows that Hartford **knew** how to limit

or even expand its exclusions with respect to insured risks in certain states. For example, the Policy's Massachusetts endorsement removes the term "virus" from the above exclusion whereas the Policy's New York endorsement adds an exclusion for loss resulting from any disease-inducing virus. However, Hartford chose *not* to include such expansive language in its general "'Fungus', Wet Rot, Dry Rot, Bacteria or Virus" exclusion.

49. *Fourth*, the COVID-19 losses are *not* excluded under the Policy's "Pollutants and Contaminants" exclusion, because COVID-19 does not fall under the Policy's definition of "pollutants and contaminants," which does not include the word "virus." Moreover, COVID-19 as a virus, *unlike* traditional environmental pollutants or contaminants (that is, the intended target of this exclusion), does *not* "[d]ischarge, dispers[e], seep[], migrat[e], release or escape" as required by the exclusion.

50. Hartford's conduct was undertaken without inquiry into the operative facts, and in disregard of its own policy provisions and, thus, is willful, wanton, and/or malicious, is without basis in law or fact, and has been and is undertaken by Hartford solely to protect its own pecuniary interests at the expense of the interests of its insured Altar'd State, and in violation of Altar'd State's known rights. Hartford's conduct constitutes a violation of 42 Pa. Stat. Ann. § 8371 ("§ 8371").

51. As a direct and natural consequence of Hartford's violation of § 8371, Altar'd State is entitled to money damages in an amount to be proven at trial.

52. As a direct and natural consequence of Hartford's violation of § 8371, Altar'd State is entitled to punitive damages in an amount sufficient to deter future violations of § 8371 by Hartford and others, as well as attorney fees and costs and interest on Altar'd State's claim as set forth in § 8371(1).

**FIRST CLAIM FOR RELIEF**  
***(Declaratory Judgment)***

53. Plaintiff incorporates paragraphs 1 through 52 in full by this reference.

54. Under the Policy, Hartford is obligated to pay for business income losses and extra expenses sustained by Altar'd State at its retail store properties as a result of COVID-19, which are covered under the Policy's various coverages, including but not limited to its Civil Authority coverage and not otherwise excluded.

55. Hartford disputes and denies its legal obligation to pay Altar'd State's claim for these losses.

56. An actual and justiciable controversy exists between Altar'd State and Hartford as to the rights and obligations of the parties under the Policy, including with respect to Altar'd State's claim for business income losses and extra expenses arising out of COVID-19.

57. Pursuant to 28 U.S.C. § 2201, this Court should enter a declaratory judgment in favor of Altar'd State and against Hartford, declaring that there is coverage available for Altar'd State up to the applicable limits of the Policy, and pursuant to 28 U.S.C. § 2201, any other relief this Court deems proper.

58. Altar'd State specifically seeks a declaration that the orders as provided in Exhibit B constitute prohibitions of access by Civil Authorities to Altar'd State's Scheduled Premises.

59. Altar'd State further seeks a declaration that the orders as provided in Exhibit B are the direct result of a Covered Cause of Loss to property in the immediate areas of the Scheduled Premises.

60. Altar'd State further seeks a declaration that COVID-19 causes direct physical loss of or direct physical damage to property as a Covered Cause of Loss under the Policy.

61. Altar'd State further seeks a declaration that each Civil Authority order and each

supplemental Civil Authority order (that either extends or amends the previous order) constitutes a separate Civil Authority order that triggers the Civil Authority Coverage and successive 30 consecutive day time limits.

62. Altar'd State further seeks a declaration that orders by Civil Authorities in response to COVID-19 that require non-essential, non-life-sustaining, or non-critical businesses to close or cease operations, that require limitations on the total occupancy of the business facility, and/or that require the adherence to social distancing requirements constitute Civil Authority orders under the Policy that specifically prohibit access to the Scheduled Premises;

63. Altar'd State further seeks a declaration to affirm that under the Policy, Hartford must pay all current and future business income losses and extra expenses, and any applicable Extended Income and Future Earnings, that Altar'd State has incurred, or will incur in the future, related to: (a) direct physical loss of or damage to its insured property caused by or resulting from COVID-19, (b) Civil Authority closures of its Scheduled Premises as a direct result of physical loss of or damage caused by COVID-19 to property in the immediate areas of the Scheduled Premises, (c) specific prohibitions of ingress or egress to one or more of its Scheduled Premises as the result of physical loss of or damage caused by COVID-19 to property at premises that are contiguous to its Scheduled Premises, and (d) the necessary suspension of Altar'd State's operations with dependent properties.

