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**U.S. Court of Appeals Case No. 21-16093  
U.S. District Court Case No. 3:20-cv-07476-VC**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**ANOTHER PLANET ENTERTAINMENT, LLC,**

Plaintiff - Appellant,

**v.**

**VIGILANT INSURANCE COMPANY,**

Defendant - Appellee.

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Appeal from the United States District Court  
For the Northern District of California, San Francisco  
Hon. Vince Chhabria

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**EXCERPTS OF RECORD, VOLUME III**

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## X The Orient-Express case

297. *Orient-Express Hotels Ltd v Assicurazioni Generali SpA* [2010] EWHC 1186 (Comm); [2010] Lloyd's Rep IR 531 concerned a claim for business interruption loss arising from damage to a hotel in central New Orleans from wind and water as a result of Hurricanes Katrina and Rita in the autumn of 2005. The insurance policy, which was governed by English law, provided cover against physical damage to the property on an all risks basis. It also provided cover for loss due to interruption or interference with the business "directly arising from Damage". The trends clause was in similar terms to those in the present case and provided that the adjusted figures "shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage". The term "Damage" was defined in the policy to mean "direct physical loss destruction or damage" to the hotel.

298. As a result of the damage to the hotel it was closed throughout September and October 2005. The surrounding area of New Orleans was also devastated by the hurricanes and there was a mandatory evacuation of the city. The city was only reopened at the end of September and the beginning of October 2005. The hotel reopened on 1 November 2005, although not yet fully repaired. Its business was severely affected both by the physical damage to the hotel and by the general impact of the hurricanes on the city. A dispute arose about the amounts which the insured ("OEH") was entitled to recover which the parties agreed to submit to arbitration in London. A central issue was whether OEH could recover business interruption losses which resulted not only from the physical damage to the hotel but also from the wider damage to the city.

299. Before the arbitrators the insurer submitted that OEH could only recover loss that it would not have suffered but for the physical damage to the hotel and not loss of business which the hotel would have suffered even if it had not been damaged at all (because of the effects of the hurricanes on the city). The arbitrators accepted the insurer's case, observing that counsel for OEH "did not, in the view of the tribunal, ever supply a convincing answer to this submission". The tribunal held that the language of the policy:

"... requires OEH to establish that the cause of the loss claimed is the Damage to the Hotel. It is not necessary or relevant for this purpose to go behind the Damage and consider whether the event which caused the Damage also caused damage to other property in the City: the fact that there was other damage which resulted from the same cause does not bring the consequences of such damage within the scope of the cover."

300. The tribunal also rejected an argument based on concurrent causation, stating that:

“... the language of the Trends clause is, the Tribunal thinks, conclusive. This clause specifically requires the business interruption loss to be assessed by reference to the results which ‘*but for the Damage*’ (ie the damage to the Hotel) would have obtained during the relevant period. It is accordingly irrelevant whether there was a concurrent cause of any such losses.”

301. OEH obtained permission to appeal under section 69 of the Arbitration Act 1996 on two questions of law:

“(1) Whether on its true construction, the policy provides cover in respect of loss which was concurrently caused by: (i) physical damage to the property; and (ii) damage to or consequent loss of attraction of the surrounding area;

(2) Whether on the true construction of the policy, the same event(s) which cause the damage to the insured property which gives rise to the business interruption loss are also capable of being or giving rise to ‘special circumstances’ for the purposes of allowing an adjustment of the same business interruption loss within the scope of the ‘Trends clause’.”

302. On the appeal OEH were represented by different counsel who, in relation to question (1), argued that on the correct interpretation of the insuring clause the “but for” causation test should not be applied because this was one of those “very occasional” cases where “fairness and reasonableness require a relaxation in the standard” (para 24). This had not been argued before the arbitrators. The court recognised that there was “considerable force” in the argument (para 33), but pointed out that what “fairness and reasonableness” require “is very much a matter for the tribunal of fact, rather than for this court on an appeal limited to questions of law” (para 36). The court also observed that the issue was one on which no findings had been made by the arbitral tribunal since the argument was not put to it (para 37). In any event, the court concluded that it had “not been established that the tribunal erred in law in adopting the ‘but for’ approach to causation which they did” (para 40).

303. In relation to question (2) and the proper interpretation of the trends clause, the court rejected all of the nine arguments made on behalf of OEH and agreed with

the conclusion reached by the tribunal. The court concluded as follows (at paras 57-58):

“57. I agree with the tribunal that the clause is concerned only with the damage, not with the causes of the damage. What is covered are business interruption losses caused by damage, not business interruption losses caused by damage or ‘other damage which resulted from the same cause’. Nowhere in the Trends clause does it state that ‘variations or special circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred’ has to be something completely unconnected with the damage in the sense that it had an independent cause to the cause of the damage. The assumption required to be made under the Trends clause is ‘had the Damage not occurred’; not ‘had the Damage and whatever event caused the Damage not occurred’.

58. I agree with Generali that OEH’s construction effectively requires words to be read into the clause or for it to be re-drafted. Further, such a re-drafting of the Trends Clause, which would allow OEH to recover for the loss in gross operating profit suffered as a result of the occurrence of the insured event (ie the hurricanes) as opposed to the loss suffered as a result of the damage to the hotel, is inconsistent with the causation requirement of the main insuring clause which OEH accepts requires proof that the losses claimed were caused by damage to the hotel.”

304. There are a number of general observations to be made about the *Orient-Express* decision.

305. First, as with all cases, the decision and reasoning of both the arbitral tribunal and the court was framed by the arguments advanced by the parties. On these appeals we have had the benefit of far more detailed and wide-ranging argument than at the arbitration hearing or on the one-day arbitration appeal in the *Orient-Express* case.

306. Second, the context of the decision was an appeal under section 69 of the Arbitration Act 1996, which is limited to questions of law “arising out of an award”. As illustrated by the argument raised on the appeal as to what “fairness and reasonableness” requires, this limits the permissible scope of argument.

307. Third, unusually for an appeal under the Arbitration Act 1996, the court gave permission for a further appeal to the Court of Appeal and granted the requisite certificate that the appeal raised a point of law of general importance. The court thereby recognised that OEH’s case on causation was well arguable and indeed had a real prospect of success. In the event the case settled before an appeal was heard.

308. In the present case the court below considered that the *Orient-Express* decision was distinguishable but, if necessary, would have reached the conclusion that it was wrongly decided and would have declined to follow it. For reasons already given in addressing the causation and trends clauses issues, on mature and considered reflection we also consider that it was wrongly decided and conclude that it should be overruled.

309. The main error occurred at the first stage of the analysis when considering causation under the insuring clause. Applying the analysis set out earlier under the heading “Causation”, business interruption loss which arose because both (a) the hotel was damaged and also (b) the surrounding area and other parts of the city were damaged by the hurricanes had two concurrent causes, each of which was by itself sufficient to cause the relevant business interruption but neither of which satisfied the “but for” test because of the existence of the other. In such a case when both the insured peril and the uninsured peril which operates concurrently with it arise from the same underlying fortuity (the hurricanes), then provided that damage proximately caused by the uninsured peril (ie in the *Orient-Express* case, damage to the rest of the city) is not excluded, loss resulting from both causes operating concurrently is covered. In the *Orient-Express* case the tribunal and the court were therefore wrong to hold that the business interruption loss was not covered by the insuring clause to the extent that it did not satisfy the “but for” test.

310. If the tribunal or the court had held that the loss concurrently caused by both the damage to the hotel and the damage to other parts of the city was covered by the insuring clause, that would have fundamentally affected the approach to the interpretation of the trends clause. In any event, for the reasons set out above under the heading “The trends clauses”, we consider that the correct approach in the *Orient-Express* case would have been to construe the trends clause so as to exclude from the assessment of what would have happened if the damage had not occurred circumstances which had the same underlying or originating cause as the damage, namely the hurricanes.

311. In reaching a different conclusion now to that which we both reached over ten years ago we would refer to what Justice Jackson said in *McGrath v Kristensen*, 340 US 162, 177-8 (1950), concurring in a decision which contradicted an opinion he had given when Attorney General:

“Precedent, however, is not lacking for ways by which a judge may recede from a prior opinion that has proven untenable and perhaps misled others. See Chief Justice Taney, *License Cases*, 5 How 504, recanting views he had pressed upon the Court as *Attorney General of Maryland in Brown v Maryland*, 12 Wheat 419. Baron Bramwell extricated himself from a somewhat similar embarrassment by saying, ‘The matter does not appear to me now as it appears to have appeared to me then.’ *Andrew v Styrax*, 26 LTR (NS) 704, 706. And Mr Justice Story, accounting for his contradiction of his own former opinion, quite properly put the matter: ‘My own error, however, can furnish no ground for its being adopted by this Court. ...’ *United States v Gooding*, 12 Wheat 460, 25 US 478. Perhaps Dr Johnson really went to the heart of the matter when he explained a blunder in his dictionary - ‘Ignorance, sir, ignorance.’ But an escape less self-depreciating was taken by Lord Westbury, who, it is said, rebuffed a barrister’s reliance upon an earlier opinion of his Lordship: ‘I can only say that I am amazed that a man of my intelligence should have been guilty of giving such an opinion.’ If there are other ways of gracefully and good naturedly surrendering former views to a better considered position, I invoke them all.”

312. We likewise invoke whatever ways by which we may “gracefully and good naturedly” surrender “former views to a better considered position.”

## **XI Conclusion**

313. Although we have accepted some of the insurers’ arguments on their appeals, in no case has that affected the outcome of the appeal. It follows that the insurers’ appeals are dismissed. We allow the FCA’s appeal on grounds 1 and 4, and on grounds 2 and 3 in the qualified terms set out in the judgment and in relation to those wordings where the appeal affects the outcome. We allow the Hiscox Interveners’ appeal on ground 1 and on grounds 2 and 3 in the qualified terms set out in the judgment. The parties are encouraged to agree appropriate declarations and orders to be made in the light of the judgment.

### **LORD BRIGGS: (with whom Lord Hodge agrees)**

314. I have read in draft, with admiration, the joint judgment of Lord Hamblen and Lord Leggatt, with which Lord Reed agrees. I will refer to them as the majority. I agree with all the conclusions to which the majority have come. Subject to one major and one minor point, I also agree with their reasoning. The practical effect of

their analysis is that all of the insuring clauses which are in issue on the appeal to this court (not including those clauses where the issues appealed by the FCA are academic) will provide cover for business interruption caused by the COVID-19 pandemic, and that the trends clauses will not cut it down in the calculation of the amounts payable.

315. The contrary view, contended for by most of the insurers, was in the main that, either because of the narrow geographical limit of cover imposed by the radius limitations, or because of the express “but for” provision in most of the trends clauses, there was little or no effective cover for business interruption caused by the national response to COVID-19. This was not, of course, a disease which anyone could have had specifically in mind when the policies in issue were written and marketed. But it is clear from the use of the definition of a “Notifiable Disease” in most of the relevant clauses, and equivalent wording in the remainder, that COVID-19 (when it appeared) fell squarely within the types of disease for which all the relevant disease and hybrid clauses provided cover: see in particular paras 51 to 53 of the majority judgment. Thus it cannot be said that cover for business interruption attributable to the reaction to a disease like COVID-19 lay outside the purview of the policies in issue.

316. The consequence therefore is that, on the insurers’ case, the cover apparently provided for business interruption caused by the effects of a national pandemic type of notifiable disease was in reality illusory, just when it might have been supposed to have been most needed by policyholders. That outcome seemed to me to be clearly contrary to the spirit and intent of the relevant provisions of the policies in issue. It therefore comes as no surprise to me that all the judges who have considered these issues have been unanimous in rejecting that outcome, albeit that this court has done so, rightly in my view, more comprehensively than did the court below. This is not to mis-use the dubious benefit of hindsight when applying an insuring clause to events which could not have been contemplated by the parties at the time of their bargain. As the majority show, there were a number of well-known notifiable diseases (such as cholera, plague, typhus, yellow fever and SARS) to which the relevant clauses clearly applied, all of which were capable of spreading rapidly and widely, so as potentially to cause a threat to health on a national scale, and to threaten a national reaction by the responsible authorities, leading to business disruption on a national scale.

317. The major point on which, left alone, I would have reached the same conclusion as the majority but by a different route concerns the construction of what I shall label the “radius limitations”, both in the disease clauses and in the hybrid clauses. By that I mean the provisions which delimit cover for the effects of a notifiable disease (in this case COVID-19) by reference to its incidence within a circle defined by a 25 mile or 1 mile radius from the insured premises (“the radius”). The insurers’ case was that (i) the radius limitations meant that only occurrences of

COVID-19 within the radius were within the insured peril and (ii) that the application of a “but for” causation test to identify the loss for which compensation was payable would be bound to produce a nil return, because the national response to the pandemic would have been exactly the same even if there had been no outbreak within the radius.

318. The preferred response of the judges in the court below was to treat the radius limitation not as defining the insured peril, which they identified as the COVID-19 pandemic (at least within the whole of the UK), but as a condition for cover which required the disease first to have spread within the radius. In the rare cases where there was no such spread (probably confined to insured premises in the Isles of Scilly and possibly parts of the Western Isles of Scotland), there would be no cover at all even if those premises suffered serious business interruption because of national restrictions on movement. In relation to the overwhelming majority of premises the radius limitation would merely define the date from which business interruption could constitute the basis for a claim. But the court below adopted as a fall-back analysis the identification of every case of COVID-19 as a separate insured peril, each just as causative of the national reaction, and leading thereby to consequential business interruption, as any other.

319. In this court the majority have rejected the primary analysis of the court below, but in substance accepted and applied the alternative. They have, in effect, rescued the policyholders from the at first sight sombre consequences of a narrow definition of the insured peril by a principled application of the doctrine of concurrent cause, where (in settled insurance law) the existence of one or more concurrent causes of loss, other than the insured peril itself, does not prevent cover provided that the concurrent causes are not themselves expressly excluded. Encouraged by the court below they have done so, rightly in my view, by overruling the only reported case on comparable facts, namely the *Orient-Express* case. What is striking about the present case is that each and every separate case of COVID-19 is identified as an equally operative concurrent cause of the national response to the pandemic, so that the typical number of concurrent causes in the authorities, say two or three, is increased by orders of magnitude to something approaching, or even exceeding, a million. But there is no reason why the essential logic of concurrent cause cannot be scaled up in that way.

320. That is not to say that the majority have insulated policyholders from the unfortunate consequences of a bad bargain (properly construed) by the healing balm of purely legal rules of causation. On the contrary, and again rightly in my view, the majority ground their treatment of concurrent causation firmly within the process of construction. The question whether particular consequential harm to a policyholder is subject to indemnity is as much a part of the process of interpreting their bargain as is the identification of the insured peril. It is therefore a quite distinct process from, for example, applying the law about causation and remoteness of loss for the



purpose of identifying the harm liable to be made good by tortfeasors to their victims. In terms intelligible to non-lawyers, the question is: for what loss have the parties agreed that the insurers should compensate the policyholders as the result of the occurrence of the insured peril? Both the insured peril and the covered loss lie at the very heart of the contract of insurance, and the process of construction requires that they be addressed together.

321. Left to myself I would not have departed from the adoption of both these two alternatives by the court below save that, since they both lead to the same conclusion, it is not necessary to prefer one over the other. As already noted, the underlying driver for some workable analysis is the need to avoid a conclusion that, as the insurers contend, clauses with radius limitations are a completely illusory form of cover for a pandemic type of disease falling clearly within the covered class. I recognise the force of the linguistic analysis by the majority which leads them to reject, as outwith the insured peril, any occurrence of COVID-19 outside the specified radius. I accept that the use of “occurrence” and similar words may lend some weight to a conclusion that every individual case, rather than the outbreak of the disease as a whole, is a separate insured peril. I acknowledge that the recognition of a million concurrent causes of equal potency is consistent with established authority, although an extension of it into new territory.

322. My main reasons for thinking that the alternative construction, which treats COVID-19 as a whole as falling within the insured perils once it spreads within the specified radius, is as persuasive as that of the majority, are as follows. First, construction requires the court to put itself into the mind of the reasonably informed reader of the contract in issue, so as to understand what that hypothetical person (rather than an insurance lawyer) would think that the parties meant by the words which they have used, in the relevant context. To my mind, that person would ask: do clauses with the radius limitations provide cover for the adverse business consequences of a national reaction to a national pandemic disease? They would likely answer yes or no. But I am less confident that they would answer: No, there is cover only for the consequences of individual cases within the radius, but since they are each as causally potent as any other case or cases, cover is in practice provided for the national consequences of a national outbreak, because of the law about non-excluded concurrent cause. They might find it as easy to conclude that the parties meant that cover for the national disease was there, provided it reached, spread, encroached or extended (call it what you will) within the radius.

323. Secondly, I would not be confident that the hypothetical reader would necessarily attribute the case by case specificity to the word “occurrence” or its synonyms given to it by the majority. Depending upon context, the word “occurrence” can properly be applied to happenings which do not take place at a single specified time, in a particular way and at a particular location. Thus a hurricane, a storm or a flood may properly be described as an occurrence even

though each may take place over a substantial period of time, and over an area which changes over time. It is not in my view an inappropriate word to use about a pandemic disease as a whole, although I accept that it may be a pointer of some weight to an individual case analysis.

324. Thirdly, the reasoning adopted by the majority might be regarded by the hypothetical reader as somewhat circuitous. Its end product is, as already noted, that cover is effectively provided for business interruption caused by a national reaction to a national pandemic, provided that it extends within the radius. If so, the reader might ask, why not interpret it as doing so directly? An illustration of the length of that journey may be provided by reading the majority judgment, but stopping at para 95. At that point in the analysis, the reader might think that the policyholders with radius-limited disease clauses had lost.

325. None of this means that I consider that the analysis of the majority is not a readily available construction of clauses which contain a radius limitation. If it were the only means of giving those clauses real rather than illusory cover for diseases of a type which they clearly comprehend, then I would agree with the majority without qualification. It is often said that there can only ever be one “true” construction of any contractual provision. Where different constructions produce different results it may well be necessary to choose between them. But where, as here, the practical outcome is the same, there is to my mind no such necessity.

326. I can deal with my one minor point of departure from the majority very briefly. It is that I would be cautious about treating the cases about defence costs (dealt with by the majority at paras 186 to 188) as of any general application outside their specific field. In my view, and notwithstanding that they can be viewed as consistent with a concurrent cause analysis, cases about insurance cover for costs are better regarded as *sui generis*.

## APPENDIX 1

1. The Prime Minister's statement of 16 March 2020 included the following:

“Last week we asked everyone to stay at home if you had one of two key symptoms: a high temperature or a new and continuous cough. Today, we need to go further, because according to SAGE it looks as though we're now approaching the fast growth part of the upward curve. And without drastic action, cases could double every five or six days.

So, first, we need to ask you to ensure that if you or anyone in your household has one of those two symptoms, then you should stay at home for 14 days. That means that if possible you should not go out even to buy food or essentials, other than for exercise, and in that case at a safe distance from others. If necessary, you should ask for help from others for your daily necessities. And if that is not possible, then you should do what you can to limit your social contact when you leave the house to get supplies. And even if you don't have symptoms and if no one in your household has symptoms, there is more that we need you to do now.

So, second, now is the time for everyone to stop non-essential contact with others and to stop all unnecessary travel. We need people to start working from home where they possibly can. And you should avoid pubs, clubs, theatres and other such social venues. It goes without saying, we should all only use the NHS when we really need to. And please go online rather than ringing NHS 111. Now, this advice about avoiding all unnecessary social contact, is particularly important for people over 70, for pregnant women and for those with some health conditions ...

So third, in a few days' time - by this coming weekend - it will be necessary to go further and to ensure that those with the most serious health conditions are largely shielded from social contact for around 12 weeks ...

And it's now clear that the peak of the epidemic is coming faster in some parts of the country than in others. And it looks

as though London is now a few weeks ahead. So, to relieve the pressure on the London health system and to slow the spread in London, it's important that Londoners now pay special attention to what we are saying about avoiding non-essential contact, and to take particularly seriously the advice about working from home, and avoiding confined spaces such as pubs and restaurants.

Lastly, it remains true as we have said in the last few weeks that risks of transmission of the disease at mass gatherings such as sporting events are relatively low. But obviously, logically as we advise against unnecessary social contact of all kinds, it is right that we should extend this advice to mass gatherings as well. And so we've also got to ensure that we have the critical workers we need, that might otherwise be deployed at those gatherings, to deal with this emergency. So from tomorrow, we will no longer be supporting mass gatherings with emergency workers in the way that we normally do. So mass gatherings, we are now moving emphatically away from."

2. The Prime Minister's statement of 18 March 2020 included the following:

"I want to repeat that everyone - everyone - must follow the advice to protect themselves and their families, but also - more importantly - to protect the wider public. So stay at home for seven days if you think you have the symptoms. Remember the two key symptoms are high temperature, a continuous new cough.

Whole household to stay at home for 14 days if one member in that household thinks he/she has the symptoms. Avoid all unnecessary gatherings - pubs, clubs, bars, restaurants, theatres and so on and work from home if you can. Wash your hands.

...

And we come today to the key issue of schools where we have been consistently advised that there is an important trade off.

...

So looking at the curve of the disease and looking at where we are now - we think now that we must apply downward pressure,

further downward pressure on that upward curve by closing the schools.

So I can announce today and Gavin Williamson making statement now in House of Commons that after schools shut their gates from Friday afternoon, they will remain closed for most pupils - for the vast majority of pupils - until further notice. I will explain what I mean by the vast majority of pupils.

The objective is to slow the spread of the virus and we judge it is the right moment to do that.

But of course, as I've always said, we also need to keep the NHS going and to treat the number of rising cases. So we need health workers who are also parents to continue to go to work.

And we need other critical workers with children to keep doing their jobs too - from police officers who are keeping us safe to the supermarket delivery drivers, social care workers who look after the elderly and who are so vital. We will be setting out more details shortly about who we mean in these groups.

So we therefore need schools to make provision for the children of these key workers who would otherwise be forced to stay home. And they will also need to look after the most vulnerable children.

This will mean there will of course be are far fewer children in schools and that will help us to slow the spread of the disease.  
...

So we are simultaneously asking nurseries and private schools to do the same, and we are providing financial support where it is needed. ...”

3. The Prime Minister's statement of 20 March 2020 included the following:

“... I want to thank everyone for following the guidance we issued on Monday:

To stay at home for seven days if you think you have the symptoms, for 14 days if anyone in your household has either of the symptoms - a new continuous cough or a high temperature.

To avoid pubs bars, clubs and restaurants.

To work from home if at all possible.

Keep washing your hands ...

... I am confident that, in time, the UK economy is going to bounce back.

Of course it is.

But I must be absolutely clear with you: the speed of that eventual recovery depends entirely on our ability, our collective ability, to get on top of the virus now.

And that means we have to take the next steps, on scientific advice and following our plan, we are strengthening the measures announced on Monday which you will remember.

And of course people have already made a huge effort to comply with those measures for avoiding unnecessary social contact.

But we need now to push down further on that curve of transmission between us.

And so following agreement between all the formations of the United Kingdom, all the devolved administrations, we are collectively telling, telling cafes, pubs, bars, restaurants to close tonight as soon as they reasonably can, and not to open tomorrow.

Though to be clear, they can continue to provide take-out services.

We're also telling nightclubs, theatres, cinemas, gyms and leisure centres to close on the same timescale.

Now, these are places where people come together, and indeed the whole purpose of these businesses is to bring people together. But the sad things [sic] is that today for now, at least physically, we need to keep people apart.

And I want to stress that we will review the situation each month, to see if we can relax any of these measures.

And listening to what I have just said, some people may of course be tempted to go out tonight. But please don't. You may think you are invincible, but there is no guarantee you will get mild symptoms, and you can still be a carrier of the disease and pass it on to others. So that's why, as far as possible, we want you to stay at home, that's how we can protect our NHS and save lives."

4. Regulation 2 of the 21 March Regulations provided as follows:

**“Requirement to close premises and businesses during the emergency**

2(1) A person who is responsible for carrying on a business which is listed in Part 1 of the Schedule must -

(a) during the relevant period -

(i) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises, and

(ii) cease selling food or drink for consumption on its premises; or

(b) if the business sells food or drink for consumption off the premises, cease selling food or drink for consumption on its premises during the relevant period.

(2) For the purposes of paragraph (1)(a), food or drink sold by a hotel or other accommodation as part of room service is not to be treated as being sold for consumption on its premises.

(3) For the purposes of paragraph (1)(a)(ii) and (b), an area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) to be treated as part of the premises of that business.

(4) A person responsible for carrying on a business which is listed in Part 2 of the Schedule must cease to carry on that business during the relevant period.

(5) If a business listed in the Schedule ('business A') forms part of a larger business ('business B'), the person responsible for carrying on business B complies with the requirement in paragraph (1) if it closes down business A.

(6) The Secretary of State must review the need for restrictions imposed by this regulation every 28 days, with the first review being carried out before the expiry of the period of 28 days starting with the day after the day on which these Regulations are made.

(7) As soon as the Secretary of State considers that the restrictions set out in this regulation are no longer necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England with the coronavirus, the Secretary of State must publish a direction terminating the relevant period.

(8) A direction published under paragraph (7) may terminate the relevant period in relation to some of the businesses listed in the Schedule, or all businesses listed in the Schedule.



(9) For the purposes of this regulation -

(a) ‘coronavirus’ means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

(b) a ‘person responsible for carrying on a business’ includes the owner, proprietor, and manager of that business;

(c) the ‘relevant period’ starts when these Regulations come into force and ends on the day specified in a direction published by the Secretary of State under paragraph (7).”

5. The Prime Minister’s statement of 23 March 2020 included the following:

“it’s vital to slow the spread of the disease ... And that’s why we have been asking people to stay at home during this pandemic. And though huge numbers are complying - and I thank you all - the time has now come for us all to do more. From this evening I must give the British people a very simple instruction - you must stay at home. Because the critical thing we must do is stop the disease spreading between households. That is why people will only be allowed to leave their home for the following very limited purposes:

- shopping for basic necessities, as infrequently as possible;
- one form of exercise a day - for example a run, walk, or cycle - alone or with members of your household;
- any medical need, to provide care or to help a vulnerable person; and
- travelling to and from work, but only where this is absolutely necessary and cannot be done from home.

That's all - these are the only reasons you should leave your home.

You should not be meeting friends. If your friends ask you to meet, you should say No. You should not be meeting family members who do not live in your home. You should not be going shopping except for essentials like food and medicine - and you should do this as little as you can. And use food delivery services where you can. If you don't follow the rules the police will have the powers to enforce them, including through fines and dispersing gatherings.

To ensure compliance with the Government's instruction to stay at home, we will immediately:

- close all shops selling non-essential goods, including clothing and electronic stores and other premises including libraries, playgrounds and outdoor gyms, and places of worship;
- we will stop all gatherings of more than two people in public - excluding people you live with;
- and we'll stop all social events, including weddings, baptisms and other ceremonies, but excluding funerals. Parks will remain open for exercise but gatherings will be dispersed.

No Prime Minister wants to enact measures like this.

I know the damage that this disruption is doing and will do to people's lives, to their businesses and to their jobs.

And that's why we have produced a huge and unprecedented programme of support both for workers and for business.

And I can assure you that we will keep these restrictions under constant review. We will look again in three weeks, and relax them if the evidence shows we are able to."

6. Regulations 4 and 5 of the 26 March Regulations provided as follows:

**“Requirement to close premises and businesses during the emergency**

4(1) A person responsible for carrying on a business which is listed in Part 1 of Schedule 2 must -

(a) during the emergency period -

(i) close any premises, or part of the premises, in which food or drink are sold for consumption on those premises, and

(ii) cease selling food or drink for consumption on its premises;

or

(b) if the business sells food or drink for consumption off the premises, cease selling food or drink for consumption on its premises during the emergency period.

(2) For the purposes of paragraph (1)(a), food or drink sold by a hotel or other accommodation as part of room service is not to be treated as being sold for consumption on its premises.

(3) For the purposes of paragraph (1)(a)(ii) and (b), an area adjacent to the premises of the business where seating is made available for customers of the business (whether or not by the business) is to be treated as part of the premises of that business.

(4) A person responsible for carrying on a business or providing a service which is listed in Part 2 of Schedule 2 must cease to carry on that business or to provide that service during the emergency period.

(5) Paragraph (4) does not prevent the use of -

(a) premises used for the businesses or services listed in paragraphs 5, 6, 8, 9 or 10 of that Part to broadcast a performance to people outside the premises, whether over the internet or as part of a radio or television broadcast;

(b) any suitable premises used for the businesses or services listed in that Schedule to host blood donation sessions.

(6) If a business listed in Part 1 or 2 of Schedule 2 ('business A') forms part of a larger business ('business B'), the person responsible for carrying on business B complies with the requirement in paragraph (1) if it closes down business A."

#### **Further restrictions and closures during the emergency period**

"5(1) A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop, or providing library services must, during the emergency period -

(a) cease to carry on that business or provide that service except by making deliveries or otherwise providing services in response to orders received -

(i) through a website, or otherwise by on-line communication,

(ii) by telephone, including orders by text message, or

(iii) by post;

(b) close any premises which are not required to carry out its business or provide its services as permitted by sub-paragraph (a);

(c) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by subparagraph (a).

(2) Paragraph (1) does not apply to any business which provides hot or cold food for consumption off the premises.

(3) Subject to paragraph (4), a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period.

(4) A person referred to in paragraph (3) may continue to carry on their business and keep any premises used in that business open -

(a) to provide accommodation for any person, who -

(i) is unable to return to their main residence;

(ii) uses that accommodation as their main residence;

(iii) needs accommodation while moving house;

(iv) needs accommodation to attend a funeral;

(b) to provide accommodation or support services for the homeless,

(c) to host blood donation sessions, or

(d) for any purpose requested by the Secretary of State, or a local authority.

(5) A person who is responsible for a place of worship must ensure that, during the emergency period, the place of worship is closed, except for uses permitted in paragraph (6).

(6) A place of worship may be used -

(a) for funerals,

(b) to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast, or

(c) to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).

(7) A person who is responsible for a community centre must ensure that, during the emergency period, the community centre is closed except where it is used to provide essential voluntary activities or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).

(8) A person who is responsible for a crematorium or burial ground must ensure that, during the emergency period, the crematorium is closed to members of the public, except for funerals or burials.

(9) If a business referred to in paragraph (1) or (3) ('business A') forms part of a larger business ('business B'), the person responsible for carrying on business B complies with the requirement in paragraph (1) or (3) to cease to carry on its business if it ceases to carry on business A."

7. Schedule 2 to the 26 March Regulations stated as follows:

**“PART 1**

1. Restaurants, including restaurants and dining rooms in hotels or members’ clubs.

2(1) Cafes, including workplace canteens (subject to subparagraph (2)) but not including -

(a) cafes or canteens at a hospital, care home or school;

(b) canteens at a prison or an establishment intended for use for naval, military or air force purposes or for the purposes of the Department of the Secretary of State responsible for defence;

(c) services providing food or drink to the homeless.

(2) Workplace canteens may remain open where there is no practical alternative for staff at that workplace to obtain food.

3. Bars, including bars in hotels or members’ clubs.

4. Public houses.

**PART 2**

5. Cinemas.

6. Theatres.

7. Nightclubs.

8. Bingo halls.

9. Concert halls.
10. Museums and galleries.
11. Casinos.
12. Betting shops.
13. Spas.
14. Nail, beauty, hair salons and barbers.
15. Massage parlours.
16. Tattoo and piercing parlours.
17. Skating rinks.
18. Indoor fitness studios, gyms, swimming pools, bowling alleys, amusement arcades or soft play areas or other indoor leisure centres or facilities.
19. Funfairs (whether outdoors or indoors).
20. Playgrounds, sports courts and outdoor gyms.
21. Outdoor markets (except for stalls selling food).
22. Car showrooms.
23. Auction Houses.



**PART 3**

24. Food retailers, including food markets, supermarkets, convenience stores and corner shops.

25. Off licenses and licensed shops selling alcohol (including breweries).

26. Pharmacies (including non-dispensing pharmacies) and chemists.

27. Newsagents.

28. Homeware, building supplies and hardware stores.

29. Petrol stations.

30. Car repair and MOT services.

31. Bicycle shops.

32. Taxi or vehicle hire businesses.

33. Banks, building societies, credit unions, short term loan providers and cash points.

34. Post offices.

35. Funeral directors.

36. Laundrettes and dry cleaners.

37. Dental services, opticians, audiology services, chiropody, chiropractors, osteopaths and other medical or health services, including services relating to mental health.

38. Veterinary surgeons and pet shops.
39. Agricultural supplies shops.
40. Storage and distribution facilities, including delivery drop off or collection points, where the facilities are in the premises of a business included in this Part.
41. Car parks.
42. Public toilets.”

# EXHIBIT C



# **Final guidance: Business interruption insurance test case - proving the presence of coronavirus (Covid-19)**

3 March 2021

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# 1 Summary

## About this guidance

- 1.1 Following the onset of the coronavirus (Covid-19) pandemic we received many complaints from small and medium enterprise (SME) policyholders, MPs and other stakeholders. They complained about insurers taking a narrow reading of whether their business interruption (BI) policy wordings, which did not require damage to the insured premises, would provide cover in response to the situation. Our supervisory work confirmed that insurers were refusing the large majority of these SME BI claims, with genuine debate as to the meaning of some policies.
- 1.2 We decided that the quickest route to resolving the issue and providing certainty for all parties was to go to the High Court to seek a declaration on what the wordings covered. Given the potential harm for SMEs from the pandemic, we have been clear throughout that our overarching aim has been to achieve a final outcome with clarity and to do so swiftly. This is to enable eligible policyholders to receive claim payments as early as possible.
- 1.3 In June 2020, we began a test case in the High Court, which was then subject to a leapfrog (bypassing the Court of Appeal) appeal to the Supreme Court. Our counsel reviewed over 500 policy wordings to arrive at the 21 representative policy 'types' issued by the 8 insurers included in the test case. We selected wordings that were representative of the key issues in dispute at the time between policyholders and insurers, which led to us deciding which insurers we would invite to participate in the test case. These 21 policy types have 3 types of cover wording:
  - (i) cover for BI caused by an outbreak of disease within a specified radius (eg 25 miles or 1 mile) within the vicinity of premises
  - (ii) cover for BI caused by denial of access to premises, following public authority action, taken due to an emergency
  - (iii) 'hybrid' wordings which combine a requirement for both outbreak of disease and public authority denial of access to premisesOur role was to put forward the best policyholder arguments. We used the court's Financial Markets Test Case scheme, as it offered the quickest way to get an authoritative ruling.
- 1.4 The Supreme Court judgment (*FCA v Arch and others* [2021] UKSC 1) handed down on 15 January 2021 and High Court judgment (*FCA v Arch and others* [2020] EWHC 2448 (Comm)) handed down on 15 September 2020, provided authoritative guidance for the interpretation of the approximately 700 policy wordings identified as affected by the test case by about 60 insurers. Following the Supreme Court judgment, 14 out of the 21 policy types tested were found to have the potential to provide cover in response to the pandemic; 7 were not. The Supreme Court also found that cover may be available for partial as well as full closure of premises, and for mandatory closure orders that were not legally binding.
- 1.5 Some BI insurance policies require the policyholder to prove the presence of a disease within a particular area around their premises. As part of its decision, the

High Court made declarations on the types of evidence which policyholders can use to seek to prove the presence of Covid-19, and the methodologies they may use in that process. These declarations were not appealed to the Supreme Court, but the Supreme Court did make some statements that are relevant to the guidance and we have reflected these in the final guidance.

1.6 This document contains guidance for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries on how the presence of Covid-19 in a particular area may be proved. This is based on the High Court's judgment and declarations and the additional statements from the Supreme Court and in the context of insurers' obligations under our rules to handle claims fairly. This is intended to:

(i) provide clarity for all parties

(ii) help ensure that the process of proving the presence of Covid-19 is made as simple as possible for eligible policyholders and

(iii) enable those policyholders to receive claim payments as early as possible

1.7 This guidance is the FCA's view and it does not prevent policyholders using other sources of evidence or putting forward their own arguments in respect of the sources of evidence in this guidance. The FCA will shortly publish a Covid-19 Calculator to assist policyholders to carry out the calculations in Chapters 7, 8 and 9. The results of the Covid-19 Calculator can be used to evidence whether Covid-19 was likely to be present in their policy area but it is open to policyholders to carry out calculations themselves.

## Who this guidance applies to

1.8 This guidance is for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries.

1.9 For insurers and insurance intermediaries, this document contains guidance on firms' obligations under:

- the FCA Principles for Businesses (PRIN), in particular Principles 6 and 7
- the Insurance Conduct of Business sourcebook (ICOBS), in particular ICOBS 2.2.2R, ICOBS 2.5.-1R and ICOBS 8.1
- the Dispute Resolution: Complaints sourcebook (DISP), in particular DISP 1.4 and DISP 1.6

## What this document sets out

1.10 **Chapter 2** sets out how policyholders can use this guidance.

1.11 **Chapter 3** sets out our guidance for insurers and insurance intermediaries on proving the presence of Covid-19.

1.12 **Chapters 4 to 9** set out our guidance on the specific evidence that policyholders can use to seek to prove the presence of Covid-19 in the Relevant Policy Area (RPA) that applies to their policy and claim.

## Which insurance policies this guidance is relevant to

1.13 This guidance relates to how a policyholder might prove the presence of Covid-19 for the purpose of making a claim under an insurance contract that:

- was in force during the UK Government action primarily in March 2020 in response to the national Covid-19 pandemic
- which is of, or similar to, a type of policy found to provide cover for that action in the test case and
- which requires the policyholder to prove the presence of Covid-19 within a particular area around their premises

It may also be relevant to losses from later events such as 'local' lockdowns or subsequent national lockdowns.

1.14 The judgment and declarations from the Supreme Court and High Court relate to the laws of England and Wales. But they provide persuasive guidance that can be taken into account in other court cases including in Northern Ireland and Scotland, and by the Financial Ombudsman Service and by the FCA in looking at whether insurers are handling claims fairly. Most of the sources of evidence referred to in this document are available throughout the UK, but some are not relevant to Wales, Northern Ireland and/or Scotland.

## Duration of the guidance

1.15 This guidance comes into effect on the date it is issued and ceases to have effect on 31 January 2022 (by when we expect that all issues relating to proving the presence of Covid-19 will have been resolved).



## 2 How to use this guidance

### Introduction

- 2.1 As set out above, some BI insurance policies require the policyholder to prove the presence of a disease within a particular area before the policy will respond. This guidance is intended to help policyholders in this process.
- 2.2 The first step for policyholders is to determine whether the relevant coverage clause in the BI insurance policy being considered has wording that:
- requires the presence of disease within a particular distance, zone or radius from the premises – see, for example, the ‘disease clause’ in ‘Argenta Type 1 of 1’ or ‘QBE Type 1 of 3’ in the representative sample of policy wordings considered in the test case
  - requires the presence of disease within a vicinity or area where events that occur within such area would be reasonably expected to have an impact on the policyholder – see, for example, the ‘disease clause’ in ‘RSA Type 4 of 4’ in the representative sample of policy wordings considered in the test case
  - requires the occurrence of a notifiable disease without specifying a particular vicinity or area within which the disease needs to occur
- If the policy contains one of the above types of wording, the policyholder should follow the steps set out under the relevant subheading below.
- 2.3 This guidance was not designed for proving the presence of Covid-19 for other types of policy wording but may be of assistance in some circumstances.

### Policies requiring the presence of disease within a particular distance, zone or radius from the insured premises

- 2.4 Some BI insurance policies which the Courts decided should, in principle, provide cover for the pandemic require the policyholder to demonstrate that there was at least 1 case of Covid-19 in a specific zone relative to the insured premises, for example within a 25-mile or 1-mile radius from the premises. In this document, that zone is called the Relevant Policy Area, or ‘RPA’.
- 2.5 Whether you need to prove the presence of a case on a particular date will depend on the policy wording. For most policy types, the policyholder will need to be able to show that a case occurred at any time prior to the interruption of their business in order to claim.
- 2.6 In presenting evidence to the insurer, a policyholder will need to explain which type of evidence it is, how it has been obtained and how it proves the presence of at least 1 case of Covid-19 in the RPA (references to paragraphs of this guidance may help with this). In some cases, a policyholder may not be able to gather sufficient evidence to prove the presence of Covid-19 in their RPA.

### *Policyholders with a 25-mile radius RPA*

- 2.7 This guidance sets out 4 types of evidence on which a policyholder may seek to rely to establish the presence of Covid-19 in their RPA. If a policyholder can establish cogent evidence from one of these types, there is no need to establish other types of evidence.
- 2.8 We suggest that a policyholder with a 25-mile radius RPA seeks to use these types of evidence in the order set out below:
1. specific evidence (for example, media reports of a case near the premises) – see Chapter 4
  2. NHS data on deaths due to Covid-19 – see Chapter 5
  3. Office of National Statistics (ONS) data on deaths due to Covid-19 – see Chapter 6
  4. reported cases of Covid-19 in different areas (for example, local authorities) – see Chapter 7 - the FCA will shortly publish a Covid-19 Calculator that a policyholder can use to gather this evidence.
- 2.9 If none of those 4 types of evidence is sufficient to prove the presence of Covid-19 in the RPA, for example because the evidence provides data for cases which could be inside or outside the RPA, this guidance describes 2 methodologies which a policyholder may use to nonetheless seek to prove the presence of Covid-19 in their RPA:
1. using an undercounting methodology: recognising that testing was limited before the first national lockdown, this involves using a statistical model to estimate the real number of infections in an area – see Chapter 8.
  2. the geographical distribution methodology, where actual or estimated Covid-19 infections are 'averaged' across an area, weighted according to population size – see Chapter 9.

We will shortly publish a Covid-19 Calculator that a policyholder can use to gather the evidence in Chapters 8 and 9.

### *Policyholders with a 1-mile radius RPA*

- 2.10 We suggest that a policyholder with a 1-mile radius RPA starts with considering 'specific evidence' (Chapter 4), then considers 'Reported Cases by Middle Super Output Area' (in Chapter 7) before using NHS data (Chapter 5) and the other sources of evidence in Chapter order. If a policyholder can establish cogent evidence of one of these types, there is no need to establish other types of evidence.

**Policies that require the presence of disease within a vicinity or area, where the events that occur within such area would be reasonably expected to have an impact on the policyholder.**

### *Policyholders in England and Wales*

- 2.11 The High Court confirmed that the particular definition of 'vicinity' in the disease clause of the policy type underwritten by Royal & Sun Alliance Insurance plc (RSA)

and various other insurers and branded Marsh Resilience, referred to during the test case as RSA4, meant that, for that policy type, Covid-19 occurred within the 'vicinity' of all premises in England and Wales on 31 January 2020 (Court declaration 4). This was the date of the first positive test for Covid-19 in England. Policyholders with this type of policy do not need to prove the presence of Covid-19.

- 2.12 The definition of 'vicinity' in RSA4 is 'an area surrounding or adjacent to an Insured Location in which events that occur within this area would be reasonably expected to have an impact on an Insured or the Insured's Business'. Where other policies require the presence of Covid-19 within an area defined in a similar way to the definition of 'vicinity' in RSA4, we consider the same approach should be used as for RSA4<sup>1</sup>.

### *Policyholders in Northern Ireland and Scotland*

- 2.13 For policyholders in Northern Ireland or Scotland, the guidance for policyholders in England and Wales above is also relevant, except that Covid-19 should be treated as having occurred, for the purposes of the disease clause in RSA4 and similar clauses in other policies, within the 'vicinity' of all premises in those nations when the first positive test for Covid-19 occurred in those nations, which is:
- in Northern Ireland, 11 January 2020<sup>2</sup> (see [Covid-19 Testing Details](#))
  - in Scotland, 28 February 2020 (see [Daily Update](#))

## Policies requiring the occurrence of a notifiable disease

### *Policyholders in England and Wales*

- 2.14 The High Court confirmed that Covid-19 'occurred' on 5 March 2020 in England and on 6 March 2020 in Wales within Hiscox1-3 (hybrid clauses) (Court declaration 3). Policyholders with these policies will not need to take any further steps to prove the presence of Covid-19. Where other policies have similar wording, the FCA considers the same approach should be used as for Hiscox1-3 (hybrid clauses).

### *Policyholders in Northern Ireland and Scotland*

- 2.15 For policyholders in Northern Ireland and Scotland, Covid-19 should be treated as notifiable for these types of policies when it became notifiable in those nations:
- in Northern Ireland, 29 February 2020 (see The Public Health Act (Northern Ireland) 1967)
  - in Scotland, 22 February 2020 (see Public Health (Scotland) Act 2008)

<sup>1</sup> High Court judgment – paragraph 140.

<sup>2</sup> Note that this date differs to that in the High Court judgment as the judgment refers to reported cases while the online tools use specimen dates.

## 3 Guidance for insurers and insurance intermediaries

### Rules this guidance relates to

- 3.1 For insurers (including managing agents at Lloyd's) and insurance intermediaries, this is guidance on obligations under:
- the FCA Principles for Businesses (PRIN), in particular Principles 6 and 7
  - the Insurance Conduct of Business sourcebook (ICOBS), in particular ICOBS 2.2.2R, ICOBS 2.5.-1R and ICOBS 8.1
  - the Dispute Resolution: Complaints sourcebook (DISP), in particular DISP 1.4 and DISP 1.6.