64. Such declarations are needed to resolve the current dispute and controversy between the parties.

**SECOND CLAIM FOR RELIEF**  
***(Breach of Contract)***

65. Plaintiff incorporates paragraphs 1 through 64 in full by this reference.

66. Hartford issued the Policy under which Hartford insured Altar'd State's retail store

properties for business income losses and extra expenses under the Policy's "Property Choice - Business Income and Extra Expense Coverage Form (Business Interruption)," including for "Civil Authority," "Dependent Properties," "Extended Income," "Future Earnings," and "Ingress or Egress" additional coverages.

67. Altar'd State paid the premiums in accordance with the Policy.

68. Beginning as early as January 2020, COVID-19 caused physical loss of or damage to Altar'd State's Scheduled Premises, to property at premises that are contiguous to Altar'd State's Scheduled Premises, as well as to property in the immediate area of Altar'd State's Scheduled Premises by and through its proclivity to attach to surfaces of property for sustained periods of time thus rendering the property useless or uninhabitable and by causing an imminent threat or risk of the spread of COVID-19.

69. As a direct result of this physical loss of or damage to property, including property in the immediate area of Altar'd State's Scheduled Premises, Civil Authorities across the country issued orders specifically prohibiting access to the Scheduled Premises as non-essential or non-life-sustaining businesses.

70. As a result, Altar'd State sustained substantial business income losses and extra expenses as its Scheduled Premises remained closed for business or where access to the Scheduled Premises was otherwise specifically prohibited, and at a minimum, for up to 30 consecutive days after each order and supplemental order of a Civil Authority.

71. Altar'd State, pursuant to the Policy, timely provided notice of its losses to Hartford. On March 27, 2020, Hartford denied coverage for these losses.

72. There is no justification for Hartford's absolute denial of coverage for these losses, and, accordingly, Hartford has breached its contract of insurance.



73. As a direct and proximate result of Hartford's breach of contract, Altar'd State has been damaged in an amount subject to proof at trial.

**THIRD CLAIM FOR RELIEF**  
*(Statutory Remedies Under 42 Pa. Stat. Ann. § 8371)*

74. Plaintiff incorporates paragraphs 1 through 52 and 65 through 73 in full by this reference.

75. The Policy obligates Hartford to provide coverage for business income losses and extra expenses when, among other reasons, Altar'd State's property sustains direct physical loss or damage, when property at premises that are contiguous to Altar'd State's property sustains physical loss or damage, or when access to an Altar'd State covered retail store is specifically prohibited by order of a Civil Authority as the direct result of a covered cause of loss to property in the immediate area of the retail store. COVID-19 is a covered cause of loss under the Policy. Altar'd State provided timely notice of losses under the Policy. Without any justification or for otherwise improper reasons, Hartford denied coverage for the claim.

76. Altar'd State has requested that Hartford acknowledge and undertake its insuring obligations pursuant to the terms of the Policy in connection with this claim. Hartford failed or refused to acknowledge, accept or undertake its contractual obligations.

77. Hartford's actions, or failure or refusal to act, are willful, wanton, and malicious, without basis in law or fact, and have been and are undertaken by Hartford solely to protect its own pecuniary interests at the expense of the interests of the insured Altar'd State, and in violation of Altar'd State's known rights. Hartford's actions, or failure or refusal to act, constitute a violation of 42 Pa. Stat. Ann. § 8371, and include, but are not limited to, the following wrongful acts:

A. Failing to provide any reasonable bases or otherwise improper bases for its flat

denial of coverage for Altar'd State's claim;

B. Failing to conduct a reasonable investigation of Altar'd State's claim on Altar'd State's behalf;

C. Failing and refusing fully to perform known insuring obligations;

D. Failing to adopt and implement reasonable standards for the prompt investigation of Altar'd State's claim arising under the Policy; and

E. Compelling Altar'd State to initiate litigation to recover amounts due under the Policy providing coverage to Altar'd State.

78. By the actions alleged herein, Hartford violated 42 Pa. Stat. Ann. §8371.

79. Hartford's actions, or failure or refusal to act, were and are knowing, willful, wanton, intentional, deliberate, frivolous, and malicious, are without basis in law or fact, and have been and are undertaken solely to avoid its required payments under the Policy and to protect its own pecuniary interests at the expense of Altar'd State's interests, and in violation of Altar'd State's known rights.

80. As a result of its statutory violation, the Policy is without limitation and Hartford will thus be responsible to reimburse Altar'd State completely against any loss resulting from COVID-19.

81. In light of the foregoing, and otherwise, Hartford may not enforce or attempt to enforce against Altar'd State any purported contractual obligation, limitation or exclusion set forth in the Policy or any contractual term or condition allegedly running in its favor.

82. In light of the foregoing, and otherwise, Hartford has an unlimited duty to pay for loss under the Policy, irrespective of any allegation that any such policy has a limit of liability, per occurrence, aggregate or otherwise.

83. As a direct and natural consequence of Hartford's violation of § 8371, Altar'd State is entitled to punitive damages in an amount sufficient to deter future violations of § 8371 by Hartford and others, as well as attorney fees and costs and interest on Altar'd State's claim as set forth in § 8371.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

1. On the First Claim for Relief:
  - a. For a declaration that the orders as provided in Exhibit B constitute specific prohibitions of access by Civil Authorities to Altar'd State's Scheduled Premises;
  - b. For a declaration that that the orders as provided in Exhibit B are the direct result of a Covered Cause of Loss to property in the immediate areas of the Scheduled Premises;
  - c. For a declaration that COVID-19 causes direct physical loss of or direct physical damage to property as a Covered Cause of Loss under the Policy;
  - d. For a declaration that each Civil Authority order and each supplemental Civil Authority order (that either extends, amends, or supplements the previous order) constitutes a separate Civil Authority order that triggers the Civil Authority Coverage and successive 30 consecutive day time limits;
  - e. For a declaration that orders by Civil Authorities in response to COVID-19 that require non-essential, non-life-sustaining, or non-critical businesses to close or cease operations, that require limitations on the total occupancy of the business facility, and/or that require the adherence to social distancing requirements constitute Civil Authority orders under the Policy that specifically prohibit access to the Scheduled Premises;
  - f. For a declaration that under the Policy, Hartford must pay all current and

future business income losses and extra expenses, and any applicable Extended Income and Future Earnings, that Altar'd State has incurred, or will incur in the future, related to: (a) direct physical loss of or damage to its insured property caused by or resulting from COVID-19, (b) Civil Authority closures of its Scheduled Premises as a direct result of physical loss of or damage caused by COVID-19 to property in the immediate areas of the Scheduled Premises, (c) specific prohibitions of ingress or egress to one or more of its Scheduled Premises as the result of physical loss of or damage caused by COVID-19 to property at premises that are contiguous to its Scheduled Premises, and (d) the necessary suspension of Altar'd State's operations with dependent properties; and

g. For such other relief as the Court may deem proper.

2. On the Second Claim for Relief: An award of damages in accordance with proof at trial.

3. On the Third Claim for Relief:

a. An award of money damages in accordance with proof at trial;

b. Punitive damages;

c. Interest at the prime rate plus three percent (3%), as provided by 42 Pa. Stat. § 8371 and post-judgment interest; and

d. Attorneys' fees and costs.

4. On all Claims for Relief: An award of reasonable costs, expenses, pre-judgment interest, attorneys' fees and such further relief as is just and equitable in this case.

**JURY DEMAND**

Plaintiff demands a trial by jury on all triable issues.

Dated: July 17, 2020

Respectfully submitted,

/s/ Harvey Bartle IV

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