### Insurers - general

- 3.2 Insurers should provide fair consideration and assessment of any evidence policyholders submit to prove the presence of Covid-19 where required under their policy. As part of that, we expect insurers to have regard to the guidance provided to policyholders in this document.
- 3.3 Where a policyholder has provided cogent evidence of the presence of Covid-19 in their RPA in accordance with the approach in this guidance, insurers should, in handling claims fairly, accept that evidence as sufficient to discharge the burden of proof on the policyholder. If the insurer does put forward counter-evidence in response to cogent evidence from a policyholder, the FCA considers that fair claims handling means that:
- (i) the counter-evidence will need to be more cogent than the evidence put forward by the policyholder to put the burden of proof back onto the policyholder; and
- (ii) the insurer will need to clearly explain to the policyholder the basis on which it considers that, in relation to the policyholder's particular claim:
- the policyholder's evidence does not discharge the burden of proof in relation to the minimal requirements of the policy, and
  - the insurer's counter-evidence is more cogent.
- 3.4 We encourage insurers to adopt approaches that streamline and expedite claims handling having regard to the requirement to handle claims promptly and fairly. Accordingly, this guidance encourages insurers to voluntarily adopt a more transparent and facilitative approach to claims handling that helps policyholders to prove the presence of Covid-19 by particular dates. We expect insurers to act honestly, fairly and professionally in accordance with the best interests of policyholders and to have recorded how their approach meets that standard. For example:
- (i) insurers may want to propose to policyholders a suitable and reasonably assessed date that Covid-19 will be deemed to have been established in one or more RPAs, with policyholders able to agree to that deemed date or seek to prove that an earlier or later date is relevant, where applicable

- (ii) insurers may wish to publish on their websites, in an anonymised form (or with policyholders' consent), records of the RPAs in which cases of Covid-19 have been proved by policyholders, to help other policyholders when making claims, and ensuring compliance with any applicable laws on publishing this data

## Insurers – responsibility for delegated tasks or functions

- 3.5 Where an insurer delegates any aspect of claims or complaints handling to a third party and appoints the third party to carry out any task or function covered in this guidance, the insurer should consider SYSC 3.2.3G. In particular, the firm should ensure that the third party is aware of this guidance and applies it as appropriate for any task or function they perform involving relevant non-damage BI policies on behalf of the insurer.
- 3.6 We remind insurers that they cannot contract out of their regulatory responsibilities (ICOBS 2.5.3G). So, for example, under Principle 3 an insurer should take reasonable care to supervise the discharge of outsourced functions by its contractor (SYSC 3.2.4G).

## Insurers - other policyholder evidence

- 3.7 Where one policyholder has proved that Covid-19 was 'sustained', or 'occurred', or 'manifested' in a particular location for their policy (through whatever method), we consider that the insurer should not require its other policyholders also to prove that the disease was 'sustained', or 'occurred', or 'manifested' (as applicable) where their RPAs substantially overlap. We do not consider that it would be fair to put these other policyholders to the task of proving this where the insurer already holds adequate proof.
- 3.8 The insurer should tell these other policyholders that they do not have to prove the presence of the disease. The insurer should communicate this at the time that the other policyholder first notifies the insurer of the claim. Alternatively, where the insurer becomes aware of the evidence during the claims process, they should do this in the next communication with the other policyholder as part of the claims process, for example, when the insurer updates the other policyholder on the progress of their claim.
- 3.9 For the purpose of identifying RPAs that substantially overlap insurers could use, for example, the postcode sector for RPAs with a 25 mile radius or a postcode unit for RPAs with a 1 mile radius (except for any postcode sectors or units that are unusually large). The ONS website explains how to identify a postcode sector, made up of the postcode area (denoted by letters eg PO) a postcode district (denoted by a number eg 15) and a further number to indicate the sector (eg PO15 5). The postcode unit is the smallest geographic unit for a postcode and is indicated by the letters at the end of a postcode eg PO15 5RR. See the ONS website for further information. Website tools can be used to find the postcodes within a radius of a particular point, such as the 'UK Postcode Radius Search Map' on [FreeMapTools](#).
- 3.10 If a policyholder has proved the presence of Covid-19, the insurer should accept that evidence as sufficient for other policyholders with the same radius of RPA in the same postcode sector (for 25 mile radii) or unit (for 1 mile radii). For example, if a

policyholder whose premises has a postcode of PO15 5RR has proved that a case occurred within 25 miles (or alternatively 1 mile), policyholders with 25-mile RPAs in the PO15 5 postcode sector (or alternatively with 1 mile RPAs in the PO15 5RR postcode unit) would be told that they do not need to evidence the disease.

## Informing relevant customers about this guidance and the FCA Covid-19 Calculator

- 3.11 We expect insurers to alert relevant policyholders about the existence of this guidance and (once available) the FCA Covid-19 Calculator described in Chapter 9 (with website links) as part of their obligation to “provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress”. This includes sending an individual communication to any policyholder who has made a claim and has not yet satisfied the insurer of the presence of Covid-19 in their area.

## Insurance intermediaries

- 3.12 Insurance intermediaries helping policyholders with making claims should have regard to the guidance provided to policyholders in this document. We encourage insurance intermediaries to adopt approaches that streamline and expedite claims handling for their clients. For example, insurance intermediaries may want to publish on their websites records of the RPAs in which cases of Covid-19 have been proved by their clients, in an anonymised form (or with policyholders’ consent). Anonymised records of this sort could help their other clients when making claims.
- 3.13 Insurance intermediaries helping insurers assess claims should have regard to this guidance in the same way as insurers.

## 4 Guidance for policyholders – Specific evidence

4.1 Court declaration 8.2(a) states that policyholders can in principle use, to prove the presence of Covid-19 in their RPA:

‘specific evidence of a case or cases of Covid-19 in a particular location within the relevant policy area’.

4.2 The Court did not provide guidance on the types of specific evidence that might be used. It would appear reasonable for a policyholder to rely on any of the following to satisfy the burden of proof, for example:

- Personal knowledge of somebody within their RPA who:
  - tested positive for Covid-19
  - was diagnosed with Covid-19
  - (where the policy requires the disease to ‘manifest’ symptoms) manifested symptoms of Covid-19 or was diagnosed with Covid-19 whether or not they had symptoms (in each case, together with accompanying evidence)
- Reports from reliable media outlets of cases of Covid-19 at a care home, hospital, restaurant, school or other business in the RPA (such as a processing factory, food or goods distribution centres); see for [example](#) the case at Deloitte.
- Personal knowledge of a staff member who tested positive within a 7-day period after being present at the business premises (together with accompanying evidence). Paragraph 571 of the High Court judgment refers to the fact that the insurers in the Court case accepted that the infectious period for Covid-19 is, on average, 7-12 days. We have used the lower number of days for the purpose of the estimates in this section.
- Personal knowledge of a customer or guest who tested positive within a 7-day period after being present at their business premises.
- Contacting a local GP surgery to request information about whether they had a patient who tested positive or who displayed Covid-19 symptoms during the relevant period.
- Contacting a local school or university to request information about whether a student or teacher tested positive during the relevant period.
- Official statements or press releases from universities confirming a case of Covid-19. For example, the Bristol City Council and Bristol University [joint statement](#) on a case of coronavirus.

## 5 Guidance for policyholders – NHS death data

### Policyholders who can use this chapter

- 5.1 This chapter can be used by policyholders with premises in England and Wales or Scotland where all the hospitals of one or more NHS Hospital Trusts (or Boards, in Scotland) are located within the RPA.

### Policyholders in England

- 5.2 Court declaration 8.2(b) states that policyholders can in principle use:

'data published by NHS England on a daily basis recording the number of individuals who died in NHS Hospital Trusts in England after testing positive for Covid-19 (NHS Death Data), where an NHS Hospital Trust has recorded such a death on a particular date and:

- (i) all hospitals in that Trust are within the relevant policy area; and
- (ii) since inferences can be drawn from the NHS Death Data as to when Covid-19 was present in that NHS Hospital Trust, an inference may be able to be drawn that Covid-19 was present in the relevant policy area at a particular date (this may be more obvious in some circumstances than others, for example if an individual died in early March 2020 after testing positive for Covid-19, it is prima facie likely that Covid-19 was present in the local area at the time of death).'

- 5.3 This means that policyholders can use data published by NHS England, on a daily and cumulative basis, about the number of people who died in each NHS Hospital Trust after having tested positive for Covid-19. NHS Hospital Trusts can run one or more hospitals, and the data do not always pinpoint the specific hospital where the death occurred. Therefore, the Court's declaration confirmed that a policyholder can rely on the NHS Death Data in respect of a particular NHS Hospital Trust where all the hospitals of that NHS Hospital Trust are located within the RPA.

- 5.4 The policyholder can then draw appropriate inferences from the data to satisfy the burden of proof. For example, provided that the Trust hospital or hospitals are all within the RPA, if an individual tested positive for Covid-19, was admitted to one of the Trust's hospitals and died in early March, it is likely that Covid-19 was present in the RPA at the time of death. Policyholders are free to make arguments as to other inferences for insurers to consider, such as how long a patient was likely to be in the hospital with symptomatic Covid-19 prior to their death (see for example the inferences we suggest policyholders could make, at paragraph 6.5, about the average time between infection and death).

- 5.5 For further information about using the data from NHS England:

- (i) See paragraphs 36 to 37A of '[Agreed Facts 3 – Prevalence of Covid-19](#)', one of the documents in the Court proceedings, and the links there to the NHS Death Data, especially [Daily Deaths](#). That website includes a spreadsheet entitled, 'Covid-19 total announced deaths [date]', and Tab 4 of the spreadsheet lists 'Deaths by trust'.



- (ii) The NHS [website](#) contains [details](#) of how many hospitals are in each NHS Hospital Trust, and their locations. For example, clicking on 'North West Anglia NHS Foundation Trust' in that list, and then the 'Hospitals and clinics' tab, shows that there are currently 7 hospitals in that Trust. If that Trust recorded deaths due to Covid-19, and all 7 hospitals are in the policyholder's RPA, then the policyholder can rely on those data.

## Policyholders in Northern Ireland

- 5.6 We have not identified the equivalent data sets for Northern Ireland. But alternative data sets are available in Chapters 6 to 8.

## Policyholders in Scotland

- 5.7 For Scotland, daily death data, broken down by geography, local authority or NHS board for the period 1 March 2020 to present, is available on [Tableau](#). To access the data choose tab 'data table' and select geography (Scotland, NHS board or local authority), then filter the data by 'location' (eg for NHS board 'Ayrshire and Arran') and the relevant date range.

## Policyholders in Wales

- 5.8 For Wales, daily death data broken down by local authority or NHS Board is available on the ONS [website](#). To access the data select the 2020 data set. The data is presented on an excel spreadsheet. The death data is presented in a number of ways. Policyholders may find it helpful to use the 'Registrations – All data' tab. Death data can be filtered by 'Health Board' under the 'Geography type' heading. To identify the number of Covid-19 deaths in the Health Board for the relevant time period: (1) filter the cause of death by 'Covid-19' and (2) select the relevant week number(s) (corresponding with the week numbers in the year from 1 to 53) to filter the data to the relevant date range.

## 6 Guidance for policyholders – ONS death data

### Policyholders in England and Wales

6.1 Court declaration 8.2(c) states that policyholders can in principle use:

'weekly data published by the Office of National Statistics recording the number of deaths that have occurred in England and Wales each week by local authority or health board where the death certificate mentions Covid-19 (ONS Death Data):

- (i) where the local authority or health board was entirely within the relevant policy area; and
- (ii) taking into account all of the deaths involving Covid-19 in a particular week in a particular local authority or health board area, as representing active cases in that local authority or health board area on (at the latest) the first day of that week (and it may be that the deaths in a particular week can safely be treated as active cases many days before the beginning of that week but additional evidence would be required on that).'

6.2 This means that policyholders can rely on data published by the ONS, on a weekly basis, showing the number of deaths in England and Wales in the year to date, including deaths where Covid-19 is recorded on the death certificate. The ONS publishes the data by local authority, health board and place of death – the ONS Death Data. The information is contained in a [spreadsheet](#) that can be filtered to show deaths involving Covid-19 by local authority or health board for a particular week of the year. Policyholders should open the spreadsheet and select the tab 'Occurrences – Pivot Table'. Policyholders should use the Cause of death drop-down to select 'Covid-19' and should also select a week number. The first week of January is Week 1. The week beginning 16 March 2020 is Week 12.

6.3 The ONS data is also [available](#) on the GOV.UK website. This website collates the death statistics from the 4 nations and can be filtered by nation, region or local authority. To extract the data select the relevant local authority and scroll down to the table headed 'Deaths within 28 days of positive test by date of death' or 'Weekly deaths with Covid-19 on the death certificate by date registered' then click on "Download" to download the .csv file.

6.4 Based on the above declaration, to be able to rely on the ONS Death Data, the policyholder can only refer to the data where the local authority or health board in question was entirely within the RPA. That will ensure the relevant Covid-19 cases were in the RPA. Separately, where the RPA is entirely within, or straddles, the local authority, please see Chapter 9 on geographical distributions, where a policyholder can use a distribution-based analysis to utilise ONS Death Data in that scenario.

6.5 ONS Death Data can be used (either cumulatively, or on a case by case basis) to evidence a case of Covid-19 in the RPA during a period before the death was reported. A policyholder could, for example, present evidence that there was a case of Covid-19 in their area for a period of 18 days prior to the death, based on:

- the estimate produced for SAGE by Co-CIN that the average time between symptom onset and death during the first wave was 13 days; and
- the estimate produced by the WHO and supported by analysis from the BMJ that the average incubation time for Covid-19 is 5-6 days from the date of infection to the date a person is symptomatic.

- 6.6 As such, if the ONS Death Data shows one or more deaths in the week commencing 30 March and ending 5 April 2020, the FCA considers that the policyholder may rely on that as demonstrating a case of Covid-19 in the MSOA by 18 March 2020, and possibly earlier than that, though the policyholder would need to provide additional evidence in relation to earlier dates.
- 6.7 For further information on the ONS Death Data, see paragraphs 38 to 40 of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings.
- 6.8 Policyholders in Wales may also refer to the *Health in Wales website*, which gives information about the 7 local health boards in Wales that deliver services in their areas. Also, Public Health Wales provides rapid Covid-19 surveillance data on its website, including ONS daily death data by health board (see 'ONS Deaths' tab and drop down box 'Select Wales or Local Health Board').

## Policyholders in Northern Ireland or Scotland

- 6.9 We consider that policyholders in Northern Ireland may use the GOV.UK website to seek to prove the presence of Covid-19 in a similar way to that described above for England and Wales.
- 6.10 In Northern Ireland the Department of Health releases daily statistics on Covid-19 on the Covid-19 Dashboard (see Quick Links and the pdfs for archive pages ) for dates from 5 May 2020, including data of deaths by Local Government District. This daily update replaces the Daily Bulletin published by the Public Health Agency (and archived on their website) where you can find data on Covid-19 deaths by Local Government District from 24 March 2020 to 19 April 2020;
- 6.11 We have also identified the following national data sources for Scotland:
1. NHS Scotland provides information about the 14 regional health boards on its website.
  2. Public Health Scotland provides a dashboard of information, including death information by regional health board on its website. To access this data, look at the top of the page for the 'Trends and Demographics' tab. The tab shows 'Covid-19 in Scotland Trends and Demographics'. Trend data can be sorted by NHS Board and Local Authority. To view the data for the relevant period take the following steps: (1) under "What information would you like to see" select 'Deaths (Covid confirmed)' (2) under 'Select location' choose one of the 14 NHS regional health boards. The dashboard will then display daily death information by health board on a bar chart.
  3. The National Records of Scotland provides daily data on deaths involving Covid-19 on its website, including by NHS Board and Council Area of usual residence.

## 7 Guidance for policyholders – Reported cases

### Policyholders who can use this chapter

- 7.1 This chapter can be used by policyholders with premises in any nation of the UK where one or more local authorities (or Middle-layer Super Output Areas) are located within the RPA. We will shortly publish a Covid-19 Calculator that a policyholder can use to gather this evidence.

### Policyholders in all nations of the UK

- 7.2 Court declaration 8.2(d) states that policyholders can in principle use:

‘data published by the UK Government recording the number of daily lab-confirmed positive tests of Covid-19 in a particular nation, region, UTLA or LTLA (Reported Cases):

- (i) taking into account the Reported Cases on a particular date in a particular nation, region, UTLA or LTLA together with the Reported Cases two to three days either side of that day as being active on that particular date in that nation, region, UTLA or LTLA; and
- (ii) when taking into account the Reported Cases in a particular LTLA or LTLAs, the LTLA or LTLAs are entirely within the relevant policy area.’

- 7.3 So policyholders can rely on the UK Government’s Reported Cases of Covid-19 to seek to prove the presence of Covid-19 in an RPA, in certain prescribed circumstances, as explained further below.

### How to locate the Reported Cases for the Court declaration’s areas

- 7.4 The Reported Cases are records published by the UK Government. They state for each day and cumulatively, the number of lab-confirmed positive tests of Covid-19 in each:

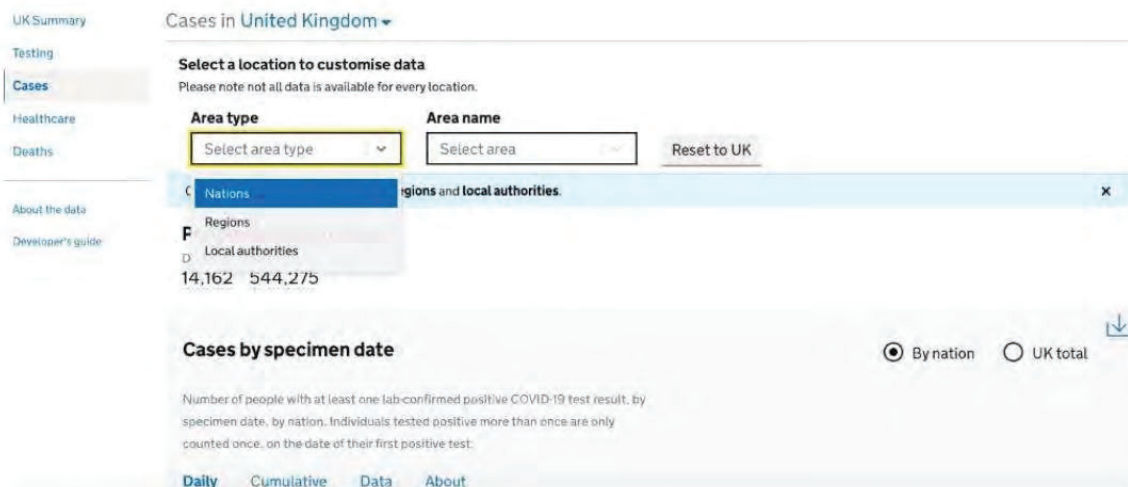
1. nation – England, Wales, Scotland and Northern Ireland;
2. region – East Midlands, East of England, London, North East, North West, South East, South West, West Midlands, Yorkshire and The Humber;
3. Upper Tier Local Authority (**UTLA**) – which includes Counties, Unitary Authorities, Metropolitan Districts and London Boroughs; and
4. Lower Tier Local Authority (**LTLA**) – which includes County Districts (Non-Metropolitan Districts), Unitary Authorities, Metropolitan Districts and London Boroughs. Examples of LTLAs are Luton and Stockport.

- 7.5 A map of local authority districts is available on the ONS [website](#).

- 7.6 Policyholders can locate the Reported Cases in the following ways:

1. When opening the 'GOV.UK, Coronavirus (Covid-19) in the UK' [webpage](#), the default shows Reported Cases on a UK-wide basis, but the drop-down arrow next to 'United Kingdom' in the heading of the webpage allows the user to search for a specific nation, region or local authority (incorporating both UTLAs and LTLAs):

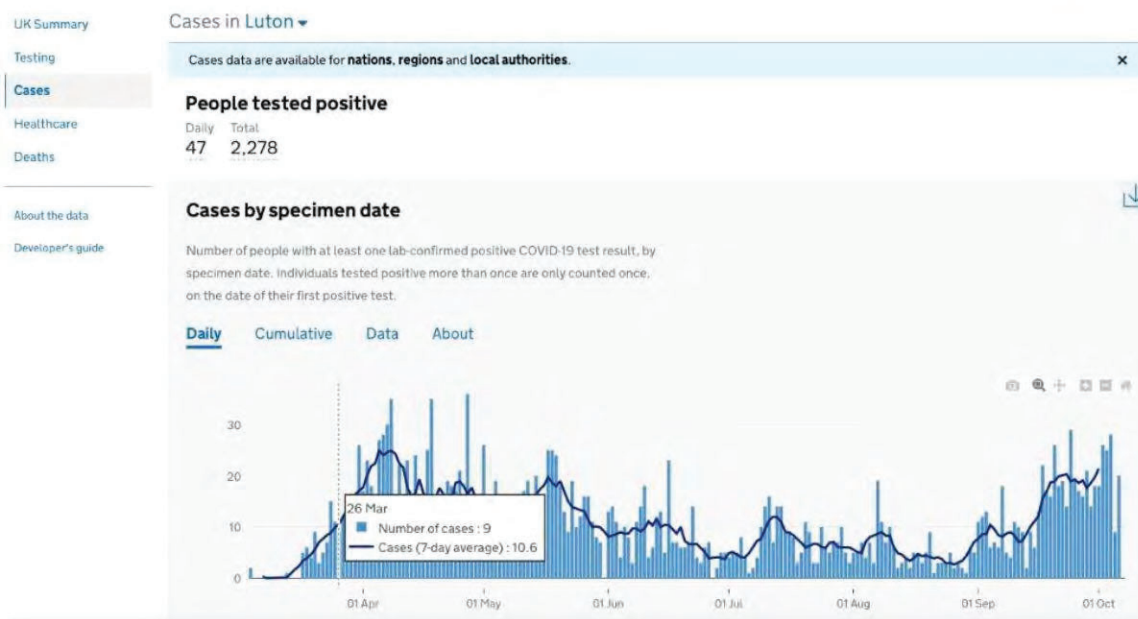
**Figure 1: How to search for a specific nation, region or local authority (incorporating both UTLAs and LTLAs)**



<https://coronavirus.data.gov.uk/details/cases> - Contains public sector information licensed under the [Open Government Licence v3.0](#).

2. For example, if a policyholder wanted to search for Reported Cases in the local authority of Luton, then in 'Area type' they would select 'Local authorities', and in 'Area name' they would select 'Luton'. Hovering the cursor over the chart, they can see cases for a particular date. For example, on 26 March 2020 there were 9 new Reported Cases in Luton (and the cumulative total of Reported Cases up to and including that date is available by clicking on 'Cumulative', which gives 77):

**Figure 2: How to search for Reported Cases in the local authority of Luton**



<https://coronavirus.data.gov.uk/details/cases> - Contains public sector information licensed under the Open Government Licence v3.0.

3. Alternatively, policyholders can see the daily and cumulative Reported Cases for each UTLA and LTLA in a Gov.uk [spreadsheet](#). Under the heading 'Supplementary downloads' and under the sub-heading 'Legacy download of cases from the previous version of the dashboard', click on 'CSV (stacked)' to open the spreadsheet. There is a screenshot of some of the data, shown as an example, in Appendix A to '[Agreed Facts 3 – Prevalence of Covid-19](#)', one of the documents in the Court proceedings.

## How to use the Reported Cases in proving the presence of Covid-19 in an RPA

- 7.7 For most policy types, a policyholder will need to be able to show that at least 1 case occurred at any time prior to the interruption of their business in order to claim. Accordingly, once a policyholder has located the Reported Cases for a given area, the policyholder may use the 'Cumulative' cases as at the relevant date but also, in accordance with declaration 8.2(d)(i), the following 3 days. For example, if a policyholder wanted evidence of cumulative active cases of Covid-19 in Luton as at 26 March 2020, then they can rely on 77 cumulative cases as at 26 March and add the 32 daily new cases on 27, 28 and 29 March to give a total of 99 active cases occurring up to and including 26 March.
- 7.8 If a policyholder needs to prove that there was at least 1 case on a specific day, they can rely on the Reported Cases for that specific day, and for the 2 to 3 days either side of that day, as proving that there were active cases of Covid-19 in that particular area on that day. For example, if a policyholder wanted evidence of active cases of Covid-19 in Luton as at 26 March 2020, then they can rely on the following data:
  - (i) 26 March: 9 new Reported Cases
  - (ii) 23, 24 and 25 March (being the three days before 26 March): 33 new Reported Cases in total across the 3 days
  - (iii) 27, 28 and 29 March (being the 3 days after 26 March): 32 new Reported Cases in total across the 3 days.

Based on the above, the policyholder can rely on there being 74 active cases in Luton on 26 March.

- 7.9 The policyholder then needs to look at their policy to check the size of the RPA, for example a radius of 25 miles or 1 mile from the insured premises. If any single local authority they are considering is located entirely within the RPA, and has at least 1 Reported Case on a cumulative or specific data basis as relevant to the policy (which, for example, Luton did as calculated above), then they will be able to prove the presence of Covid-19 in their RPA on that date. That is the situation whether the insured premises are located inside the local authority or outside it, as long as the local authority is entirely within the RPA.
- 7.10 To identify whether the local authority is located within the RPA policyholders may wish to review the local authority map which can be found on the Government 'Local government structure and elections' [website](#) under the heading 'Council map'. Policyholders in Aylesbury Vale, South Buckinghamshire, Wycombe and Chiltern

should note that the map has not yet been updated to reflect the merger of these areas into 'Buckinghamshire' in April 2020.

- 7.11 If there is more than 1 local authority in the RPA, then the policyholder can prove the presence of Covid-19 in the RPA as long as there is at least 1 Reported Case at a particular date (including the 3 days on either side) in at least 1 local authority entirely within that RPA.
- 7.12 See paragraphs 20 to 31 of '[Agreed Facts 3 – Prevalence of Covid-19](#)', one of the documents in the Court proceedings, for further information and examples. This includes a map with Luton as the example at paragraph 24, and at Appendix F an administrative map of the UK from which the location of the LTLAs can be identified.
- 7.13 If the RPA is entirely within, or straddles, the local authority or region, then the approach for demonstrating the presence of Covid-19 in the RPA is more complex, and is described in Chapter 9.

## Reported cases and deaths by Middle Super Output Area

- 7.14 Middle Super Output Areas (MSOAs) are small areas with an average population of around 7,200. The Government started publishing data for MSOAs relatively recently and the data is not mentioned in the Court declarations. MSOA data is especially useful for policyholders with a 1-mile radius RPA, since it shows Reported Cases within a small geographical area.
- 7.15 For data on deaths between 1 March and 31 July 2020, the ONS has published [data](#) showing the number of deaths involving Covid-19 in MSOAs in England and Wales, by month. The data can be downloaded in an [excel spreadsheet](#) or viewed on a map. To use the map, a policyholder can enter the postcode of their premises in the search field, and see the number of Covid-19 deaths in the relevant MSOA associated with that postcode, for each of the months from March to July 2020.
- 7.16 MSOA death data can be used (either cumulatively, or on a case by case basis) to evidence a case of Covid-19 in the RPA during a period before the death was reported. A policyholder could, for example, present evidence that there was a case of Covid-19 in their area for a period of 18 days prior to the death, based on:
  - the estimate produced for SAGE by [Co-CIN](#) that the average time between symptom onset and death during the first wave was 13 days; and
  - the estimate produced by the [WHO](#) and supported by analysis from the [BMJ](#) that the average incubation time for Covid-19 is 5-6 days from the date of infection to the date a person is symptomatic.
- 7.17 As such, if the MSOA data shows one or more deaths in March 2020, the FCA considers that the policyholder may rely on that as demonstrating a case of Covid-19 in the MSOA by 13 March 2020, and possibly earlier than that, though the policyholder would need to provide additional evidence in relation to earlier dates.
- 7.18 Reported cases by MSOA for dates after August 2020 are available on the [GOV.UK website](#). To view the MSOA data, click on the 'Download data' link on the left-hand side near the top of the page, select 'Area type' as MSOA and the relevant Region, Local Authority and MSOA. Given its source, we consider that policyholders can use the data in the same way as the Reported Cases data referred to by the Court. We consider that policyholders may rely on the MSOA data to prove the presence of

Covid-19 in their RPA as at a particular date where, during the week in which that date falls, the data for any MSA in the RPA shows Reported Cases.

- 7.19 For the avoidance of doubt, policyholders – including those with a 1-mile radius RPA – will not be limited to the MSA data and may rely on the other sources and methodologies set out by the High Court and in this guidance. That is especially because the MSA data are only available for restricted date-ranges, and in smaller areas data may not have been reported to protect the identity of the diseased. Policyholders need only prove the existence of 1 case of Covid-19 in their RPA. Since the MSA data does not (in some areas) show where there has been either 1 or 2 cases, policyholders are entitled to rely on other data sources as well. If there is more than 1 MSA within a policyholder’s RPA, the policyholder can rely on any or all of the data from the MSAs in the RPA.



## 8 Guidance for policyholders - Estimated cases

### Policyholders who can use this chapter

- 8.1 This chapter can be used by policyholders with premises in any nation of the UK where one or more local authorities are located within the RPA. We will shortly publish a Covid-19 Calculator that a policyholder can use to gather this evidence.

### Policyholders in the United Kingdom

- 8.2 Court declaration 8.2(f) states that policyholders can in principle use:

‘given the likely true number of cases of Covid-19 in the UK in March 2020 was much higher than that shown in the Reported Cases, an undercounting analysis – albeit absolute precision is not required to discharge the burden of proof – to demonstrate the likely number of actual cases of Covid-19 in the relevant policy area’.

- 8.3 The Court made a declaration that the true number of cases of Covid-19 in the UK in March 2020 was ‘much higher’ than the figure in the Reported Cases. This is because the Reported Cases represent individuals with a positive lab test result for Covid-19, and during March 2020, testing was focused on those who had gone to hospital with certain severe symptoms. Testing capacity was low, and missed those who had not been hospitalised but still had some symptoms, as well as those who were asymptomatic. See paragraphs 2.2 and 10-13 of [Agreed Facts 3 – Prevalence of Covid-19](#), one of the documents in the Court proceedings. The insurers in the Court case accepted that the true figure of infected cases was ‘much higher’.

### How to estimate the likely true number of Covid-19 cases in an RPA

- 8.4 For policyholders whose business premises are in densely populated areas, such as London, we expect it is likely to be relatively straightforward to demonstrate the presence of at least 1 case of Covid-19 in their RPA, particularly if their RPA has a large radius such as 25 miles. This is because there are likely to be sufficient deaths from Covid-19 or Reported Cases to do so, even if those deaths or Reported Cases are a significant underrepresentation of the likely true number infected.
- 8.5 However, for policyholders in more rural locations, especially in early March (when testing was particularly low), there may be insufficient deaths or Reported Cases to demonstrate the presence of at least 1 case of Covid-19 in the RPA during the relevant period.
- 8.6 In either case – whether in a densely-populated or less densely-populated area – the Court declared that policyholders can use ‘an undercounting analysis – albeit absolute precision is not required to discharge the burden of proof – to demonstrate the likely number of actual cases of Covid-19 in the relevant policy area’.

8.7 The question is what sort of 'undercounting analysis' may be used to 'demonstrate the likely number of actual cases of Covid-19' in the RPA. The Court declined to provide detailed guidance on that question, because it did not hear expert evidence, but it would involve a methodology for estimating the likely true number of infected individuals, relative to the figure in the Reported Cases – namely, the degree to which infected cases were 'undercounted'.

## Epidemiological modelling reports

- 8.8 In the Court proceedings, we identified 2 scientific reports as examples of estimates of the likely number infected in March, one of which was produced by Imperial College (Imperial Report) and the other by Cambridge University together with Public Health England (Cambridge/PHE Report).
- 8.9 The Court held that 'the insurers have accepted that insureds can seek to rely on the specific reports identified in this case' (Judgment paragraph 579) – being the Imperial Report and the Cambridge/PHE Report. The insurers in the Court proceedings did not accept the reliability of these reports and sought a ruling that policyholders be required to prove that any undercounting reports or methodologies on which they sought to rely were 'reliable', but the Court specifically declined to make a ruling or declaration to that effect (see paragraph 8.19(1) below).
- 8.10 The original Cambridge/PHE Report can be found at <https://www.mrc-bsu.cam.ac.uk/tackling-covid-%2019/nowcasting-and-forecasting-of-covid-19/> with the latest report available at <https://www.mrc-bsu.cam.ac.uk/now-casting/report-on-nowcasting-and-forecasting-26th-november-2020/>. The Cambridge/PHE Report also estimated the likely true number of infected peoples in March 2020, for England and for each of England's regions. In the 'Infections and Deaths' part of the report, it is possible to view the graphs based on, for example, Infection Incidence (daily totals) and Cumulative Infections (accumulated daily totals over time). See also paragraphs 41 to 46 of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings.
- 8.11 The Imperial Report estimated the number of infections of Covid-19 during March 2020 in 11 countries, including the UK. Its work on this subject was subsequently published following peer-review in Nature, a well-respected journal. The peer reviewing process means that other experts have scrutinised the methodologies and results of the report before permission has been given to publish the work in the journal. The model behind the report uses conservative assumptions about initial seeding of infections and uses an infection fatality ratio that fits with the evidence from serology studies (which test antibodies to Covid-19)..
- 8.12 Imperial's work influenced the UK Government in its approach to measures to take to prevent the spread of the virus and protect the NHS. Imperial concluded: 'In all countries, we estimate there are orders of magnitude fewer infections detected than true infections, most likely due to mild and asymptomatic infections as well as limited testing capacity'. See also paragraphs 41 to 46 of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings. This overall conclusion is in line with the undercounting in the UK reported in the Cambridge/PHE Report and a further study by Oxford University.

## Imperial College data at local authority level

- 8.13 We have re-published data previously published by Imperial College (using the model behind the Imperial Report) showing their estimate of infections (in the following sections we refer to these as “cases”) at the LTLA level during the early stages of the pandemic (‘Imperial Data’). We consider that the Imperial Data is a reliable estimate of the number of cases present in LTLAs during March 2020 and later periods. It is the best available evidence of estimated cases at LTLA level that we are aware of at the date of this guidance.
- 8.14 The Imperial Data is presented in an excel spreadsheet with the number of new cases on any given day. To find the number of new cases for the relevant date in your area:
- (i) Find your LTLA/Area in the spreadsheet (our example below uses Guildford). The Areas are ordered alphabetically.
  - (ii) Identify the relevant date for your estimate. These are recorded under the heading ‘Period start’.
  - (iii) The Spreadsheet should present you with the relevant data.

The estimate of the number of new cases on any given day is shown in the column ‘Value’. ‘CIlow’ and ‘CIup’ report the lower and the upper bound of the statistical 90% confidence interval, respectively.

- 8.15 In the example in the table below, which is for 21 March 2020 in Guildford, the lower bound ‘CIlow’ estimate is 93.2 and the ‘Value’ point estimate represents the ‘best estimate’ of the true number of new cases, 198.1<sup>3</sup>.

Area	Type	Value	CIlow	CIup	Period start	Period end	Coverage
Guildford	Infections	198.1	93.2	348.6	21/03/2020	21/03/2020	0.9

## Policies which require that Covid-19 was ‘manifested’

- 8.16 If a policy requires that Covid-19 was ‘manifested’ within the RPA, that means that a person displayed symptoms of, or was diagnosed with, COVID-19 (whether or not they displayed symptoms<sup>4</sup>). The Imperial Data is of all Covid-19 cases, whether symptomatic or asymptomatic. Accordingly, a policyholder with ‘manifested’ language in their policy will need to apply a reduction to the number of cases. We suggest that a reduction of 28% is appropriate as representing a good estimate of the proportion of asymptomatic cases.<sup>5</sup> For example, if the Imperial Data suggests that the estimated cumulative number of new cases in Guildford on 21 March 2020 was 198.1, then the estimated-number of new cases ‘manifested’ in Guildford on that day would be  $198.1 \times (100-28)/100 = 142.6$ .<sup>6</sup>

<sup>3</sup> In formal statistical language, this point is a central tendency estimate. For further details on the used estimator please see [https://static-content.springer.com/esm/art%3A10.1038%2Fs41586-020-2405-7/MediaObjects/41586\\_2020\\_2405\\_MOESM1\\_ESM.pdf](https://static-content.springer.com/esm/art%3A10.1038%2Fs41586-020-2405-7/MediaObjects/41586_2020_2405_MOESM1_ESM.pdf), page 5.

<sup>4</sup> This was Declaration 7 given by the High Court. As at the date of this guidance, this Declaration has been agreed between the FCA and insurers in the Court case.

<sup>5</sup> This figure was produced in a paper produced by NERVTAG <https://www.gov.uk/government/publications/nervtag-rapid-review-of-the-asymptomatic-proportion-of-pcr-confirmed-sars-cov-2-infections-in-community-settings-9-september-2020> on the proportion of asymptomatic COVID-19 cases and considered at SAGE 56 on 10 September 2020.

<sup>6</sup> If a policy requires that Covid-19 was “sustained” or “occurred” within the RPA, that means so that it could be diagnosed whether or not it was verified and *whether or not the person was symptomatic* (Declarations 5 and 6). It is therefore not necessary to reduce the number of estimated cases in the same way.

## Level of proof provided

8.17 As described above:

- the precise number of cases of Covid-19 in an RPA on any date can never be known
- the Imperial Data is derived from a peer-reviewed model that uses conservative assumptions about initial seeding of infections and uses an infection fatality ratio that fits with the evidence from serology studies (which test antibodies to Covid-19)
- the High Court accepted that a policyholder may use an undercounting analysis and that absolute precision is not required to discharge the burden of proof

8.18 Our rules require insurers to handle claims fairly and not unreasonably reject them. In that context, if the 'value' estimate from the Imperial Data is equal to or greater than 1, we consider this is cogent evidence of the presence of at least 1 case of Covid-19 in the LTLA (and therefore within any RPA where the LTLA falls entirely within the RPA) which will discharge a policyholder's burden of proof for the purposes of our rules.

8.19 The insurer may seek to challenge whether that evidence discharges the policyholder's burden of proof, however:

1. The insurers in the trial sought a Court ruling that policyholders must prove the Imperial Report to be 'reliable', but the Court refused to make that ruling and it is not part of the Declaration. See pages 7 to 26 of the transcript of the hearing of the High Court on 2 October 2020.
2. The Court in its Declaration confirmed that 'absolute precision is not required to discharge the burden of proof', so in the FCA's view an approximation using the Imperial Data should be sufficient.
3. The Court in its Judgment stated, at paragraph 579: 'The concessions which have been made by the insurers are important. It is our hope and expectation that in the light of them insurers will be able to agree on any issues of prevalence which actually arise and are relevant to particular cases.' In addition, our rules require an insurer to act fairly when assessing claims. So we expect insurers to provide fair consideration and assessment of any evidence that policyholders submit.
4. The Court also stated, at paragraph 578, that, although an insurer can challenge a policyholder's evidence, 'if it does not do so, then it is much more likely that the court will find that the burden has been discharged'. Therefore, if the insurer does not put in counter-evidence, the policyholder is more likely to have discharged the burden of showing the distribution of cases in the RPA.
5. If the insurer does put forward counter-evidence, we consider that fair handling of a claim means that:
  - the counter-evidence will need to be more cogent than the evidence put forward by the policyholder to put the burden of proof back onto the policyholder;
  - the counter-evidence will need to be additional to that already presented to the FCA (as set out in the Feedback Statement to this guidance); and
  - the insurer will need to clearly explain to the policyholder why, for the policyholders' particular claim, the policyholder's evidence does not discharge the burden of proof in relation to the minimum requirements of

the policy (normally just one case of Covid-19 in the RPA) and why the insurer's counter-evidence is more cogent.

## 9 Guidance for policyholders – Geographical distribution methodology

### Policyholders who can use this chapter

- 9.1 This chapter can be used by policyholders with premises in any nation of the UK where the RPA is entirely within a local authority or straddles one or more local authorities. We will shortly publish a Covid-19 Calculator that a policyholder can use to gather the Reported Cases and Estimated Cases evidence below.

### Policyholders in all nations of the United Kingdom

- 9.2 Court declaration 8.2(e) states that policyholders can in principle use:

‘a distribution-based analysis – albeit absolute precision is not required to discharge the burden of proof – to demonstrate the geographical distribution of Covid-19 cases (where the policyholder relies on ONS Death Data or Reported Cases in an LTLA or another reporting area, and the relevant policy area is entirely within, or intersects, the LTLA or another reporting area).’

- 9.3 That declaration relates to the scenario where the RPA is entirely within, or straddles, the LTLA or other region for which data is available. As an example, in the map below, the 25-mile RPA from premises in Newquay (approximated by the circle) is entirely within the LTLA of Cornwall:

**Figure 3: Example of the 25-mile RPA from premises in Newquay**



9.4 In that situation, some of the ONS Death Data (Chapter 6), Reported Cases (Chapter 7) or Estimated Cases (Chapter 8) for the LTLA (in the above example, Cornwall) may have occurred within the RPA circle, while others may have occurred outside it. A policyholder can only rely on ONS Death Data, Reported Cases or Estimated Cases which have occurred within the RPA.

## Identifying ONS Death Data, Reported Cases or Estimated Cases within the RPA

- 9.5 The question is how to identify which of the LTLA's cases have occurred within the RPA circle. The Court's Declaration states that a policyholder may rely on 'a distribution-based analysis' to show the geographical distribution of Covid-19 cases (inside and outside the RPA), and that 'absolute precision is not required to discharge the burden of proof'.
- 9.6 The Court did not provide guidance on the particulars of the 'distribution-based analysis'. It is open to an individual policyholder to suggest a method – which may be based, for example, on evidence that a hospital or other location in the RPA had cases of Covid-19. During the trial, we proposed a 'weighted averaging' approach (described below), which the Court did not specifically adopt or reject, but we consider it is a reasonable approach.
- 9.7 Doing the calculation for the 'weighted averaging' approach can be complex. We will shortly publish a Covid-19 Calculator to carry out the 'weighted averaging' of the Reported Cases and Imperial Data of Estimated Cases (but not ONS Death Data). If you would like to use the Covid-19 Calculator, please [sign up for our BI test case email alerts](#) and you will get an email when the calculator is launched. The following paragraphs explain the steps that our Covid-19 Calculator takes.
- 9.8 For the 'weighted averaging' methodology, our calculator operates as follows (with the description given in relation to Estimated Cases, but it also could in principle, be used for any type of Covid-19 case data in any area):
1. Find the number of new cases on a given day for the relevant LTLA in the Imperial Data. This is in the 'Value' column in the Imperial Data
  2. Identify the postcodes within the RPA ([example](#))
  3. Find the population of every postcode identified in (ii) using Census data ([example](#))<sup>7</sup>
  4. Identify the LTLA(s) for all postcodes identified in (ii), ([example](#))
  5. Calculate: (a) the population of every LTLA identified in (iv) (which can be found on the ONS [website](#)), (b) proportion of the LTLA's population located in the RPA
  6. apply an equivalent proportion of the middle bound 'Value' Estimated Infections of the LTLA computed in (v)(b) as being in the RPA. For example, if two-thirds of the LTLA's population are located in the RPA, then regard two-thirds of the middle bound 'Value' Estimated cases for the LTLA are treated as being in the RPA. If the RPA straddles more than one LTLA, the calculation above is then repeated for

<sup>7</sup> Please note that population data for postcodes in Northern Ireland which have 1, 2 or 3 households and have less than 10 usual residents have been suppressed [replaced] with '\*' for confidentiality reasons. The combined counts for the 4,964 suppressed postcodes are: 23,143 all usual residents, 11,911 males, 11,232 females, 9,308 households. We recommend the following procedure to handle the missing population data. Information on the suppressed postcodes is given in the "Person and Household Averages for Suppressed Postcodes in Postcode Districts" table (available in a zipped archive along with the main dataset). The table contains the "Postcode Districts" workbook. For every postcode in the policyholder's RPA with missing population count data, they can look up the relevant postcode district and a corresponding number in the "Average Usual Residents per suppressed Postcode" column of the mentioned workbook. We recommend that this number is then used to replace the missing population data for a particular postcode in order to calculate the appropriate weights for the case averages. This procedure needs to be repeated for every postcode for which the population data is suppressed.

each relevant LTLA and the resulting number is the sum of each calculation for the LTLAs.

See, for further information and useful web links, paragraphs 32 to 34 of Agreed Facts 3 – Prevalence of Covid-19, one of the documents in the Court proceedings.

- 9.9 We appreciate that the 'weighted averaging' approach only produces an approximation of how many of the Estimated Cases (by LTLA from the Imperial Data) are within the RPA. The spread of Covid-19 does not correlate precisely to population size and cases may be concentrated in particular areas due to factors such as the presence of hospitals or 'super spreader events'. On the other hand, the degree to which cases of Covid-19 are compressed into a short period of time (peakedness of the epidemic) is strongly shaped by population aggregation and heterogeneity (*Nature* magazine [article](#)). Also, there are other factors that would point to more uniform distribution rather than more concentration, for example people were moving about, and business premises would tend to attract people to them. As the High Court said, 'absolute precision is not required to discharge the burden of proof'.

### Policies which require that Covid-19 was 'manifested'

- 9.10 For the reasons described in paragraph 8.16, if a policy requires that Covid-19 was 'manifested' within the RPA, we suggest that a reduction of 28% is appropriate to the output from the above methodology or our calculator (if the output is estimated rather than reported cases).

### Level of proof provided

- 9.11 Our rules require insurers to handle claims fairly and not unreasonably reject them. In that context, we consider that a policyholder will have cogent evidence of the presence of at least 1 case of Covid-19 in the RPA that will discharge the policyholder's burden of proof for the purposes of our rules if:

1. the above methodology, and or the output of our calculator, shows a number of estimated or reported cases equal to or greater than 1 (applying a 28% discount if the policy requires that Covid-19 was 'manifested' in the RPA);
2. the policyholder is an SME (meaning, in this context, an eligible complainant for the Financial Ombudsman Scheme (as defined in DISP 2.7.3R); and
3. the relevant LTLA(s) have an area in the region of or smaller than the RPA (LTLA areas can be found on the ONS [website](#). In particular, for a 25-mile RPA (area c.1,960 square miles or c.5,085 square kilometres), this will be the case for all LTLAs (other than in the Highland Council of Scotland).

- 9.12 We do not consider that it would be reasonable to expect an SME policyholder in such circumstances to obtain their own expert evidence to put forward a claim.

- 9.13 In other cases, we consider that the above methodology and the output of our calculator, if it shows a number of estimated or reported cases in the RPA equal to or greater than 1, will provide indicative evidence of the presence of Covid-19 in the RPA. Depending on the results of the calculation (a higher number of cases is more indicative of Covid-19 than a lower number) other evidence may be required to satisfy the burden of proof. This could include (where it is fair and reasonable of an



insurer to request it) information about the demographics of the RPA, the movements of people in and around the RPA, and the likelihood that there are cases locally. In particular, for 1-mile RPAs where the relevant LTLA(s) are significantly larger than 3 square miles (8 square kilometres), and for a 25-mile RPA in the Highland Council of Scotland, the 'scaling down' of the estimated case numbers from LTLA level to the RPA makes the evidence indicative only.

- 9.14 The insurer may seek to challenge whether the methodology or the output of our calculator discharges the policyholder's burden of proof. What we say in paragraph 8.19 applies to such a challenge.

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ANOTHER PLANET  
ENTERTAINMENT, LLC

Plaintiff,

v.

VIGILANT INSURANCE COMPANY,

Defendants.

Case No. 3:20-cv-07476-VC

Hon. Vince Chhabria  
Courtroom 4

**DEFENDANT VIGILANT INSURANCE  
COMPANY’S NOTICE OF MOTION AND  
MOTION TO DISMISS PLAINTIFF’S FIRST  
AMENDED COMPLAINT; MEMORANDUM  
OF POINTS AND AUTHORITIES IN SUPPORT  
THEREOF (Fed. R. Civ. P. 12(b)(6))**

**Date: May 6, 2021  
Time: 2:00 p.m.  
Courtroom: 4**

**TO PLAINTIFF, ANOTHER PLANET ENTERTAINMENT, LLC, AND TO ITS  
ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on Thursday, May 6, 2021 at 2:00 p.m. in Courtroom 4 of the United States Courthouse, 450 Golden Gate Avenue, 17th Floor, San Francisco, CA 94102, Defendant Vigilant Insurance Company (“Defendant” or “Vigilant”), by and through its attorneys

of record, hereby move to dismiss the First Amended Complaint of Plaintiff Another Planet Entertainment, LLC (“Plaintiff” or “APE”) pursuant to Federal Rule of Civil Procedure 12(b)(6).

Vigilant seeks dismissal of this action because APE has failed to adequately allege facts sufficient to state a claim upon which relief can be granted.

APE’s first, second, and seventh claims for breach of contract, tortious breach of the implied covenant of good faith and fair dealing, and declaratory relief fail as a matter of law because these claims are premised on an obligation and/or failure to pay policy benefits due. APE, however, has not alleged and cannot allege a covered loss in the first instance.

APE’s third, fourth, fifth, and sixth claims for fraud in the inducement, fraudulent promise made without intent to perform, fraudulent concealment, and negligent misrepresentation fail as a matter of law because APE has not pled these claims with specificity as required under Federal Rule of Civil Procedure 9(b).

This Motion is based on this Notice, the Memorandum of Points and Authorities, arguments made in reply to any opposition to this Motion, and on such oral argument and evidence that may be presented at the hearing, and the papers, records, and pleadings on file herein.

Dated: March 25, 2020

CLYDE & CO US LLP

By: /s/ Susan Koehler Sullivan

Susan Koehler Sullivan

Gretchen S. Carner

Brett C. Safford

Attorneys for Defendant

VIGILANT INSURANCE COMPANY

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Defendant Vigilant Insurance Company (“Vigilant”) respectfully submits this Memorandum of Points and Authorities in support of its Motion to Dismiss (Fed. R. Civ. P. 12(b)(6)) the First Amended Complaint (“FAC”) of Another Planet Entertainment, LLC (“APE”).

## **I. INTRODUCTION**

After granting Vigilant’s Motion to Dismiss APE’s Complaint, this Court afforded APE with an opportunity to amend, but cautioned that “[i]t is exceedingly difficult to imagine that Another Planet will be able to state a claim for coverage under this policy.” ECF No. 34. This statement proves true as APE’s FAC includes some additional verbiage, but suffers from the same pleading defects as the original Complaint. APE, which owns and operates several concert venues, fails to plausibly allege facts indicating any “direct physical loss or damage” to its properties as required to trigger coverage under the Vigilant policy (the “Policy”). APE also fails to allege sufficient facts to support its fraud-based claims, which simply assert APE was “misled” because it thought its COVID-19 claim would be covered. APE’s additional allegations primarily speculate about the nature of COVID-19, or include references to other Policy coverages – but none of these allegations alter the Court’s analysis resulting in the prior dismissal order. *See* FAC ¶¶40, 43-57.

The second time around, APE still has not plausibly alleged entitlement to benefits under the Policy, and its claims for breach of contract, bad faith, and declaratory relief should be dismissed. Similarly, APE’s vague allegations that Vigilant misled APE about the existence of coverage for viruses and/or pandemics still fail to satisfy the heightened pleading standard required by Federal Rule of Civil Procedure 9(b) (“Rule 9(b)"). Because APE has already had an opportunity to amend, Vigilant requests that the Court dismiss the FAC *without leave to amend*, as it is clear that any further amendment would be futile.

## **II. STATEMENT OF FACTS**

### **A. The FAC’s Allegations Fail to Plausibly Allege Coverage under the Policy.**

Substantively, the allegations in APE’s FAC remain the same as in its Complaint. APE again alleges that in March 2020 in response to the COVID-19 pandemic, civil authorities throughout the United States began issuing “Closure Orders,” FAC ¶58, and cites the same

“Closures Orders.”<sup>1</sup> APE contends the Closure Orders “continue to limit, restrict, and prohibit partial or total access to [its] insured properties as a result of direct physical damage of the type insured by the Policy.” *Id.* ¶70. APE asserts that “[b]ecause SARS-CoV-2 causes a distinct, demonstrable, physical alteration to property, it constitutes ‘direct physical loss or damage’ to property as that phrase is used in the Policy,” *id.* ¶73, and “the presence or potential presence of SARS-CoV-2 at, on, and in insured property prevents or impairs the use of the property, thus constituting “direct physical loss” to property. *Id.* ¶74; *see id.* ¶86

Despite conclusory and conflicting allegations about the “presence” of the virus (including that it *would* have been present absent closures) APE’s FAC again fails to allege any facts confirming the actual presence of COVID-19 at its scheduled properties. Instead, APE alleges that it is “*informed and believes, and on that basis alleges, that SARS-CoV-2 has been present at and in its properties, or would have been present but for its efforts to reduce, prevent, or otherwise mitigate its presence on its properties.*” FAC ¶76 (emphasis added); *see id.* ¶¶5, 87. APE offers conclusory allegations that it has suffered covered losses, *id.* ¶¶79, 91, but it has still failed to allege any plausible facts indicating that the temporary closure of its venues was (1) the result of direct physical loss or damage at those properties, or (2) due to civil orders enacted as the result of direct physical loss or damage to nearby properties.

APE’s FAC again alleges, without factual support, that Vigilant misrepresented and/or concealed coverages when selling the policy, and thereby purportedly misled APE to believe that the policy would cover losses caused by viruses or pandemics. *See* FAC ¶¶113-148. But APE has failed to provide any new allegations to satisfy the heightened pleading requirements for fraud, including identifying who said what to APE, and when. APE’s general assertion that Vigilant “knew” that there were risks associated with viruses and pandemics based on a few lines pulled

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<sup>1</sup> California Governor Newsom’s Executive Order N-25-20, effective March 12, 2020, FAC ¶60; California’s Order of the State Public Health Officer issued on March 19, 2020, *id.* ¶61; orders issued by Alameda County and San Francisco County officials, *id.* ¶62; and Nevada Governor Sisolak’s Declaration of Emergency Directive 003, and Nevada Health Response’s COVID-19 Risk Mitigation Initiative’s stay at home order – both effective March 17, 2020, *id.* ¶64.

out of context from a public filing by Vigilant’s ultimate parent company (with no assertion that APE ever saw the filing) can hardly satisfy the requirement of an actual representation being made by Vigilant to APE – which somehow misled APE concerning the terms of the Vigilant Policy. APE’s fraud-based claims remain far short of Rule 9(b)’s heightened pleading standard after amendment, and should be dismissed – this time without leave to amend.

APE’s repeated argument that Vigilant could have included a virus exclusion in the Policy but chose not to do so is also unavailing. FAC ¶¶19-30; 97-99. The absence of an exclusion does not prove coverage – APE must first establish coverage, which it has not done and cannot do.

### **B. The Policy**

Vigilant issued Policy No. 7956-75-28, for the Policy Period of May 1, 2019 through May 1, 2020, to APE. FAC, Ex. A. APE alleges that coverage was improperly denied under the Policy’s coverages for Business Income with Extra Expense, Form 80-02-1004 (Rev. 7-03). *See* FAC ¶¶36-42. In its FAC, APE now suggests potential coverage under other Policy provisions, including Extra Expense coverage, Form 80-02-1018 (Rev. 7-03), *id.* ¶¶43-46, and Building and Personal Property Coverage, Form 80-02-1000 (Rev. 6-05), *id.* ¶¶47-48. The relevant Policy provisions are addressed below, but APE still fails to plausibly allege coverage under any of them.

## **III. LEGAL STANDARD**

### **A. Fed. R. Civ. P. 12(b)(6) Warrants Dismissal of the Complaint With Prejudice.**

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) challenges the legal sufficiency of the claims stated in a complaint. The court must “assume all factual allegations are true and construe them in light most favorable to the plaintiff.” *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003). However, “a pleading that merely offers ‘labels and conclusions,’ a ‘formulaic recitation of the elements,’ or ‘naked assertions’ will not be sufficient to state a claim upon which relief can be granted.” *Quinones v. Ocwen Loan Servicing, LLC*, 282 F. Supp. 3d 1207, 1209 (C.D. Cal. 2017). The court is “‘not bound to accept as true a legal conclusion couched as a factual allegation.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor is the court required to accept

as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

Dismissal is appropriate where “there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “[F]or a complaint to survive a motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

#### **B. Interpretation of Insurance Contracts Under California Law.**

The parties do not dispute that California law applies to this suit. *See* Cal. Civ. Code, § 1646. Under California law, the interpretation of insurance policies is a question of law. *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18 (1995). “[T]he ordinary rules of contractual interpretation apply,” and the policy’s terms must be given their “ordinary and popular sense,” and if the policy language is “clear and explicit, it governs.” *Palmer v. Truck Ins. Exch.*, 21 Cal. 4th 1109, 1115 (1999) (internal quote marks omitted); Cal. Civ. Code, § 1638. Courts “may not, under the guise of strict construction, rewrite a policy to bind the insurer to a risk that it did not contemplate and for which it has not been paid.” *Safeco Ins. Co. v. Gilstrap*, 141 Cal. App. 3d 524, 533 (1983).

### **IV. ARGUMENT**

#### **A. APE Cannot Allege “Direct Physical Loss or Damage” as a Matter of Law.**

The Policy’s Business Income With Extra Expense coverage provides, “We will pay for the actual: [¶] **business income** loss you incur due to the actual impairment of your **operations**; and [¶] **extra expense** you incur due to the actual or potential impairment of your **operations**, during the **period of restoration** . . . [¶] This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to **property**, unless otherwise stated.” FAC, Ex. A-Part 1 (Dkt. 35-1 at 59 of 121). The Extra Expense<sup>2</sup> and Building

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<sup>2</sup> “We will pay for the actual **extra expense** you incur due to the actual or potential impairment of your **operations** during the **period of restoration** . . . [¶] This actual or potential impairment of

and Personal Property<sup>3</sup> coverages likewise require “direct physical loss or damage.”

Under California law, the phrase “direct physical loss” means an actual change in the insured property “occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so.” *MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 779 (2010). Further, “loss” requires that some external force acted upon the insured property to cause a “distinct, demonstrable, physical alteration” of the property—in other words, the property must have been “damaged” according to the common understanding of that term. *Id.* at 779-80.

The requirement of “direct physical loss or damage” is “widely held . . . to preclude any claim against the property insurer where the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.” *Simon Mktg., Inc. v. Gulf Ins. Co.*, 149 Cal. App. 4th 616, 623 (2007); see *Ba Lax, LLC v. Hartford Fire Ins. Co.*, No. 2:20-CV-06344-SVW-JPR, 2021 WL 144248, at \*3 (C.D. Cal. Jan. 12, 2021) (“The meaning of ‘direct physical damage’ and ‘direct physical loss’ is well established under California law. Property must undergo a ‘distinct, demonstrable, physical alteration.’ ‘Detrimental economic impact’ does not suffice.”) (Quoting *MRI*, 187 Cal. App. 4th at 779.)

Since Vigilant filed its Motion to Dismiss APE’s Complaint in December 2020, even more courts applying California law have dismissed complaints with allegations largely identical to those of APE. As noted in *Roundin3rd Sports Bar LLC v. Hartford*, No. 2:20-CV-05159-SVW-PLA, 2021 WL 647379, at \*5 (C.D. Cal. Jan. 14, 2021), “[N]umerous courts have now held that neither the presence of COVID-19 in society nor government restrictions can, by themselves, constitute direct physical loss or direct physical damage under California law.” (Citing *MRI*, 187

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**operations** must be caused by or result from direct physical loss or damage by a **covered peril to property** unless otherwise stated.” *Id.* (Dkt. 35-1 at 90 of 121).

<sup>3</sup> “We will pay for direct physical loss or damage to: [¶] **building**; or [¶] **personal property**, caused by or resulting from a peril not otherwise excluded . . .” *Id.* (Dkt. 35-1 at 30 of 121).

Cal. App. 4th 766 & collecting cases); *Out West Rest. Grp. v. Affiliated FM Ins. Co.*, No. 20-CV-06786-TSH, 2021 WL 1056627, at \*4-6 (N.D. Cal. Mar. 19, 2021).

**1. COVID-19’s Presence Does Not Constitute “Direct Physical Loss or Damage.”**

In its FAC, APE alleges *on information and belief*, “that SARS-CoV-2 was present at various times on and in its insured properties, or would have been present had it not been for the closure of its properties . . .”. FAC ¶5; *id.* ¶76. Yet, APE’s FAC fails to specifically identify any direct physical loss or damage to any of its scheduled properties or explain how its property or any dependent business premises was physically altered or permanently lost due to COVID-19. APE also does not and cannot allege that APE’s facilities “shut down because of the virus’s presence on facility surfaces.” *See* ECF No. 34 at 3. Indeed, as APE concedes, “its facilities would have remained shut regardless of whether the virus was present in its facilities.” *Id.*

APE’s inability to affirmatively allege the presence of COVID-19 at its scheduled properties (*i.e.*, COVID-19 “was present at various times . . . or would have been present”) and its inability to affirmatively allege that any closures were due to such presence further underscores that APE’s properties did not suffer “direct physical loss or damage.” The FAC merely offers the same conclusory allegations that this Court found insufficient, *i.e.*, that the potential presence of COVID-19 caused “direct physical loss or damage.” *See, e.g.*, FAC ¶¶73-79, 84-88. Even if APE sufficiently alleged the presence of COVID-19 at its properties (which it has not), the alleged presence of COVID-19 does not constitute “direct physical loss or damage” because “the virus harms human beings, not property.” *Wellness Eatery La Jolla LLC v. Hanover Ins. Grp.*, No. 20CV1277-AJB-RBB, 2021 WL 389215, at \*7 (S.D. Cal. Feb. 3, 2021).

In *Selane Prod., Inc v. Cont’l Cas. Co.*, No. 2:20-CV-07834-MCS-AFM, 2021 WL 609257 (C.D. Cal. Feb. 8, 2021), the plaintiff also alleged that COVID-19 “‘attaches to surfaces and lingers in the air and airspace of buildings,’ and [that] they cause ‘direct physical loss of or damage to property’” and included allegations “concerning COVID-19’s physical properties, transmissibility, and spread throughout California.” *Id.* at \*4; *see* FAC ¶¶53-54. In dismissing the first amended complaint with prejudice, the *Selane* court explained that these “negligible additions” failed to

“change this Court’s determination that [the plaintiff’s] conclusory allegations of ‘direct physical loss of or damage to property’ do not, under California law, support recovery under the Policy’s Civil Authority coverage.” *Selane*, at \*5. The court stated, “[Plaintiff] adding allegations about COVID-19’s properties does not make the Policy ambiguous, alter the economic nature of [plaintiff’s] loss, or justify departure from the MTD Order and voluminous authority from California district courts finding that COVID-19 and its impacts do not constitute ‘direct physical loss of or damage to property.’” *Id.* at \*4; *Karen Trinh, DDS, Inc. v. State Farm Gen. Ins. Co.*, No. 5:20-CV-04265-BLF, 2020 WL 7696080, at \*5 (N.D. Cal. Dec. 28, 2020) (allegations that “human droplets containing COVID-19 have either damaged the premises or pose a significant risk of damaging the premises” are insufficient to trigger coverage because plaintiff had not “alleged that any covered property ‘damaged’ by droplets containing the virus is unrecoverable” and hence did “not even fall within an expansive interpretation of the phrase [direct physical loss]”).

Likewise, in *Wellness Eatery*, 2021 WL 389215, at \*6, the plaintiff alleged “that COVID-19 droplets have physically spread and proliferated ‘onto virtually every surface and object in, on, and around Wellness Eatery and its surrounding environs.’” The Court found these allegations “do not support a claim for insurance coverage” because “[it] does not find that the presence of COVID-19 qualifies as physical damage to property because the virus harms human beings, not property. *Id.* at \*7 (citations omitted); *Protege Rest. Partners LLC v. Sentinel Ins. Co., Ltd.*, No. 20-CV-03674-BLF, 2021 WL 428653, at \*4 (N.D. Cal. Feb. 8, 2021) (“Even if Plaintiff had known of a specific instance of COVID-19 particles inside of its business, evidence of such would still not qualify as a ‘physical change’ to the property.”).

In *Mortar & Pestle Corp. v. Atain Specialty Ins. Co.*, No. 20-CV-03461-MMC, 2020 WL 7495180, at \*4 (N.D. Cal. Dec. 21, 2020), the Court held, “Although [the insured] has added allegations such as COVID-19 has ‘intruded upon the property’ and ‘damaged the property[,]’ those conclusory assertions are insufficient to state a claim based thereon.” Citing *Pappy’s Barber Shops, Inc. v. Farmers Grp., Inc.*, No. 20-CV-907-CAB-BLM, 2020 WL 5847570, at \*1 (S.D. Cal. Oct. 1, 2020), the Court explained that “the presence of the virus itself, or of individuals infected

with the virus, at [insured’s] business premises or elsewhere [does] not constitute direct physical loss of or damage to property.” *Id.*; *Kevin Barry Fine Art Assocs. v. Sentinel Ins. Co., Ltd.*, No. 20-CV-04783-SK, 2021 WL 141180, at \*6 (N.D. Cal. Jan. 13, 2021); *Sas Int’l, Ltd. v. Gen. Star Indem. Co.*, No. CV 20-11864-RGS, 2021 WL 664043, at \*4 (D. Mass. Feb. 19, 2021) (“Unlike an unpleasant odor, however, COVID-19 is imperceptible; it does not endure beyond a brief passage of time or a proper cleaning, let alone render the property permanently uninhabitable.”).

APE’s conclusory allegations that COVID-19 was present at its properties and dependent business premises, or would have been present had it not closed its properties are woefully insufficient to allege “direct physical loss or damage.” And even assuming APE could allege specific facts regarding the presence of COVID-19 at its properties, such allegations would not support “direct physical loss or damage” so as to trigger coverage under the Policy.

In addition, the Business Income With Extra Expense and Extra Expense coverages only apply during the “**Period of Restoration**” which commences “immediately after the time of direct physical loss or damage” and “continue[s] until your **operations** are restored, with reasonable speed, to the level which would generate the **business income** amount that would have existed if no direct physical loss or damage occurred, including the time required to: [¶] A. repair or replace the property.” FAC, Ex. A-Part 2 (Dkt. 35-2 at 31 of 115).

In *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, No. 20-CV-03213-JST, 2020 WL 5525171, \*4 (N.D. Cal. Sept. 14, 2020), the Court explained, “The words ‘[r]ebuild,’ ‘repair’ and ‘replace’ all strongly suggest that the damage contemplated by the Policy is physical in nature.” *Baker v. Oregon Mut. Ins. Co.*, No. 20-CV-05467-LB, 2021 WL 24841, at \*3 (N.D. Cal. Jan. 4, 2021) (“The end date for the period of restoration — when the property is repaired, rebuilt, or replaced — also shows that the damage covered by the policy is physical and that the plaintiffs are not entitled to Business Income coverage”); *Wellness Eatery*, 2021 WL 389215, at \*6 (“Interpreting the Policy in context and with the assistance of surrounding terms, the Court finds that without some tangible physical alteration to the property, there would be no need to restore, repairs, rebuild, or replace.”); *Colgan v. Sentinel Ins. Co., Ltd.*, No. 20-CV-04780-HSG, 2021 WL



472964, at \*3 (N.D. Cal. Jan. 26, 2021). Here, APE has not alleged any “direct physical loss or damage” requiring any repairing or replacing.

## 2. Limitations on Use Do Not Constitute “Direct Physical Loss or Damage.”

In its FAC, APE continues to suggest that temporary Closure Orders constitute “direct physical loss or damage” because they limited and/or restricted the use of its scheduled properties. FAC ¶¶70-74, 77. This “loss of use” argument has been resoundingly rejected by courts applying California law.<sup>4</sup> As noted in *Protege Rest. Partners*, 2021 WL 428653, at \*4, “**Every California court** that has addressed COVID-19 business interruption claims to date has concluded that government orders that prevent full use of a commercial property or that make the business less profitable do not themselves cause or constitute ‘direct physical loss of or physical damage to’ the insured property.” (Emphasis added); *Kevin Barry Fine Art*, 2021 WL 141180, at \*3 (“[T]he overwhelming majority [of courts] have concluded that temporarily closing a business due to government closure orders during the pandemic does not constitute a direct loss of property . . .”); *10E, LLC*, 483 F. Supp. 3d at 836 (While such orders may carry “social, economic, and legal consequences,” they do “not physically alter” insured property.)

Under California law, the Closure Orders themselves do not cause “direct physical loss or damage” although they may temporarily impair the use or functionality of the property, nor do the

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<sup>4</sup> See, e.g., *10E, LLC v. Travelers Indem. Co. of Conn.* 483 F. Supp. 3d 828, 835-36 (C.D. Cal. 2020); *Plan Check Downtown III, LLC v. AmGuard Ins. Co.*, 485 F. Supp. 3d 1225, 1230-32 (C.D. Cal. 2020); *Pappy's Barber Shops, Inc. v. Farmers Grp., Inc.*, No. 20-cv-907-CAB-BLM, 2020 WL 5500221, at \*4-5 (S.D. Cal. Sept. 11, 2020); *Mudpie*, 2020 WL 5525171, at \*3-6; *Mark's Engine Co. No. 28 Rest., LLC v. Travelers Indem. Co. of Connecticut*, No. 2:20-CV-04423-AB-SK, 2020 WL 5938689, at \*3 (C.D. Cal. Oct. 2, 2020); *Travelers Cas. Ins. Co. of Am. v. Geragos & Geragos*, No. CV 20-3619 PSG (Ex), 2020 WL 6156584, at \*4-5 (C.D. Cal. Oct. 19, 2020); *West Coast Hotel Mgmt., LLC v. Berkshire Hathaway Guard Ins. Co.*, Case No. 2:20-CV-05663-VAP-DFMx, 2020 WL 6440037 at \*4 (C.D. Cal., Oct. 27, 2020); *Water Sports Kauai, Inc. v. Fireman's Fund Ins. Co.*, No. 20-CV-03750-WHO, 2020 WL 6562332, at \*6-7 (N.D. Cal. Nov. 9, 2020); *Long Affair Carpet & Rug, Inc. v. Liberty Mut. Ins. Co.*, No. SACV 20-01713-CJC(JDEx), 2020 WL 6865774, at \*2-3 (C.D. Cal. Nov. 12, 2020); *Robert W. Fountain, Inc. v. Citizens Ins. Co. of Am.*, No. 20-CV-05441-CRB, 2020 WL 7247207, at \*3-4 (N.D. Cal. Dec. 9, 2020); *Jonathan Oheb MD, Inc. v. Travelers Cas. Ins. Co. of Am.*, No. 2:20-CV-08478-JWH-RAOx, 2020 WL 7769880, at \*3-4 (C.D. Cal. Dec. 30, 2020); *Wellness Eatery*, 2021 WL 389215, at \*5; *Out West Rest.*, 2021 WL 1056627, at \*4.

Closure Orders permanently dispossess insureds of their property. APE will be able to resume its pre-pandemic use of its property once the orders are lifted. Thus, APE has not and cannot demonstrate the requisite “physical loss or damage” to trigger coverage.

**B. APE Cannot Demonstrate Civil Authority Or Ingress and Egress Coverage.**

APE continues to allege that Vigilant wrongly denied coverage under the Policy’s Civil Authority coverage. FAC ¶¶39, 86. The Civil Authority provision provides coverage for “**business income loss**” and “**extra expense**” that APE incurs “due to the actual impairment of [its] **operations**, directly caused by the prohibition of access to [¶] [its] **premises**; [¶] or a **dependent business premises** [¶] by a civil authority.” FAC, Ex. A-Part 1 (Dkt. 35-1 at 61-62 of 121). This coverage further requires that “[t]his prohibition of access by a civil authority *must be the direct result of direct physical loss or damage to property away from such premises* or such **dependent business premises** by a **covered peril**, provided such property is within [¶] one mile; or [¶] the applicable miles shown in the Declarations.” *Id.* (italics added).<sup>5</sup>

The FAC fails to allege any facts satisfying these required coverage elements. None of the Closure Orders prohibited access to APE’s scheduled properties; they ordered people to stay home and not to gather in large groups.<sup>6</sup> APE also fails to identify physical loss or damage to a property within one mile of an insured property, or to any other “dependent business premises.” Rather, APE only offers conclusory allegations that “[t]he Closure Orders continue to limit, restrict, and prohibit partial or total access to Another Planet’s insured properties as a result of direct physical damage of the type insured by the Policy.” FAC ¶70.

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<sup>5</sup> The separate “Extra Expense” coverage has a similar Civil Authority provision. FAC, Ex. A-Part 1 (Dkt. 35-1 at 91 of 121).

<sup>6</sup> *See, e.g., Wellness Eatery*, 2021 WL 389215, at \*7-8 (Closure Orders “were issued as general precautionary measures ‘to slow the pace of community spread and avoid unnecessary strain on our medical system’ “ and allegations that the orders were due to “the presence of COVID-19 on their property amount to nothing more than ‘bare assertions’ and ‘mere conclusory statements,’ which are not entitled to the presumption of truth.”); *Kevin Barry Fine Art*, 2021 WL 141180, at \*6 (Closure Orders “were issued to prevent the spread of COVID-19 to people”); *Mortar & Pestle*, 2020 WL 7495180, at \*5 (Closure Orders “were issued to stop the spread of COVID-19 and not as a result of any physical loss of or damage to property”).

Courts have interpreted the phrase “prohibits access” in civil authority provisions to mean to “formally forbid” or “prevent” any access to the premises. *See, e.g., S. Hospitality, Inc. v. Zurich Am. Ins.*, 393 F.3d 1137, 1140 (10th Cir. 2004). Voluntary closures or limitations restricting access are not sufficient, and there must be a “requisite causal link between damage to adjacent property and denial of access.” *Syufy Enterprises v. Home Ins. Co. of Indiana*, No. 94-0756 FMS, 1995 WL 129229, at \*2 (N.D. Cal. Mar. 21, 1995); *see Pappy’s Barber Shops, Inc. v. Farmers Grp., Inc.*, No. 20-CV-907-CAB-BLM, 2020 WL 5500221, at \*6 (S.D. Cal. Sept. 11, 2020) (finding no civil authority coverage because “[t]he government orders alleged in the complaint prohibit the operation of Plaintiff’s business; they do not prohibit access to Plaintiffs’ place of business.”); *Mudpie*, 2020 WL 5525171, \*7 (*Syufy’s* “causal link” required for civil authority coverage for COVID-19 claim); *Water Sports Kauai, Inc. v. Fireman’s Fund Ins. Co.*, No. 20-CV-03750-WHO, 2020 WL 6562332, at \*8 (N.D. Cal. Nov. 9, 2020) (“preventative closure orders cannot support a causal link of direct physical loss of or damage to property”). APE’s FAC lacks any allegations establishing the requisite “causal link.”

In short, like its initial Complaint, APE’s FAC fails to allege actual prohibition of access to either its premises or a dependent business premises caused by a civil authority order issued due to direct physical loss or damage to property away from such premises. Also, APE again has not shown that (1) COVID-19 directly physically damaged nearby property and (2) that (nonexistent) damage caused authorities to issue orders prohibiting access to APE’s premises (assuming the orders prohibited access to APE’s premises, which the orders do not). Thus, APE has not established Civil Authority coverage.

In its FAC, APE suggests for the first time that it may be entitled to coverage under the Ingress and Egress provision.<sup>7</sup> FAC ¶40. But APE fails to identify any “direct physical loss or

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<sup>7</sup> “We will pay for the actual: [¶] **business income** loss you incur due to the actual impairment of your **operations**; and [¶] **extra expense** you incur due to the actual or potential impairment of your **operations**, [¶] when existing ingress to and egress from a premises shown in the Declarations is prevented due to direct physical loss or damage by a **covered peril** to property at a location contiguous to such premises.” FAC, Ex. A-Part 1 (Dkt. 35-1 at 60 of 121).

damage by a **covered peril** to property at unspecified premises” impairing its operations. *Ba Lax*, 2021 WL 144248, at \*4 (“[T]here is no evidence – much less an allegation – of distinct, demonstrable, physical alteration, or permanent dispossession of property . . . at contiguous locations, or in the immediate area. Therefore, Plaintiffs cannot establish . . . Ingress or Egress . . . coverage[.]”) Thus, APE has not alleged facts supporting Ingress and Egress coverage.

**C. APE’s Mitigation Argument Again Fails.**

APE alleges, *on information and belief*, “that SARS-CoV-2 has been present at and in its properties, or would have been present but for its efforts to reduce, prevent, or otherwise mitigate its presence on its properties.” FAC ¶76. Thus, APE concludes that “[t]he costs and losses associated with the closures therefore constitute reasonable costs incurred to ‘protect property from further loss or damage’ . . . [and] Vigilant is obligated to pay these amounts.” *Id.* ¶90. The Policy conditions under the heading “*Insured’s Duties In The Event Of Loss Or Damage*” include reference to an insured’s duty to mitigate damage, but this condition is **not** a grant of coverage and cannot be used to fabricate coverage when none of the Policy’s coverage provisions are triggered. The mitigation provision requires that APE “in the event of loss or damage: [¶] . . . [¶] Take every reasonable step to protect the covered property from further loss or damage.” FAC, Ex. A-Part 2 (Dkt. 35-2 at 12 of 115). Here, APE still has not identified any covered damage in the first instance, and the mitigation provision never comes into play. An insured’s duty to mitigate losses and any obligation by the insurer to pay reasonable expenses are tied to the coverage provided by the policy and are not triggered until there is a covered loss. *See Grebow v. Mercury Ins. Co.*, 241 Cal. App. 4th 564, 574-75 (2015). APE cannot bootstrap coverage through the mitigation condition.

**D. APE’s Breach of Contract and Declaratory Relief Claims Fail Because APE Has Not Alleged Any Basis for Coverage Under the Policy.**

In its FAC, APE again fails to allege facts that support a reasonable inference that its alleged loss is covered under the Policy. “[A]bsent an actual withholding of benefits due, there is no breach of contract.” *Love v. Fire Ins. Exch.*, 221 Cal. App. 3d 1136, 1151-52 n.10 (1990) (original emphasis). Accordingly, APE’s first claim for breach of contract must be dismissed. *Id.*

For the same reason, APE's seventh claim for declaratory relief also fails because no cognizable legal theory or set of facts has been alleged to warrant the declaratory relief sought. *Hines v. Nat'l Cont'l Ins. Co.*, No. CV 17-07772 JVS(JCX), 2018 WL 4846992, at \*4 (C.D. Cal. Jan. 22, 2018).

**E. There Can Be No Bad Faith as There is No Coverage as a Matter of Law.**

To establish a claim for breach of the implied covenant of good faith and fair dealing: "(1) benefits due under the policy must have been withheld; and (2) the reason for withholding benefits must have been unreasonable or without proper cause." *Love*, 221 Cal. App. 3d at 1151. A bad faith claim generally "cannot be maintained unless policy benefits are due under the contract." *Waller*, 11 Cal. 4th at 35; *Brown v. Mid-Century Ins. Co.*, 215 Cal. App. 4th 841, 858 (2013). APE is not entitled to coverage under the Policy as a matter of law and it has failed to allege any other grounds for bad faith, such that this claim must also be dismissed.

**F. APE's Fraud and Negligent Misrepresentation Claims Also Fail.**

Federal Rule of Civil Procedure 9(b) states, "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." *Neilson v. Union Bank of California, N.A.*, 290 F. Supp. 2d 1101, 1141 (C.D. Cal. 2003) ("It is well-established in the Ninth Circuit that both claims for fraud and negligent misrepresentation must meet Rule 9(b)'s particularity requirements."); *Errico v. Pac. Cap. Bank, N.A.*, 753 F. Supp. 2d 1034, 1049 (N.D. Cal. 2010). "To properly plead fraud with particularity under Rule 9(b), 'a pleading must identify the who, what, when, where, and how of the misconduct charged, as well as what is false or misleading about the purportedly fraudulent statement, and why it is false.'" *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 964 (9th Cir. 2018).

The FAC is devoid of any facts identifying what representations were allegedly made to APE, who made them, to whom they were made, when and where they were made, and by what means they were made and again merely recites the basic elements of each claim. Similar allegations have been rejected as insufficient in other COVID-19 insurance coverage cases. *See, e.g., Franklin EWC, Inc. v. Hartford Fin. Servs. Grp., Inc.*, No. 20-CV-04434-JSC, 2020 WL 7342687, at \*6-7 (N.D. Cal. Dec. 14, 2020) ("It is also unclear when, where, or how Defendants

made false or misleading statements when they sold Plaintiffs the Policy.”); *Water Sports Kauai*, 2020 WL 6562332, at \*8; *Wellness Eatery*, 2021 WL 389215, at \*8.

APE’s FAC does add an allegation that Vigilant’s knowledge of virus/pandemic losses “is evidenced by the statements made regarding the risk of pandemics in Chubb Limited’s 2017 Annual Report” – identifying individuals who allegedly signed that report. FAC ¶114. APE also added, on information and belief, “that the Policy was signed by or on behalf of Paul J. Krump (President), as well as secretary and an authorized individual on behalf of Vigilant, on or about May 14, 2019.” *Id.* ¶115. But these new allegations have no relationship to purported misrepresentations made *during the sale of the Policy to APE*. Accordingly, APE has not satisfied Rule 9(b)’s heightened pleading standard.

Nor can APE’s own purported misunderstanding of the Policy’s coverages provide a basis for its fraud and negligent misrepresentation claims. *See, e.g., Wellness Eatery*, 2021 WL 389215, at \*8 (finding “no misrepresentation here because the text of the Policy makes plain that it does cover physical damage to the property; Plaintiffs’ particular claim simply did not meet it.”)

Thus, APE’s third, fourth, fifth, and sixth claims should be dismissed, with prejudice.

**G. The Absence of a Virus Exclusion Does Not Create Coverage.**

APE again argues in its FAC that the absence of a virus exclusion means that coverage will be triggered for any “virus claim,” and Vigilant should have included such a virus exclusion if it sought to avoid covering losses arising from these types of claims. *See* FAC ¶¶9, 19-22, 25-30, 98-99. APE’s argument has been rejected because the existence or non-existence of an exclusion is immaterial when the loss does not fall within the insuring agreement to begin with. “The burden is on an insured to establish that the occurrence forming the basis of its claim is within the basic scope of insurance coverage.” *Aydin Corp. v. First State Ins. Co.*, 18 Cal. 4th 1183, 1188 (1998) (citations omitted.) “[W]hen an occurrence is clearly not included within the coverage afforded by the insuring clause, it need not also be specifically excluded.” *Glavinich v. Commonwealth Land Title Ins. Co.*, 163 Cal .App. 3d 263, 270 (1984); *Stanford Ranch, Inc. v. Maryland Cas. Co.*, 89 F.3d 618, 626 (9th Cir. 1996) (“an exclusion cannot act as an additional grant or extension of

coverage.”); *see also*, *4431, Inc. v. Cincinnati Ins. Companies*, No. 5:20-CV-04396, 2020 WL 7075318, at \*13 n.18 (E.D. Pa. Dec. 3, 2020) (rejecting insured’s argument that lack of virus exclusion supported coverage for COVID-19 claim because “the issue of exclusions is irrelevant as Plaintiffs’ claims do not fall within the scope of the Policies’ coverage”); *Sas Int’l*, 2021 WL 664043, at \*4 (“the ‘absence of an express [virus] exclusion does not operate to create coverage’ for pandemic-related losses”).

Here, APE cannot establish the “direct physical loss or damage” required to trigger coverage, so there is no reason to consider whether the Policy also has a virus exclusion. *Water Sports Kauai, Inc.*, 2020 WL 6562332, at \*6 n.4 (without regard to the existence of a virus exclusion, “[t]he majority of these courts reasonably determined, first, that coverage was not implicated given the lack of a direct physical event causing loss of or damage to property”); *Plan Check Downtown III*, 485 F. Supp. 3d at 1232 n.7 (C.D. Cal. 2020) (plaintiff had “not suffered any physical loss of or damage to its properties and therefore its loss is not covered by the Policy” – without regard to the Policy’s virus exclusion); *Kevin Barry Fine Art*, 2021 WL 141180, at \*6, (“[B]ecause the Court finds that [the plaintiff] has not, and cannot, allege direct physical loss to property in the immediate area, or that the Stay-at-Home Orders were issued to as a result of direct physical loss to property in the immediate area, the Court need not address the scope of the ‘virus endorsement’”).

Accordingly, APE’s assertion that the absence of a virus exclusion results in its claim being covered must be rejected.

## V. CONCLUSION

For the foregoing reasons, Vigilant respectfully requests that the Court dismiss Plaintiff’s FAC in its entirety, *with prejudice*, under Federal Rule of Civil Procedure 12(b)(6).

Dated: March 25, 2020

CLYDE & CO US LLP

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ANOTHER PLANET ENTERTAINMENT,  
LLC,

Plaintiff,

vs.

VIGILANT INSURANCE COMPANY

Defendants.

Case No. 3:20-cv-07476-VC

Case Assigned to Hon. Vince Chhabria

**FIRST AMENDED COMPLAINT FOR**

1. BREACH OF CONTRACT;
2. TORTIOUS BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
3. FRAUD IN THE INDUCEMENT;
4. FRAUDULENT PROMISE MADE WITHOUT INTENT TO PERFORM
5. FRAUDULENT CONCEALMENT;
6. NEGLIGENT MISREPRESENTATION;  
AND
7. DECLARATORY RELIEF

**DEMAND FOR JURY TRIAL**

Plaintiff Another Planet Entertainment, LLC brings this action against defendant Vigilant Insurance Company and alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. section 1332 based on complete diversity of the parties and an amount in controversy exceeding \$75,000, exclusive of interest and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. section 1391.

**NATURE OF THE ACTION**

3. Another Planet is an independent operator and exclusive promoter of concerts, events, and festivals at the Greek Theatre at UC Berkeley, the Bill Graham Civic Auditorium in San Francisco, the Fox Theater in Oakland, and the Lake Tahoe Outdoor Arena at Harveys, among other venues. Vigilant is an insurer that sold Another Planet a broad, “all-risk” property insurance policy protecting Another Planet against losses of business income when there was, to quote the policy, “direct loss or damage to property.”

4. As SARS-CoV-2 and COVID-19 began spreading around the United States, Another Planet, like thousands of other businesses, was forced to suspend its operations, close the concert venues, and cancel performances for almost all of 2020 and well into 2021.

5. The first 20 confirmed COVID-19 cases in the United States were in January and February 2020. By December 2020, California had the highest number of new daily COVID-19 cases per capita in the United States.<sup>1</sup> Based on scientific data and published reports, SARS-COV-2 began spreading throughout California, with its spread largely through “community transmission” and often by people with no symptoms. During the course of 2020, and based on

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<sup>1</sup> <https://www.sfgate.com/bayarea/article/California-COVID-19-cases-data-CDC-worst-states-US-15829422.php>.

data about the nature of how SARS-CoV-2 spread, Another Planet is informed and believes, and on that basis alleges, that SARS-CoV-2 was present at various times on and in its insured properties, or would have been present had it not been for the closures of its properties directed to curb the spread of SARS-CoV-2. The presence of SARS-CoV-2 physically alters the air in which it is found and the surfaces of property on which it lands. Furthermore, the presence and threatened presence of SARS-CoV-2 and the orders of state and local civil authorities and guidance from the Centers for Disease Control impaired Another Planet's ability to use its insured locations for their intended uses and purposes. As a result, Another Planet has suffered, and continues to suffer, substantial financial losses, including lost profits, lost commissions, and lost business opportunities.

6. When Another Planet turned to Vigilant, Another Planet reasonably expected Vigilant to cover its losses. However, instead of honoring its policy, Vigilant wrongfully denied coverage and refused to pay Another Planet for any portion of its losses.

7. Put simply, there is no merit to Vigilant's refusal to pay Another Planet for its losses. Broad "all risk" property insurance policies, such as the policy here, cover all losses not expressly excluded. The policy here promised coverage for "direct physical loss or damage to property," a phrase that Vigilant and other insurers have known for decades extends to losses caused by the presence of a hazardous substance in the airspace inside a building or on property, and losses that result when the use or function of property is substantially impaired, even if the property has not been physically altered.

8. In fact, as Vigilant has long known and California courts have recognized since at least 1962, even if a building or structure is not physically or structurally altered, it will be deemed, for insurance purposes, to have suffered a "direct physical loss or damage to property" if its function or purpose is substantially impaired.

9. Vigilant has known for more than a decade that it and its insureds face a substantial risk of loss from viruses and pandemics and often has included an exclusion in its policies to limit or bar coverage for such losses. Indeed, the insurance industry created a standard-form “virus or bacteria” exclusion in 2006 in an attempt to limit insurance for such losses. However, in selling its policy to Another Planet, Vigilant decided not to include any such exclusion in the policy. In fact, Vigilant did nothing in selling the policy to limit its liability for virus- or pandemic-associated risks. Nor did Vigilant warn Another Planet that even though it did not include a virus or pandemic exclusion in the policy, it would interpret its policy as if it contained such an exclusion.

10. By this lawsuit, Another Planet seeks damages to compensate it for Vigilant’s contractual breaches, bad faith, and fraud. It also seeks declaratory relief confirming that its losses are covered and will continue to be covered as they continue to be incurred.

### **THE PARTIES**

11. Another Planet is a Delaware limited liability company whose members are trusts that are citizens of California.

12. Another Planet is informed and believes, and on that basis alleges, that Vigilant is a New York corporation, with its principal place of business in Whitehouse Station, New Jersey. At all times material hereto, Vigilant was licensed to transact, and did transact, business in California and the County of San Francisco.

13. Another Planet is informed and believes, and on that basis alleges, that Vigilant is a wholly owned subsidiary of Federal Insurance Company, which is a wholly owned subsidiary of Chubb INA Holdings Inc., which is a subsidiary of Chubb Limited. All are, and hold themselves out as being, members of the Chubb group of insurance companies (collectively, “Chubb”). Another Planet is informed and believes, and on that basis alleges, that Vigilant and

the other Chubb companies are, and hold themselves out as being, extremely sophisticated and knowledgeable in insuring against property and business interruption losses and in investigating the risks they are insuring. Another Planet is informed and believes, and on that basis alleges, that Vigilant and the other Chubb companies participate in a wide range of first-party property insurance programs and are, and hold themselves out as being, knowledgeable, experienced, and reliable, and willing to insure, and capable of insuring, substantial property and business interruption losses.

14. Chubb makes various representations on behalf of its member companies, including Vigilant, on its collective website for its member companies, in advertising, and in public statements. Another Planet is informed and believes, and on that basis alleges, that in making these statements, Chubb is speaking on behalf of its member companies, including Vigilant, and is authorized to do so, such that Chubb's statements are the statements of its member companies, including Vigilant.

15. Chubb poses this question on its website: "How is Chubb different?" It answers as follows:

We don't just process claims, we make things right.

We hope you never need to file a claim with us. But if you do, that's our opportunity to show you what "craftsmanship" means in service to you. It means a quick response when you need it most. It means Chubb people working with empathy, integrity and our legendary attention to detail to make you whole. It means we honor the promises we've made to you. Your loved ones, your employees, your home, your business reputation—these things matter. These things are personal, for you and for us.

We're here to help.<sup>2</sup>

16. Chubb also has represented, and represents, to the public:

If being treated fairly and paid quickly are important to your clients when they have a loss, you want Chubb. When your clients insure with Chubb, they're buying real insurance.<sup>3</sup>

17. Chubb also represents:

The insurance claims process can sometimes be, well, a process. At Chubb, it's different. That's because we're not just in the insurance business, we're in the people business. Our experienced claims specialists are relentless about every detail in the most personal way possible. Whether you have a business, homeowners or auto policy, it's our policy to make your life easier. . . . If a solution is possible, we'll find a way to make it happen."<sup>4</sup>

18. Chubb claims to specifically appreciate and understand that "[t]he risks faced by entertainment industry companies can be unique and vary widely. Chubb offers customized coverage for property . . . to support your risk management strategy."<sup>5</sup>

#### **WHAT VIGILANT KNEW BEFORE IT SOLD THE POLICY**

19. Vigilant and other insurers were repeatedly warned over the years of the potential impact of pandemics. In fact, there were many publicly available reports about the risks of pandemics and what insurers should do—in the months and years before the outbreak of the COVID-19 pandemic. For example, one article noted in March 2018:

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<sup>2</sup> <https://www.chubb.com/us-en/claims/claims-difference.aspx>.

<sup>3</sup> Chubb Ad, Business Insurance, at 11 (Apr. 4, 2008)

<sup>4</sup> <https://www.chubb.com/us-en/claims/>.

<sup>5</sup> <https://www.chubb.com/us-en/business-insurance/entertainment.aspx>.

Even with today's technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.<sup>6</sup>

20. One insurance industry repository shows the proverbial "tip of the iceberg" about how much information was available to Vigilant and other insurers regarding the risk of pandemics. The Insurance Library Association of Boston, founded in 1887, describes itself as "the leading resource for and provider of literature, information services, and quality professional education for the insurance industry and related interests."<sup>7</sup> The Association states on its website:

The past 20 years [have] seen the rise of a number of pandemics. Slate recently published an article on what has been learned about treating them in that time. We thought it might be apt for us to take a look back and see what the insurance industry has learned as well.<sup>8</sup>

21. The Association lists more than 20 articles, reports, and white papers available to insurers from early 2007 through 2018. One white paper warned in 2018 of a pandemic's consequences to the insurance industry:

Even with today's technology, a modern severe pandemic would cause substantive direct financial losses to the insurance

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<sup>6</sup> "What the 1918 Flu Pandemic Can Teach Today's Insurers," *AIR* (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

<sup>7</sup> <http://insurancelibrary.org/about/>.

<sup>8</sup> <http://insurancelibrary.org/pandemics-and-insurance/>.

community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.<sup>9</sup>

22. Thus, Vigilant has known, or should have known, for decades that its policies probably would be called upon to pay hundreds of millions of dollars or more to its insureds.

23. Vigilant also has known, or should have known, for decades that its policies could be held to cover losses from the presence of a hazardous substance, such a virus inside buildings or because a building could not be used for its intended purposes or function. As Vigilant has known, or should have known, for decades many courts have held that the presence of a hazardous substance in property, including the airspace inside buildings, constitutes property damage and that there may be “direct physical loss” to property even if the property is not physically damaged. As Vigilant has known, or should have known, the many decisions include the following:

- *AIU Insurance Co. v. Superior Court*, 51 Cal. 3d 807, 842 (1990): “contamination of the environment satisfies” the requirement of property damage.
- *Aetna Casualty & Surety Co. v. Pintlar Co.*, 1948 F.2d 1507, 1514 (9th Cir. 1981): “The insurers further concede that contamination of the soil and water by hazardous substances constitutes injury to property . . . . And an ordinary person would find that the environmental contamination alleged . . . falls within the plain mean of ‘property damage’ as that term is used in policies.”
- *Arbeiter v. Cambridge Mut. Fire Insurance Co.*, 1996 WL 1250616, at \*2 (Mass. Super. Ct. Mar. 15, 1996): presence of oil fumes in building constituted “physical loss” to building.

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<sup>9</sup> “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” AIR (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.



- *Essex Insurance Co. v. BloomSouth Flooring Corp.*, 562 F.2d 399, 406 (1st Cir. 2009): odor from carpet and adhesive “can constitute physical injury to property.”
- *Farmers Insurance Co. v. Trutanich*, 123 Or. App. 6, 9-11 (1993): “[T]he odor produced by the methamphetamine lab had infiltrated the house. The cost of removing the odor is a direct physical loss.”
- *Gregory Packaging, Inc. v. Travelers Property Casualty Co.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014): closure of facility because of accidentally released ammonia; while “structural alteration provides the most obvious sign of physical damage, . . . property can sustain physical loss or damage without experiencing structural alteration.”
- *Matzner v. Seacoast Insurance Co.*, 1998 WL 566658 (Mass. Super. Ct. Aug. 12, 1998): building with unsafe levels of carbon monoxide sustained direct physical loss.
- *Mellin v. Northern Security Insurance Co.*, 167 N.H. 544, 550-51 (2015): cat urine odor inside condominium constitutes direct physical loss; “‘physical loss’ need not be read to include only tangible changes to the property that can be seen or touched, but can also encompass changes that are perceived by the sense of smell.” . . . a property policy insures “physical loss changes to the insured property, but also changes that are perceived by a sense of smell” and ‘may exist in the absence of structural damage to the insured property.’”
- *Oregon Shakespeare Festival Ass’n v. Great American Insurance Co.*, 2016 WL 3267247, at \*9 (D. Ore. June 7, 2016): “smoke infiltration in theatre caused direct property loss or damage by causing the property to be uninhabitable and unusable for its intended purpose.”
- *Port Authority v. Affiliated FM Insurance Co.*, 311 F.3d 226, 236 (3d Cir. 2002): property sustained a direct physical loss because it was rendered uninhabitable by the presence of asbestos fibers.

- *Sentinel Management Co. v. Aetna Casualty & Surety Co.*, 1999 WL 540466, at \*7 (Minn. Ct. App. July 27, 1999): “If rental property is contaminated by asbestos fibers and presents a health hazard to tenants, its function is seriously impaired.”
- *Sentinel Management Co. v. New Hampshire Insurance Co.*, 563 N.W.2d 296, 300 (Minn. Ct. App. 1997): “Although asbestos contamination does not result in tangible injury to the physical structure of a building, a building's function may be seriously impaired or destroyed and the property rendered useless by the presence of contaminants. . . . Under these circumstances, we must conclude that contamination by asbestos may constitute a direct, physical loss to property under an all-risk insurance policy.”
- *Western Fire Insurance Co. v. First Presbyterian Church*, 165 Colo. 34, 39-40 (1968): direct physical loss when gasoline contaminated church building making it dangerous to use.

24. Because Vigilant long has been licensed to sell insurance to California insureds, it has known, or should have known, that a California Court of Appeal addressed in 1962—59 years ago—the question of whether a property insurance policy could cover loss or damage to a structure that had no physical damage or alteration. In *Hughes v. Potomac Insurance Co.*, 199 Cal. App. 2d 239 (1962), the insureds’ house had been left partially overhanging a cliff after landslide. The house suffered no physical damage. However, the court rejected the insurer’s argument that there was no “direct physical loss.” The court explained why, and what an insurer should do if it did not want to cover such losses:

Despite the fact that a ‘dwelling building’ might be rendered completely useless to its owners, [the insurer] would deny that any loss or damage had occurred unless some tangible injury to the physical structure itself could be detected. Common sense requires

that a policy should not be so interpreted in the absence of a provision specifically limiting coverage in this manner. [The insureds] correctly point out that a ‘dwelling’ or ‘dwelling building’ connotes a place fit for occupancy, a safe place in which to dwell or live. It goes without question that [the insureds’] ‘dwelling building’ suffered real and severe damage when the soil beneath it slid away and left it overhanging a 30-foot cliff. Until such damage was repaired and the land beneath the building stabilized, the structure could scarcely be considered a ‘dwelling building’ in the sense that rational persons would be content to reside there.<sup>10</sup>

25. In drafting and selling the Policy, Vigilant ignored the *Hughes* court’s admonitions that coverage exists without tangible damage unless an insurer includes language expressly limiting coverage to situations in which there is tangible damage. Vigilant did not even attempt to do so here, even though it readily could have tried to do so by using a long-available standard-form exclusion or even the Biological Agents exclusion it used in its liability coverage.

26. A standard-form exclusion has long been available to Vigilant and other insurers. In fact, given the potential liability that insurers, including Vigilant, faced under their policies for losses from pandemics, shortly after the outbreak of SARS in 2003, the insurance industry undertook to draft exclusions applicable to losses from viruses and bacteria. In 2006, the

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<sup>10</sup> *Id.* at 248-49.

Insurance Services Office (“ISO”), the insurance industry’s drafting organization, considered the need to draft an exclusion that would bar coverage for losses caused by a virus.<sup>11</sup>

27. On July 6, 2006, ISO prepared a circular that included a standard “**Exclusion Of Loss Due To Virus Or Bacteria**” as part of its filing with state insurance regulators of a standard exclusion of loss due to viruses and bacteria.<sup>12</sup> In that circular, ISO noted that examples of “viral and bacterial contaminants are rotavirus, SARS, [and] influenza,” observing, “The universe of disease-causing organisms is always in evolution.”<sup>13</sup> ISO recognized that viruses could cause property damage, stating:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.<sup>14</sup>

28. ISO expressly warned that “the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing [property] policies

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<sup>11</sup> “ISO is a non-profit trade association that provides rating, statistical, and actuarial policy forms and related drafting services to approximately 3,000 nationwide property or casualty insurers. Policy forms developed by ISO are approved by its constituent insurance carriers and then submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the starting point for their general liability policies.” *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645,671 n.13 (1995).

<sup>12</sup> See ISO Circular, “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.”<sup>15</sup> Therefore, ISO introduced a standard-form exclusion that it entitled “**Exclusion Of Loss Due To Virus Or Bacteria**” (form CP 01 40 07 06 and, in certain jurisdictions, form CP 01 75 07 06).

29. Thus, Vigilant and other insurers have had a “virus or bacteria” exclusion since 2006 that is approved for use throughout the United States. As one recent article succinctly stated, “Insurers knew the damage a viral pandemic could wreak on businesses. So they excluded coverage.”<sup>16</sup>

30. However, Another Planet is informed and believes, and on that basis alleges, that even though they knew they could be liable for losses from viruses and pandemics if they did not include an appropriate exclusion in their policies, Vigilant and other members of the Chubb group of insurers still sold many policies (including the policy here) without including such an exclusion. Therefore, Vigilant should have anticipated that it would be obligated to pay for losses when it did not include such an exclusion. In fact, in reporting on the financial condition and performance of Vigilant and the other Chubb companies, Chubb Limited warned investors of the potential negative impact on their financial results and condition from this exposure—and did so well before Vigilant sold the policy to Another Planet. For example, Chubb Limited stated the following warning in its 2017 Annual Report:

**Our results of operations or financial condition could be adversely affected by the occurrence of natural and man-made disasters.**

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<sup>15</sup> *Id.*

<sup>16</sup> Todd Frankel, “Insurers knew the damage a viral pandemic could wreak on businesses. So they excluded coverage,” *Washington Post* (April 2, 2020). This statement might be true for many policies, but it is not true as to the policy here—Vigilant did not exclude coverage for viruses and pandemics.

We have substantial exposure to losses resulting from natural disasters . . . such as . . . catastrophic events, including pandemics. This could impact a variety of our businesses, including our commercial and personal lines . . . . Catastrophes can be caused by various events, including . . . a global or other wide-impact pandemic . . . . The occurrence of claims from catastrophic events could result in substantial volatility in our results of operations or financial condition for any fiscal quarter or year . . . . [T]he occurrence of one or more catastrophic events could have an adverse effect on our results of operations and financial condition.<sup>17</sup>

### **THE VIGILANT POLICY**

31. Vigilant sold Another Planet a Customarq Series Entertainment Insurance Program, which includes a Property Insurance Section and a Liability Insurance Section (the “Policy”). A true and correct copy of the Policy is attached hereto as Exhibit A and incorporated herein by reference. The Policy was in effect from May 1, 2019, to May 1, 2020. Before selling the Policy to Another Planet, Vigilant engaged in, or had reasonable opportunities to engage in, an extensive underwriting investigation and became familiar and knowledgeable regarding the nature and scope of Another Planet’s business and the nature of the risks that it was insuring against.

32. The Property Insurance Section of the Policy is an “all risk” property insurance policy—that is, a policy that covers all risks of physical loss or damage except those plainly, clearly, conspicuously, and expressly excluded. Unlike “enumerated perils” property insurance

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<sup>17</sup> Chubb Limited, 2017 Annual Report, at 19, [https://s1.q4cdn.com/677769242/files/doc\\_financials/2018/AGM/Chubb\\_Limited\\_2017\\_Annual\\_Report.pdf](https://s1.q4cdn.com/677769242/files/doc_financials/2018/AGM/Chubb_Limited_2017_Annual_Report.pdf).

policies, which cover only certain causes of loss, “all risk” property insurance policies provide broad coverage for unprecedented and unanticipated risks of loss.

33. The Policy is comprised of a number of forms and endorsements that define the scope of coverage. Like most commercial property insurance policies, the Policy insures not only against physical loss or damage to covered property, but also for resulting economic and financial losses. This coverage is referred to in the Policy as “Business Income With Extra Expense” and “Extra Expense” coverage. *See* Ex. A, Property Insurance – Business Income With Extra Expense and Extra Expense.

34. The Policy states that, in the event of loss or damage, Another Planet must “[t]ake every reasonable step to protect the covered property from further loss or damage . . . .” *Id.*, Conditions and Definitions.

35. The Policy defines “**covered peril**” to mean “a peril covered by the Form(s) shown in the Property Insurance Schedule Of Forms . . . applicable to the lost or damaged property.” *Id.*

#### ***Business Income With Extra Expense Coverage***

36. The Policy’s Business Income With Extra Expense coverage is designed, understood, stated, and intended to cover Another Planet for economic losses, including losses from the interruption and/or reduction of its business, suffered as a result of “direct physical loss or damage” to covered property that is “caused by or result[s] from a **covered peril**.” Vigilant elected not to define or explain the phrase “direct physical loss or damage.”

37. Under this coverage, Vigilant is obligated to pay for Another Planet’s actual loss of Business Income sustained due to the “impairment” of Another Planet’s operations. *Id.*, Business Income With Extra Expense Coverage.

38. The “Extra Expense” portion of this coverage grant is designed, understood, stated, and intended to cover Another Planet for losses from “the actual or potential impairment” of its “**operations.**” *Id.*

39. Within the Business Income With Extra Expense coverage, the Policy provides an “Additional Coverage” for “Civil Authority,” which obligates Vigilant to pay Another Planet’s “**business income loss**” and “**extra expense**” “incur[red] due to the actual impairment of [its] **operations**, directly caused by the prohibition of access to: [its] premises; or a **dependent business premises**, by a civil authority.” *Id.* The “prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such **dependent business premises** by a **covered peril**, provided such property is within one mile . . . from such premises or **dependent business premises** . . . .” *Id.*

40. The Policy provides coverage for “Ingress and Egress.” The Policy obligates Vigilant to

pay for the actual **business income loss** [Another Planet] incur[s] due to the actual impairment of [its] **operations**; and **extra expense** [Another Planet] incur[s] due to the actual or potential impairment of [its] **operations**, when existing ingress to or egress from a premises . . . is prevented due to direct physical loss or damage by a **covered peril** to property at a location contiguous to such premises.

*Id.*

41. The Policy also provides an “Additional Coverage” for “Dependent Business Premises.” This coverage obligates Vigilant to pay Another Planet’s “**business income loss** . . . due to the actual impairment of [its] **operations**” and its “**extra expense** . . . due to the actual or potential impairment of [its] **operations.**” *Id.* The “actual or potential impairment of **operations**



must be caused by or result from direct physical loss or damage by a **covered peril to property** . . . at a **dependent business premises.**” *Id.*

42. The Policy defines “**dependent business premises**” as “premises operated by others on whom [Another Planet] depend[s] to: deliver materials or services to you or to others for your account (contributing premises); [and] accept your products or services (recipient premises) . . . .” *Id.*

#### *Extra Expense Coverage*

43. The Policy also includes “Extra Expense” coverage in a separate section from the “Business Income With Extra Expense” coverage. The “Extra Expense” section includes coverage for premises damage, coverage for loss caused by civil authority, and ingress/egress coverage.

44. The Extra Expense coverage obligates Vigilant to “pay for the actual **extra expense** [Another Planet] incur[s] due to the actual or potential impairment of [its] **operations**” that “must be caused by or result from direct physical loss or damage by a **covered peril to property** . . . .” *Id.*, Extra Expense Coverage.

45. The Policy’s “Additional Coverage” for “Civil Authority” obligates Vigilant to pay Another Planet’s “**extra expense**” “incur[red] due to the actual impairment of [its] **operations**, directly caused by the prohibition of access to: [its] premises; or a **dependent business premises**, by a civil authority.” *Id.* The “prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such **dependent business premises** by a **covered peril**, provided such property is within one mile . . . from such premises or **dependent business premises** . . . .” *Id.*

46. The Policy’s “Additional Coverage” for “Dependent Business Premises” obligates Vigilant to pay Another Planet’s “**extra expense** . . . due to the actual or potential impairment of

[its] **operations.**” *Id.* The “actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to property . . .** at a **dependent business premises.**” *Id.*

### ***Building and Personal Property Coverage***

47. The Premises Coverage section of the Policy obligates Vigilant to “pay for direct physical loss or damage to: **building;** or **personal property,** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit of Insurance for Building or Personal Property shown in the Declarations.” *Id.*, Building and Personal Property Coverage.

48. The Policy obligates Vigilant to “Pay the reasonable and necessary costs you incur to protect: **building; personal property;** or **research and development property;** at the premises shown in the Declarations from imminent direct physical loss or damage caused by or resulting from a peril not otherwise excluded . . . .” *Id.*

49. As noted above, the Policy has several different coverages. One of those is liability coverage. Like the property coverage, which insures “direct loss or damage to property,” the liability coverage insures against claims alleging “property damage,” including “physical injury to tangible property” and “loss of use of tangible property.” However, Vigilant included an exclusion in the liability coverage that it did not include in the property coverage. Specifically, Vigilant amended the liability coverage, but not the property coverage, by adding an exclusion for Biological Agents. *See* Ex. A, Exclusion End., Biological Agents. This exclusion purports to exclude liability coverage for “damages, loss, cost or expense arising out of the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of biological agents.” *Id.* “**Biological Agents**” is defined to include “**viruses or other pathogens (whether or not a microorganism).**” *Id.* Another Planet is informed and believes, and on that basis alleges, that Vigilant’s decision to include this exclusion in the

liability coverage was based on Vigilant's recognition that "damage to property" could include the alterations to property caused by a virus and that, therefore, if it did not want to insure claims alleging such damage, it needed to include a virus-specific exclusion.

50. Despite its awareness of the massive losses that its insureds, including Another Planet, could face from a virus-related pandemic, Vigilant decided to sell the Policy's property coverage without incorporating the Biological Agents exclusion, the 2006 standard-form "**Exclusion Of Loss Due To Virus Or Bacteria**," or a communicable disease or pandemic exclusion. Because losses caused by or resulting from viruses, communicable diseases, and pandemics are not expressly excluded under the Policy, they are, as a matter of law and pursuant to decades of insurance industry custom and practice, Covered Perils.

**THE COVID-19 PANDEMIC AND**  
**ENSUING CIVIL AUTHORITY ORDERS**

51. COVID-19 is a disease caused by a recently discovered virus known as SARS-CoV-2. The first reported cases of COVID-19 in humans were diagnosed in or around December 2019 in Wuhan, the capital city of the Hubei Province in China. Since then, SARS-CoV-2 and COVID-19 have spread throughout the world, prompting the World Health Organization to declare a global pandemic. As the World Health Organization has stated:

COVID-19 is caused by the SARS-CoV-2 virus, which spreads between people, mainly when an infected person is in close contact with another person.

The virus can spread from an infected person's mouth or nose in small liquid particles when they cough, sneeze, speak, sing or breathe heavily. These liquid particles are different sizes, ranging from larger 'respiratory droplets' to smaller 'aerosols'.

Other people can catch COVID-19 when the virus gets into their mouth, nose or eyes, which is more likely to happen when people are in direct or close contact (less than 1 metre apart) with an infected person.

Current evidence suggests that the main way the virus spreads is by respiratory droplets among people who are in close contact with each other.

Aerosol transmission can occur in specific settings, particularly in indoor, crowded and inadequately ventilated spaces, where infected person(s) spend long periods of time with others, such as restaurants, choir practices, fitness classes, nightclubs, offices and/or places of worship. More studies are underway to better understand the conditions in which aerosol transmission is occurring outside of medical facilities where specific medical procedures, called aerosol generating procedures, are conducted.

The virus can also spread after infected people sneeze, cough on, or touch surfaces, or objects, such as tables, doorknobs and handrails. Other people may become infected by touching these contaminated surfaces, then touching their eyes, noses or mouths without having cleaned their hands first.<sup>18</sup>

52. Though microscopic, SARS-CoV-2—like all viruses—is a physical substance. SARS-CoV-2 is highly contagious and mobile. Even with reasonable efforts to slow the spread, it spreads from person to person primarily through fine aerosolized droplets containing the virus.

53. Aerosolized droplets containing SARS-CoV-2 exhaled by normal breathing can travel significant distances and stay suspended in air and infective for at least 16 hours until

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<sup>18</sup> <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted>.

gravity ultimately forces them to the nearest surface.<sup>19</sup> Studies suggest that SARS-CoV-2 can remain active on inert surfaces for at least 28 days.<sup>20</sup> These droplets thus physically alter the air and airspace in which they are present and the surfaces of both the real and personal property to which they attach, constituting physical loss or damage. By doing so, they can render both real and personal property unusable for its intended purpose and function, constituting physical loss or damage. Their presence, particularly because SARS-CoV-2 can be present in the air and on surfaces anytime any infected person breathes, requires steps to be taken to minimize their spread, such as physical distancing, regular disinfection, air filtration, and further physical alterations, such as installation of physical barriers restricting the movement of the aerosolized droplets.

54. Scientists have likened the ubiquitous aerosolized droplets of the virus to smoke, present in the air long after the source of its dissemination has gone.<sup>21</sup> Thus, absent proper safety precautions and protocols, entering a building or other location where SARS-CoV-2 may be physically present in the air can pose an imminent and severe risk to human health. Of course, closing venues and barring events such as concerts that would attract large groups of people also can be effective both to protect people and to ensure that SARS-CoV-2 is not present in a venue's air or airspace or on surfaces and personal property.

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<sup>19</sup> See Leslie Tate, *Virus Survives In Air For Hours*, Tulanian (Fall 2020), <https://tulanian.tulane.edu/fall-2020/virus-survives-in-air-for-hours>.

<sup>20</sup> See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common surfaces, research says* (Oct. 12, 2020), <https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html>; Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles, & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 *Virology J.*, Art. No. 145 (2020), <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

<sup>21</sup> See "Airborne Transmission of SARS-CoV-2," *Science* (Oct. 16, 2020), available at <https://science.sciencemag.org/content/370/6514/303.2>.

55. Since January 1, 2020, and as of the date of this First Amended Complaint, there have been more than 117,573,000 confirmed cases of COVID-19 throughout the world, more than 2,610,900 of which have resulted in deaths.<sup>22</sup> There have been more than 28,879,900 confirmed cases of COVID-19 in the United States, more than 523,900 of which have resulted in deaths.<sup>23</sup> Moreover, due in part to the initial absence of available tests, it is believed that the true number of coronavirus cases is significantly higher than the reported numbers might suggest.<sup>24</sup>

56. In California, there have been more than 3,600,000 confirmed cases in the state, more than 54,800 of which have resulted in deaths.<sup>25</sup> Moreover, due in part to the initial absence of available tests, it is believed that the true number of coronavirus cases is significantly higher than the reported numbers might suggest.<sup>26</sup> On March 12, 2020, the positive test rate in California was 3.3% after 1,493 people were tested for COVID-19.<sup>27</sup> The number of positive COVID-19 cases in California had quadrupled by April 1, 2020.<sup>28</sup> By late January 2021, California surpassed three million positive cases of COVID-19, meaning, at least one out of every 19 California residents has tested positive for COVID-19. *Id.*

57. In Nevada, there have been more than 295,179 confirmed cases of COVID-19, more than 5,005 of which have resulted in deaths.<sup>29</sup> Moreover, due in part to the initial absence

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<sup>22</sup> <https://covid19.who.int>.

<sup>23</sup> <https://covid19.who.int/region/amro/country/us>.

<sup>24</sup> Fiona P. Havers, Carrie Reed, Travis Lim, et. al, *Seroprevalence of Antibodies to SARS-CoV-2 in 10 Sites in the United States, March 23-May 12, 2020*, JAMA Internal Medicine (July 21, 2020), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2768834>.

<sup>25</sup> <https://www.nytimes.com/interactive/2020/us/california-coronavirus-cases.html>.

<sup>26</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/about-us-cases-deaths.html#:~:text=CDC%20tracks%20COVID%2D19,territories%20report%20their%20cases>.

<sup>27</sup> <https://www.nytimes.com/interactive/2020/us/california-coronavirus-cases.html>.

<sup>28</sup> <https://www.latimes.com/projects/connecting-california-covid-cases-la-surge/>.

<sup>29</sup> <https://www.nytimes.com/interactive/2020/us/nevada-coronavirus-cases.html>.

of available tests, it is believed that the true number of coronavirus cases is significantly higher than the reported numbers might suggest.<sup>30</sup> On March 12, 2020, the positive test rate in Nevada was 7.1% after 146 people were tested for COVID-19.<sup>31</sup> However, on May 1, 2020, the Nevada Department of Health and Human Services reported 229 new cases of COVID-19, “the biggest one-day increase in more than three weeks. The new cases raised the total in the state to 5,227[.]”<sup>32</sup> These statistics were derived from “tests on 43,595 people, representing an infection rate of 11.99 percent of those tested.” *Id.* “The infection rate was only slightly higher than the 11.90 percent infection rate reported on [April 30, 2020], suggesting that the increase of tests to 2,082 from the 1,235 reported a day earlier was largely responsible.” *Id.*

58. Due to the prevalence of SARS-CoV-2 and the lack of availability of widespread testing, in March 2020, civil authorities throughout the United States began issuing “stay home” and “shelter in place” orders, travel restrictions, quarantines, and other orders, including orders requiring the suspension of non-essential business operations (collectively, “Closure Orders”). Only by doing so could the spread of SARS-CoV-2 in the first months of the pandemic be abated—after all, COVID-19 testing was not readily available and was imprecise, and many carriers of SARS-CoV-2 had no symptoms. Thus, closures were deemed necessary—by health agencies and most businesses, including Vigilant, in order to curtail the spread of SARS-CoV-2. The Closure Orders prohibited or limited the use and operations of Another Planet’s insured locations. This meant that Another Planet (and many other businesses) could not use their insured locations and properties for their intended purpose.

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<sup>30</sup> <https://www.nbcnews.com/health/health-news/how-many-people-have-had-coronavirus-no-symptoms-n1187681>.

<sup>31</sup> <https://www.nytimes.com/interactive/2020/us/nevada-coronavirus-cases.html>;  
<https://covidactnow.org/us/nevada-nv/?s=1637578>.

<sup>32</sup> <https://www.reviewjournal.com/news/politics-and-government/nevada/more-tests-may-be-behind-jump-in-clark-county-nevada-covid-19-cases-2018753/>.

59. Another Planet was, and continues to be, impacted by a number of Closure Orders, including the following.

60. In California, Governor Gavin Newsom issued Executive Order N-25-20, ordering that: “All residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.” Executive Order N-25-20 took effect on March 12, 2020.

61. On March 19, 2020, the State of California issued an Order of the State Public Health Officer, which required all individuals living in the state to stay at home or at their place of residence “except as needed to maintain operations of the federal critical infrastructure sectors.” On that same date, California Governor Newsom issued Executive Order N-33-20, expressly requiring California residents to follow the March 19, 2020, Order of the State Public Health Officer, and incorporating by reference California Government Code 8665, which provides that “[a]ny person . . . who refuses or willfully neglects to obey any lawful order . . . issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to exceed six months or by both such fine and imprisonment.”

62. Officials of Alameda and San Francisco Counties subsequently issued similar orders in response to the rapid spread of SARS-CoV-2 and the resulting damage to individuals and property that it causes.

63. Another Planet’s insured locations in Nevada were, and continue to be, impacted by a number of Closure Orders, including the following.



64. Governor Steve Sisolak issued Declaration of Emergency Directive 003, ordering that all non-essential businesses close.<sup>33</sup> After issuing the Directive, Governor Sisolak explained that these drastic shut down measures were necessary in light of “the ability of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time, [which] renders some property unusable” and contributes to “damage ... and property loss.”<sup>34</sup> In conjunction with that order, the Nevada Health Response issued Covid-19 Risk Mitigation Initiative further ordering that “all Nevadans stay home.” These orders took effect on March 17, 2020.

65. Chubb has publicly commented on the pandemic and made many representations about how it would respond to claims by its insureds under Chubb policies. For example, Chubb proclaims as follows on its website:

Our hearts go out to those affected by the COVID-19 pandemic. We have been – and stand ready to continue – supporting our clients, distribution partners and communities.<sup>35</sup>

66. Chubb also states:

**We're here for you —**

**Financially** – Chubb has the financial strength and resources to support our policies and the financial capacity to pay covered claims even in these uncertain times.

**Operationally** – All of our claims networks and supporting systems are fully operational and all Chubb employees can access these systems from home.

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<sup>33</sup> [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-20\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_003\\_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-19_Declaration_of_Emergency_Directive_003_(Attachments)/).

<sup>34</sup> [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-04-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_016\\_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_(Attachments)/).

<sup>35</sup> <https://www.chubb.com/microsites/covid19-resource-center/index.aspx>.

**Resourcefully** – We know we will face unanticipated challenges, but Chubb is committed to providing you with the high level of claims service and responsiveness that you expect, and we will do what is feasible to ensure that continues, all in compliance with the fast-changing laws, rules and regulations. We plan for the unexpected and remain agile and adaptable; including using alternative means of adjusting claims as needed and feasible.

**While we are in a time of unprecedented uncertainty, Chubb is well prepared and will be there for you, as always.**<sup>36</sup>

67. Chubb further states:

**Doing our part**

Chubb takes pride in our continuing commitment to our clients.<sup>37</sup>

68. Chubb echoed these sentiments in a news release in April 2020, stating:

“We are committed to supporting people, business and communities most impacted by this global crisis,” said Evan G. Greenberg, Chairman and Chief Executive Officer.<sup>38</sup>

69. Even as the SARS-CoV-2 transmission rate has abated, vaccines have begun to be provided and testing has become more widely available, civil authorities have continued to prohibit or limit the use and operations of concert venues.

70. The Closure Orders continue to limit, restrict, and prohibit partial or total access to Another Planet’s insured properties as a result of direct physical damage of the type insured by the Policy.

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<sup>36</sup> <https://www.chubb.com/microsites/covid19-resource-center/claims.aspx>.

<sup>37</sup> <https://www.chubb.com/microsites/covid19-resource-center/index.aspx>.

<sup>38</sup> <https://news.na.chubb.com/2020-04-05-Chubb-Commits-10-Million-to-Pandemic-Relief-Efforts-Globally-Company-Pledges-No-Covid-19-Layoffs>.

71. The Closure Orders required Another Planet to completely suspend their business operations and prohibit access to their venues.

72. The Closure Orders also impaired access to Another Planet's insured properties. Indeed, the Closure Orders restricted or prohibited many patrons, would-be patrons, and other third parties from accessing or visiting Another Planet's insured properties.

73. Because SARS-CoV-2 causes a distinct, demonstrable, physical alteration to property, it constitutes "direct physical loss or damage" to property as that phrase is used in the Policy.

74. Additionally, the presence or potential presence of SARS-CoV-2 at, on, and in insured property prevents or impairs the use of the property, thus constituting "direct physical loss" to property as that phrase is used in the Policy, even if it did not constitute "damage" to property as that term is used in the Policy.

75. Indeed, by mid-March 2020, SARS-CoV-2 has rapidly spread through the United States, with only a few isolated areas (none in Northern California or Nevada) having escaped its wrath. This spread and the presence of SARS-CoV-2 has caused "direct loss or damage," as that phrase is used in the Policy, including by physical alterations to air, airspace, and other property.

76. Another Planet is therefore informed and believes, and on that basis alleges, that SARS-CoV-2 has been present at and in its properties, or would have been present but for its efforts to reduce, prevent, or otherwise mitigate its presence on its properties.

77. Given the widespread nature of SARS-CoV-2 and COVID-19, its spread through community transfer, and the fact that concerts are one of the most dangerous sources of SARS-CoV-2, SARS-CoV-2 has been present at Another Planet's insured properties and/or would have been present had Another Planet not taken steps to reduce, prevent, or otherwise mitigate its

presence on its insured properties and had the Closure Orders not been issued.<sup>39</sup> In fact, attending a concert is considered to be one of the highest risk activities when it comes to the transmission of SARS-CoV-2 and COVID-19.<sup>40</sup> Scientists widely recommended that “[c]losures should include high-risk indoor settings where people congregate, like bars, restaurants, entertainment venues, gyms, and indoor religious spaces, and possibly indoor offices where transmission risk cannot be lowered through mitigation efforts.”<sup>41</sup> Therefore, the only way to prevent the presence of SARS-CoV-2 was with closures because of the likelihood (almost a near certainty) that if people attended a concert, SARS-CoV-2 would be physically present. That presence constitutes “direct loss or damage to property” and rendered the insured properties unfit for their intended purpose. To borrow the words of the *Hughes* court, no “rational persons would be content” to be in a venue likely to cause them to contract COVID-19.

78. Another Planet is informed and believes, and on that basis alleges, that SARS-CoV-2 has been present at numerous dependent business premises in the vicinity of Another Planet’s insured properties.

79. As SARS-CoV-2 and COVID-19 spread around the world, Another Planet has suffered, and continues to suffer, loss and damage covered by the Policy in an amount to be established at trial.

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<sup>39</sup> <https://www.cnn.com/2020/02/28/health/coronavirus-uncounted-cases-community-spread/index.html> (“[T]he virus is out there in the community, and that means pretty much that everybody's at risk,” said Dr. Dean Blumberg, an infection disease specialist at UC Davis Medical Center, where one of the California patients is being treated, told CNN affiliate KCRA. “We don't know who might be carrying it. We don't know who we can get it from”).

<sup>40</sup> See, e.g., <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>

<sup>41</sup> [https://www.centerforhealthsecurity.org/our-work/pubs\\_archive/pubs-pdfs/2020/200729-resetting-our-response.pdf](https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2020/200729-resetting-our-response.pdf)

**VIGILANT’S BREACHES AND WRONGFUL CONDUCT**

80. On or about May 5, 2020, Another Planet timely notified Vigilant of its losses.

81. In its May 5, 2020 response, without any contact with Another Planet in the month it took to respond, Vigilant ignored the Policy’s grant of coverage for “direct physical loss or damage” and the Policy’s coverage for such loss or damage and the economic losses resulting from covered “direct physical loss or damage.”

82. Instead, on June 5, 2020, Vigilant denied its coverage obligations. A true and correct copy of the June 5, 2020 is attached here as Exhibit B and incorporated by reference.

83. Vigilant’s June 5, 2020, letter failed to address coverage for mitigation costs.

84. Contrary to Vigilant’s position, coverage is triggered by physical loss in addition to damage. Another Planet’s losses, as described above, include both physical loss and damage. In addition, Another Planet’s losses have a number of causes and trigger a number of covered perils that are not excluded in the Policy.

85. As a result of the actual and/or potential presence of SARS-CoV-2 in and on its properties and the suspension of its business operations, Another Planet sustained “physical loss or damage” as that term is used in the Policy.

86. The Closure Orders were issued due to the presence of SARS-CoV-2 and the desire to avoid the spread of SARS-CoV-2 and COVID-19. The Closure Orders further prohibited Another Planet’s access to its insured premises. Because SARS-CoV-2 can adhere to surfaces of property for at least 28 days and can linger in the air in buildings for hours, its presence on or around property amounts to “direct physical loss or damage to property” as that phrase is used in the Policy. In fact, given the manner in which SARS-CoV-2 lingers in the air and on surfaces, its manner of transmission, and the desire to “flatten the curve,” Another Planet’s premises and the premises upon which it depends were not capable of fulfilling their

essential functions. Accordingly, the Closure Orders substantially impaired the use and function of premises. They also amount to the “prohibition of access by a civil authority” that is “the direct result of direct physical loss or damage to property away from such premises” as required to trigger Civil Authority coverage under the Policy. Another Planet’s compliance with the Closure Orders also were mitigation efforts, entitling Another Planet to recover from Vigilant its losses and expenses incurred in connection with these mitigation efforts.

87. Another Planet is informed and believes, and on that basis alleges, that SARS-CoV-2 particles attached to and damaged, or but for the Closure Orders would have attached to and damaged, Another Planet’s insured premises, as well as the surrounding vicinity. The threat presented by the actual or potential presence of SARS-CoV-2 rendered Another Planet’s premises unsafe and unusable, constituting “direct physical loss or property damage.” As a result, all events scheduled for Another Planet’s venues were cancelled, including scheduled concerts by Bob Dylan, John Legend, Sturgill Simpson, Wilco, Phish, The Black Keys, Nelly, Kraftwerk and Kenny Chesney, among many others. At this time, it appears that Another Planet will not be able to access or otherwise operate its venues as it ordinarily would until later in 2021, if then.

88. As a result of the suspension and impairment of operations at the insured locations, Another Planet has incurred Extra Expense, as defined and used in the Policy. These losses were caused by the presence of SARS-CoV-2 on, in, or around its insured properties, the civil authority orders, or both.

89. Another Planet also sustained loss and extra expense caused by direct physical loss or damage to a “dependent business premises,” as that term is used in the Policy.

90. By suspending business operations, Another Planet also reduced the likelihood of further losses, including the ability to reopen at any point in the future. The closures were

therefore necessary to prevent the spread of SARS-CoV-2. Had Another Planet not done so, the potential for a complete loss was imminent. The viability of the intended use of the premises entirely depends on the ability of Another Planet's customers to know and believe that attending an event there is safe. Had Another Planet not acted in accordance with the Closure Orders, that knowledge would have been seriously called into question. Therefore, by closing in response to the presence of SARS-CoV-2 on the premises and the Closure orders, Another Planet preserved the functional viability of the insured premises. The costs and losses associated with the closures therefore constitute reasonable costs incurred to "protect the covered property from further loss or damage." Although never addressed by Vigilant, Vigilant is obligated to pay these amounts because Another Planet's actions, in addition to being required under the common law doctrine of mitigation, are covered because they protected the insured properties from further damage.

91. The suspension of business at each insured venue as a result of the property damage caused by the presence of SARS-CoV-2 and the related Closure Orders resulted in significant losses to Another Planet that will exceed the Policy's \$23,908,822 limit, and which continue to rise.

92. Although Another Planet has sustained Business Income and Extra Expense losses falling squarely with the Policy's coverage, Vigilant failed and refused to acknowledge coverage for Another Planet's losses and refused to pay any portion of them, including the amounts Another Planet has incurred, and is incurring, to mitigate otherwise insured losses.

93. Further, Vigilant denied Another Planet's claim, incorrectly asserting that the losses were not caused by direct physical loss or damage or due to the prohibition of access by a civil authority or an inherently dangerous condition. Vigilant took this position even though all of the localities and states where the insured properties are located issued orders in response to the presence of SARS-CoV-2; even though the orders declared that SARS-CoV-2 was causing

property damage; and even though the presence of SARS-CoV-2 on or around real and personal property and in the airspace amounts to “physical loss or damage” to property under the governing rules of insurance policy interpretation.

94. While Vigilant waited for months to wrongfully deny Another Planet’s claim, Another Planet is informed and believes, and on that basis alleges, that Vigilant had decided, in March 2020, in conjunction with a blanket position taken by all Chubb insurers, that it would deny coverage under property policies for business income losses associated with SARS-CoV-2, COVID-19, and the Closure Orders. In fact, the Chubb website contains a “Final – March 26, 2020” notice stating in part:

Business interruption insurance generally covers losses to your business’ income that result from disruption of your business. The disruption must be caused by physical loss or damage to your property by a “covered peril.” The presence of an infectious agent or communicable disease at a location where there is covered property **generally will not mean that property has suffered “physical loss or damage” under your policy.** Generally, “physical loss or damage” means that the physical structure or physical characteristics of the property have been altered by a “covered peril.” Loss of use, or diminished value of property that has not been physically altered will not be considered “physical loss or damage . . . .”<sup>42</sup>

95. Vigilant also took the same position through its trade association, the American Property Casualty Insurance Association in a letter to the United States House of Representatives

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<sup>42</sup> <https://chubb-b70-qa.adobecqms.net/content/dam/chubb-sites/chubb-com/microsites/covid19-resource-center/notices-policy-changes/documents/pdf/covid-commercial-property-policyholder-notice-4-1-2020.pdf>



Committee on Business. The Association wrote on March 18, 2020, stating: “Business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19.” *See* March 18, 2020, Letter, American Property Casualty Insurance Association, The Council of Insurance Agents & Brokers, Big Independent Insurance Agents & Brokers of America, and National Association of Mutual Insurance Companies to House Committee on Small Business. A true and correct copy of this letter is attached hereto as Exhibit C and incorporated herein by reference. Thus, it is clear that before Vigilant did any meaningful investigation into Another Planet’s claim (if it did any investigation at all), it already had decided that it would not pay Another Planet for its losses under the Policy.

96. Vigilant was required under California law and insurance industry custom and practice to conduct a thorough investigation of facts that might support Another Planet’s claim before denying coverage. Another Planet is informed and believes, and on that basis alleges, that Vigilant did not conduct the required investigation before denying Another Planet’s claim. Another Planet is informed and believe, and on that basis alleges, that even though SARS-CoV-2 caused physical alterations to the air and airspace in which it is present and to the surfaces to which it attaches, Vigilant contends that these physical alterations somehow do not constitute “direct physical loss or damage” as that phrase is used in the in the Policy because the physical alterations are not visible to the naked human eye.

97. Another Planet is informed and believes, and on that basis alleges, that Vigilant denied coverage, and continues to deny coverage, even though it has known for decades that its Policy could be held to cover losses from the presence of a virus inside buildings, or because a building could not be used for its intended purpose or function.

98. At a minimum, in light of many court decisions in the decades before Vigilant sold its policies to Another Planet, Vigilant knew that its policy language reasonably could be

interpreted to cover losses associated with pandemics and viruses. Another Planet is informed and believe and, on that basis alleges, that rather than define “direct physical loss or damage,” Vigilant elected to leave the language as is, knowing that insureds could, and likely would, understand it to mean that virus- and pandemic-associated losses would be insured.

99. Vigilant further compounded the misleading nature of the Policy by omitting the 2006 “**Exclusion Of Loss Due To Virus Or Bacteria**” and omitted from the property coverage the Biological Agents exclusion it added to the liability coverage. By doing so, Vigilant elected, contrary to decades of California law, not to include a conspicuous, plain, and clear exclusion that would have put insureds like Another Planet on possible notice that losses like those associated with the current pandemic might not be insured. Another Planet reasonably understood and expected that as an all-risk policy, the Policy would cover all losses not conspicuously, plainly, and clearly excluded. Vigilant knew, or should have known, that it should not deny coverage when it decided not to include readily available exclusions and that it should not ignore decades of court decisions finding that the presence of hazardous substances in or on property constitutes damage to property or “direct loss or damage to property.”

100. To the extent not waived or otherwise excused, Another Planet complied with provisions contained in the Policy. Therefore, Another Planet is entitled to all benefits of insurance provided by the Policy.

### **FIRST CAUSE OF ACTION**

#### *For Breach of Contract*

101. Another Planet realleges and incorporates by reference paragraphs 1 through 100 above.

102. Vigilant breached its duties under the Policy by adopting the position that Another Planet sustained no “physical loss or damage;” by refusing to acknowledge that the presence of

SARS-COV-2 constitutes “direct physical loss or damage” to property as that phrase is used in the Policy; and by refusing to acknowledge that the impairment of the use or function of property caused by the actual or potential presence of SARS-CoV-2, the Closure Orders, and the need to mitigate constitutes “direct physical loss or damage” to property as that phrase is used in the Policy; by denying coverage for Another Planet’s losses; and by otherwise acting as alleged above.

103. As a direct and proximate result of Vigilant’s breaches, Another Planet has sustained, and continues to sustain, damages, plus interest, for which Vigilant is liable. The amount of Another Planet’s damages is not yet precisely known but will be established according to proof. Another Planet will seek leave to amend this Complaint to more precisely allege the amount of its damages when the amount is more precisely known.

### **SECOND CAUSE OF ACTION**

#### ***For Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing***

104. Another Planet realleges and incorporates by reference paragraphs 1 through 100 and 102 above.

105. Implied in the Policy was a covenant that Vigilant would act in good faith and deal fairly with Another Planet, that Vigilant would do nothing to interfere with right of Another Planet to receive benefits due under the Policy, and that Vigilant would give at least the same level of consideration to the interests of Another Planet as it gave to its own interests.

106. Vigilant also had a duty under the Policy, the law, and insurance industry custom, practice, and standards to conduct a prompt and thorough investigation, including as to all bases that might support Another Planet’s claims for insurance coverage, before reserving rights to deny or denying, coverage.

107. Instead of complying with its duties, Vigilant acted in bad faith by, among other things:
- a. failing to conduct a full and thorough investigation of Another Planet's claim for insurance coverage and asserting grounds for denying coverage without conducting such investigation;
  - b. wrongfully and unreasonably asserting grounds for denying coverage that Vigilant knew, or should have known, are not supported by, and in fact are contrary to, the terms of the Policy, the law, insurance industry custom and practice, and the facts;
  - c. failing to fully inquire into the bases that might support coverage for Another Planet's claim;
  - d. failing to conduct an adequate investigation of the losses suffered by Another Planet, and asserting grounds for disputing coverage based on its inadequate investigation;
  - e. creating and implementing a course of action to automatically deny coverage for all business interruption claims relating to SARS-CoV-2, Covid-19, and subsequent events;
  - f. unreasonably failing and refusing to honor its promises and representations in the Policy it issued to Another Planet;
  - g. giving greater consideration to its own interests than it gave to the interests of Another Planet;
  - h. compelling Another Planet to file this suit in order to receive the contractual benefits that it bought and for which it paid; and
  - i. otherwise acting as alleged above.

108. In breach of the implied covenant of good faith and fair dealing, Vigilant did the things and committed the acts alleged above for the purpose of consciously withholding from Another Planet the rights and benefits to which it is and are entitled under the Policy.

109. Vigilant's actions are inconsistent with Another Planet's reasonable expectations, are contrary to established industry custom and practice, are contrary to legal requirements, are contrary to the express terms of the Policy, and constitute bad faith.

110. As a direct and proximate result of Vigilant's breaches, Another Planet has sustained, and continues to sustain, damages in an amount in excess of this Court's jurisdictional limits, plus interest, for which Vigilant is liable. Also, pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), Another Planet is entitled to recover all attorneys' fees it reasonably incurred, and continues to incur, in the efforts to obtain the benefits due under the Policy that Vigilant has withheld, and is withholding, in bad faith. The amount of Another Planet's damages is not yet precisely known but will be established according to proof. Another Planet will seek leave to amend this Complaint to more precisely allege the amount of its damages when the amount is more precisely known.

111. Another Planet is informed and believes, and on that basis alleges, that Vigilant, acting through one or more of its officers, directors, or other corporate employees with substantial independent and discretionary authority over significant aspects of its business, performed, authorized, or ratified the bad faith conduct alleged above.

112. Vigilant's conduct is despicable and has been done with a conscious disregard of the rights of Another Planet, constituting oppression, fraud, or malice. Vigilant engaged in a series of acts designed to deny Another Planet the benefits due under the Policy. Specifically, Vigilant, by acting as alleged above, in light of information, facts, and relevant law to the contrary, consciously disregarded Another Planet's respective rights and forced Another Planet to incur substantial financial losses, thereby inflicting substantial financial damage on Another Planet. Vigilant ignored Another Planet's interests and concerns with the requisite intent to injure within the meaning of California Civil Code section 3294. Therefore, Another Planet is

entitled to recover punitive damages from Vigilant in an amount sufficient to punish and make an example of Vigilant and to deter similar conduct in the future.

### **THIRD CAUSE OF ACTION**

#### ***Fraud in the Inducement***

113. Another Planet realleges and incorporates by reference herein each allegation contained in 1 through 100, 102, and 105 through 109 above.

114. Another Planet is informed and believes, and on that basis alleges, that when Vigilant sold the Policy to Another Planet, it knew that Another Planet could suffer substantial business income and other economic losses from a virus or pandemic and that Another Planet sought and expected the broadest coverage possible. Vigilant's knowledge is evidenced by the statements made regarding the risk of pandemics in Chubb Limited's 2017 Annual Report, which was signed and authorized by Philip V. Bancroft, Executive Vice President and Chief Financial Officer (Principal Financial Officer). Chubb Limited's 2017 Annual Report was also signed by Evan G. Greenberg (Chairman, President, Chief Executive Officer, and Director) and Paul B. Medini (Chief Accounting Officer).

115. In negotiating and selling the Policy, Vigilant expressly and impliedly represented to Another Planet that the Policy would cover all forms of property loss and damage unless expressly excluded, including by issuing an April 29, 2019, binder that promised broad coverage without any restrictions or exclusions for virus or pandemic losses, and selling the Policy with the same terms. Another Planet is informed and believes, and on that basis alleges, that the Policy was signed by or on behalf of Paul J. Krump (President), as well as a secretary and an authorized individual on behalf of Vigilant, on or about May 14, 2019.

116. Another Planet is informed and believes, and on that basis alleges, that if Vigilant's position that it has no obligation to pay for property damage or loss caused by a virus

or pandemic is true, then Vigilant misrepresented the insurance it planned and promised to provide to Another Planet and the true nature and the characteristics of the Policy.

117. At no time during the discussions leading to Another Planet's purchase of the Policy did any representative of Vigilant ever disclose that despite these clear representations, Vigilant believed and later would contend that it would not cover property loss or damage caused by a virus or pandemic, which was not excluded from coverage.

118. Another Planet is informed and believes, and on that basis alleges, that at the time that Vigilant made these promises and representations, Vigilant did so intentionally knowing that they were false. Vigilant intended Another Planet to rely upon them in agreeing to purchase the Policy. Vigilant induced Another Planet to purchase the Policy based on Vigilant's representation that the Policy was, in fact, an "all risk" policy that would cover all losses not expressly excluded, including losses caused by viruses and pandemics.

119. At the time Vigilant made these representations and promises, Another Planet was ignorant of Vigilant's secret plan and intention not to perform and the falsity of the representations. Another Planet could not, in the exercise of reasonable diligence, have discovered Vigilant's secret plan and intention or the falsity of Vigilant's representations.

120. In reliance on Vigilant's representations and promises, Another Planet purchased the Policy and did not purchase alternative coverage that was available in the marketplace at that time that would have provided the coverage that Vigilant promised to provide. Had Vigilant not misrepresented the coverage it was selling, Another Planet would not have purchased the Policy and would have purchased insurance elsewhere or would have purchased the Policy with different premiums, terms, and conditions. Another Planet justifiably relied on Vigilant's representations based on, among other things, Vigilant's superior knowledge and expertise about insurance, the express representations in the Policy, Vigilant's representations that the Policy

was an “all risk” Policy, and Chubb’s reputation and public statements about how it treats its insureds.

121. Vigilant failed to abide by its representations and promises and, contrary to those representations and promises, refused to provide the coverage it promised to provide.

122. As a direct and proximate result of Vigilant’s acts, Another Planet has sustained, and continues to sustain, damages in an amount in excess of this Court’s jurisdictional limits, plus interest, for which Vigilant is liable, including the premiums it paid to Vigilant. The amount of Another Planet’s damages is not yet precisely known but will be established according to proof. Another Planet will seek leave to amend this Complaint to more precisely allege the amount of its damages when the amount is more precisely known.

123. Vigilant’s conduct constitutes oppression, fraud, and/or malice. Vigilant engaged in a series of acts designed to deny the benefits due under the Policy that Vigilant promised and represented, and to conceal and/or mispresent material facts.

124. Another Planet is informed and believes, and on that basis alleges, that Vigilant—acting through one or more of its officers, directors, or other corporate employees with substantial independent and discretionary authority over significant aspects of Vigilant’s business—performed, authorized, and/or ratified the fraudulent conduct alleged above.

125. Vigilant’s conduct is despicable and has been done with a conscious disregard of the rights of Another Planet, constituting oppression, fraud, or malice. Vigilant engaged in a series of acts designed to deny Another Planet the benefits due under the Policy. Specifically, Vigilant, by acting as alleged above, consciously disregarded Another Planet’s respective rights and forced Another Planet to incur substantial financial losses, thereby inflicting substantial financial damage on Another Planet. Vigilant ignored Another Planet’s interests and concerns with the requisite intent to injure within the meaning of California Civil Code section 3294.



Therefore, Another Planet is entitled to recover punitive damages from Vigilant in an amount sufficient to punish and make an example of Vigilant and to deter similar conduct in the future.

#### **FOURTH CAUSE OF ACTION**

##### ***Fraud - Promise Made without Intent to Perform***

126. Another Planet realleges and incorporates by reference herein each allegation contained in 1 through 100, 102, 105 through 109, and 114 through 121 above.

127. In selling the Policy, Vigilant expressly and impliedly represented to Another Planet that the Policy would be applied as written and would cover all forms of physical loss or damage unless the cause of the loss was excluded. At no time during the discussions leading to Another Planet's purchase of the Policy did any representative of Vigilant ever disclose that despite the representations in the Policy, Vigilant believed and would contend that it had no obligation to cover losses caused by a virus or pandemic.

128. Another Planet is informed and believes, and on that basis alleges, that at the time that Vigilant made its promises and representations, the promises and representations were false.

129. Another Planet is informed and believes, and on that basis alleges, that at the time that Vigilant made these promises and representations, Vigilant did not intend to honor its representations or perform these promises and intended not to cover losses caused by a virus or pandemic.

130. As a direct and proximate result of Vigilant's acts, Another Planet has sustained, and continues to sustain, damages in an amount in excess of this Court's jurisdictional limits, plus interest, for which Vigilant is liable, including the premiums it paid to Vigilant. The amount of Another Planet's damages is not yet precisely known but will be established according to proof. Another Planet will seek leave to amend this Complaint to more precisely allege the amount of its damages when the amount is more precisely known.

131. Vigilant's conduct constitutes oppression, fraud, and/or malice. Vigilant engaged in a series of acts designed to deny the benefits due under the Policy that Vigilant promised and represented, and to conceal and/or mispresent material facts.

132. Another Planet is informed and believes, and on that basis alleges, that Vigilant—acting through one or more of its officers, directors, or other corporate employees with substantial independent and discretionary authority over significant aspects of Vigilant's business—performed, authorized, and/or ratified the fraudulent conduct alleged above.

133. Vigilant's conduct is despicable and has been done with a conscious disregard of the rights of Another Planet, constituting oppression, fraud, or malice. Vigilant engaged in a series of acts designed to deny Another Planet the benefits due under the Policy. Specifically, Vigilant, by acting as alleged above, consciously disregarded Another Planet's respective rights and forced Another Planet to incur substantial financial losses, thereby inflicting substantial financial damage on Another Planet. Vigilant ignored Another Planet's interests and concerns with the requisite intent to injure within the meaning of California Civil Code section 3294. Therefore, Another Planet is entitled to recover punitive damages from Vigilant in an amount sufficient to punish and make an example of Vigilant and to deter similar conduct in the future.

### **FIFTH CAUSE OF ACTION**

#### ***Fraud by Concealment***

134. Another Planet realleges and incorporates by reference paragraphs 1 through 1 through 100, 102, 105 through 109, 114 through 121, and 127 through 129 above.

135. Another Planet is informed and believes, and on that basis alleges, that if Vigilant's statements made since the outbreak of the pandemic that its policies do not cover losses from a virus or pandemic are true, Vigilant planned and intended, before selling the Policy, not to cover such losses and concealed its plans and intent from Another Planet.

136. A limitation on coverage, such as one relating to viruses and pandemics, is material to the Policy.

137. Vigilant had a duty to disclose all limitations on coverage to Another Planet prior to selling the Policy.

138. Another Planet is informed and believes, and on that basis alleges, that Vigilant knew of the availability of a “virus or bacteria” exclusion since 2006. Vigilant knew it could be liable for losses from viruses and pandemics if it did not include an appropriate exclusion in its policies, but Vigilant did not include such an exclusion.

139. Another Planet is informed and believes, and on that basis alleges, that when Vigilant sold the Policy to Another Planet, Vigilant knew that Another Planet did not know Vigilant’s plan and intent not to pay under the Policy for any losses that might arise from viruses and pandemics and concealed its plan and intent from Another Planet.

140. At the time Another Planet purchased the Policy, it was unaware of any limitation on coverage concerning or related to damage or loss caused by a virus or pandemic.

141. As a direct and proximate result of Vigilant’s acts, Another Planet has sustained, and continues to sustain, damages in an amount in excess of this Court’s jurisdictional limits, plus interest, for which Vigilant is liable, including the premiums it paid to Vigilant. The amount of Another Planet’s damages is not yet precisely known but will be established according to proof. Another Planet will seek leave to amend this Complaint to more precisely allege the amount of its damages when the amount is more precisely known.

142. Vigilant’s conduct constitutes oppression, fraud, and/or malice. Vigilant engaged in a series of acts designed to deny the benefits due under the Policy that Vigilant promised and represented, and to conceal and/or mispresent material facts.

143. Another Planet is informed and believes, and on that basis alleges, that Vigilant—acting through one or more of its officers, directors, or other corporate employees with substantial independent and discretionary authority over significant aspects of Vigilant’s business—performed, authorized, and/or ratified the fraudulent conduct alleged above.

144. Vigilant’s conduct is despicable and has been done with a conscious disregard of the rights of Another Planet, constituting oppression, fraud, or malice. Vigilant engaged in a series of acts designed to deny Another Planet the benefits due under the Policy. Specifically, Vigilant, by acting as alleged above, consciously disregarded Another Planet’s respective rights and forced Another Planet to incur substantial financial losses, thereby inflicting substantial financial damage on Another Planet. Vigilant ignored Another Planet’s interests and concerns with the requisite intent to injure within the meaning of California Civil Code section 3294. Therefore, Another Planet is entitled to recover punitive damages from Vigilant in an amount sufficient to punish and make an example of Vigilant and to deter similar conduct in the future

### **SIXTH CAUSE OF ACTION**

#### ***Negligent Misrepresentation***

145. Another Planet realleges and incorporates by reference herein each allegation contained in 1 through 100, 102, 105 through 109, 127 through 129, and 135 through 140 above.

146. Another Planet is informed and believes, and on that basis alleges, that at the time that Vigilant made the promises and representations about the Policy, Vigilant made them without any reasonable basis to believe they were true and with the intent and knowledge that Another Planet would rely upon them.

147. If Vigilant’s current position that it has no obligation to cover Another Planet’s losses is correct, then the representations Vigilant made in selling the Policy were, in fact, false, and were made without any reasonable basis for believing them to be true. If Vigilant’s current

position is to be believed, then Vigilant did not plan or intend to insure losses associated with viruses or pandemics and, in fact, planned and intended the contrary.

148. As a direct and proximate result of Vigilant's acts, Another Planet has sustained, and continues to sustain, damages in an amount in excess of this Court's jurisdictional limits, plus interest, for which Vigilant is liable, including the premiums it paid to Vigilant. The amount of Another Planet's damages is not yet precisely known but will be established according to proof. Another Planet will seek leave to amend this Complaint to more precisely allege the amount of its damages when the amount is more precisely known.

### **SEVENTH CAUSE OF ACTION**

#### ***For Declaratory Relief***

149. Another Planet realleges and incorporates by reference paragraphs 1 through 100 above.

150. Another Planet contends that it is entitled to coverage under the Policy for Business Income losses suffered and/or Extra Expense incurred as a result of the presence of SARS-CoV-2 and the related Closure Orders. Another Planet is informed and believes, and on that basis alleges, that Vigilant disputes that Another Planet is entitled to such coverage. Therefore, an actual and justiciable controversy exists between Another Planet, on the one hand, and Vigilant, on the other.

151. Pursuant to 28 U.S.C. § 2201, Another Planet seeks a judicial declaration from this Court confirming that Another Planet's contentions, as stated above, are correct. A declaration is necessary in order that the parties' dispute may be resolved and that they may be aware of their respective rights and duties.

**PRAYER FOR RELIEF**

WHEREFORE, Another Planet prays for relief as follows:

**ON THE FIRST CAUSE OF ACTION**

1. For damages according to proof at the time of trial, plus interest;

**ON THE SECOND CAUSE OF ACTION**

2. For damages according to proof at the time of trial, including reasonable attorneys' fees incurred in obtaining the benefits due under the Policy, plus interest; and
3. For punitive damages in an amount to be determined at the time of trial;

**ON THE THIRD CAUSE OF ACTION**

4. For damages, plus interest, according to proof at the time of trial;
5. For punitive damages in an amount to be determined at the time of trial;

**ON THE FOURTH CAUSE OF ACTION**

6. For damages, plus interest, according to proof at the time of trial;
7. For punitive damages in an amount to be determined at the time of trial;

**ON THE FIFTH CAUSE OF ACTION**

8. For damages, plus interest, according to proof at the time of trial;
9. For punitive damages in an amount to be determined at the time of trial;

**ON THE SIXTH CAUSE OF ACTION**

10. For damages, plus interest, according to proof at the time of trial;

**ON THE SEVENTH CAUSE OF ACTION**

11. For declarations in accord with Another Planet's contentions stated above;

**ON ALL CAUSES OF ACTION**

12. For the costs of this lawsuit; and

13. For such other, further, and/or different relief as the Court may deem just and proper.

DATED: March 11, 2021

PASICH LLP

By:           /s/Anamay M. Carmel          

Anamay M. Carmel

Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Plaintiff Another Planet Entertainment, LLC hereby demands a trial by jury in this action.

DATED: March 11, 2021

PASICH LLP

By:           /s/Anamay M. Carmel            
Anamay M. Carmel

Attorneys for Plaintiff



# **EXHIBIT A – Part 1**





## **IMPORTANT NOTICE TO POLICYHOLDERS**

### **TERRORISM RISK INSURANCE ACT**

This Important Notice is being provided with your policy to further satisfy the disclosure requirements of the Terrorism Risk Insurance Act.

At the time you received the written offer for this policy, we provided you with an Important Notice to Policyholders indicating that the insurance provided in your policy for losses caused by certain acts of terrorism (as defined in the Terrorism Risk Insurance Act) would be partially reimbursed by the United States of America, pursuant to the formula set forth in the Terrorism Risk Insurance Act. In addition, as required by the Terrorism Risk Insurance Act, we:

- indicated that we would make available insurance for such losses in the same manner as we provide insurance for other types of losses;
- specified the premium we would charge, if any, for providing such insurance; and
- except to the extent prohibited by law, gave you the opportunity to reject such insurance and have a terrorism exclusion, sublimit or other limitation included in your policy.

This Important Notice refers back to that Important Notice and provides information about your decision and the manner in which your policy has been subsequently modified.

If:

- You rejected terrorism insurance under the Terrorism Risk Insurance Act, your policy includes the appropriate amendatory endorsement(s).
- You did not reject terrorism insurance under the Terrorism Risk Insurance Act, the premium charged for your policy, including that portion applicable to terrorism insurance under the Terrorism Risk Insurance Act, is shown in your policy. To the extent your policy includes a limitation on terrorism insurance, it has been modified so that such limitation does not apply to terrorism insurance under the Terrorism Risk Insurance Act.

Please carefully review your policy and the Important Notice previously provided to you for further details. Please remember that only the terms of your policy establish the scope of your insurance protection.

**Please note that if your policy:**

- *provides commercial property insurance in a jurisdiction that has a statutory standard fire policy, the premium we charge for terrorism insurance under the Terrorism Risk Insurance Act, includes an amount attributable to the insurance provided pursuant to that standard fire policy. Rejection of such statutory insurance is legally prohibited.*
- *is a workers compensation policy, rejection of insurance for terrorism is legally prohibited.*

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.



## **IMPORTANT NOTICE TO POLICYHOLDERS**

**This Important Notice is not your policy. Please read your policy carefully to determine your rights, duties, and what is and what is not covered. Only the provisions of your policy determine the scope of your insurance protection.**

**THIS IMPORTANT NOTICE PROVIDES INFORMATION CONCERNING POSSIBLE IMPACT ON YOUR INSURANCE COVERAGE DUE TO COMPLIANCE WITH APPLICABLE TRADE SANCTION LAWS.**

**PLEASE READ THIS NOTICE CAREFULLY.**

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Various trade or economic sanctions and other laws or regulations prohibit us from providing insurance in certain circumstances. For example, the United States Treasury Department's Office of Foreign Asset Control (OFAC) administers and enforces economic and trade sanctions and places restrictions on transactions with foreign agents, front organizations, terrorists, terrorists organizations, and narcotic traffickers. OFAC acts pursuant to Executive Orders of the President of the United States and specific legislation, to impose controls on transactions and freeze foreign assets under United States jurisdiction. (To learn more about OFAC, please refer to the United States Treasury's web site at <http://www.treas.gov/ofac>.)

To the extent that you or any other insured, or any person or entity claiming the benefits of this insurance has violated any applicable sanction laws, this insurance will not apply.

We have added a condition or section that applies to the entire policy called Compliance With Applicable Trade Sanctions, which stipulates that your insurance policy does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance.



## *POLICYHOLDER NOTICE*

All of the members of the Chubb Group of Insurance companies doing business in the United States (hereinafter "Chubb") distribute their products through licensed insurance brokers and agents ("producers"). Detailed information regarding the types of compensation paid by Chubb to producers on US insurance transactions is available under the Producer Compensation link located at the bottom of the page at [www.chubb.com](http://www.chubb.com), or by calling 1-866-588-9478. Additional information may be available from your producer.

Thank you for choosing Chubb.

**Customarq Series**

**CHUBB®**

Entertainment Insurance Program

FOR

ANOTHER PLANET ENTERTAINMENT, LLC

Producer:

LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

Chubb Servicing Office:

SAN FRANCISCO  
455 MARKET STREET  
SUITE 500  
SAN FRANCISCO, CA 94105



**Customarq Series**  
**Entertainment Insurance Program**

*How To Report A Loss*

To report a Loss, use the following procedure.

---

**Loss Notification**

If an **Insured Person** has a Loss, please contact us by telephone as soon as possible for further assistance:

Telephone Number: 1-800-252-4670

24 hours a day, 7 days a week

**Fax Number**

You may also fax the loss report during normal business hours to:

Fax Number: 1-800-300-2538

**Mailing Address**

You may mail your loss report to the following address:

Chubb Group Of Insurance Companies  
Claim Service Center  
600 Independence Parkway  
P.O. Box 4700  
Chesapeake, Va. 23327-4700



**Customarq Series**  
**Entertainment Insurance Program**

*Table Of Contents*

This Table Of Contents is provided to acquaint you with the overall organization of this policy.

**POLICY ORGANIZATION**

Insuring Agreement

Premium Summary

Property Insurance Section

Property Schedule Of Forms & Declarations

Property Contracts \*

Property Endorsements

Liability Insurance Section

Liability Schedule Of Forms & Declarations

Liability Contracts \*

Liability Endorsements

Common Policy Section

Common Policy Conditions

Common Policy Endorsements

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\* Note: Each contract within a section has its own Table Of Contents to facilitate your use of them.



**CHUBB®**

*Insuring Agreement*

**Chubb Group of Insurance Companies  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889**

*Named Insured and Mailing Address*

ANOTHER PLANET ENTERTAINMENT, LLC  
1815 4TH ST STE C  
BERKELEY, CA 94710

*Policy Number* 7956-75-28

*Effective Date* MAY 1, 2019

*Issued by the stock insurance company indicated below, herein called the company.*

**VIGILANT  
INSURANCE COMPANY**

*Producer No.* 0028440-99999

*Incorporated under the laws of  
NEW YORK*

*Producer* LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

---

**Company and Policy Period**

Insurance is issued by the company in consideration of payment of the required premium.

This policy is issued for the period 12:01 AM standard time at the Named Insured's mailing address shown above:

From: MAY 1, 2019 To: MAY 1, 2020

Your acceptance of this policy terminates, effective with the inception of this policy, any prior policy of the same number issued to you by us.

This Insuring Agreement together with the Premium Summary, Schedule Of Forms, Declarations, Contracts, Endorsements and Common Policy Conditions comprise this policy.

In Witness Whereof, the company issuing this policy has caused this policy to be signed by its authorized officers, but this policy shall not be valid unless also signed by a duly authorized representative of the company.

*President*

*Secretary*

*Authorized Representative*



**Customarq Series  
Entertainment Insurance Program**

**Premium Summary**

**Chubb Group of Insurance Companies  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889**

*Named Insured and Mailing Address*

ANOTHER PLANET ENTERTAINMENT, LLC  
1815 4TH ST STE C  
BERKELEY, CA 94710

*Policy Number* 7956-75-28

*Effective Date* MAY 1, 2019

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**VIGILANT  
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*Incorporated under the laws of  
NEW YORK*

*Producer No.* 0028440-99999

*Producer* LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

**Policy Period**

From: MAY 1, 2019 To: MAY 1, 2020  
12:01 A.M. standard time at the Named Insured's mailing address shown above.

**Premium Payment**

The First Named Insured shown in the Declarations is responsible for the payment of all premiums and will be the payee for any return premiums we pay.

**Premium Audit**

Certain classifications within our rates and rules indicate that premiums calculated therefrom can be significantly affected by large increases or decreases in your business results. Based upon our underwriting review of information provided by you, we may at our discretion perform a premium audit. You may also request such an audit.

If an audit is conducted and additional premiums are due, they are payable upon notice to the First Named Insured. If as a result of an audit the premium paid is greater than the earned premium, we will return the excess to the First Named Insured. The First Named Insured must keep records of the information we need to perform the audit and send us copies at such times as we may request.

**Coverage**

PROPERTY INSURANCE SECTION  
LIABILITY INSURANCE SECTION

**Rate**

**Premium**

**REDACTED**

*Issue Date: MAY 14, 2019*

*continued*

# CHUBB®

## **Premium Summary** *(continued)*

### **TOTAL**

REDACTED

If ATD coverage is provided on this policy, additional certificate and handling fees may be imposed during the policy term.

## **Coverage Premium**

Additional certificate and handling fees may be imposed as respects to certification of pressure equipment as mandated by State and/or local jurisdictional authorities.

## **Payment Plan**

This policy premium is being billed as follows. The amounts shown are due and payable as of the dates shown below:

### **Date Payment Due**

MAY 1, 2019  
JUNE 1, 2019  
JULY 1, 2019  
AUGUST 1, 2019  
SEPTEMBER 1, 2019  
OCTOBER 1, 2019  
NOVEMBER 1, 2019  
DECEMBER 1, 2019  
JANUARY 1, 2020  
FEBRUARY 1, 2020

### **Amount Due**

REDACTED

***Property Insurance Section***

***Declarations***

**CHUBB®****Property Insurance****Schedule of Forms**

*Policy Period*                    MAY 1, 2019 TO MAY 1, 2020

*Effective Date*                MAY 1, 2019

*Policy Number*                7956-75-28

*Insured*                         ANOTHER PLANET ENTERTAINMENT, LLC

*Name of Company*            VIGILANT INSURANCE COMPANY

*Date Issued*                    MAY 14, 2019

The following is a schedule of forms issued as of the date shown above:

<i>Form Number</i>	<i>Edition Date</i>	<i>Form Name</i>	<i>Effective Date</i>	<i>Date Issued</i>
10-02-0939	3-11	MISCELLANEOUS EQUIPMENT	05/01/19	05/14/19
10-02-0981	3-11	BLANKET LOSS PAYEES - MISCELLANEOUS EQUIPMENT	05/01/19	05/14/19
80-02-0280	7-03	SCHEDULE OF MORTGAGEES/LOSS PAYEES	05/01/19	05/14/19
80-02-0315	1-15	SUPP DEC-IMPAIRMENT OF COMP SERVICES	05/01/19	05/14/19
80-02-0005	1-18	PROPERTY DECLARATIONS	05/01/19	05/14/19
80-02-0220	1-15	PROPERTY SUPPLEMENTARY DECLARATIONS	05/01/19	05/14/19
80-02-0225	7-03	PROPERTY SUPPLEMENTARY DEC.-BUSINESS INCOME	05/01/19	05/14/19
80-02-1000	6-05	BUILDING AND PERSONAL PROPERTY	05/01/19	05/14/19
80-02-1004	7-03	BUSINESS INCOME WITH EXTRA EXPENSE	05/01/19	05/14/19
80-02-1017	7-03	ELECTRONIC DATA PROCESSING PROPERTY	05/01/19	05/14/19
80-02-1018	7-03	EXTRA EXPENSE	05/01/19	05/14/19
80-02-1048	7-03	ACCTS REC, FINE ARTS, MONEY & SEC, VAL PAPERS	05/01/19	05/14/19
80-02-1095	7-03	IMPAIRMENT OF COMPUTER SERVICES-MALICIOUS PGM	05/01/19	05/14/19
80-02-1097	6-05	PROPERTY/BI CONDITIONS & DEFINITIONS	05/01/19	05/14/19
80-02-1300	7-03	SCHEDULED PERSONAL PROPERTY COVERAGE	05/01/19	05/14/19
80-02-1372	10-06	EQSL-LIMIT OF INSURANCE /DEDUCTIBLE	05/01/19	05/14/19
80-02-1644	5-04	ELECTRONIC DATA AND PERIL CHANGES	05/01/19	05/14/19
80-02-1660	1-15	EXCL. OF CERTIFIED ACTS-INCL. ENSUING FIRE	05/01/19	05/14/19
80-02-5250	6-08	ORD OR LAW & EXISTING GREEN STANDARDS LPB	05/01/19	05/14/19
80-02-5310	1-14	MECH. OR ELECT. SYSTEM OR APPARATUS DEF AMEND	05/01/19	05/14/19
80-02-5355	1-15	SPECIAL WAITING PERIOD PROVISION ADDED	05/01/19	05/14/19
80-02-5357	1-15	ADDITIONAL COVG ADDED - PROHIBITION OF ACCESS	05/01/19	05/14/19

last page



**Property Insurance**

**Schedule of Mortgagees And Loss Payees**

**Chubb Group of Insurance Companies  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889**

*Named Insured and Mailing Address*

ANOTHER PLANET ENTERTAINMENT, LLC  
1815 4TH ST STE C  
BERKELEY, CA 94710

*Policy Number* 7956-75-28

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*Producer No.* 0028440-99999

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*Producer* LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

---

**Policy Period**

From: MAY 1, 2019 To: MAY 1, 2020  
12:01 A.M . standard time at the Named Insured's mailing address shown above.

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**SCHEDULE**

**PREMISES # 1** 1815 4TH ST  
STE A, B, C, D, E  
BERKELEY, CALIFORNIA 94710  
COUNTY OF ALAMEDA

LOSS PAYEE: WELLS FARGO BANK N.A.  
ATTN: RECORDS MGMT / ERIC PENNISTON  
MAC C7300-033  
1740 BROADWAY, DENVER, CO 80274

**CHUBB<sup>®</sup>**

**Premises Summary**  
*(continued)*

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**Chubb. Insured.<sup>SM</sup>**



# Property Insurance

## Declarations

**Chubb Group of Insurance Companies**  
**202B Hall's Mill Road**  
**Whitehouse Station, NJ 08889**

**Named Insured and Mailing Address**

ANOTHER PLANET ENTERTAINMENT, LLC  
1815 4TH ST STE C  
BERKELEY, CA 94710

**Policy Number** 7956-75-28  
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*Issued by the stock insurance company indicated below, herein called the company.*

**VIGILANT  
INSURANCE COMPANY**

*Incorporated under the laws of  
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**Producer No.** 0028440-99999  
**Producer**  
LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

---

**Policy Period:** From: MAY 1, 2019 To: MAY 1, 2020  
12:01 A.M. standard time at the Named Insured's mailing address shown above.

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**Deductible** \$ 5,000  
**Waiting Period** 24 HOURS  
**Extended Period** UNLIMITED

The information shown above applies to:

- all premises coverages;
- all additional coverages; and
- debris removal coverage,

and all premises shown in this and all other property declarations, unless corresponding specific information is shown as applicable to a specific premises or coverage.

---

### Premises Schedule

1. 1815 4TH ST, STE A, B, C, D, E, BERKELEY, CA 94710
2. 1255 21ST ST, OAKLAND, CA 94607
3. 1807 TELEGRAPH AVE, OAKLAND, CA 94612
4. 1825 TELEGRAPH AVE, OAKLAND, CA 94612
5. 2001 GAYLEY ROAD, BERKELEY, CA 94720
6. 99 GROVE ST, SAN FRANCISCO, CA 94102
7. 18 HWY 50, STATELINE, NV 89449



**CHUBB®****Premises Coverages - Blanket Limits**

<u>Blanket Number and Coverages</u>	<u>Limits Of Insurance</u>
1. PERSONAL PROPERTY	\$ 8,180,000
2. BUSINESS INCOME WITH EXTRA EXPENSE	\$ 23,908,822
3. EDP PROPERTY	\$ 350,000
4. PREP OF LOSS FEES	\$ 350,000

**Premises Coverages** If "Blanket" or "Loss Limit" is shown under Limits Of Insurance as applicable to a Premises, please refer to the "Premises Coverages – Blanket Limits" section or the "Loss Limits Of Insurance" section above to determine the Limit Of Insurance applicable to such Premises. "Blanket" limits are numbered for ease of reference. If a specific limit is shown under Limits Of Insurance for a Premises Coverage, that Limit applies to such coverage, even if a "Blanket" limit applies to other Premises Coverage at such premises.

PREMISES #1            1815 4TH ST  
 STE A, B, C, D, E  
 BERKELEY, CALIFORNIA 94710

	<u>Limits Of Insurance</u>
PERSONAL PROPERTY	BLANKET 1
EDP PROPERTY	BLANKET 3
FINE ARTS	\$ 475,000

PREMISES #2            1255 21ST ST  
 OAKLAND, CALIFORNIA 94607

	<u>Limits Of Insurance</u>
PERSONAL PROPERTY	BLANKET 1

PREMISES #3            1807 TELEGRAPH AVE  
 OAKLAND, CALIFORNIA 94612

	<u>Limits Of Insurance</u>
PERSONAL PROPERTY	BLANKET 1
BUSINESS INCOME WITH EXTRA EXPENSE	BLANKET 2
EDP PROPERTY	BLANKET 3
PREPARATION OF LOSS FEES	BLANKET 4

PREMISES #4            1825 TELEGRAPH AVE  
 OAKLAND, CALIFORNIA 94612

**CHUBB®**

**Premises Coverages**  
(continued)

	<u>Limits Of Insurance</u>
PERSONAL PROPERTY	BLANKET 1
PREPARATION OF LOSS FEES	BLANKET 4

**PREMISES #5**                    2001 GAYLEY ROAD  
BERKELEY, CALIFORNIA 94720

	<u>Limits Of Insurance</u>
BUSINESS INCOME WITH EXTRA EXPENSE	BLANKET 2
EDP PROPERTY	BLANKET 3

**PREMISES #6**                    99 GROVE ST  
SAN FRANCISCO, CALIFORNIA 94102

	<u>Limits Of Insurance</u>
PERSONAL PROPERTY	BLANKET 1
BUSINESS INCOME WITH EXTRA EXPENSE	BLANKET 2
EDP PROPERTY	BLANKET 3

**PREMISES #7**                    18 HWY 50  
STATELINE, NEVADA 89449

	<u>Limits Of Insurance</u>
PERSONAL PROPERTY	BLANKET 1
BUSINESS INCOME WITH EXTRA EXPENSE	BLANKET 2

**Additional Coverages**

	<u>Limits Of Insurance</u>
MISCELLANEOUS EQUIPMENT	
MISCELLANEOUS EQUIPMENT	\$ 1,950,556

Chubb. Insured.™



**Property Insurance**

**Supplementary Declarations – Impairment Of Computer Services – Malicious Programming**

**Chubb Group of Insurance Companies  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889**

*Named Insured and Mailing Address*

ANOTHER PLANET ENTERTAINMENT, LLC  
1815 4TH ST STE C  
BERKELEY, CA 94710

*Policy Number* 7956-75-28

*Effective Date* MAY 1, 2019

*Issued by the stock insurance company indicated below, herein called the company.*

**VIGILANT  
INSURANCE COMPANY**

*Producer No.* 0028440-99999

*Incorporated under the laws of  
NEW YORK*

*Producer* LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

**Policy Period**

From: MAY 1, 2019 To: MAY 1, 2020  
12:01 A.M. standard time at the Named Insured's mailing address shown above.

The Limits Of Insurance shown below:

- are provided at no additional cost to you;
- apply anywhere within the Coverage Territory; and
- do not apply when the applicable coverage has been excluded as shown in the Declarations or by endorsement to this policy.

You may purchase increased Limits Of Insurance, and we will charge you an additional premium. If you purchase increased Limits Of Insurance, the Limits Of Insurance shown in the Declarations will reflect your total Limit Of Insurance, including the Limits Of Insurance shown below. Any applicable deductible will be shown in the Declarations with the coverage. If no deductible is shown in the Declarations with the coverage, then the Property Deductible will apply. Extra Expense is not subject to any deductible.

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**IMPAIRMENT OF COMPUTER SERVICES – MALICIOUS PROGRAMMING**

INSIDE ATTACK	\$ 100,000
OUTSIDE ATTACK – PER OCCURRENCE	\$ 10,000
OUTSIDE ATTACK – ANNUAL AGGREGATE	\$ 50,000



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*Authorized Representative*

**Chubb. Insured.<sup>SM</sup>**



**Property Insurance**

**Supplementary Declarations - Property**

**Chubb Group of Insurance Companies  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889**

*Named Insured and Mailing Address*

ANOTHER PLANET ENTERTAINMENT, LLC  
1815 4TH ST STE C  
BERKELEY, CA 94710

*Policy Number* 7956-75-28

*Effective Date* MAY 1, 2019

*Issued by the stock insurance company indicated below, herein called the company.*

**VIGILANT  
INSURANCE COMPANY**

*Producer No.* 0028440-99999

*Incorporated under the laws of  
NEW YORK*

*Producer* LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

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**Policy Period**

From: MAY 1, 2019 To: MAY 1, 2020  
12:01 A.M. standard time at the Named Insured's mailing address shown above.

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**Covered Premises \$500,000 Blanket Limit Of Insurance**

The Blanket Limit Of Insurance shown above applies only for the Premises Coverages shown below. Unless otherwise stated, this Blanket Limit Of Insurance applies separately at each covered premises shown in the Declarations. This Blanket Limit Of Insurance applies in excess of the applicable deductible shown in the Declarations.

At time of loss, the first Named Insured may elect to apportion this Blanket Limit Of Insurance to one or any combination of the Premises Coverages shown, but under no circumstance will the aggregate apportionment be permitted to exceed the Blanket Limit Of Insurance shown above at any one covered premises. For the purpose of the application of this \$500,000 Blanket Limit Of Insurance, all property at one premises shall constitute a single premises.

Separate specific Limits Of Insurance may be purchased for each of these Premises Coverages. If purchased, these Limits Of Insurance and any applicable deductible will be shown in the Declarations with the Premises Coverages. If no deductible is shown in the Declarations with the Premises Coverages, then the Property Deductible will apply. When a specific Limit Of Insurance is purchased for any of these Premises Coverages, such specific Limit Of Insurance will apply in addition to whatever amount the first Named Insured apportions to that coverage at time of loss as provided in the previous paragraphs.

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**Coverages Included In The Blanket Limit Of Insurance:**

ACCOUNTS RECEIVABLE  
ELECTRONIC DATA PROCESSING PROPERTY  
FINE ARTS  
LEASEHOLD INTEREST -  
BONUS PAYMENT,  
PREPAID RENT,  
SUBLEASE PROFIT,  
TENANTS' LEASE INTEREST

LEASEHOLD INTEREST – UNDAMAGED  
TENANT'S IMPROVEMENTS & BETTERMENTS  
NON – OWNED DETACHED TRAILERS  
OUTDOOR TREES, SHRUBS, PLANTS OR LAWNS  
PAIR AND SET  
PERSONAL PROPERTY OF EMPLOYEES  
PUBLIC SAFETY SERVICE CHARGES  
RESEARCH AND DEVELOPMENT PROPER TY  
VALUABLE PAPERS

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**Property Coverages**

The Limits Of Insurance shown below:

- are provided for the Premises Coverages and Additional Coverages shown at no additional cost to you;
- apply separately at each premises shown in the Declarations, except for the following Additional Coverages which apply anywhere within the Coverage Territory:
  - Any Other Location;
  - Deferred Payments;
  - Exhibition, Fair Or Trade Show;
  - Installation;
  - In Transit; or
  - Mobile Communication Property (greater than 1,000 feet from a premises shown in the Declarations); and
- do not apply when the applicable coverage has been excluded as shown in the Declarations or by endorsement to this policy.

The Limits Of Insurance for:

- Debris Removal; and
- Preparation Of Loss Fees,

apply separately at each premises shown in the Declarations or anywhere within the Coverage Territory.

You may purchase increased Limits Of Insurance, and we will charge you an additional premium. If you purchase increased Limits Of Insurance for any of these coverages, the Limits Of Insurance shown in the Declarations will reflect your total Limit Of Insurance, including the Limits Of Insurance shown below. Any applicable deductible will be shown in the Declarations with the coverage. If no deductible is shown in the Declarations with the coverage, then the Property Deductible will apply. Extra Expense Coverage is not subject to any deductible.

Extra expense is subject to the:

- Business Income With Extra Expense contract and Business Income With Extra Expense And Research And Development Income contract if purchased; or
- Extra Expense contract, if the Business Income With Extra Expense contract or Business Income With Extra Expense And Research And Development Income contract is not purchased.

**CHUBB®****Property Insurance****Supplementary Declarations - Property**

Effective Date MAY 1, 2019

Policy Number 7956-75-28

**Property Coverages****Limit Of Insurance****ANY OTHER LOCATION**

ACCOUNTS RECEIVABLE	\$ 75,000
BUILDING COMPONENTS	\$ 75,000
ELECTRONIC DATA PROCESSING PROPERTY	\$ 75,000
FINE ARTS	\$ 75,000
PERSONAL PROPERTY	\$ 75,000
RESEARCH AND DEVELOPMENT PROPERTY	\$ 75,000
VALUABLE PAPERS	\$ 75,000

**DEBRIS REMOVAL**

PREMISES SHOWN IN THE DECLARATIONS	\$ 500,000
ANY OTHER LOCATION	\$ 50,000
IN TRANSIT	\$ 50,000

**DEFERRED PAYMENTS**

\$ 50,000

**EXHIBITION, FAIR OR TRADE SHOW**

ELECTRONIC DATA PROCESSING PROPERTY	\$ 75,000
FINE ARTS	\$ 75,000
PERSONAL PROPERTY	\$ 75,000

**EXTRA EXPENSE**

\$ 250,000

**FUNGUS CLEAN-UP OR REMOVAL**

\$ 50,000

**INSTALLATION**

ANY JOB SITE	\$ 50,000
IN TRANSIT	\$ 50,000

<b>Property Coverages</b>	<b>Limit Of Insurance</b>
<b>IN TRANSIT</b>	
ACCOUNTS RECEIVABLE	\$ 50,000
BUILDING COMPONENTS	\$ 50,000
ELECTRONIC DATA PROCESSING PROPERTY	\$ 50,000
FINE ARTS	\$ 50,000
PERSONAL PROPERTY	\$ 50,000
VALUABLE PAPERS	\$ 50,000
<b>LOSS OF MASTER KEY</b>	\$ 25,000
<b>LOSS PREVENTION EXPENSES</b>	\$ 25,000
<b>MOBILE COMMUNICATION PROPERTY (GREATER THAN 1,000 FEET FROM A PREMISES SHOWN IN THE DECLARATIONS )</b>	\$ 25,000
<b>MONEY &amp; SECURITIES</b>	
ON PREMISES	\$ 25,000
OFF PREMISES	\$ 25,000
<b>POLLUTANT CLEAN-UP OR REMOVAL</b>	\$ 50,000
<b>PROCESSING WATER</b>	\$ 25,000
<b>PREPARATION OF LOSS FEES</b>	\$ 25,000

The following displays the Coverages and the applicable Limits Of Insurance for:

<b>Newly Acquired Premises Or Newly Acquired Or Constructed Property</b>	<b>Limit Of Insurance</b>
<b>BUILDING</b>	\$5,000,000
<b>PERSONAL PROPERTY</b>	\$2,500,000
<b>PERSONAL PROPERTY AT EXISTING PREMISES</b>	\$ 100,000
<b>ELECTRONIC DATA PROCESSING EQUIPMENT</b>	\$2,500,000
<b>ELECTRONIC DATA</b>	\$ 250,000
<b>COMMUNICATION PROPERTY</b>	\$ 250,000
<b>FINE ARTS</b>	\$ 50,000



**CHUBB®**

***Property Insurance***

***Supplementary Declarations - Property***

*Effective Date*            MAY 1, 2019

*Policy Number*            7956-75-28

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You may purchase increased Limits Of Insurance for any of the Newly Acquired Premises or Newly Acquired or Constructed Property Limits Of Insurance shown above and we will charge you an additional premium. If you purchase such increased Limits Of Insurance, the Limits Of Insurance shown in the Declarations will reflect your total limit, including the Limits Of Insurance shown above.



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*Authorized Representative*

**Chubb. Insured.™**



## Property Insurance

### Supplementary Declarations — Business Income

**Chubb Group of Insurance Companies**  
202B Hall's Mill Road  
Whitehouse Station, NJ 08889

*Named Insured and Mailing Address*

ANOTHER PLANET ENTERTAINMENT, LLC  
1815 4TH ST STE C  
BERKELEY, CA 94710

*Policy Number* 7956-75-28

*Effective Date* MAY 1, 2019

*Issued by the stock insurance company indicated below, herein called the company.*

**VIGILANT  
INSURANCE COMPANY**

*Producer No.* 0028440-99999

*Incorporated under the laws of  
NEW YORK*

*Producer* LOCKTON COMPANIES, LLC (ENT)  
3 EMBARCADERO CTR STE600  
SAN FRANCISCO, CA 94111-0000

### Policy Period

From: MAY 1, 2019 To: MAY 1, 2020  
12:01 A.M. standard time at the Named Insured's mailing address shown above.

### Additional Business Income Coverages

The Limits Of Insurance shown below are provided for the Premises Coverages and Additional Coverages shown at no additional cost to you. You may purchase increased Limits Of Insurance, and we will charge you an additional premium. If you purchase increased Limits Of Insurance for any of these coverages, the Limits Of Insurance shown in the Declarations will reflect your total Limit Of Insurance, including the Limits Of Insurance shown below.

Except for Dependent Business Premises, Any Other Location, Exhibition, Fair or Trade Show and Preparation Of Loss Fees, the Limits Of Insurance shown below apply at each premises for which you have purchased a Limit Of Insurance for Business Income as shown in the Declarations.

The Limit Of Insurance for Dependent Business Premises applies:

- at each of your premises for which you have purchased a Limit Of Insurance for Business Income as shown in the Declarations;
- separately to each **occurrence**, regardless of the number of **dependent business premises** that sustain covered direct physical loss or damage; and
- only if such direct physical loss or damage causes a business income loss (or extra expense loss if Business Income With Extra Expense is purchased) at your premises for which you have purchased a Limit Of Insurance for Business Income as shown in the Declarations,

provided that actual loss for such premises is the direct result of direct physical loss or damage, by a **covered peril**, to the **dependent business premises**.

If you increase the \$250,000 Limit Of Insurance for Dependent Business Premises as provided for in this Supplementary Declarations, such increased Limit Of Insurance:

- will be shown in the Declarations and will reflect your total Dependent Business Premises Limit Of Insurance at the applicable **dependent business premises** shown in the Declarations; and
- is the most we will pay in any one **occurrence** at all premises for which a Limit Of Insurance for Business Income is shown in the Declarations.

The Limit Of Insurance for Any Other Location or Exhibition, Fair or Trade Show applies within the Coverage Territory of this policy.

The Limit Of Insurance for Preparation Of Loss Fees applies at each premises shown in the Declarations or anywhere within the Coverage Territory.

**Business Income Coverages**

*Limit Of Insurance*

<i>ANY OTHER LOCATION</i>	\$ 50,000
<i>CONTRACTUAL PENALTIES</i>	\$ 25,000
<i>DEPENDENT BUSINESS PREMISES</i>	\$ 250,000
<i>EXHIBITION, FAIR OR TRADE SHOW</i>	\$ 25,000
<i>PREPARATION OF LOSS FEES</i>	\$ 25,000
<i>INGRESS &amp; EGRESS</i>	\$ 50,000
<i>LOSS OF UTILITIES</i>	\$ 25,000
<i>POLLUTANT CLEAN-UP OR REMOVAL</i>	\$ 25,000

The following displays the coverage and the applicable Limit Of Insurance provided for each newly acquired premises:

**Newly Acquired Premises**

*Limit Of Insurance*

<i>BUSINESS INCOME</i>	\$ 250,000
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Authorized Representative



**Chubb. Insured.<sup>SM</sup>**

## ***Property Insurance***

### ***Building And Personal Property***

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## **Building And Personal Property**

### **Contract**

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy.

Throughout this contract, the words “you” and “your” refer to the Named Insured shown in the Declarations of this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

#### **Premises Coverages**

The following Premises Coverages apply only at those premises for which a Limit Of Insurance applicable to such coverages is shown in the Declarations.

Except as otherwise provided, the loss or damage must:

- be caused by or result from a peril not otherwise excluded; and
- occur at, or within 1,000 feet of, the premises shown in the Declarations.

#### **Building Or Personal Property**

We will pay for direct physical loss or damage to:

- **building**; or
- **personal property**,

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Building Or Personal Property shown in the Declarations.

#### **Burglary Damage To Building**

We will pay for direct physical loss or damage to a **building**:

- you do not own;
- you occupy; and
- for which you are contractually liable,

caused by or resulting from burglary or any attempt at burglary, not to exceed the Limit Of Insurance for Personal Property shown in the Declarations for the premises where the loss or damage occurred.

This Premises Coverage does not apply:

- to ensuing loss or damage caused by or resulting from a peril not otherwise excluded; or
- if a Limit Of Insurance for Building applicable to the premises, where the loss or damage occurred, is shown in the Declarations.

#### **Fungus Clean-up Or Removal**

We will pay the costs you incur to clean up, remove, restore or replace covered property because of the presence of **fungus** at the premises shown in the Declarations.

The most we will pay at the premises for the sum of all such covered costs that occur during each separate 12-month policy period, regardless of whether this Premises Coverage appears in any other contract or contracts that form part of this policy is the applicable Limit Of Insurance for Fungus Clean-up Or Removal shown in the Declarations.

**Premises Coverages**

**Fungus Clean-up Or Removal**  
(continued)

We will not pay for the costs to test for, monitor, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **fungus**, other than payment for testing that is performed during the clean-up or removal of **fungus**.

This Premises Coverage does not apply if the presence of **fungus**:

- A. is caused by or results from:
  - 1. a peril that is excluded under this insurance; or
  - 2. moisture, other than **water** or **flood**, if the **flood** would be covered under this insurance;
- B. existed prior to the effective date shown in the Declarations;
- C. is not reported to us in writing as soon as possible after you first become aware, or in the exercise of reasonable care, should have become aware, of the presence of **fungus**; or
- D. is at premises that has been specifically excluded in the Declarations or by endorsement to this policy.

**Leasehold Interest - Bonus Payment, Prepaid Rent, Sublease Profit, Tenants' Lease Interest**

We will pay for the:

- **bonus payment;**
- **prepaid rent;**
- **sublease profit;** or
- **tenants' lease interest,**

loss you incur directly resulting from the cancellation of your written lease for the premises shown in the Declarations, not to exceed the applicable Limit Of Insurance for:

- Bonus Payment;
- Prepaid Rent;
- Sublease Profit; or
- Tenants' Lease Interest,

shown under Leasehold Interest in the Declarations.

Cancellation of the lease must be:

- by the lessor;
- by a valid condition of your lease; and
- due to direct physical loss or damage to a **building** caused by or resulting from a peril not otherwise excluded at the premises shown in the Declarations.

**Leasehold Interest - Undamaged Tenant's Improvements And Betterments**

We will pay for the value of undamaged **tenant's improvements and betterments** when your lease is canceled:

- by the lessor; and
- by a valid condition of your lease,



## **Building And Personal Property**

### **Premises Coverages**

#### **Leasehold Interest - Undamaged Tenant's Improvements And Betterments** (continued)

due to direct physical loss or damage to **building or personal property** caused by or resulting from a peril not otherwise excluded at the premises shown in the Declarations, not to exceed the applicable Limit Of Insurance for Leasehold Interest – Undamaged Tenant's Improvements And Betterments shown in the Declarations.

#### **Loss Of Master Key**

We will pay for the reasonable and necessary costs you incur to:

- replace keys;
- adjust locks to accept new keys; or
- if required, install new locks,

due to direct physical loss or damage to a master key or grand master key caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Loss Of Master Key shown in the Declarations.

#### **Loss Prevention Expenses**

We will pay the reasonable and necessary costs you incur to protect:

- **building;**
- **personal property;** or
- **research and development property,**

at the premises shown in the Declarations from imminent direct physical loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Loss Prevention Expenses shown in the Declarations.

To the extent possible, you must notify us of your intent to incur such cost before you take any loss prevention action.

In any event, you must notify us within forty-eight (48) hours after you have taken any loss prevention action.

#### **Non-Owned Detached Trailers**

We will pay for direct physical loss or damage to **non-owned detached trailers** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Non-Owned Detached Trailers shown in the Declarations.

#### **Outdoor Trees, Shrubs, Plants Or Lawns**

We will pay for direct physical loss or damage to **outdoor trees, shrubs, plants or lawns** at premises you own, rent or occupy, shown in the Declarations, caused by or resulting from:

- fire;
- lightning;
- explosion;
- riot or civil commotion; or
- aircraft or self-propelled missiles,



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## **Premises Coverages**

### **Outdoor Trees, Shrubs, Plants Or Lawns (continued)**

not to exceed the applicable Limit Of Insurance for Outdoor Trees, Shrubs, Plants Or Lawns shown in the Declarations.

---

### **Pair And Set**

We will pay for consequential loss to undamaged **personal property** that is part of:

- your product; or
- any product in your care, custody or control,

which has become unmarketable as a complete product, because of covered direct physical loss or damage to **personal property** which is part of the same product, not to exceed the applicable Limit Of Insurance for Pair And Set shown in the Declarations.

This Premises Coverage applies only when you have purchased a Limit Of Insurance for Personal Property.

---

### **Personal Property Of Employees**

We will pay for direct physical loss or damage to **personal property of employees** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Personal Property Of Employees shown in the Declarations.

We will also pay for direct physical loss or damage to **personal property of employees** caused by or resulting from a peril not otherwise excluded while such **personal property of employees** is away from your premises for the purpose of performing duties relating to the conduct of your business, not to exceed \$2,500 for any one employee or \$10,000 in the aggregate for any **occurrence**, regardless of the number of employees.

---

### **Processing Water**

We will pay the cost you incur to replace water that is used in your processing operations and contained in any:

- above-ground tank;
- processing equipment; or
- any associated above-ground piping,

when such water has been released or rendered unusable for its intended purpose as a direct result of direct physical loss or damaged to such tank, equipment or piping caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Processing Water shown in the Declarations.

The loss or damage must occur at the premises show in the Declarations.

This Premises Coverage does not apply to fire protection equipment.

---



## **Building And Personal Property**

### **Premises Coverages** (continued)

#### **Public Safety Service Charges**

We will pay the charges you:

- assume under any contract or agreement; or
- are required to pay by local ordinance,

in effect at the time of the direct physical loss or damage, if a fire department or other municipal agency charged with preserving public safety is called to save or protect **building, personal property** or **research and development property** from direct physical loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Public Safety Service Charges shown in the Declarations.

---

#### **Removal**

We will pay for direct physical loss or damage to **building components, personal property** or **research and development property** while:

- being moved to another location or returned from such location to its original location; or
- temporarily stored at another location,

if you must move the **building components, personal property** or **research and development property** from such location to preserve it from imminent loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Building, Personal Property or Research And Development Property shown in the Declarations.

---

#### **Research And Development Property**

We will pay for:

- direct physical loss or damage to **research and development property** caused by or resulting from a peril not otherwise excluded; and
- the necessary and reasonable additional cost you incur to repair or replace **research and development property** that has been lost or damaged by a peril not otherwise excluded,

not to exceed the applicable Limit Of Insurance for Research and Development Property shown in the Declarations.

These additional costs must be in excess of the cost you would otherwise incur to repair or replace lost or damaged **research and development property** in order to meet your last scheduled introduction date (prior to loss or damage) for any new product which is based on such **research and development property**.

---

#### **Additional Coverages**

The following Additional Coverages apply within the coverage territory.

#### **Any Other Location**

We will pay for direct physical loss or damage caused by or resulting from a peril not otherwise excluded to:

- **building components;**
- **personal property;** or
- **research and development property,**

---

## **Additional Coverages**

### **Any Other Location (continued)**

at unspecified premises, not to exceed the applicable Limit Of Insurance for:

- Building Components;
- Personal Property; or
- Research and Development Property,

shown under Any Other Location in the Declarations.

This Additional Coverage does not apply to:

- **salespersons' samples;**
- property while at any exhibition, fair or trade show;
- property at newly acquired premises;
- property while **in transit;** or
- property at a job site or temporarily warehoused elsewhere awaiting installation at the job site.

This Additional Coverage applies only if a Limit Of Insurance for:

- Building Components;
- Personal Property; or
- Research And Development Property,

is shown under Any Other Location in the Declarations.

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### **Arson Or Theft Reward**

We will pay a reward of 25% of the covered loss or damage, up to a maximum of \$25,000, for information leading to a felony conviction arising out of direct physical loss or damage to covered property caused by or resulting from arson, larceny, burglary or vandalism.

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### **Deferred Payments**

We will pay for your interest in **personal property** that suffers direct physical loss or damage caused by or resulting from a peril not otherwise excluded and sold by you under a conditional sale or trust agreement or any installment or deferred payment plan:

- while **in transit** to buyers; or
- after delivery to buyers,

not to exceed the applicable Limit Of Insurance for Deferred Payments shown in the Declarations.

This Additional Coverage does not apply to default by the buyer of such agreement or plan.

This Additional Coverage applies only if a Limit Of Insurance for Deferred Payments is shown in the Declarations.

**CHUBB®****Building And Personal Property****Additional Coverages**  
(continued)**Exhibition, Fair Or Trade Show**

We will pay for direct physical loss or damage to **personal property** caused by or resulting from a peril not otherwise excluded while:

- **in transit** to or from any exhibition, fair or trade show; or
- at any exhibition, fair or trade show,

not to exceed the applicable **Limit Of Insurance** for Personal Property shown under Exhibition, Fair Or Trade Show in the Declarations.

This Additional Coverage does not apply to:

- **electronic data processing property**; or
- **fine arts.**

This Additional Coverage applies only if a **Limit Of Insurance** for Personal Property is shown under Exhibition, Fair Or Trade Show in the Declarations.

**Fire Protection Equipment**

We will pay the cost you incur to refill your discharged fire protection equipment whether or not there is direct physical loss or damage to property.

This Additional Coverage is provided regardless of whether a **Limit Of Insurance** is shown in the Declarations.

**Installation**

We will pay for direct physical loss or damage to **personal property** caused by or resulting from a peril not otherwise excluded while such **personal property** is:

A. at a job site or temporarily warehoused elsewhere:

1. awaiting and during installation;
2. awaiting and during tests; or
3. awaiting acceptance by the buyer,

not to exceed the applicable **Limit Of Insurance** for Any Job Site shown under Installation in the Declarations; or

B. **in transit** to or from such job site or temporary warehouse, not to exceed the applicable **Limit Of Insurance** for In Transit shown under Installation in the Declarations.

We will not pay for any loss or damage to:

- **personal property** not a part of or destined to become part of the installation;
- tools; or
- **contractors' equipment.**

This Additional Coverage ends when the first of the following occurs:

- your interest in the **personal property** ceases;
- the buyer accepts the **personal property**;
- the **personal property** is put to use for its intended purpose; or

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## **Additional Coverages**

### **Installation (continued)**

- this policy is terminated.

This Additional Coverage applies only if a Limit Of Insurance for Any Job Site or In Transit is shown under Installation in the Declarations.

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### **In Transit**

We will pay for direct physical loss or damage to:

- A. **personal property, building components, or research and development property while in transit;**
- B. **personal property** being shipped FOB or on other similar terms after the title of a shipment passes to the consignee; or
- C. **personal property** which has been refused by the consignee, from the time such property has been refused until:
  1. the time such property is returned to your premises; or
  2. 14 consecutive days after such property has been refused,
 whichever occurs first,

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Personal Property, Building Components or Research And Development Property shown under In Transit in the Declarations.

We will not attempt to collect from the consignee, unless you:

- provide us with your written consent to do so; or
- assign us your right of action.

We will also pay for:

- A. the necessary additional expenses you incur to inspect, repackage and reship **personal property** damaged by a peril not otherwise excluded;
- B. general average and salvage charges that may be assessed against your covered **personal property** shipments that are waterborne; and
- C. loss or damage to **personal property** during loading and unloading of that property from a transporting conveyance, by a peril not otherwise excluded,

not to exceed the applicable Limit Of Insurance for Personal Property shown under In Transit in the Declarations.

This Additional Coverage does not apply:

- to any **personal property, building components or research and development property while in transit** to or from any exhibition, fair or trade show;
- to **salespersons' samples;**
- when you are acting as a carrier for hire;
- if you have purchased separate ocean marine insurance that covers any property **in transit;**
- to shipments by mail, unless registered;
- to **electronic data processing property;**

CHUBB®

**Building And Personal Property****Additional Coverages****In Transit  
(continued)**

- to **fine arts**; or
- to loss or damage to any property insured under the International Air Shipments Additional Coverage.

**International Air  
Shipments**

We will pay for direct physical loss or damage to **personal property** caused by or resulting from a peril not otherwise excluded while being shipped by air to or from:

- the contiguous United States of America;
- Canada;
- the State of Alaska;
- the State of Hawaii;
- Puerto Rico; or
- territories or possessions of the United States of America or Canada,

and points worldwide, not to exceed the applicable Limit Of Insurance for Personal Property shown under International Air Shipments in the Declarations. This coverage applies from the delivery of **personal property** at the point of origin shown in the air waybill until it is discharged at the destination shown in the air waybill.

This Additional Coverage does not apply:

- to **personal property** while being shipped by air to or from any exhibition, fair or trade show;
- if you have purchased separate ocean marine insurance which covers any **personal property** being shipped by air;
- to shipments by mail;
- if you are required to provide a negotiable special cargo policy of insurance to any seller, buyer or bank;
- to **electronic data processing property**;
- to **fine arts**; or
- to loss or damage to any property insured under the In Transit Additional Coverage.

**Newly Acquired Property**

We will pay for direct physical loss or damage to:

- **building** under construction at existing or newly acquired premises;
- **building** or **personal property** at newly acquired premises; or
- newly acquired **personal property** at existing premises shown in the Declarations

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Building or Personal Property shown in the Declarations under Newly Acquired Premises or Newly Acquired or Constructed Property.

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## **Additional Coverages**

### **Newly Acquired Property** (continued)

This Additional Coverage applies until the first of the following occurs:

- you report the value of the **building** or **personal property** at the newly acquired premises to us and we add such **building** or **personal property** to this policy;
- you report the value of the newly acquired **personal property** at the existing premises shown in the Declarations, and we add such **personal property** to this policy;
- 180 days pass from the date you acquire the premises, **personal property**, or construction begins on the **building**; or
- this policy expires.

We will charge you additional premium for the reported values from the date you acquire the premises or **personal property**, or construction begins on the **building**, if we add such premises, **personal property** or **building** to this policy.

**Personal property** being moved from a vacated premises to a new premises is not considered newly acquired **personal property**.

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### **Pollutant Clean-up Or Removal**

We will pay the costs you incur to clean up or remove **pollutants** from land, water or air:

- A. at the premises shown in the Declarations and either inside or outside of a **building**; or
- B. if the **pollutants** were part of:
  1. **personal property**;
  2. **research and development property**; or
  3. **building components**,
 while **in transit**,

if the discharge, dispersal, seepage, migration, release or escape of the **pollutants** is caused by or results from a peril not otherwise excluded.

The costs will be paid only if they are reported to us in writing within 180 days of the date the peril occurred which caused or resulted in the discharge, dispersal, seepage, migration, release or escape of the **pollutants**.

The most we will pay:

- at a premises shown in the Declarations; and
- for any property **in transit**,

for all such covered costs that occur during each separate 12-month policy period, regardless of whether this Additional Coverage appears in any other contract or contracts that form part of this policy, is the applicable Limit Of Insurance for Pollutant Clean-up Or Removal shown in the Declarations.

We will not pay for the costs to test for, monitor, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **pollutants**, other than payment for testing that is performed during the clean up or removal of the **pollutants** from the land, water or air, either inside or outside of a **building**.



## Building And Personal Property

### Additional Coverages

#### Pollutant Clean-up Or Removal (continued)

This Additional Coverage does not apply if the discharge, dispersal, seepage, migration, release or escape of **pollutants**:

- is caused by or results from a peril that is excluded under this insurance; or
- occurred prior to the effective date shown in the Declarations.

#### Preparation Of Loss Fees

We will pay the reasonable and necessary expenses we require you to incur after covered direct physical loss or damage to:

- **building;**
- **personal property;**
- **personal property of employees;**
- **research and development property;** or
- **outdoor trees, shrubs, plants or lawns,**

to determine the extent of such loss or damage, not to exceed the applicable Limit Of Insurance for Preparation Of Loss Fees shown in the Declarations.

This Additional Coverage does not apply to any expenses you incur for any:

- insurance adjuster, consultant, or attorney; or
- of your subsidiaries or affiliates.

#### Salespersons' Samples

We will pay for direct physical loss or damage to **salespersons' samples** caused by or resulting from a peril not otherwise excluded, not to exceed the Limit Of Insurance for Salespersons' Samples shown in the Declarations.

This Additional Coverage applies only if a Limit Of Insurance for Salespersons' Samples is shown in the Declarations.

#### Debris Removal Coverage

The following Debris Removal Coverage applies.

#### Debris Removal

- A. We will pay for the costs you incur to:
1. demolish and remove debris of damaged **building, personal property, personal property of employees** or **research and development property** caused by or resulting from a peril not otherwise excluded that occurs during the policy period; or
  2. remove debris of damaged **outdoor trees, shrubs, plants or lawns** at the premises shown in the Declarations, caused by or resulting from the perils of fire, lightning, explosion, riot or civil commotion or aircraft or self-propelled missiles that occurs during the policy period.
- B. The most we will pay for debris removal is the lesser of:
1. 25% of the covered direct physical loss or damage; or



**Debris Removal Coverage**

*Debris Removal (continued)*

2. the remaining applicable Limit Of Insurance for Building, Personal Property, Personal Property Of Employees, Research and Development Property or Outdoor Trees, Shrubs, Plants Or Lawns shown in the Declarations, after payment of the covered direct physical loss or damage.
- C. If the amount in B. above is insufficient to pay the debris removal, we will pay the remaining debris removal, subject to the applicable Limit Of Insurance shown under Debris Removal in the Declarations.  
  
We will also pay up to \$1,000 for the costs you incur at each premises to remove debris that is blown onto your premises by wind, if the wind would be covered by this insurance.
- D. Debris removal will be paid only if:
  1. reported to us in writing within 180 days of the date of the direct physical loss or damage to the **building, personal property, personal property of employees, research and development property** or **outdoor trees, shrubs, plants or lawns**; and
  2. a Limit Of Insurance applicable to the damaged **building, personal property, personal property of employees, research and development property** or **outdoor trees, shrubs, plants or lawns** is shown in the Declarations.
- E. Debris removal does not apply to costs to:
  1.
    - a. clean up or remove **pollutants** from land, water or air;
    - b. clean up, remove, restore or replace covered property because of the presence of **fungus**; or
    - c. clean up, remove, restore or replace polluted land, water or air, either inside or outside of a **building**; or
  2. demolish and clear the site of the undamaged portion of the **building**.

**Policy Exclusions**

The following Policy Exclusions apply to all the coverages in this contract.

*Acts Or Decisions*

This insurance does not apply to loss or damage caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

This Acts Or Decisions exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

*Business Errors*

This insurance does not apply to loss or damage caused by or resulting from errors in the:

- altering;
- calibrating;
- constructing;
- developing;
- distributing;



## ***Building And Personal Property***

### ***Policy Exclusions***

#### ***Business Errors (continued)***

- installing;
- manufacturing;
- maintaining;
- processing;
- repairing;
- researching; or
- testing,

of part or all of any property.

This Business Errors exclusion does not apply to:

- loss or damage that results to other covered property; or
- ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

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#### ***Dishonesty***

This insurance does not apply to loss or damage caused by or resulting from fraudulent, dishonest or criminal acts or omission committed alone or in collusion with others by you, your partners, members, officers, managers, directors, trustees, employees, anyone performing acts coming within the scope of the usual duties of your employees, or by anyone authorized to act for you, or anyone to whom you have entrusted covered property for any purpose.

This Dishonesty exclusion does not apply to:

- A. acts of vandalism;
- B. acts committed by carriers or warehousemen for hire or anyone claiming to be a carrier or warehousemen for hire, other than:
  1. you, your partners, directors, trustees and employees;
  2. anyone performing acts coming within the scope of the usual duties of your employees; or
  3. anyone authorized to act for you; or
- C. ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

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#### ***Governmental Or Military Action***

This insurance does not apply to loss or damage caused by or resulting from seizure, confiscation, expropriation, nationalization or destruction of property by order of governmental or military authority, whether de jure or de facto, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

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## Policy Exclusions

### *Governmental Or Military Action* (continued)

This Governmental Or Military Action exclusion does not apply to loss or damage caused by or resulting from acts of destruction ordered by governmental or military authority:

- A. when taken at the time of a fire to prevent its spread, if the fire would be covered under this insurance; or
- B. if the act of destruction is made necessary by direct physical loss or damage to:
  1. **personal property while in transit**; or
  2. a conveyance in or on which **personal property while in transit** is loaded, caused by or resulting from a specified peril not otherwise excluded.

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### *Inherent Vice/Latent Defect*

This insurance does not apply to loss or damage caused by or resulting from inherent vice or latent defect.

This Inherent Vice/Latent Defect exclusion does not apply to:

- loss or damage caused by or resulting from a **specified peril**; or
- ensuing loss or damage caused by or resulting from a **specified peril or water**.

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### *Insects Or Animals*

This insurance does not apply to loss or damage caused by or resulting from nesting or infestation by, or discharge or release of waste products or secretions of any insect or other animal.

This Insects Or Animals exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

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### *Mechanical Breakdown (Other Than Abrupt And Accidental)*

This insurance does not apply to loss or damage caused by or resulting from mechanical breakdown.

This Mechanical Breakdown (Other Than Abrupt And Accidental) exclusion does not apply to:

- A. abrupt and accidental breakdown of **mechanical or electrical system or apparatus** which causes direct physical loss or damage to all or part of that **mechanical or electrical system or apparatus** provided the direct physical loss or damage becomes manifest at the time of the breakdown that caused it.

Abrupt and accidental breakdown of **mechanical or electrical system or apparatus** does not include:

1. rust, oxidation or corrosion;
  2. faulty, inadequate or defective design, plan, specifications or installation;
  3. failure of **mechanical or electrical system or apparatus** to perform in accordance with plans or specifications; or
  4. freezing caused by or resulting from weather conditions; or
- B. ensuing loss or damage caused by or resulting from a peril not otherwise excluded.



## ***Building And Personal Property***

### ***Policy Exclusions*** *(continued)*

#### ***Nuclear Hazard***

This insurance does not apply to loss or damage caused by or resulting from nuclear reaction or radiation, or radioactive contamination, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Nuclear Hazard exclusion does not apply to ensuing loss or damage to:

- **building;**
- **personal property;**
- **personal property of employees;** or
- **research and development property,**

caused by or resulting from fire, if the fire would be covered under this insurance and there is a law in effect in the jurisdiction where the loss or damage occurs that expressly prohibits us from excluding such ensuing loss or damage.

#### ***Planning, Design, Materials Or Maintenance***

This insurance does not apply to loss or damage (including the costs of correcting or making good) caused by or resulting from any faulty, inadequate or defective:

- planning, zoning, development, surveying, siting;
- design, specifications, plans, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- materials used in repair, construction, renovation or remodeling; or
- maintenance,

of part or all of any property on or off the premises shown in the Declarations.

This Planning, Design, Materials Or Maintenance exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

#### ***Utility Supply Failure***

This insurance does not apply to loss or damage caused by or resulting from suspension or reduction of:

- water services;
- electrical or other power services;
- natural gas or other fuel services; or
- Internet or other communication services,

regardless of any other cause or event that:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

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## **Policy Exclusions**

### **Utility Supply Failure (continued)**

This Utility Supply Failure exclusion does not apply:

- if the suspension or reduction of such services is the direct result of direct physical loss or damage caused by or resulting from a peril not otherwise excluded; or
- to ensuing loss or damage caused by or resulting from a **specified peril**.

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### **War And Military Action**

This insurance does not apply to loss or damage caused by or resulting from:

- war, including undeclared or civil war;
- warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- insurrection, rebellion, revolution, usurped power or action taken by governmental or military authority, whether de jure or de facto, in hindering or defending against any of these,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

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### **Wear And Tear**

This insurance does not apply to loss or damage caused by or resulting from wear and tear or deterioration.

This Wear And Tear exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril** or **water**.

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### **Additional Exclusions**

The following Additional Exclusions apply to all coverages in this contract except:

- In Transit Additional Coverage;
- International Air Shipments Additional Coverage;
- Research And Development Property Premises Coverage; and
- Salespersons' Samples Additional Coverage.

### **Disappearance**

This insurance does not apply to loss or damage caused by or resulting from:

- disappearance; or
- shortage disclosed on taking inventory,

where there is no physical evidence to show what happened.

This Disappearance exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

**CHUBB®*****Building And Personal Property******Additional Exclusions****(continued)****Earthquake***

This insurance does not apply to loss or damage caused by or resulting from earthquake, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Earthquake exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

***Errors In Systems Programming***

This insurance does not apply to loss or damage caused by or resulting from:

- A. errors or omissions in the development of, programming of, or instructions to:
1. **electronic data processing property**; or
  2. a machine; or
- B. **electronic data** which is faulty, inadequate or defective for the use intended at the time of loss or damage.

This Errors In Systems Programming exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

***Flood***

This insurance does not apply to loss or damage caused by or resulting from:

- waves, tidal water or tidal waves; or
- rising, overflowing or breaking of any boundary,

of any natural or man-made lakes, reservoirs, ponds, brooks, rivers, streams, harbors, oceans or any other body of water or watercourse, whether driven by wind or not, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Flood exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

***Fungus***

This insurance does not apply to loss or damage:

- which is **fungus**;
- which is in anyway attributed to the presence of **fungus**; or
- caused by or resulting from **fungus**,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or

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**Additional Exclusions**

**Fungus**  
(continued)

- contributes in any sequence to, the loss or damage, even if such cause or event would otherwise be covered.

This Fungus exclusion does not apply:

- A. when the presence of **fungus** results from:
  1. explosion;
  2. fire;
  3. leakage from fire protection equipment; or
  4. lightning; or
- B. to the extent insurance is provided under the Fungus Clean-up Or Removal Premises Coverage.

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**Pollutants**

This insurance does not apply to loss or damage caused by or resulting from the mixture of or contact between property and a **pollutant** when such mixture or contact causes the property to be impure and harmful to:

- itself or other property;
- persons, animals or plants;
- land, water or air; or
- any other part of an environment,

either inside or outside of a building or other structure, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Pollutants exclusion does not apply to:

- A. the mixture of or contact between property and **pollutants** if the mixture or contact is directly caused by or directly results from a **specified peril**;
- B. any solid, liquid or gas used to suppress fire; or
- C. **water**.

Paragraphs B and C do not apply to loss or damage involving:

- viruses or pathogens; or
  - ammonia.
-

**CHUBB®****Building And Personal Property****Additional Exclusions***(continued)***Settling**

This insurance does not apply to loss or damage caused by or resulting from settling, cracking, shrinking, bulging or expansion of land, paved or concrete surfaces, foundations, pools, **buildings** or other structures.

This Settling exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

**Limits Of Insurance**

Except as provided under Fungus Clean-up Or Removal and Pollutant Clean-up Or Removal, the most we will pay in any **occurrence** is the amount of loss or damage, not to exceed the applicable Limit Of Insurance shown in the Declarations.

If any Premises Coverage or Additional Coverage appears in more than one contract which form a part of this policy, unless otherwise specified, the applicable Limit Of Insurance shown in the Declarations for such coverages is the most we will pay in any **occurrence**, regardless of the number of contracts in which such Premises Coverage or Additional Coverage appears.

**Building Extended Limit Of Insurance**

If an Extended Limit Of Insurance for Building is shown in the Declarations, the most we will pay in any **occurrence** is the amount of loss or damage, not to exceed 125% of the applicable Limit Of Insurance for Building shown in the Declarations.

The Extended Limit Of Insurance for Building:

- applies only to a premises shown in the Declarations for which the Extended Limit Of Insurance is shown; and
- does not apply to any Limit Of Insurance applicable to more than one **building** or **building** and any other coverage combined.

**Automatic Increase In Limits**

The Limits Of Insurance for Building or Personal Property will automatically increase by the annual percentage shown in the Declarations under Automatic Increase In Limits. At the time of loss or damage, the amount of increase will be determined by multiplying the applicable Limit Of Insurance shown in the Declarations by the percentage of annual increase applied on a pro rata basis.

This Automatic Increase In Limits:

- A. applies only to a premises shown in the Declarations for which the Automatic Increase In Limits is shown; and
- B. does not apply to any Limit of Insurance applicable to:
  1. more than one **building**;
  2. **personal property** in more than one **building**;
  3. **building** and **personal property** combined; or
  4. **building** or **personal property** combined with any other coverage.



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### **Deductible**

Subject to the applicable Limit Of Insurance, we will pay the amount of loss or damage, after application of Coinsurance if applicable, in excess of the applicable deductible amount shown in the Declarations for each **occurrence**.

If two or more deductibles apply to the same **occurrence**, only the largest single deductible will apply, unless otherwise stated.

### **Loss Payment Basis**

The following Loss Payment Basis provisions apply to all coverages contained within this contract, unless otherwise stated.

Subject to the applicable Limit Of Insurance shown in the Declarations:

- A. covered property is valued on a replacement cost basis as described below, unless:
  1. the Loss Payment Basis shown in the Declarations is Actual Cash Value; or
  2. otherwise stated under Loss Payment Basis Exceptions; and
- B. valuation also includes, for **building** or **personal property**, costs you incur as described below under Ordinance Or Law, Construction Fees, Brands And Labels and Extended Warranties.

### **Our Loss Payment Options**

In the event of loss or damage covered by this insurance, at our option, we will either:

- pay the covered value of the lost or damaged covered property;
- pay the cost of repairing or replacing the lost or damaged covered property plus any reduction in value of the repaired item;
- take all or any part of the covered property at an agreed or appraised value; or
- repair or replace the covered property with other such property of comparable material and quality for the same use or occupancy.

### **Replacement Cost Basis**

Lost or damaged covered property will be valued at the cost to repair or replace such property at the time of loss or damage, but not more than you actually spend to repair or replace such property at the same or another location for the same use or occupancy. There is no deduction for physical deterioration or depreciation.

If you replace the lost or damaged covered property, the valuation will include customs duties incurred.

If you do not repair or replace the covered property, we will only pay as provided under Actual Cash Value Basis.

If you commence the repair or replacement of the lost or damaged covered property within 24 months from the date of the loss or damage, we will pay you the difference between the actual cash value previously paid and the lesser of the:

- replacement cost at the time of loss or damage; or
- actual costs you incur to repair or replace.

Payment under the Replacement Cost Basis will not be made until the completion of the repairs or the replacement of the covered property.

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**Building And Personal Property****Loss Payment Basis**  
(continued)

**Actual Cash Value Basis** If the Loss Payment Basis shown in the Declarations is Actual Cash Value, lost or damaged covered property will be valued at the cost to repair or replace such property at the time of loss or damage with material of like kind and quality, less allowance for each of the following:

- physical deterioration;
- physical depreciation;
- obsolescence; and
- depletion.

**Ordinance Or Law**

If there is an ordinance or law in effect at the time of loss or damage that regulates zoning, land use or construction of a **building or personal property**, and if that ordinance or law affects the repair or replacement of the lost or damaged **building or personal property**, and if you:

- A. repair or replace the **building or personal property** as soon as reasonably possible, the valuation will include:
1. a. the replacement cost of the damaged and undamaged portions of the **building or personal property**; or
  - b. the actual cash value of the damaged and undamaged portions of the **building or personal property** (if the applicable Loss Payment Basis shown in the Declarations is Actual Cash Value);
  2. the costs to demolish and clear the site of the undamaged portion of the **building or personal property**; and
  3. the increased cost to repair or replace the **building** to the same general size at the same site or **personal property** for the same general use, to the minimum standards of such ordinance or law, except we will not include any costs:
    - a. for land, water or air, either inside or outside of a **building**;
    - b. for paved or concrete surfaces, retaining walls, foundations or supports below the surface of the lowest floor or basement, unless specifically covered by this policy, or **outdoor trees, shrubs, plants or lawns**;
    - c. incurred outside the legal property boundary of the premises shown in the Declarations;
    - d. if **building or personal property** is valued on an actual cash value basis; or
    - e. attributable to any ordinance or law that you were required to, but failed to, comply with before the loss; or
- B. do not repair or replace the **building or personal property**, the valuation will include:
1. the actual cash value of the damaged and undamaged portions of the **building or personal property**; and
  2. the cost to demolish and clear the site of the undamaged portion of the **building or personal property**.

When direct physical loss or damage is caused by or results from both:

- a peril not otherwise excluded; and

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## Loss Payment Basis

### Ordinance Or Law (continued)

- an excluded peril,

the valuation will not include the Ordinance Or Law costs attributable to the excluded peril. Instead, the valuation will be based on that portion of such costs equal to the proportion that the covered direct physical loss or damage bears to the total direct physical loss or damage, not including Ordinance Or Law costs, unless the Ordinance Or Law applies solely to that portion of the **building** or **personal property** which suffered the covered direct physical loss or damage.

This Loss Payment Basis does not apply to:

- any costs for undamaged **tenant's improvements and betterments** that are payable under the Leasehold Interest – Undamaged Tenant's Improvements and Betterments Premises Coverage;
- any increase in costs, loss or damage associated with the enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **fungus** or **pollutants**; or
- loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Ordinance Or Law Loss Payment Basis does not apply to the Fungus Clean-up Or Removal Premises Coverage or Pollutant Clean-up Or Removal Premises Coverage.

If a maximum value for ordinance or law is shown in the Declarations, then, subject to the applicable Limits Of Insurance shown in the Declarations, such maximum value is the most we will consider under Ordinance Or Law.

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## Construction Fees

**Building** and **personal property** valuation includes necessary and incurred architectural, engineering, consulting, decorating and supervisory fees related to the construction and repair of the lost or damaged **building** and **personal property**.

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## Brands And Labels

**Personal property** valuation includes the cost of:

- replacing labels, capsules, wrappers or containers from lost or damaged **personal property**; or
- identifying and reconditioning lost or damaged **personal property**.

In the event of loss or damage to **stock**, you have two options when:

- you do not want to sell your lost or damaged **stock** under your brand or label; or
- the owner of any lost or damaged **stock** in your care, custody or control does not want to sell that lost or damaged **stock** under the owner's brand or label,

even though the lost or damaged **stock** has salvage value, you may:

- remove the brand or label and then relabel the lost or damaged **stock** to comply with the law; or



## **Building And Personal Property**

### **Loss Payment Basis**

#### **Brands And Labels (continued)**

- label the lost or damaged **stock** as "salvage" but, in doing so, cause no further loss or damage to the **stock**.

In either case, the **personal property** valuation will include the difference between:

- the salvage value of the lost or damaged **stock** with the brand or label attached; and
- the salvage value of the lost or damaged **stock** with the brand or label removed.

#### **Extended Warranties**

**Personal property** or **building components** valuation includes the pro rata portion of the original cost based on the period of time remaining in your nonrefundable extended warranties, maintenance contracts or service contracts that you purchased and which are no longer valid on lost or damaged:

- **personal property**; or
- **building components** consisting of permanently installed, or intended to be permanently installed, machinery and equipment,

that you repair or replace.

### **Loss Payment Basis Exceptions**

#### **Accounts Receivable Records And Valuable Papers**

**Accounts receivable records** and **valuable papers**, are valued based on the cost of blank materials and the cost of copying from a duplicate source on the same type of materials.

#### **Deferred Payments**

When a total loss occurs, coverage for Deferred Payments is valued based on the amount shown on your books as due from the buyer.

When partial loss or damage occurs and the buyer refuses to continue payment, forcing you to repossess, coverage for Deferred Payments will be valued as follows:

If the realized value of the repossessed **personal property** is:

- greater than or equal to the amount shown on your books as due from the buyer, we will make no payment; or
- less than the amount shown on your books as due from the buyer, we will pay the difference, less any amount that was past due by more than 30 days.

#### **Finished Stock And Sold Personal Property**

**Finished stock** and sold **personal property** completed and awaiting delivery are valued based on your selling price less the value of discounts and costs you would have incurred.

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## **Loss Payment Basis Exceptions**

(continued)

### **Gold, Gold Salts And Other Precious Metals**

Gold, gold salts and other precious metals are valued based on the average market cost for replacement as published by the American Metals Market during the period of 10 business days immediately preceding the date of loss or damage, or the actual sum you pay for replacement, whichever is less.

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### **Nuclear Hazard**

**Building, personal property, personal property of employees, or research and development property** which suffers direct physical loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination, is valued on an actual cash value basis, subject to all other exceptions described under Loss Payment Basis Exceptions.

---

### **Personal Property Of Others, Business Personal Property You Lease And Personal Property Of Employees**

**Personal property of others**, business personal property you lease and **personal property of employees** are valued on the same basis as **personal property**, subject to all other exceptions described under Loss Payment Basis Exceptions, but we will not pay more than the amount for which you are contractually liable.

Labor, materials and services that you furnish or arrange on **personal property of others**, business personal property you lease and **personal property of employees** are valued based on the actual cost of the labor, materials and services.

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### **Research And Development Property**

If lost or damaged **research and development property**:

- cannot be repaired, replaced, or reproduced; or
- is not replaced or reproduced,

no payment will be made under this insurance.

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### **Research And Development Property Of Others**

**Research and development property** not owned by you is valued on the same basis as your **research and development property**, subject to all other exceptions described under Loss Payment Basis Exceptions, but we will not pay more than the amount for which you are contractually liable.

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### **Stock In Process**

**Stock in process** is valued based on the cost of raw materials and costs expended as of the date of loss or damage.

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### **Undamaged Tenant's Improvements And Betterments**

Undamaged **tenant's improvements and betterments** are valued based on:

- the cost to replace undamaged **tenant's improvements and betterments** at the time of loss or damage at another site if you commence replacement within 24 months following the termination of your lease; or
  - the **unamortized** portion of their original cost to you if you do not replace undamaged **tenant's improvements and betterments**.
-



## ***Building And Personal Property***

### ***Loss Payment Limitations***

#### ***Electronic Data***

We will not pay for any loss or damage to **electronic data**, unless such loss or damage is caused by or results from:

- aircraft;
- explosion;
- falling objects;
- fire;
- freezing;
- leakage from fire protection equipment;
- lightning;
- riot or civil commotion;
- **sinkhole collapse**;
- smoke;
- vehicles;
- weight of snow; or
- windstorm or hail.

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#### ***Loss Of Market***

We will not pay for any loss or damage that results from loss of market, loss of use or delay.

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#### ***Prototypes***

When production of a new product begins, coverage under this contract ceases for:

- the **prototype** of that product; and
- the research project directly associated with the new product.

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#### ***Tenant's Improvements And Betterments***

We will not pay for that part of any lost or damaged **tenant's improvements and betterments** which is paid by others.

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#### ***Suspension, Lapse Or Cancellation Of Any License***

Leasehold Interest insurance does not apply to loss caused by or resulting from the suspension, lapse or cancellation of any license.

---

**Conditions (Including Coverage Territory)**

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy. Any additional conditions are shown in the Additional Conditions section of this contract.

**Additional Condition****Building Or Personal Property Coinsurance**

Coinsurance applies to **building** or **personal property** only when a coinsurance percentage under Building or Personal Property is shown in the Declarations.

Coinsurance does not apply to:

- **personal property** or **building components while in transit;**
- **building** or **personal property** at any premises not shown in the Declarations; or
- any covered loss of \$100,000 or less.

If coinsurance applies, our maximum loss payment will be determined as follows:

- A. determine the value of the covered **building** or **personal property** at the time of loss or damage in accordance with the applicable Loss Payment Basis as provided under Loss Payment Basis;
- B. multiply the value determined in step A. by the applicable coinsurance percentage shown in the Declarations;
- C. divide the applicable Limit Of Insurance for Building or Personal Property shown in the Declarations by the amount determined in step B.;
- D. multiply the total amount of the covered loss or damage, before the application of any deductible, by the percentage determined in step C.; and
- E. subtract the deductible from the amount determined in step D.

The amount determined in step E. is the most we will pay for loss or damage, not to exceed the applicable Limit Of Insurance for Building or Personal Property shown in the Declarations.

If coinsurance applies and the **building** or **personal property** is valued on a replacement cost basis and if you do not repair or replace the **building** or **personal property**, we will pay you the lesser of:

- the actual cash value of the lost or damaged **building** or **personal property**; or
- the replacement cost of the lost or damaged **building** or **personal property** after application of coinsurance.

If you commence the repair or replacement of the lost or damaged **building** or **personal property** within 24 months from the date of the loss or damage, and if the payment made above was on an actual cash value basis, then we will pay the difference between the previous payment and the lesser of the replacement cost of the lost or damaged **building** or **personal property** at the time of:

- loss or damage; or
- actual replacement,

after the application of coinsurance.



## **Building And Personal Property**

### **Additional Condition**

#### **Building Or Personal Property Coinsurance (continued)**

Coinsurance will apply to the total values of all **building** and **personal property** if one Limit Of Insurance for Building or Personal Property applies to:

- more than one **building**;
- **personal property** at more than one premises; or
- **buildings** and **personal property** at one or more premises.

If **personal property** is insured with a separate Limit Of Insurance for **personal property** at each premises, you may elect to have coinsurance applied in either of the following ways at the time of loss or damage:

- at the premises where the loss occurred; or
- based on the total value of all **personal property** at all premises where a Limit Of Insurance for Personal Property is shown in the Declarations.

If the application of coinsurance results in a penalty to you, at the time of loss adjustment, you may change the Loss Payment Basis from a replacement cost basis to an actual cash value basis, if such action will increase your loss payment and reduce the coinsurance penalty.

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### **Definitions**

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.



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## **Business Income With Extra Expense**

### **Contract**

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy.

Throughout this contract, the words “you” and “your” refer to the Named Insured shown in the Declarations of this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

### **Premises Coverages**

The following Premises Coverages apply only at those premises for which a Limit Of Insurance applicable to such coverages is shown in the Declarations.

Except as otherwise provided, direct physical loss or damage must:

- be caused by or result from a **covered peril**; and
- occur at, or within 1,000 feet of, the premises, other than a **dependent business premises**, shown in the Declarations.

### **Business Income And Extra Expense**

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to property**, unless otherwise stated.

This Premises Coverage applies only at those premises:

- where you incur a **business income** loss or **extra expense**; and
- for which a Limit Of Insurance for Business Income With Extra Expense is shown in the Declarations.

### **Contractual Penalties**

We will pay for the contractual penalties you are legally liable to pay under the written provisions of a contract due to a material breach of that contract, not to exceed the applicable Limit Of Insurance for Contractual Penalties shown under Business Income in the Declarations.

This material breach of contract must be the direct result of direct physical loss or damage by a **covered peril to property**.

### **Fungus Clean-up Or Removal**

We will pay for the actual:

- **business income** loss; and
- **extra expense**,

you incur due to the actual impairment of your **operations** during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.

This actual impairment of **operations** must be caused by or result from the presence of **fungus** at your premises shown in the Declarations.

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## Premises Coverages

### *Fungus Clean-up Or Removal (continued)*

Coverage will begin **immediately** after the date the **fungus** first appeared and will end:

- 45 consecutive days after this coverage begins; or
- when your **business income** coverage ends,

whichever occurs first.

This Premises Coverage does not apply if the presence of **fungus**:

- A. is caused by or results from:
  1. a peril that is not a **covered peril**; or
  2. **moisture**, other than **water** or **flood**, if **flood** would be covered under this insurance;
- B. existed prior to the effective date shown in the Declarations;
- C. is not reported to us in writing as soon as possible after you first become aware, or in the exercise of reasonable care should have been aware, of the presence of **fungus**; or
- D. is at premises shown under Excluded Premises in the Declarations.

---

### *Ingress And Egress*

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

when existing ingress to or egress from a premises shown in the Declarations is prevented due to direct physical loss or damage by a **covered peril** to property at a location contiguous to such premises.

This Premises Coverage will begin at the time of direct physical loss or damage and will continue until the expiration of thirty (30) consecutive days thereafter or whenever your **business income** coverage ends, whichever occurs first.

This Premises Coverage does not apply if the:

- direct physical loss or damage is caused by or results from earthquake or **flood**; or
- ingress to or egress from your premises is prohibited by civil authority.

The most we will pay for this Premises Coverage is the Limit Of Insurance for Ingress And Egress shown under Business Income in the Declarations.

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### *New Product Delay*

We will pay for the actual **business income** loss you incur and discover after lost or damaged **property** directly related to your **research and development operations** is repaired or replaced and your **research and development operations** are restored, with reasonable speed to the condition that would have existed if no direct physical loss or damage occurred.

Such payment will be made:

- only if you discover the **business income** loss within 24 months after the date of the direct physical loss or damage;
- only after the new product or the enhanced product is made available in the market-place; and



## **Business Income With Extra Expense**

### **Premises Coverages**

#### **New Product Delay (continued)**

- for the period equal to the length of time it originally took to restore such lost or **damaged property** with reasonable speed.

If a competitor introduces a similar product prior to the date you scheduled the introduction of your new or enhanced product, we will reduce the amount of such actual **business income** loss to the extent attributable to the competitor's product.

The **business income** loss must be caused by or result from direct physical loss or damage by a **covered peril to property**, and must result in a delay in the introduction of any new product or the enhancement of any existing product.

The most we will pay for New Product Delay is the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.

### **Additional Coverages**

The following Additional Coverages apply within the coverage territory.

#### **Any Other Location**

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income shown under Any Other Location in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to property** at unspecified premises.

This Additional Coverage does not apply to **business income** loss or **extra expense** you incur caused by or resulting from loss or damage to **property**:

- used by utility companies to supply you with services;
- used by **on-line access** providers;
- at a **dependent business premises**;
- at a newly acquired premises;
- at any exhibition, fair or trade show; or
- **in transit**.

This Additional Coverage applies only if a Limit Of Insurance for Business Income is shown under Any Other Location in the Declarations.

#### **Civil Authority**

We will pay for the actual:

- **business income** loss; or
- **extra expense**,

you incur due to the actual impairment of your **operations**, directly caused by the prohibition of access to:

- your premises; or

---

## **Additional Coverages**

### **Civil Authority (continued)**

- a **dependent business premises**,

by a civil authority.

This prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such **dependent business premises** by a **covered peril**, provided such property is within:

- one mile; or
- the applicable miles shown in the Declarations,

from such **premises** or **dependent business premises**, whichever is greater.

The most we will pay for Civil Authority is the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.

The coverage for:

A. **business income** will begin:

1. after the applicable waiting period shown in the Declarations for Business Income expires; or
2. 24 normal business hours following the time the civil authority prohibits access, whichever is the longer.

The Waiting Period shown in the Declarations will begin immediately following the time the civil authority prohibits access.

The coverage will apply for a period of:

- up to 30 consecutive days after coverage begins; or
- when your **business income** loss ends,

whichever occurs first; and

B. **extra expense** will begin immediately after the time the civil authority prohibits access and will end:

1. 30 consecutive days after the coverage begins; or
2. whenever your **business income** coverage ends,

whichever is later.

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

---

### **Dependent Business Premises**

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Dependent Business Premises shown under Business Income in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to **property** or **personal property of a dependent business premises** at a **dependent business premises**.



## **Business Income With Extra Expense**

### **Additional Coverages**

#### **Dependent Business Premises (continued)**

You may purchase higher limits for specific **dependent business premises** only by showing such premises in the Declarations. Such higher limits apply to actual **business income** loss or **extra expense** only if the covered direct physical loss or damage occurs at such **dependent business premises**.

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

#### **Exhibition, Fair Or Trade Show**

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income shown under Exhibition, Fair Or Trade Show in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to personal property, electronic data processing property or fine arts** at, or while **in transit** to or from, any exhibition, fair or trade show.

This Additional Coverage applies only if a Limit Of Insurance for Business Income is shown under Exhibition, Fair Or Trade Show in the Declarations.

#### **International Air Shipments**

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income shown under International Air Shipments in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to personal property, electronic data processing property, fine arts or valuable papers** being shipped by air to or from:

- the contiguous United States of America;
- Canada;
- the State of Alaska;
- the State of Hawaii;
- Puerto Rico; or
- territories or possessions of the United States of America or Canada,

and points worldwide. This Additional Coverage applies from the delivery of such property at the point of origin shown in the air waybill until it is discharged at the destination shown in the air waybill.

This Additional Coverage does not apply to any **business income** loss or **extra expense**:

- caused by or resulting from loss or damage to any property while being shipped by air to or from any exhibition, fair or trade show;

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## Additional Coverages

### International Air Shipments (continued)

- caused by or resulting from loss or damage to shipments by mail;
- if you have purchased separate ocean marine insurance that covers any property while being shipped by air;
- if you are required to provide a negotiable special cargo policy of insurance to any seller, buyer or bank; or
- payable under the In Transit Additional Coverage.

This Additional Coverage applies only if a Limit Of Insurance for Business Income is shown under International Air Shipments in the Declarations.

---

### In Transit

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income shown under In Transit in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to personal property, electronic data processing property, fine arts or valuable papers while in transit**.

This Additional Coverage does not apply to any **business income** loss or **extra expense**:

- caused by or resulting from loss or damage to any property while **in transit** to or from any exhibition, fair or trade show;
- when you are acting as a carrier for hire;
- if you have purchased separate ocean marine insurance which covers any property while **in transit**;
- caused by or resulting from loss or damage to shipments by mail, unless ~~registered~~;
- payable under the International Air Shipments Additional Coverage.

This Additional Coverage applies only if a Limit Of Insurance for Business Income is shown under In Transit in the Declarations.

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### Loss Of Utilities

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Loss Of Utilities shown under Business Income in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to**:

- **building**;
- **personal property of a utility** located either inside or outside of a **building**; or
- **service property**,





## **Business Income With Extra Expense**

### **Additional Coverages**

#### **Loss Of Utilities (continued)**

excluding **overhead communication, transmission or distribution equipment**, necessary to supply your premises with:

- water supply;
- communication supply;
- power supply;
- natural gas supply;
- sewage treatment; or
- **on-line access,**

services.

We will pay such loss provided that the disruption of services:

- is not due to your failure to comply with the terms and conditions of any contract; and
- has been reported to the service provider.

We will not pay for the actual **business income** loss you incur until the:

- applicable waiting period shown in the Declarations for Business Income expires;
- applicable waiting period shown in the Declarations for Loss Of Utilities expires; or
- first 24 normal business hours following the direct physical loss or damage expires,

whichever is the longer.

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

---

#### **Newly Acquired Premises**

We will pay for the actual:

- **business income** loss you incur due to the actual impairment of your **operations**; and
- **extra expense** you incur due to the actual or potential impairment of your **operations**,

during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Business Income shown in the Declarations under Newly Acquired Premises.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to property** at each newly acquired premises. This Additional Coverage applies until the first of the following occurs:

- you notify us of how you want Business Income With Extra Expense to apply to the newly acquired premises and we add such premises to this policy;
- 180 days pass from the date you acquire the premises; or
- this policy expires.

We will charge you additional premium from the date you acquire the premises, if we add such premises to this policy.

**Additional Coverages***(continued)***Pollutant Clean-up Or Removal**

We will pay for the actual **business income** loss you incur due to the actual impairment of your **operations** during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Pollutant Clean-up Or Removal shown under Business Income in the Declarations.

This actual impairment of **operations** must be caused by or result from the enforcement of any ordinance or law that requires you to clean up or remove **pollutants** from land, water or air, either inside or outside of a **building**, as a result of direct physical loss or damage by a **covered peril** to **property** at the premises shown in the Declarations.

**Preparation Of Loss Fees**

We will pay the reasonable and necessary expenses and fees incurred following covered loss or damage to certify your **business income** loss or **extra expense**, not to exceed the applicable Limit Of Insurance for Preparation Of Loss Fees shown under Business Income in the Declarations.

This Additional Coverage does not apply to any expenses you incur for any:

- insurance adjuster, consultant or attorney; or
- of your subsidiaries or affiliates.

**Limits Of Insurance**

The most we will pay in any **occurrence** is the amount of loss, not to exceed the applicable Limit Of Insurance shown in the Declarations.

**Automatic Increase In Limits**

The Limits Of Insurance for Business Income With Extra Expense will automatically increase by the annual percentage shown in the Declarations under Automatic Increase In Limits. At the time of loss or damage, the amount of increase will be determined by multiplying the applicable Limit Of Insurance shown in the Declarations by the percentage of the annual increase, applied on a pro rata basis.

This Automatic Increase In Limits:

- applies only to a premises shown in the Declarations for which the Automatic Increase in Limits is shown; and
- does not apply to any Limit Of Insurance applicable to more than one premises.

**Waiting Period**

Subject to the applicable Limit Of Insurance, we will pay the amount of **business income** loss that is incurred after the waiting period shown in the Declarations for each **occurrence**.

If a waiting period is shown in the Declarations, the waiting period begins immediately following the time of the covered direct physical loss or damage.

If two or more Business Income waiting periods apply to the same **occurrence**, only the largest single waiting period will apply, unless otherwise stated.

Hours shown for the waiting period are the normal business hours.

The waiting period does not apply to **extra expense**.



## **Business Income With Extra Expense**

### **Loss Determination**

In making any loss determination under this coverage, we may utilize relevant sources of information, including:

- your financial records and accounting procedures;
- bills, invoices and other vouchers;
- deeds, liens and contracts;
- status and feasibility reports; and
- budgeting and marketing records.

### **Business Income**

The amount of **business income** loss will be determined based on the:

- net income of your business before the direct physical loss or damage occurred;
- the likely net income of your business if no loss or damage occurred, but not including any **business income** that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the covered loss on customers or on other businesses; and
- your continuing operating expenses, including your continuing normal payroll expenses, necessary to resume **operations** with the same quality of service that existed just before the direct physical loss or damage.

### **Extra Expense**

The amount of **extra expense** loss will be determined based on necessary expenses that:

- exceed your normal operating expenses that would have been incurred by **operations** during the **period of restoration**, if no physical loss or damage had occurred; and
- reduce the **business income** loss that otherwise would have been incurred.

We will deduct from the total of such expenses:

- the salvage value that remains on any property bought for temporary use during the **period of restoration**, once **operations** are resumed; and
- any **extra expense** that is paid for by other insurance.

### **Resumption Or Continuation Of Operations**

We will reduce the amount of any **business income** loss payment to the extent you can resume or continue your **operations**, in whole or in part, by using:

- damaged or undamaged property, including **merchandise** or **stock**; or
- any other available premises.

If you elect not to resume or continue **operations**:

- any loss determination for **business income** will be based on the length of time it would have taken to resume or continue **operations** with reasonable speed; and
- we will not make any payment for **extra expense**.

**Loss Payment Option** The following Loss Payment Option applies when a Monthly Limit of Indemnity under Business Income is shown in the Declarations:

**Monthly Limit Of Indemnity** The most we will pay for the actual **business income** loss incurred in each period of 30 consecutive days after the beginning of the **period of restoration** will be determined by multiplying the Limit Of Insurance for Business Income With Extra Expense by the Monthly Limit Of Indemnity shown in the Declarations.

If all of the amount determined by this calculation is not used in the 30 day period, the unused portion may be applied to any subsequent 30 day periods.

This Monthly Limit Of Indemnity applies only for **business income** loss, not **extra expense**.

**Loss Payment Limitations**

**Debris Removal** We will not pay for any **extra expense** you incur for the demolition or removal of debris, but we will pay for such **extra expense** you incur to the extent it reduces the amount of a covered **business income** loss that otherwise would have been payable under this contract.

**Increase Of Loss Due To Death Or Injury** We will not pay for any **business income** loss or **extra expense** caused by or resulting from any injury, sickness, disease, death, emotional injury, emotional distress or humiliation of any person.

**Increase Of Loss Due To Strikers Or Others Causing A Delay** We will not pay for any increase of loss caused by or resulting from delay in repairing or replacing property or resuming your **operations**, due to interference at the location of the repair, replacement or **operations** by strikers or other persons.

**Loss Or Damage To Electronic Data** We will not pay for any **business income** loss or **extra expense** you incur caused by or resulting from direct physical loss or damage to **electronic data**, unless such direct physical loss or damage is caused by or results from:

- aircraft;
- explosion;
- earthquake, (except California) to the extent covered under the Electronic Data Processing Property contract which is part of this policy;
- falling objects;
- fire;
- **flood**, to the extent covered under the Electronic Data Processing Property contract which is part of this policy;
- freezing;
- leakage from fire protection equipment;
- lightning;
- riot or civil commotion;
- **sinkhole collapse**;
- smoke;



## **Business Income With Extra Expense**

### **Loss Payment Limitations**

#### **Loss Or Damage To Electronic Data (continued)**

- vehicles;
- weight of snow; or
- windstorm or hail.

#### **Loss Or Damage To Finished Stock**

We will not pay for that part of any **business income** loss to **finished stock**.

#### **Loss Or Damage To Property Used To Provide Utility Services**

Except as provided for in the Loss of Utilities Additional Coverage, we will not pay for any **business income** loss or **extra expense** caused by or resulting from loss or damage to:

- **building;**
- **personal property of a utility** located either inside or outside of a **building;** or
- **service property,**

used by you or a utility to provide you with utility services.

#### **Loss Or Damage To Water**

We will not pay for any **business income** loss or **extra expense** you incur for loss or damage to water.

#### **Nuclear Hazard**

We will not pay for any **business income** loss or **extra expense** you incur for loss or damage to **building** or **personal property** caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination.

#### **Pollutant Clean-up Or Removal**

We will not pay for any **extra expense** you incur for:

- clean up or removal of **pollutants** from land, water or air, either inside or outside of a **building;** or
- testing for, monitoring, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **pollutants,**

but we will pay for such **extra expense** you incur to the extent it reduces the amount of a covered **business income** loss that otherwise would have been payable under this contract.

#### **Conditions (Including Coverage Territory)**

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy. Any additional conditions are shown in the Additional Condition section of this contract.

**Additional Condition****Business Income  
Coinsurance**

Coinsurance applies to **business income** only when a coinsurance percentage under Business Income With Extra Expense is shown in the Declarations.

Coinsurance does not apply to:

- A. **extra expense;**
- B. any covered loss of \$100,000 or less;
- C. Contractual Penalties;
- D. Ingress And Egress;
- E. New Product Delay; and
- F. the following Additional Coverages:
  - 1. Any Other Location;
  - 2. Dependent Business Premises when a Limit Of Insurance for a specific Dependent Business Premises has not been purchased;
  - 3. Exhibition, Fair Or Trade Show;
  - 4. International Air Shipments;
  - 5. In Transit;
  - 6. Loss Of Utilities;
  - 7. Newly Acquired Premises;
  - 8. Pollutant Clean-up Or Removal; and
  - 9. Preparation Of Loss Fees.

We will not pay the full amount of any **business income** loss if the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations is less than:

- A. the applicable coinsurance percentage under Business Income With Extra Expense shown in the Declarations multiplied by:
- B. the sum of:
  - 1. net income (net profit or loss before income taxes); and
  - 2. operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by you in your **operations** for the 12 months following the effective date, or last previous anniversary date, of this policy (whichever is later).

Instead, our maximum **business income** loss payment will be determined as follows:

- A. multiply the net income and operating expenses that would have been earned or incurred (had no loss occurred) by you in your **operations** for the 12 months following the effective date, or last previous anniversary date, of this policy by the applicable coinsurance percentage under Business Income With Extra Expense in the Declarations;
- B. divide the applicable Limit Of Insurance for Business Income With Extra Expense by the figure determined in step A;
- C. multiply the total amount of the covered loss by the figure determined in step B; and
- D. subtract the applicable waiting period, if any, from the amount determined by step C.



## ***Business Income With Extra Expense***

### ***Additional Condition***

#### ***Business Income Coinsurance (continued)***

The amount determined in step D. is the most we will pay, not to exceed the applicable Limit Of Insurance for Business Income With Extra Expense shown in the Declarations.

In determining operating expenses for the purpose of applying coinsurance, the following expenses, if incurred, shall be deducted from the total of all operating expenses:

- prepaid freight - outgoing;
- returns and allowances;
- discounts;
- bad debts;
- collection expenses;
- cost of raw stock and factory supplies consumed (including transportation charges);
- cost of merchandise sold (including transportation charges);
- cost of other supplies consumed (including transportation charges);
- cost of services purchased from outsiders (not employees) that do not continue under contract;
- power, heat and refrigeration expenses that do not continue under contract if endorsement form 80-02-1337 is attached; and
- all ordinary payroll expense or the amount of payroll expense excluded if endorsement form 80-02-1341 is attached.

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### ***Definitions***

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.

## **Property Insurance**

### **Electronic Data Processing Property**

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CHUBB®

**Electronic Data Processing Property****Contract**

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy.

Throughout this contract, the words “you” and “your” refer to the Named Insured shown in the Declarations of this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

**Premises Coverages**

The following Premises Coverages apply only at those premises for which a Limit Of Insurance applicable to such coverages is shown in the Declarations.

Except as otherwise provided, the loss or damage must:

- be caused by or result from a **technology peril**; and
- occur at, or within 1,000 feet of, the premises shown in the Declarations.

**Electronic Data Processing Property**

We will pay for direct physical loss or damage to **electronic data processing property** caused by or resulting from a **technology peril**, not to exceed the applicable Limit Of Insurance for Electronic Data Processing Property shown in the Declarations.

If you purchase additional, separate Limits Of Insurance for:

- **electronic data processing equipment**;
- **electronic data**;
- **mobile communication property**; or
- **communication property**;

then the applicable Limit Of Insurance for:

- Electronic Data Processing Equipment;
- Electronic Data;
- Mobile Communication Property; or
- Communication Property,

shown in the Declarations will apply.

**Public Safety Service Charges**

We will pay the charges you:

- assume under any contract or agreement; or
- are required to pay by local ordinance,

in effect at the time of the direct physical loss or damage, if a fire department or other municipal agency charged with preserving public safety is called to save or protect **electronic data processing property** from direct physical loss or damage caused by or resulting from a **technology peril**, not to exceed the applicable Limit Of Insurance for Public Safety Service Charges shown in the Declarations.

**Premises Coverages***(continued)***Removal**

We will pay for direct physical loss or damage to **electronic data processing property** while:

- being moved to another location or returned from such location to its original location; or
- temporarily stored at another location,

if you must move the **electronic data processing property** from such location to preserve it from imminent loss or damage caused by or resulting from a **technology peril**, not to exceed the applicable Limit Of Insurance for:

- Electronic Data Processing Equipment;
- Electronic Data;
- Communication Property; or
- Electronic Data Processing Property,

shown in the Declarations.

**Additional Coverages**

The following Additional Coverages apply within the coverage territory.

**Any Other Location**

We will pay for direct physical loss or damage caused by or resulting from a **technology peril** to:

- **electronic data processing equipment;**
- **electronic data;** or
- **communication property,**

at unspecified premises, not to exceed the applicable Limit Of Insurance for Electronic Data Processing Property shown under Any Other Location in the Declarations.

If you purchase additional, separate Limits Of Insurance for:

- **electronic data processing equipment;**
- **electronic data;** or
- **communication property,**

then the applicable Limit Of Insurance for:

- Electronic Data Processing Equipment;
- Electronic Data; or
- Communication Property,

shown under Any Other Location in the Declarations will apply.

This Additional Coverage does not apply to **electronic data processing property:**

- while at any exhibition, fair or trade show;
- at any newly acquired premises; or
- while **in transit.**

**CHUBB®****Electronic Data Processing Property****Additional Coverages****Any Other Location  
(continued)**

This Additional Coverage applies only if an applicable Limit Of Insurance for Electronic Data Processing Property is shown under Any Other Location in the Declarations.

**Exhibition, Fair Or Trade  
Show**

We will pay for direct physical loss or damage to:

- **electronic data processing equipment;** or
- **electronic data,**

caused by or resulting from a **technology peril** while:

- **in transit** to or from any exhibition, fair or trade show; or
- at any exhibition, fair or trade show,

not to exceed the applicable Limit Of Insurance for Electronic Data Processing Property shown under Exhibition, Fair Or Trade Show in the Declarations.

If you purchase additional, separate Limits Of Insurance for:

- **electronic data processing equipment;** or
- **electronic data,**

then the applicable Limit Of Insurance for:

- Electronic Data Processing Equipment; or
- Electronic Data,

shown under Exhibition, Fair Or Trade Show in the Declarations will apply.

This Additional Coverage applies only if an applicable Limit Of Insurance for Electronic Data Processing Property is shown under Exhibition, Fair Or Trade show in the Declarations.

**Fire Protection  
Equipment**

We will pay the cost you incur to refill your discharged fire protection equipment whether or not there is direct physical loss or damage to your **electronic data processing property**.

This Additional Coverage is provided regardless of whether a Limit Of Insurance is shown in the Declarations.

**In Transit**

We will pay for direct physical loss or damage to:

- **electronic data processing equipment;** or
- **electronic data,**

while **in transit** caused by or resulting from a **technology peril**, not to exceed the applicable Limit Of Insurance for Electronic Data Processing Property shown under In Transit in the Declarations.

If you purchase additional, separate Limits Of Insurance for:

- **electronic data processing equipment;** or
- **electronic data,**

then the applicable Limit Of Insurance for:

- Electronic Data Processing Equipment; or

---

## **Additional Coverages**

### ***In Transit (continued)***

- Electronic Data,  
shown under In Transit in the Declarations will apply.

This Additional Coverage does not apply:

- to **electronic data processing property while in transit** to or from any exhibition, fair or trade show;
- when you are acting as a carrier for hire;
- if you have purchased separate ocean marine insurance which covers **electronic data processing property while in transit**; or
- to shipments by mail, unless registered.

This Additional Coverage applies only if an applicable Limit Of Insurance for Electronic Data Processing Property is shown under In Transit in the Declarations.

---

### ***International Air Shipments***

We will pay for direct physical loss or damage to:

- **electronic data processing equipment**; or
- **electronic data**,

caused by or resulting from a **technology peril** while being shipped by air to or from:

- the contiguous United States of America;
- Canada;
- the State of Alaska;
- the State of Hawaii;
- Puerto Rico; or
- territories or possessions of the United States of America or Canada,

and points worldwide, not to exceed the applicable Limit Of Insurance for Electronic Data Processing Property shown under International Air Shipments in the Declarations.

If you purchase additional, separate Limits of Insurance for:

- **electronic data processing equipment**; or
- **electronic data**,

then the applicable Limit Of Insurance for:

- Electronic Data Processing Equipment; or
- Electronic Data,

shown under International Air Shipments in the Declarations will apply.

This Additional Coverage applies from the delivery of **electronic data processing equipment** or **electronic data** at the point of origin shown in the air waybill until it is discharged at the destination shown in the air waybill.

This Additional Coverage does not apply:

- to **electronic data processing property** while being shipped to or from any exhibition, fair or trade show;



## Electronic Data Processing Property

### Additional Coverages

#### International Air Shipments (continued)

- to **electronic data processing property** being shipped by mail;
- if you have purchased separate ocean marine insurance which covers **electronic data processing property** while being shipped by air;
- if you are required to provide a negotiable special cargo policy of insurance to any seller, buyer or bank; or
- to any loss or damage to **electronic data processing property** payable under the Additional Coverage for In Transit.

This Additional Coverage applies only if an applicable Limit Of Insurance for Electronic Data Processing Property is shown under International Air Shipments in the Declarations.

#### Mobile Communication Property

We will pay for direct physical loss or damage to **mobile communication property** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Mobile Communication Property shown in the Declarations.

This Additional Coverage does not apply to **mobile communication property** at, or within 1,000 feet of, the premises shown in the Declarations.

#### Newly Acquired Electronic Data At Newly Acquired Premises

We will pay for direct physical loss or damage to **electronic data** at newly acquired premises caused by or resulting from a **technology peril**, not to exceed the Limit Of Insurance for Electronic Data shown in the Declarations under Newly Acquired Premises or Newly Acquired or Constructed Property.

This Additional Coverage applies until the first of the following occurs:

- you report the value of the **electronic data** at the newly acquired premises to us and we add such **electronic data** to this policy;
- 180 days pass from the date you acquire the premises; or
- this policy expires.

We will charge you additional premium for the ~~reported values from the~~ date you acquire the premises, if we add such **electronic data** to this ~~policy~~.

#### Newly Acquired Electronic Data Processing Equipment And Communications Property

We will pay for direct physical loss or damage to newly acquired:

- **electronic data processing equipment;** or
- **communication property,**

at:

- the premises shown in the Declarations; or
- newly acquired premises,

caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Electronic Data Processing Equipment or Communication Property shown in the:

- Supplementary Declarations under Newly Acquired Premises or Newly Acquired Or Constructed Property; or

**Additional Coverages**

- Declarations under Newly Acquired.

**Newly Acquired Electronic Data Processing Equipment And Communications Property**  
(continued)

This Additional Coverage applies until the first of the following occurs:

- you report the value of the newly acquired **electronic data processing equipment or communication property** to us and we add such **electronic data processing equipment or communication property** to this policy;
- 180 days pass from the date you acquire the **electronic data processing equipment or communication property**; or

this policy expires.

We will charge you additional premium for the reported values from the date you acquire the **electronic data processing equipment or communication property**, if we add such **electronic data processing equipment or communication property** to this policy.

**Preparation Of Loss Fees**

We will pay the reasonable and necessary expenses we require you to incur after covered direct physical loss or damage to **electronic data processing property** to determine the extent of such loss or damage, not to exceed the applicable Limit Of Insurance for Preparation Of Loss Fees shown in the Declarations.

This Additional Coverage does not apply to any expenses you incur for any:

- insurance adjuster, consultant or attorney; or
- of your subsidiaries or affiliates.

**Debris Removal Coverage**

The following Debris Removal Coverage applies.

**Debris Removal**

We will pay for the costs you incur to remove debris of damaged **electronic data processing equipment or communication property** caused by or resulting from a peril not otherwise excluded that occurs during the policy period.

Debris removal will be paid only if reported to us in writing within 180 days of the date of the direct physical loss or damage to the **electronic data processing equipment or communication property**.

Debris removal does not apply to costs to:

- clean up or remove **pollutants** from land, water or air;
- clean up, remove, restore, or replace property because of the presence of **fungus**; or
- clean up, remove, restore or replace polluted land, water or air,

either inside or outside of a building.

This Debris Removal Additional Coverage is provided regardless of whether a Limit Of Insurance for Debris Removal is shown in the Declarations.



## **Electronic Data Processing Property**

### **Policy Exclusions**

The following Policy Exclusions apply to all the coverages in this contract:

#### **Acts Or Decisions**

This insurance does not apply to loss or damage caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

This Acts Or Decisions exclusion does not apply to ensuing loss or damage caused by or resulting from a **technology peril**.

---

#### **Business Errors**

This insurance does not apply to loss or damage to **electronic data processing property** caused by or resulting from errors in the:

- altering;
- calibrating;
- constructing;
- developing;
- distributing;
- installing;
- manufacturing;
- maintaining;
- processing;
- repairing;
- researching; or
- testing,

of that **electronic data processing property**.

This Business Errors exclusion does not apply to:

- loss or damage that results to other covered property; or
- ensuing loss or damage caused by or resulting from a **technology peril**.

---

#### **Fungus**

This insurance does not apply to loss or damage:

- which is **fungus**;
- which is in anyway attributed to the presence of **fungus**; or
- caused by or resulting from **fungus**,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such cause or event would otherwise be covered.



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## Policy Exclusions

### Fungus (continued)

This Fungus exclusion does not apply when the presence of **fungus** results from:

- explosion;
- fire;
- leakage from fire protection equipment; or
- lightning.

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### Dishonesty

This insurance does not apply to loss or damage caused by or resulting from fraudulent, dishonest or criminal acts or omissions committed alone or in collusion with others by you, your partners, members, officers, managers, directors, trustees, employees, anyone performing acts coming within the scope of the usual duties of your employees, or by anyone authorized to act for you, or anyone to whom you have entrusted covered property for any purpose.

This Dishonesty exclusion does not apply to:

- A. acts of vandalism;
- B. acts committed by carriers or warehousemen for hire or anyone claiming to be a carrier or warehouseman for hire, other than:
  1. you, your partners, directors, trustees and employees;
  2. anyone performing acts coming within the scope of the usual duties of your employees; or
  3. anyone authorized to act for you; or
- C. ensuing loss or damage caused by or resulting from a **technology peril**.

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### Earthquake

This insurance does not apply to loss or damage caused by or resulting from earthquake, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Earthquake exclusion:

- applies only in the state of California, unless otherwise stated; and
- does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

---

### Errors In Systems Programming

This insurance does not apply to loss or damage caused by or resulting from:

- A. errors or omissions in the development of, programming of, or instructions to:
  1. **electronic data processing property**; or
  2. a machine; or
- B. **electronic data** which is faulty, inadequate or defective for the use intended at the time of loss or damage.

This Errors In Systems Programming exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

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## Electronic Data Processing Property

### Policy Exclusions (continued)

#### Governmental Or Military Action

This insurance does not apply to loss or damage caused by or resulting from seizure, confiscation, expropriation, nationalization or destruction of property by order of governmental or military authority, whether de jure or de facto, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Governmental Or Military Action exclusion does not apply to loss or damage caused by or resulting from acts of destruction ordered by governmental or military authority:

- A. when taken at the time of a fire to prevent its spread, if the fire would be covered under this insurance; or
- B. if the act of destruction is made necessary by direct physical loss or damage to:
  1. **electronic data processing property while in transit**; or
  2. a conveyance in or on which **electronic data processing property while in transit** is loaded,

caused by or resulting from a **technology peril**.

#### Nuclear Hazard

This insurance does not apply to loss or damage caused by or resulting from nuclear reaction or radiation, or radioactive contamination, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Nuclear Hazard exclusion does not apply to ensuing loss or damage to **electronic data processing property** caused by or resulting from fire, if the fire would be covered under this insurance and there is a law in effect in the jurisdiction where the loss or damage occurs that expressly prohibits us from excluding such ensuing loss or damage.

#### Planning, Design, Materials Or Maintenance

This insurance does not apply to loss or damage (including the costs of correcting or making good) caused by or resulting from any faulty, inadequate or defective:

- planning, zoning, development, surveying, siting;
- design, specifications, plans, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- materials used in repair, construction, renovation or remodeling; or
- maintenance,

of part or all of any property on or off the premises shown in the Declarations.

This Planning, Design, Materials Or Maintenance exclusion does not apply to ensuing loss or damage caused by or resulting from a **technology peril**.

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**Policy Exclusions**  
(continued)

**Utility Supply Failure**

This insurance does not apply to loss or damage caused by or resulting from suspension or reduction of:

- water services;
- electric or other power services;
- natural gas or other fuel services; or
- Internet or other communication services,

regardless of any other cause or event that:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Utility Supply Failure exclusion does not apply:

- if the suspension or reduction of such services is the direct result of direct physical loss or damage caused by or resulting from a **technology peril**; or
- to ensuing loss or damage caused by or resulting from a **specified peril**.

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**War And Military Action**

This insurance does not apply to loss or damage caused by or resulting from:

- war, including undeclared or civil war;
- warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- insurrection, rebellion, revolution, usurped power or action taken by governmental or military authority, whether de jure or de facto, in hindering or defending against any of these,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

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**Wear And Tear**

This insurance does not apply to loss or damage caused by or resulting from wear and tear or deterioration.

This Wear And Tear exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril** or **water**.

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## **Electronic Data Processing Property**

### **Limits Of Insurance**

The most we will pay in any **occurrence** is the amount of loss or damage, not to exceed the applicable Limit Of Insurance shown in the Declarations.

If any Premises Coverage or Additional Coverage appears in more than one contract which form a part of this policy, unless otherwise specified, the applicable Limit Of Insurance shown in the Declarations for such coverages is the most we will pay in any **occurrence**, regardless of the number of contracts in which such Premises Coverage or Additional Coverage appears.

### **Deductible**

Subject to the applicable Limit Of Insurance, we will pay the amount of loss or damage in excess of the applicable deductible amount shown in the Declarations for each **occurrence**.

If two or more deductibles apply to the same **occurrence**, only the largest single deductible will apply, unless otherwise stated.

### **Loss Payment Basis**

The following Loss Payment Basis provisions apply to all coverages contained within this contract, unless otherwise stated.

Subject to the applicable Limit Of Insurance shown in the Declarations:

- A. covered property is valued on a replacement cost basis as described below, unless:
  1. the Loss Payment Basis shown in the Declarations is Actual Cash Value; or
  2. otherwise stated under Loss Payment Basis Exceptions; and
- B. valuation also includes, for **electronic data processing equipment or communication property**, costs you incur as described below under Ordinance or Law and Extended Warranties.

### **Our Loss Payment Options**

In the event of loss or damage covered by this insurance, at our option we will either:

- pay the covered value of the lost or damaged covered property;
- pay the cost of repairing or replacing the lost or damaged covered property plus any reduction in value of the repaired item;
- take all or any part of the covered property at an agreed or appraised value; or
- repair or replace the covered property with other such property of comparable material and quality for the same use or occupancy.

### **Replacement Cost Basis**

Lost or damaged covered property will be valued at the cost to repair or replace such property at the time of loss or damage, but not more than you actually spend to repair or replace such property at the same or another location for the same use or occupancy. There is no deduction for physical deterioration or depreciation.

If you replace the lost or damaged **electronic data processing property**, the valuation will include customs duties incurred.

If you do not repair or replace the covered property, we will only pay as provided under Actual Cash Value Basis.

If you commence the repair or replacement of the lost or damaged covered property within 24 months from the date of the loss or damage, we will pay you the difference between the actual cash value previously paid and the lesser of the:

- replacement cost at the time of loss or damage; or

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## Loss Payment Basis

### Replacement Cost Basis (continued)

- actual costs you incur to repair or replace.

Payment under the Replacement Cost Basis will not be made until the completion of the repairs or the replacement of the covered property.

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### Actual Cash Value Basis

If the Loss Payment Basis shown in the Declarations is Actual Cash Value, lost or damaged covered property will be valued at the cost to repair or replace such property at the time of loss or damage with material of like kind and quality, less allowance for each of the following:

- physical deterioration;
- physical depreciation;
- obsolescence; and
- depletion.

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### Ordinance Or Law

If there is an ordinance or law in effect at the time of loss or damage that regulates zoning, land use or construction of **electronic data processing equipment** or **communication property**, and if that ordinance or law affects the repair or replacement of the lost or damaged **electronic data processing equipment** or **communication property** and if you:

- A. repair or replace the **electronic data processing equipment** or **communication property** as soon as reasonably possible, the valuation will include:
- a. the replacement cost of the damaged and undamaged portions of the **electronic data processing equipment** or **communication property**; or
  - b. the actual cash value of the damaged and undamaged portions of the **electronic data processing equipment** or **communication property** (if the applicable Loss Payment Basis shown in the Declarations is Actual Cash Value);
  2. the costs to demolish and clear the site of the undamaged portion of the **electronic data processing equipment** or **communication property**; and
  3. the increased cost to repair or replace **electronic data processing equipment** or **communication property** to the same general size at the same site and for the same general use, to the minimum standards of such ordinance or law, except we will not include any costs:
    - a. incurred outside the legal property boundary of the premises shown in the Declarations;
    - b. if **electronic data processing equipment** or **communication property** is valued on an actual cash value basis; or
    - c. attributable to any ordinance or law that you were required to, but failed to, comply with before the loss; or
- B. do not repair or replace the **electronic data processing equipment** or **communication property**, the valuation will include:
1. the actual cash value of the damaged and undamaged portions of the **electronic data processing equipment** or **communication property**; and
  2. the cost to demolish and clear the site of the undamaged portion of the **electronic data processing equipment** or **communication property**.

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**Electronic Data Processing Property****Loss Payment Basis****Ordinance Or Law  
(continued)**

When direct physical loss or damage is caused by or results from both:

- a **technology peril**; and
- an excluded peril,

the valuation will not include the Ordinance Or Law costs attributable to the excluded peril. Instead, the valuation will be based on that portion of such costs equal to the proportion that the covered direct physical loss or damage bears to the total direct physical loss or damage, not including Ordinance Or Law costs, unless the Ordinance Or Law applies solely to that portion of the **electronic data processing equipment** or **communication property** which suffered the covered direct physical loss or damage.

This Ordinance Or Law Loss Payment Basis does not apply to:

- any increase in costs, loss or damage associated with the enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **fungus** or **pollutants**; or
- loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

If a maximum value for ordinance or law is shown in the Declarations, then, subject to the applicable Limit Of Insurance shown in the Declarations, such maximum value is the most we will consider under Ordinance Or Law.

**Extended Warranties**

**Electronic data processing equipment** or **communication property** valuation includes the pro rata portion of the original cost based on the period of time remaining in your nonrefundable extended warranties, maintenance contracts or service contracts that you purchased and which are no longer valid on lost or damaged **electronic data processing equipment** or **communication property** that you repair or replace.

**Loss Payment Basis  
Exceptions****Electronic Data**

**Electronic data** is valued on the full cost of replacement or reproduction at the time of direct physical loss or damage when the **electronic data** is actually replaced or reproduced.

If the **electronic data** is not replaced or reproduced, the value is based on the cost of replacing **blank media**.

---

**Loss Payment Basis  
Exceptions**

*(continued)*

***Nuclear Hazard***

**Electronic data processing property** which suffers direct physical loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination, is valued on an actual cash value basis, subject to all other exceptions described under Loss Payment Basis Exceptions.

---

***Electronic Data  
Processing Property Not  
Owned By You***

**Electronic data processing property** not owned by you is valued on the same basis as your **electronic data processing property**, subject to all other exceptions described under Loss Payment Basis Exceptions, but we will not pay more than the amount for which you are contractually liable.

Labor, materials and services that you furnish or arrange on **electronic data processing property** not owned by you is valued based on the actual cost of the labor, materials and services.

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**Loss Payment  
Limitations**

***Loss Of Market***

We will not pay for any loss or damage that results from loss of market, loss of use or delay.

---

**Conditions (Including  
Coverage Territory)**

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.

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**Definitions**

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.

## ***Property Insurance***

### ***Extra Expense***

#### ***Table Of Contents***

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**Extra Expense****Contract**

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy.

Throughout this contract, the words “you” and “your” refer to the Named Insured shown in the Declarations of this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

**Premises Coverages**

The following Premises Coverages apply only at those premises for which a Limit Of Insurance applicable to such coverages is shown in the Declarations.

Except as otherwise provided, direct physical loss or damage must:

- be caused by or result from a **covered peril**; and
- occur at, or within 1,000 feet of, the premises, other than a **dependent business premises**, shown in the Declarations.

**Extra Expense**

We will pay for the actual **extra expense** you incur due to the actual or potential impairment of your **operations** during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Extra Expense shown in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to **property** unless otherwise stated.

This Premises Coverage applies only at those premises:

- where you incur an **extra expense** loss; and
- for which a Limit Of Insurance for Extra Expense is shown in the Declarations.

**Fungus Clean-up Or Removal**

We will pay for the actual **extra expense** you incur due to the actual impairment of your **operations** during the **period of restoration**, not to exceed the applicable Limit Of Insurance For Extra Expense shown in the Declarations.

This actual impairment of **operations** must be caused by or result from the presence of **fungus** at your premises shown in the Declarations.

Coverage will begin immediately after the date the **fungus** first appeared and will end:

- 45 consecutive days after this coverage begins; or
- when your impairment of **operations** ends,

whichever occurs first.

This Premises Coverage does not apply if the presence of **fungus**:

- A. is caused by or results from:
  1. a peril that is not a **covered peril**; or
  2. moisture, other than **water** or **flood**, if **flood** would be covered under this insurance;
- B. existed prior to the effective date shown in the Declarations;

---

## Premises Coverages

### Fungus Clean-up Or Removal (continued)

- C. is not reported to us in writing as soon as possible after you first become aware, or in the exercise of reasonable care should have been aware, of the presence of **fungus**; or
- D. is at premises shown under Excluded Premises in the Declarations.

---

## Additional Coverages

The following Additional Coverages apply within the coverage territory.

### Civil Authority

We will pay for the actual **extra expense** you incur due to the actual impairment of your **operations**, directly caused by the prohibition of access to:

- your premises; or
- a **dependent business premises**,

by a civil authority.

This prohibition of access by a civil authority must be the direct result of direct physical loss or damage to property away from such premises or such **dependent business premises** by a **covered peril**, provided such property is within:

- one mile; or
- the applicable miles shown in the Declarations,

from such premises or **dependent business premises**, whichever is greater.

The most we will pay for Civil Authority is the applicable Limit Of Insurance for Extra Expense shown in the Declarations.

The coverage will begin immediately after the time the civil authority prohibits access and will end:

- 30 consecutive days after the coverage begins; or
- whenever your **extra expense** is no longer required,

whichever occurs first.

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

---

### Dependent Business Premises

We will pay for the actual **extra expense** you incur due to the actual or potential impairment of your **operations** during the **period of restoration**, not to exceed the applicable Limit Of Insurance for Dependent Business Premises shown under Extra Expense in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril to property** or **personal property of a dependent business premises** at a **dependent business premises** shown in the Declarations.

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

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**Extra Expense****Additional Coverages**  
(continued)**Loss Of Utilities**

We will pay for the actual **extra expense** you incur due to the actual or potential impairment of your **operations**, not to exceed the applicable Limit of Insurance for Loss Of Utilities shown under Extra Expense in the Declarations.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to:

- **building;**
- **personal property of a utility** located either inside or outside of a **building**; or
- **service property,**

excluding **overhead communication, transmission or distribution equipment**, necessary to supply your premises with:

- water supply;
- communication supply;
- power supply;
- natural gas supply;
- sewage treatment; or
- **on-line access,**

services.

We will pay such loss provided that the disruption of services:

- is not due to your failure to comply with the terms and conditions of any contract; and
- has been reported to the service provider.

This Additional Coverage does not apply if the direct physical loss or damage is caused by or results from earthquake or **flood**.

**Limits Of Insurance**

The most we will pay in any **occurrence** is the amount of loss, not to exceed the applicable Limit Of Insurance shown in the Declarations.

**Loss Determination**

In making any loss determination under this coverage, we will utilize relevant sources of information, including:

- your financial records and accounting procedures;
- bills, invoices and other vouchers;
- deeds, liens and contracts;
- written agreements evidencing grants, endowments, or other financial contributions;
- status and feasibility reports; and
- budgeting and marketing records.

**Loss Determination***(continued)***Extra Expense**

The amount of **extra expense** loss will be determined based on necessary expenses that exceed your normal operating expenses that would have been incurred by **operations** during the **period of restoration**, if no physical loss or damage had occurred.

We will deduct from the total of such expenses:

- the salvage value that remains of any property bought for temporary use during the **period of restoration**, once **operations** are resumed; and
- any **extra expense** that is paid for by other insurance.

**Resumption Or Continuance Of Operations**

If you elect not to resume or continue **operations**, we will not make any payment for **extra expense**.

**Loss Payment Limitations****Debris Removal**

We will not pay for any **extra expense** you incur for the demolition or removal of debris.

**Increase Of Loss Due To Death Or Injury**

We will not pay for any **extra expense** you incur caused by or resulting from any injury, sickness, disease, death, emotional injury, emotional distress or humiliation of any person.

**Increase Of Loss Due To Strikers Or Others Causing A Delay**

We will not pay for any increase of loss caused by or resulting from delay in repairing or replacing property or resuming your **operations**, due to interference at the location of the repair, replacement or **operations** by strikers or other persons.

**Loss Or Damage To Electronic Data**

We will not pay for any **extra expense** you incur caused by or resulting from direct physical loss or damage to **electronic data**, unless such direct physical loss or damage is caused by or results from:

- aircraft;
- explosion;
- earthquake, (except California) to the extent covered under the Electronic Data Processing Property contract which is part of this policy;
- falling objects;
- fire;
- **flood**, to the extent covered under the Electronic Data Processing Property contract which is part of this policy;
- freezing;
- leakage from fire protection equipment;
- lightning;

**CHUBB®****Extra Expense****Loss Payment  
Limitations****Loss Or Damage To  
Electronic Data  
(continued)**

- riot or civil commotion;
- **sinkhole collapse;**
- smoke;
- vehicles;
- weight of snow; or
- windstorm or hail.

**Loss Or Damage To  
Property Used To  
Provide Utility Services**

Except as provided for in the Loss Of Utilities Additional Coverage, we will not pay for any **extra expense** caused by or resulting from loss or damage to:

- **building;**
- **personal property of a utility** located either inside or outside of a **building;** or
- **service property,**

used by you or a utility or provide you with utility services.

**Loss Or Damage To  
Water**

We will not pay for any **extra expense** you incur for loss or damage to **water.**

**Nuclear Hazard**

We will not pay for any **extra expense** you incur for loss or damage to **building** or **personal property** caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination.

**Pollutant Clean-up Or  
Removal**

We will not pay for any **extra expense** caused by or resulting from the:

- clean up or removal of **pollutants** from any land, water or air, either inside or outside of a **building;** or
- testing for, monitoring, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **pollutants.**

**Conditions (Including  
Coverage Territory)**

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.

**Definitions**

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.

**Property Insurance****Miscellaneous Equipment****Table Of Contents**

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## Miscellaneous Equipment

### Contract

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy and the Additional Definitions and Amended Definitions sections of this contract.

Throughout this contract, the words “you” and “your” refer to the Named Insured shown in the Declarations of this policy. The words “we,” “us” and “our” refer to the company providing this insurance.

---

### Coverages

#### Miscellaneous Equipment

We will pay for direct physical loss or damage to **miscellaneous equipment** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Miscellaneous Equipment shown in the Declarations.

#### Care, Custody Or Control Legal Liability – Loss Of Use

Subject to the applicable Limit Of Insurance for Care, Custody Or Control Legal Liability – Loss Of Use shown in the Declarations, we will pay damages the **insured** becomes legally obligated to pay by reason of liability imposed by law because of the actual loss of use of **miscellaneous equipment**:

- owned by others and in your care, custody or control; and
- caused by an accident and arising out of a peril not otherwise excluded.

This insurance applies to actual loss of use which occurs during the policy period.

Actual loss of use of such **miscellaneous equipment** that does not suffer direct physical loss or damage shall be deemed to occur at the time of the accident that caused it.

#### Civil Authority

We will pay for direct physical loss or damage to **miscellaneous equipment** caused by or resulting from actions by a civil authority in an attempt to avoid further loss or damage caused by or resulting from a peril not otherwise excluded.

The most we will pay for Civil Authority is the applicable Limit Of Insurance for Miscellaneous Equipment shown in the Declarations.

#### Extra Rental Expense

We will pay for the actual **extra rental expense** you incur due to the actual or potential impairment of your **operations** during the **period of restoration**.

This actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage to **miscellaneous equipment** by a peril not otherwise excluded.

The most we will pay in any **occurrence** is the amount of **extra rental expense**, not to exceed the applicable Limit Of Insurance for Miscellaneous Equipment – Extra Rental Expense shown in the Declarations.

#### Fire Protection Equipment

We will pay the cost you incur to refill your discharged fire protection equipment whether or not there is direct physical loss or damage to your **miscellaneous equipment**.

This Coverage is provided regardless of whether a Limit Of Insurance is shown in the Declarations.

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## Coverages

(continued)

### Newly Acquired Miscellaneous Equipment

We will pay for direct physical loss or damage to newly acquired **miscellaneous equipment** caused by or resulting from a peril not otherwise excluded, not to exceed the lesser of:

- 25% of the Limit Of Insurance for Miscellaneous Equipment shown in the Declarations; or
- \$250,000.

This Coverage applies until the first of the following occurs:

- you report the value of the **miscellaneous equipment** to us, and we add such **miscellaneous equipment** to this policy;
- 90 days pass from the date you acquire the **miscellaneous equipment**; or
- this policy expires.

We will charge you additional premium for the reported values from the date you acquire the **miscellaneous equipment**, if we add such **miscellaneous equipment** to this policy.

---

### Preparation Of Loss Fees

We will pay the reasonable and necessary expenses we require you to incur after covered direct physical loss or damage to **miscellaneous equipment** to determine the extent of such loss or damage, not to exceed the applicable Limit Of Insurance for Preparation of Loss Fees shown in the Declarations.

This Coverage does not apply to any expenses you incur for any:

- insurance adjuster, consultant or attorney; or
- of your subsidiaries or affiliates.

---

### Public Safety Service Charges

We will pay the charges you:

- assume under any contract or agreement; or
- are required to pay by local ordinance,

in effect at the time of the direct physical loss or damage, if a fire department or other municipal agency charged with preserving public safety is called to save or protect **miscellaneous equipment** from direct physical loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Public Safety Service Charges shown in the Declarations.

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### Removal

We will pay for direct physical loss or damage to **miscellaneous equipment** while:

- being moved to another location or returned from such location to its original location; or
- temporarily stored at another location,

if you must move the **miscellaneous equipment** from such location to preserve it from imminent loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Miscellaneous Equipment shown in the Declarations.

---



## Miscellaneous Equipment

The following Debris Removal Coverage applies.

### Debris Removal Coverage

#### Debris Removal

We will pay for the costs you incur to demolish and remove debris of damaged **miscellaneous equipment** caused by or resulting from a peril not otherwise excluded that occurs during the policy period.

- A. The most we will pay for debris removal is the lesser of:
1. 25% of the covered direct physical loss or damage; or
  2. the remaining applicable Limit Of Insurance for Miscellaneous Equipment shown in the Declarations, after payment of the covered direct physical loss or damage.
- B. If the amount in A. above is insufficient to pay the debris removal, we will pay the remaining debris removal, subject to the applicable Limit Of Insurance shown under Debris Removal in the Declarations.

Debris removal will be paid only if:

- reported to us in writing within 180 days of the date of the direct physical loss or damage to **miscellaneous equipment**; and
- a Limit Of Insurance applicable to the damaged **miscellaneous equipment** is shown in the Declarations.

Debris removal does not apply to costs to:

- clean up or remove **pollutants** from land, water or air; or
- clean up, remove, restore or replace polluted land, water or air, either inside or outside of a **building**.

The following Policy Exclusions apply to all Coverages in this contract.

### Policy Exclusions

#### Acts Or Decisions

This insurance does not apply to loss or damage caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

This Acts Or Decisions exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

#### Change In Temperature

This insurance does not apply to loss or damage caused by or resulting from natural or artificial:

- dampness or dryness of atmosphere; or
- changes in or extremes of temperature,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

---

## Policy Exclusions

### Change In Temperature (continued)

This Change In Temperature exclusion does not apply:

- if the loss or damage is caused by or results from a **specified peril**; or
- to ensuing loss or damage caused by or resulting from a **specified peril**.

---

### Disappearance

This insurance does not apply to loss or damage caused by or resulting from:

- disappearance; or
- shortage disclosed on taking inventory,

where there is no physical evidence to show what happened.

This Disappearance exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

---

### Dishonesty

This insurance does not apply to loss or damage caused by or resulting from fraudulent, dishonest or criminal acts or omissions committed alone or in collusion with others by you, your partners, members, officers, managers, directors, trustees, employees, anyone performing acts coming within the scope of the usual duties of your employees, or by anyone authorized to act for you, or anyone, other than a lessee, to whom you have entrusted covered property for any purpose.

This Dishonesty exclusion does not apply to:

- A. acts of vandalism;
- B. acts committed by:
  1. carriers or warehouse operators for hire, or anyone claiming to be a carrier or warehouse operator for hire; or
  2. anyone who leases covered property from you;other than:
  3. you, your partners, directors, trustees and employees;
  4. anyone performing acts coming within the scope of the usual duties of your employees; or
  5. anyone authorized to act for you; or
- C. ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

---

### Earthquake

This insurance does not apply to loss or damage caused by or resulting from earthquake, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Earthquake exclusion:

- does not apply to ensuing loss or damage caused by or resulting from a **specified peril**; and
- applies only to **miscellaneous equipment** while at premises you own, use or occupy.



## Miscellaneous Equipment

### Policy Exclusions (continued)

#### Electric Breakdown

This insurance does not apply to loss or damage caused by or resulting from electric breakdown.

#### Flood

This insurance does not apply to loss or damage caused by or resulting from:

- waves, tidal water or tidal waves; or
- rising, overflowing or breaking of any boundary,

of any natural or man-made lakes, reservoirs, ponds, brooks, rivers, streams, harbors, oceans or any other body of water or watercourse, whether driven by wind or not, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Flood exclusion:

- does not apply to ensuing loss or damage caused by or resulting from a **specified peril**; and
- applies only to **miscellaneous equipment** while at premises you own, use or occupy.

#### Governmental Or Military Action

This insurance does not apply to loss or damage caused by or resulting from seizure, confiscation, expropriation, nationalization or destruction of property by order of governmental or military authority, whether de jure or de facto, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Governmental Or Military Action exclusion does not apply to loss or damage caused by or resulting from acts of destruction ordered by governmental authority:

- A. when taken at the time of a fire to prevent its spread, if the fire would be covered under this insurance; or
- B. if the act of destruction is made necessary by direct physical loss or damage to:
  1. **miscellaneous equipment** while **in transit**; or
  2. a conveyance in or on which **miscellaneous equipment** while **in transit** is loaded, caused by or resulting from a peril not otherwise excluded.

#### Inherent Vice/Latent Defect

This insurance does not apply to loss or damage caused by or resulting from inherent vice or latent defect.

This Inherent Vice/Latent Defect exclusion does not apply:

- if the loss or damage is caused by or results from a **specified peril**; or

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## Policy Exclusions

### *Inherent Vice/Latent Defect (continued)*

- to ensuing loss or damage caused by or resulting from a **specified peril** or **water**.

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### *Insects Or Animals*

This insurance does not apply to loss or damage caused by or resulting from nesting or infestation by, or discharge or release of waste products or secretions of, any insect or other animal.

This Insects Or Animals exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

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### *Mechanical Breakdown*

This insurance does not apply to loss or damage caused by or resulting from mechanical breakdown, including rupture or bursting caused by centrifugal force.

This Mechanical Breakdown exclusion does not apply to ensuing loss or damage caused by or resulting from fire or elevator collision.

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### *Nuclear Hazard*

This insurance does not apply to loss or damage caused by or resulting from nuclear reaction or radiation, or radioactive contamination, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Nuclear Hazard exclusion does not apply to ensuing loss or damage to **miscellaneous equipment** caused by or resulting from fire, if the fire would be covered under this insurance and there is a law in effect in the jurisdiction when the loss or damage occurs that expressly prohibits us from excluding such ensuing loss or damage.

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### *Planning, Design, Materials Or Maintenance*

This insurance does not apply to loss or damage (including the costs of correcting or making good) caused by or resulting from any faulty, inadequate or defective:

- planning, zoning, development, surveying, siting;
- design, specifications, plans, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- materials used in repair, construction, renovation or remodeling; or
- maintenance,

of part or all of any property on or off the premises shown in the Declarations.

This Planning, Design, Materials Or Maintenance exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.



## Miscellaneous Equipment

### Policy Exclusions (continued)

#### Rust

This insurance does not apply to loss or damage caused by or resulting from rust, oxidation, corrosion or discoloration.

This Rust exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.

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#### Utility Supply Failure

This insurance does not apply to loss or damage caused by or resulting from the suspension or reduction of:

- water services;
- electrical or other power services;
- natural gas or other fuel services; or
- Internet or other communication services,

regardless of any other cause or event that:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Utility Supply Failure exclusion does not apply:

- if the suspension or reduction of such services is the direct result of direct physical loss or damage caused by or resulting from a peril not otherwise excluded; or
- to ensuing loss or damage caused by or resulting from a **specified peril**.

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#### War And Military Action

This insurance does not apply to loss or damage caused by or resulting from:

- war, including undeclared or civil war;
- warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- insurrection, rebellion, revolution, usurped power or action taken by governmental or military authority, whether de jure or de facto, in hindering or defending against any of these,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

---

#### Wear And Tear

This insurance does not apply to loss or damage caused by or resulting from wear and tear or deterioration.

This Wear And Tear exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril** or **water**.

---

**Limits Of Insurance**

The most we will pay in any **occurrence** is the amount of loss or damage, not to exceed the applicable **Limit Of Insurance** shown in the Declarations.

If any Coverage appears in more than one contract which form a part of this policy, unless otherwise specified, the applicable **Limit Of Insurance** shown in the Declarations for such Coverages is the most we will pay in any **occurrence**, regardless of the number of contracts in which such Coverage appears.

---

**Deductible**

Subject to the applicable **Limit Of Insurance**, we will pay the amount of loss or damage after application of Coinsurance, if applicable, in excess of the applicable deductible amount shown in the Declarations for each **occurrence**.

If two or more deductibles apply to the same **occurrence**, only the largest single deductible will apply, unless otherwise stated.

---

**Loss Payment Basis**

The following Loss Payment Basis provisions apply to all coverages contained within this contract, unless otherwise stated.

Subject to the applicable **Limit Of Insurance** shown in the Declarations:

- A. **miscellaneous equipment** is valued on a replacement cost basis as described below, unless:
1. the Loss Payment Basis shown in the Declarations is Actual Cash Value; or
  2. otherwise stated under Loss Payment Basis Exceptions; and
- B. valuation also includes costs you incur as described under Extended Warranties.

**Our Loss Payment Options**

In the event of loss or damage covered by this insurance, at our option, we will either:

- pay the covered value of the lost or damaged **miscellaneous equipment**;
- pay the cost of repairing or replacing the lost or damaged **miscellaneous equipment**, plus any reduction in value of the repaired item;
- take all or any part of the **miscellaneous equipment** at an agreed or appraised value; or
- repair or replace the **miscellaneous equipment** with other **miscellaneous equipment** of comparable material and quality for the same use or occupancy.

---

**Replacement Cost Basis**

Lost or damaged **miscellaneous equipment** will be valued at the cost to repair or replace such **miscellaneous equipment** at the time of loss or damage, but not more than you actually spend to repair or replace such **miscellaneous equipment** for the same use. There is no deduction for physical deterioration or depreciation.

If you replace the lost or damaged **miscellaneous equipment**, the valuation will include customs duties incurred.

If you do not repair or replace the **miscellaneous equipment**, we will only pay as provided under Actual Cash Value Basis.

If you commence the repair or replacement of the lost or damaged **miscellaneous equipment** within 12 months from the date of the loss or damage, we will pay you the difference between the actual cash value previously paid and the lesser of the:

- replacement cost at the time of loss or damage; or





## Miscellaneous Equipment

### Loss Payment Basis

#### Replacement Cost Basis (continued)

- actual costs you incur to repair or replace.

Payment under the Replacement Cost Basis will not be made until the completion of the repairs or the replacement of the **miscellaneous equipment**.

#### Actual Cash Value Basis

If the Loss Payment Basis shown in the Declarations is Actual Cash Value, lost or damaged **miscellaneous equipment** will be valued at the cost to repair or replace such **miscellaneous equipment** at the time of loss or damage with material of like kind and quality, less allowance for each of the following:

- physical deterioration;
- physical depreciation;
- obsolescence; and
- depletion.

#### Extended Warranties

**Miscellaneous equipment** valuation includes the pro rata portion of the original cost based on the period of time remaining in your nonrefundable extended warranties, maintenance contracts or service contracts that you purchased and which are no longer valid on lost or damaged **miscellaneous equipment** that you repair or replace.

### Loss Payment Basis Exceptions

#### Miscellaneous Equipment Of Others

**Miscellaneous equipment** not owned by you is valued on the same basis as your **miscellaneous equipment**, subject to all other exceptions described under Loss Payment Basis Exceptions, but we will not pay more than the amount for which you are contractually liable.

#### Nuclear Hazard

**Miscellaneous equipment** which suffers direct physical loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination, is valued on an actual cash value basis, subject to all other exceptions described under Loss Payment Basis Exceptions.

### Loss Payment Limitations

#### Electronic Data

We will not pay for any loss or damage to **electronic data** caused by or resulting from **malicious programming**, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

---

## Loss Payment Limitations

(continued)

### Loss Of Market

Except as provided under Care, Custody Or Control Legal Liability – Loss Of Use Coverage or Extra Rental Expense Coverage, we will not pay for any loss or damage that results from loss of market, loss of use or delay.

---

## Loss Determination – Extra Rental Expense

In making any loss determination under **extra rental expense**, we will utilize relevant sources of information, including:

- your financial records and accounting procedures;
- bills, invoices and other vouchers;
- deeds, liens and contracts;
- status and feasibility reports; and
- budgeting and marketing records.

### Extra Rental Expense

The amount of **extra rental expense** loss will be determined based on:

- all rental expenses that exceed your normal rental expenses that would have been incurred by **operations** during the **period of restoration**, if no direct physical loss or damage had occurred; and
- all necessary expenses that reduce the **extra rental expense** loss that otherwise would have been incurred.

We will deduct from the total of such expenses:

- the salvage value that remains of any **miscellaneous equipment** bought for temporary use during the **period of restoration**, once **operations** are resumed; and
- any **extra rental expense** that is paid for by other insurance.

If you elect not to rent substitute **miscellaneous equipment**, we will not make any payment for **extra rental expense**.

---

## Conditions

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy. Any additional conditions or amended conditions are shown in the Additional Conditions section of this contract and the Amended Conditions section of this contract.

---

## Additional Condition

### Coinsurance For Miscellaneous Equipment

Coinsurance applies to **miscellaneous equipment** only when a coinsurance percentage is shown under Miscellaneous Equipment in the Declarations.

Coinsurance does not apply to **miscellaneous equipment** you lease, rent or borrow from others.

If coinsurance applies, our maximum loss payment will be determined as follows:

- A. determine the value of the covered **miscellaneous equipment** at the time of loss or damage in accordance with the applicable Loss Payment Basis as provided under Loss Payment Basis;



## Miscellaneous Equipment

### Additional Condition

#### Coinsurance For Miscellaneous Equipment (continued)

- B. multiply the value determined in step A. by the applicable coinsurance percentage shown in the Declarations;
- C. divide the applicable Limit Of Insurance for Miscellaneous Equipment shown in the Declarations by the amount determined in step B.;
- D. multiply the total amount of the covered loss or damage, before the application of any deductible, by the amount determined in step C.; and
- E. subtract the applicable deductible from the amount determined in step D.

The amount determined in step E. is the most we will pay for loss or damage, not to exceed the applicable Limit Of Insurance for Miscellaneous Equipment shown in the Declarations.

### Amended Condition

#### Coverage Territory

The Coverage Territory is worldwide.

### Definitions

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy. Any additional definitions or amended definitions are shown in the Additional Definitions section of this contract and the Amended Definitions section of this contract.

### Additional Definitions

#### Extra Rental Expense

**Extra rental expense** means necessary rental expenses you incur for substitute **miscellaneous equipment**, in an attempt to continue **operations**, over and above the rental expenses you would have normally incurred provided you do not have equivalent idle **miscellaneous equipment** at your disposal.

#### Miscellaneous Equipment

**Miscellaneous equipment** means the following equipment used primarily for motion picture or television production, theatrical stage or concert production and all other taping or recording activities:

- camera equipment;
- sound and lighting equipment;
- portable electrical generators;
- mechanical effects equipment;
- grip equipment;
- any property which is part of a set, prop or wardrobe; and
- similar miscellaneous equipment,

owned by you or for which you are legally liable and used or intended to be used in connection with your **operations**.

---

## **Additional Definitions**

### **Miscellaneous Equipment (continued)**

**Miscellaneous equipment** does not mean:

- **production media;**
- permanent buildings and office contents;
- **tenant's improvements and betterments;**
- aircraft, watercraft, railroad cars or railroad equipment;
- plant life;
- animals;
- **mobile equipment;**
- **money** or **securities;** or
- mobile equipment vans, studio location units, motor homes, or similar type units or any other motor vehicles intended to be licensed for highway use, including equipment permanently installed therein.

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## **Amended Definitions**

### **Operations**

**Operations** means your business activities involving the use of **miscellaneous equipment**.

---

### **Period Of Restoration**

**Period of restoration** means the period of time that begins immediately after the time of direct physical loss or damage to the **miscellaneous equipment** and ends on the date such **miscellaneous equipment** has been repaired or replaced.

The expiration date of this policy will not cut short the **period of restoration**.

**Period of restoration** does not mean any increased period due to the enforcement of any ordinance or law that:

- regulates the construction, use or repair; or
- requires the tearing down,

of any property.

---

### **Production Media**

**Production media** means:

A. any:

1. film;
  2. tape;
  3. disk; or
  4. other medium or device,
- used to record or store sounds or images; and

B. the information contained therein.

**Property Insurance**

**Accounts Receivable, Fine Arts, Money And Securities  
And Valuable Papers**

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**Accounts Receivable, Fine Arts, Money And Securities  
And Valuable Papers**

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**Contract**

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy.

Throughout this contract, the words "you" and "your" refer to the Named Insured shown in the Declarations of this policy. The words "we", "us" and "our" refer to the company providing this insurance.

---

**Premises Coverages**

The following Premises Coverages apply only at those premises for which a Limit Of Insurance applicable to such coverages is shown in the Declarations.

Except as otherwise provided, the loss or damage must:

- be caused by or result from a peril not otherwise excluded; and
- occur at, or within 1,000 feet of, the premises shown in the Declarations.

**Accounts Receivable**

We will pay for the **accounts receivable** loss you incur caused by or resulting from direct physical loss or damage to your **accounts receivable records** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Accounts Receivable shown in the Declarations.

---

**Fine Arts**

We will pay for direct physical loss or damage to **fine arts** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Fine Arts shown in the Declarations.

---

**Money And Securities -  
On Premises**

We will pay for direct physical loss or damage to **money** or **securities** caused by or resulting from a peril not otherwise excluded **on premises**, not to exceed the applicable Limit Of Insurance for Money And Securities On Premises shown in the Declarations.

---

**Public Safety Service  
Charges**

We will pay the charges you:

- assume under any contract or agreement; or
- are required to pay by local ordinance,

in effect at the time of the direct physical loss or damage, if a fire department or other municipal agency charged with preserving public safety is called to save or protect your property from direct physical loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Public Safety Service Charges shown in the Declarations.

---

**Removal**

We will pay for:

- the **accounts receivable** loss you incur caused by or resulting from direct physical loss or damage to your **accounts receivable records**; or

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**Premises Coverages**

**Removal  
(continued)**

- direct physical loss or damage to **fine arts** or **valuable papers**, while:
  - being moved to another location or returned from such location to its original location; or
  - temporarily stored at another location,
- if you must move the **accounts receivable records, fine arts** or **valuable papers** from such location to preserve such property from imminent loss or damage caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit of Insurance for Accounts Receivable, Fine Arts, or Valuable Papers shown in the Declarations.

---

**Valuable Papers**

We will pay for direct physical loss or damage to **valuable papers** caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Valuable Papers shown in the Declarations.

---

**Additional Coverages**

The following Additional Coverages apply within the coverage territory.

**Any Other Location**

- We will pay for:
- the **accounts receivable** loss you incur caused by or resulting from direct physical loss or damage to your **accounts receivable records** at unspecified premises caused by or resulting from a peril not otherwise excluded; or
  - direct physical loss or damage to **fine arts** or **valuable papers** at unspecified premises caused by or resulting from a peril not otherwise excluded,
- not to exceed the applicable Limit Of Insurance for Accounts Receivable, Fine Arts or Valuable Papers shown under Any Other Location in the Declarations.

---

**Exhibition, Fair Or Trade Show**

We will pay for direct physical loss or damage to **fine arts** at any exhibition fair or trade show caused by or resulting from a peril not otherwise excluded, not to exceed the applicable Limit Of Insurance for Fine Arts shown under Exhibition, Fair Or Trade Show in the Declarations.

---

**In Transit**

- We will pay for:
- the **accounts receivable** loss you incur caused by or resulting from direct physical loss or damage to your **accounts receivable records** while **in transit** caused by or resulting from a peril not otherwise excluded; or
  - direct physical loss or damage to **fine arts** or **valuable papers** while **in transit** caused by or resulting from a peril not otherwise excluded,
- not to exceed the applicable Limit Of Insurance for Accounts Receivable, Fine Arts or Valuable Papers shown under In Transit in the Declarations.
-



**Accounts Receivable, Fine Arts, Money And Securities  
And Valuable Papers**

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**Additional Coverages**  
(continued)

**Money And Securities -  
Off Premises**

We will pay for direct physical loss or damage to **money** or **securities** caused by or resulting from a peril not otherwise excluded **off premises**, not to exceed the applicable Limit Of Insurance for Money And Securities Off Premises shown in the Declarations.

---

**Newly Acquired Fine Arts**

We will pay for direct physical loss or damage to newly acquired **fine arts** at the premises shown in the Declarations or at newly acquired premises caused by or resulting from a peril not otherwise excluded, not to exceed the Limit Of Insurance for Fine Arts shown in the Declarations under Newly Acquired Premises or Newly Acquired or Constructed Property.

This Additional Coverage applies until the first of the following occurs:

- you report the value of the newly acquired **fine arts** at the premises shown in the Declarations or at the newly acquired premises to us and we add such **fine arts** or premises to this policy;
- 180 days pass from the date you acquire the **fine arts**; or
- this policy expires.

We will charge you additional **premium** for the reported values from the date you acquire:

- the **fine arts**; or
- the premises,

if we add such **fine arts** or premises to this policy.

---

**Preparation Of Loss  
Fees**

We will pay the **reasonable** and necessary expenses we require you to incur after covered direct physical loss or damage to:

- **accounts receivable records**;
- **fine arts**; or
- **valuable papers**,

to determine the extent of such loss or damage, not to exceed the applicable Limit Of Insurance for Preparation Of Loss Fees shown in the Declarations.

This Additional Coverage does not apply to any expenses you incur for any:

- insurance adjuster, consultant or attorney; or
  - of your subsidiaries or affiliates.
-

---

**Debris Removal Coverage**

The following Debris Removal Coverage applies.

**Debris Removal**

- A. We will pay for the costs you incur to remove debris of damaged **accounts receivable records, fine arts or valuable papers** caused by or resulting from a peril not otherwise excluded that occurs during the policy period.
- B. The most we will pay for debris removal is the lesser of:
  - 1. 25% of the covered direct physical loss or damage; or
  - 2. the remaining applicable Limit Of Insurance for Accounts Receivable, Fine Arts or Valuable Papers shown in the Declarations, after payment of the covered direct physical loss or damage.
- C. If the amount in B. above is insufficient to pay the debris removal, we will pay the remaining debris removal, subject to the applicable Limit Of Insurance shown under Debris Removal in the Declarations.
- D. Debris removal will be paid only if:
  - 1. reported to us in writing within 180 days of the date of the direct loss or damage to the **accounts receivable records, fine arts or valuable papers**; or
  - 2. a Limit Of Insurance applicable to the damaged **accounts receivable records, fine arts or valuable papers** is shown in the Declarations.
- E. Debris removal does not apply to costs to:
  - 1. clean up or remove **pollutants** from land, water or air;
  - 2. clean up, remove, restore or replace covered **accounts receivable records, fine arts or valuable papers** because of the presence of **fungus**; or
  - 3. clean up, remove, restore or replace polluted land, water or air, either inside or outside of a **building**.

---

**Policy Exclusions**

The following Policy Exclusions apply to all the coverages in this contract.

**Acts Or Decisions**

This insurance does not apply to loss or damage caused by or resulting from acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

This Acts Or Decisions exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

---

**Dishonesty**

This insurance does not apply to loss or damage caused by or resulting from fraudulent, dishonest or criminal acts or omissions committed alone or in collusion with others by you, your partners, members, officers, managers, directors, trustees, employees, anyone performing acts coming within the scope of the usual duties of your employees, or by anyone authorized to act for you, or anyone to whom you have entrusted covered property for any purpose.

This Dishonesty exclusion does not apply to:

- A. acts of vandalism;

**Accounts Receivable, Fine Arts, Money And Securities  
And Valuable Papers**

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**Policy Exclusions**

**Dishonesty  
(continued)**

- B. acts committed by carriers or warehousemen for hire or anyone claiming to be a carrier or warehouseman for hire, other than:
1. you, your partners, directors, trustees and employees;
  2. anyone performing acts coming within the scope of the usual duties of your employees; or
  3. anyone authorized to act for you; or
- C. ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

**Governmental Or Military  
Action**

This insurance does not apply to loss or damage caused by or resulting from seizure, confiscation, expropriation, nationalization or destruction of property by order of governmental or military authority, whether de jure or de facto, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Governmental Or Military Action exclusion does not apply to loss or damage caused by or resulting from acts of destruction ordered by governmental or military authority:

- A. when taken at the time of a fire to prevent its spread, if the fire would be covered under this insurance; or
- B. if the act of destruction is made necessary by direct physical loss or damage to:
1. **accounts receivable records, fine arts or valuable papers** while **in transit**; or
  2. a conveyance in or on which **accounts receivable records, fine arts or valuable papers** while **in transit** is loaded,
- caused by or resulting from a peril not otherwise excluded.

**Nuclear Hazard**

This insurance does not apply to loss or damage caused by or resulting from nuclear reaction or radiation, or radioactive contamination, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

This Nuclear Hazard exclusion does not apply to ensuing loss or damage to **accounts receivable records, fine arts, money or securities** or **valuable papers** caused by or resulting from fire, if the fire would be covered under this insurance and there is a law in effect in the jurisdiction where the loss or damage occurs that expressly prohibits us from excluding such ensuing loss or damage.

---

**Policy Exclusions**

(continued)

**Planning, Design,  
Materials Or  
Maintenance**

This insurance does not apply to loss or damage (including the costs of correcting or making good) caused by or resulting from any faulty, inadequate or defective:

- planning, zoning, development, surveying, siting;
- design, specifications, plans, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- materials used in repair, construction, renovation or remodeling; or
- maintenance,

of part or all of any property on or off the premises shown in the Declarations.

This Planning, Design, Materials Or Maintenance exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

---

**War And Military Action**

This insurance does not apply to loss or damage caused by or resulting from:

- war, including undeclared or civil war;
- warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- insurrection, rebellion, revolution, usurped power or action taken by governmental or military authority, whether de jure or de facto, in hindering or defending against any of these,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

---

**Wear And Tear**

This insurance does not apply to loss or damage caused by or resulting from wear and tear or deterioration.

This Wear And Tear exclusion does not apply to:

- **money** and **securities**; or
  - ensuing loss or damage caused by or resulting from a **specified peril** or **water**.
-

**Accounts Receivable, Fine Arts, Money And Securities  
And Valuable Papers**

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**Accounts Receivable  
Exclusions**

The following Accounts Receivable Exclusions apply solely to **accounts receivable records**:

**Audit**

This insurance does not apply to loss or damage disclosed by an audit or inventory count. In the event the loss or damage is established by independent means, you may use an audit or inventory count to support your claim for that loss.

**Bookkeeping**

This insurance does not apply to bookkeeping, accounting or billing errors or omissions.

**Fine Arts Exclusions**

The following Fine Arts Exclusions apply solely to **fine arts**:

**Insects Or Animals**

This insurance does not apply to loss or damage caused by or resulting from nesting or infestation by, or discharge or release of waste products or secretions of:

- insects;
- birds;
- rodents; or
- other animals.

This Insects Or Animals exclusion does not apply to ensuing loss or damage caused by or resulting from a peril not otherwise excluded.

**Repair, Restoration Or  
Retouching**

This insurance does not apply to loss or damage caused by or resulting from **repair, restoration or retouching**.

**Money And Securities  
Exclusions**

The following Money And Securities Exclusions apply solely to **money and securities**:

**Accounting**

This insurance does not apply to accounting, **mathematical** or record-keeping errors.

**Books And Records**

This insurance does not apply to loss or damage to **manuscripts, records, accounts, media, microfilm or tapes**.

**Income, Interest Or  
Dividends**

This insurance does not apply to loss of **income, interest or dividends**.

## **Money And Securities Exclusions**

(continued)

### **Expenses**

This insurance does not apply to any fees, costs or expenses you incur or pay:

- in establishing the existence or the amount of any loss or **damage**; or
- in prosecuting or defending any legal proceeding or claim, whether or not any such proceeding results or would result in a loss or **damage** covered under this insurance.

### **Fire To Property Of Others**

This insurance does not apply to loss or **damage** caused by or resulting from fire to property of others that you hold as a pledge or as collateral.

### **Forgery**

This insurance does not apply to loss or **damage** caused by or resulting from forgery.

### **Kidnap/Ransom Or Extortion**

This insurance does not apply to loss or **damage** caused by or resulting from kidnap/ransom or other extortion payments surrendered to any person as a result of a threat to do:

- bodily harm to any person; or
- **damage** to the premises or other property owned by you or held by you in any capacity.

This Kidnap/Ransom Or Extortion exclusion does not apply to **robbery of money or securities**.

## **Limits Of Insurance**

The most we will pay in any **occurrence** is the amount of loss or **damage**, not to exceed the applicable Limit Of Insurance shown in the Declarations.

If any Premises Coverage or Additional Coverage appears in more than one contract which form a part of this policy, unless otherwise specified, the applicable Limit Of Insurance shown in the Declarations for such coverage is the most we will pay in any **occurrence**, regardless of the number of contracts in which such Premises Coverage or Additional Coverage appears.

## **Deductible**

Subject to the applicable Limit Of Insurance, we will pay the amount of loss or **damage** in excess of the applicable deductible amount shown in the Declarations for each **occurrence**.

If two or more deductibles apply to the same **occurrence**, only the largest single deductible will apply, unless otherwise stated.

## **Loss Payment Basis**

### **Accounts Receivable**

**Accounts receivable** loss payment will be determined as follows:

- A. when there is proof that a covered loss has occurred but you cannot accurately establish the amount of **accounts receivable** outstanding at the time of the loss, the amount of the loss will be based on your latest financial statements and will be computed as follows:
  1. determine the amount of all outstanding **accounts receivable** at the end of the same month in the year immediately preceding the year in which the loss occurred;

**Accounts Receivable, Fine Arts, Money And Securities  
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**Loss Payment Basis**

**Accounts Receivable  
(continued)**

2. determine your total gross sales of goods and services for the 12-month period immediately preceding the month in which the loss occurred;
  3. determine your total gross sales of goods and services for the 12-month period immediately preceding the same month in the year immediately preceding the year in which the loss occurred;
  4. calculate the percentage increase or decrease of step 2 over step 3;
  5. the total amount of **accounts receivable** as of the last day of the month in which the loss occurs will be the amount determined in step 4; and
  6. the established monthly amount of **accounts receivable** will be adjusted for the normal fluctuation in the amount of **accounts receivable** in the month in which the loss occurs;
- B. we will deduct from the established total amount of **accounts receivable**:
1. the amount of any accounts evidenced by records not lost or damaged;
  2. any other amounts you are able to establish or collect; and
  3. an amount to allow for probable bad debts, returns, discounts and allowances which you normally would have been unable to collect;
- C. if you recover the amount of any **accounts receivable** that were included in the amount of the paid loss, you will return the recovered amount to us, up to the total amount of the paid loss. You will keep the amount of any **accounts receivable** you recover in excess of the amount of the paid loss;
- D. you shall take reasonable measures to attempt the reproduction of **accounts receivable records** in an effort to mitigate your **accounts receivable** loss.

**Fine Arts**

**Fine arts** are valued based on **market value**.

**Fine Arts Of Others**

**Fine arts** not owned by you are valued on the same basis as your **fine arts**, subject to the Pair Or Set – Fine Arts Loss Payment Basis provision, but we will not pay more than the amount for which you are contractually liable.

**Money**

**Money** is valued based on:

- the face value of United States or Canadian currency if the loss involves United States or Canadian currency; or
- the United States dollar value of a foreign currency based on the free currency rate of exchange in effect on the day any loss involving foreign currency is discovered.

If the loss occurs before the **money** has been counted and recorded by you, the value of the **money** will not exceed the amount that is reasonably estimated and satisfactory to us.

**Loss Payment Basis***(continued)***Pair Or Set - Fine Arts**

In the event of loss or damage to **fine arts** that are part of a pair or set, at your option, we will either pay:

- the **market value** of the entire pair or set. You will return to us the remaining pieces;
- the cost to repair the lost or damaged pieces. You will keep the undamaged pieces. If the pair or set with the repaired pieces has a lower value than it had prior to the loss, we will also pay that difference. In no event will we pay more than the value that the pair or set had prior to the loss or damage; or
- the **market value** of the lost or damaged pieces prior to the loss or damage when the pieces cannot be found or repaired. You will keep the undamaged pieces. If the remaining pieces have a reduced value, we will pay the difference between the value of the remaining pieces prior to the loss or damage and after the loss or damage. In no event will we pay more than the value the pair or set had prior to the loss or damage.

**Securities**

**Securities** are valued based on the lesser of the following:

- the actual market value of the **securities** at the end of the last business day before the loss is discovered; or
- the actual cost of replacing the **securities** on the day loss payment is made.

Property of others that you hold as a pledge or as collateral for a loan is valued at:

- actual cash value at the time you made the loan; or
- the amount of the loan that remains unpaid at the time of loss, plus accrued interest on that amount at legal interest rates.

**Valuable Papers**

**Valuable papers** are valued based on the full cost of replacement or reproduction at the time of direct physical loss or damage when they are actually replaced or reproduced.

If **valuable papers** are not replaced or reproduced, the value is based on the cost of blank materials.

**Valuable Papers Of Others**

**Valuable papers** not owned by you are valued on the same basis as your **valuable papers**, but we will not pay more than the amount for which you are contractually liable.

**Loss Payment Limitations****Electronic Data**

We will not pay for loss or damage to **electronic data**, unless such direct loss or damage is caused by or results from:

- aircraft;
- earthquake, to the extent covered under this contract;
- explosion;



**Accounts Receivable, Fine Arts, Money And Securities  
And Valuable Papers**

**CHUBB®**

**Loss Payment  
Limitations**

**Electronic Data  
(continued)**

- falling objects;
- fire;
- **flood**, to the extent covered under this contract;
- freezing;
- leakage from fire protection equipment;
- lightning;
- riot or civil commotion;
- **sinkhole collapse**;
- smoke;
- vehicles;
- weight of snow; or
- windstorm or hail.

---

**Payment Made By  
Others (Money And  
Securities)**

We will deduct from any payment we make for loss or damage to **money** or **securities** the amount you recover from:

- any contract you have with an **armored vehicle company**;
- insurance carried by an **armored vehicle company**; and
- insurance carried by **others**.

---

**Conditions (Including  
Coverage Territory)**

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.

---

**Definitions**

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy.

**EXHIBIT A –  
Part 2**

**Property Insurance**

**Impairment Of Computer Services —  
Malicious Programming**

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## **Impairment Of Computer Services — Malicious Programming**

### *Contract*

Words and phrases that appear in **bold** print have special meanings and are defined in the Property/Business Income Conditions And Definitions form included in this policy and the Amended Definitions section of this contract.

Throughout this contract, the words, “you” and “your” refer to the Named Insured shown in the Declarations of this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

---

### **Coverages**

#### *Impairment Of Computer Services - Inside Attack*

We will pay for the actual:

- **electronic data recovery costs;**
- **business income** loss; and
- **extra expense,**

you incur due to the actual impairment of your **operations** during the **period of recovery of computer service**, not to exceed the applicable Limit Of Insurance for Impairment Of Computer Services - Inside Attack shown in the Declarations.

This actual impairment of **operations** must be caused by or result from actual loss to **electronic data** or a **system** due to **malicious programming** by an **insider**, unless an exclusion applies.

---

#### *Impairment Of Computer Services - Outside Attack*

We will pay for the actual:

- **electronic data recovery costs;**
- **business income** loss; and
- **extra expense,**

you incur due to the actual impairment of your **operations** during the **period of recovery of computer service**, not to exceed the applicable Limit Of Insurance for Impairment Of Computer Services - Outside Attack shown in the Declarations.

This actual impairment of **operations** must be caused by or result from actual loss to **electronic data** or a **system** due to **malicious programming** by an **outsider**, unless an exclusion applies.

---

### **Policy Exclusions**

The following Policy Exclusions apply to all coverages provided in this contract.

#### *Dishonesty*

This insurance does not apply to loss caused by or resulting from fraudulent, dishonest or criminal acts or omissions committed alone or in collusion with others by you, your partners, members, officers, managers, directors, trustees, employees, anyone performing acts coming within the scope of the usual duties of your employees, or by anyone authorized to act for you, or anyone to whom you have entrusted covered property for any purpose.

This Dishonesty exclusion does not apply to **malicious programming** by an **insider**.

**Policy Exclusions***(continued)***Governmental Or Military Action**

This insurance does not apply to loss caused by or resulting from seizure, confiscation, expropriation, nationalization or destruction of property by order of governmental or military authority, whether de jure or de facto, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss, even if such other cause or event would otherwise be covered.

**Nuclear Hazard**

This insurance does not apply to loss caused by or resulting from nuclear reaction or radiation, or radioactive contamination, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss, even if such other cause or event would otherwise be covered.

**Random Or Multiple Attack**

This insurance does not apply to loss caused by or resulting from any **malicious programming** which:

- is not specifically directed at a **system**;
- is designed or intended to affect more than one computer system or network; or
- actually affects more than one computer system or network.

This Random Or Multiple Attack exclusion does not apply to **malicious programming** by an **outsider**.

**War And Military Action**

This insurance does not apply to loss caused by or resulting from:

- war, including undeclared or civil war;
- warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- insurrection, rebellion, revolution, usurped power or action taken by governmental or military authority, whether de jure or de facto, in hindering or defending against any of these,

regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss, even if such other cause or event would otherwise be covered.



## Impairment Of Computer Services — Malicious Programming

### Limits Of Insurance

#### Impairment Of Computer Services - Insider

The most we will pay in any **occurrence** for the sum of **electronic data recovery costs, business income loss and extra expense** due to **malicious programming** by an **insider**, is the Limit Of Insurance for Impairment Of Computer Services - Inside Attack shown in the Declarations.

#### Impairment Of Computer Services - Outsider

The most we will pay in any **occurrence** for the sum of **electronic data recovery costs, business income loss and extra expense** due to **malicious programming** by an **outsider**, is the Limit Of Insurance for Impairment Of Computer Services - Outside Attack shown in the Declarations.

Subject to the Limit Of Insurance for Impairment Of Computer Services - Outside Attack, the most we will pay for the sum of all **electronic data recovery costs, business income loss and extra expense** due to **malicious programming** by an **outsider** that occurs during each separate 12-month policy period, is the Aggregate Limit Of Insurance for Impairment Of Computer Services - Outside Attack shown in the Declarations.

### Deductible

Subject to the applicable Limit Of Insurance, we will pay the amount of **electronic data recovery costs** in excess of the applicable deductible amount shown in the Declarations for each **occurrence**.

If two or more deductibles apply to the same **occurrence**, only the largest single deductible will apply, unless otherwise stated.

### Loss Determination

In making any loss determination under this contract, we may utilize relevant sources of information, including:

- your financial records and accounting procedures;
- bills, invoices and other vouchers;
- deeds, liens and contracts;
- status and feasibility reports; and
- budgeting and marketing records.

### Business Income

The amount of **business income** loss will be determined based on the:

- net income of your business before the **malicious programming** occurred;
- the likely net income of your business if no **malicious programming** occurred, but not including any **business income** that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the covered loss on customers or on other businesses; and
- your continuing operating expenses, including your continuing normal payroll expenses, necessary to resume **operations** with the same quality of service that existed just before the **malicious programming**.

---

**Loss Determination***(continued)***Extra Expense**

The amount of **extra expense** loss will be determined based on necessary expenses that:

- exceed your normal operating expenses that would have been incurred by **operations** during the **period of recovery of computer services**, if no **malicious programming** had occurred; and
- reduce the **business income** loss that otherwise would have been incurred.

We will deduct from the total of such expenses:

- the salvage value that remains of any property bought for temporary use during the **period of recovery of computer services**, once **operations** are resumed; and
- any **extra expense** that is paid for by other insurance.

---

**Resumption Or Continuation Of Operations**

We will reduce the amount of any **business income** loss payment to the extent you can resume or continue your **operations**, in whole or in part, by using any available **electronic data** or **system**, including the **electronic data** or **system** impacted by the **malicious programming**.

If you elect not to **resume** or continue **operations**:

- any loss determination for **business income** will be based on the length of time it would have taken to resume or continue **operations** with due diligence and dispatch; and
- we will not make any payment for **extra expense**.

---

**Loss Payment Limitations****Contributing Physical Loss Or Damage**

We will not pay for any **business income** loss or **extra expense** caused by or resulting from **malicious programming** if direct physical loss or damage:

- contributes concurrently to, or
- contributes in any sequence to,

such **business income** loss or **extra expense**.

---

**Extortion**

We will not pay that part of any **business income** loss or **extra expense** you incur to respond to extortion or other similar threat.

---

**Loss Of Market**

We will not pay for any loss that results from loss of **market**, loss of use or delay.

---

**Conditions (Including Coverage Territory)**

The conditions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy. Any additional conditions are contained in the Additional Condition section of this contract.



**Impairment Of Computer Services —  
Malicious Programming**

**CHUBB®**

**Additional Condition**

**System Security**

If a **system** is protected by **security software**, you are required to maintain and, as necessary, upgrade (at your own cost) such software so that it provides a technologically credible level of security.

We will not pay for any loss caused by **malicious programming** if, prior to the **malicious programming**, you:

- knew of any defect or deficiency in the **security software** and failed to correct it;
- failed to maintain the **security software** in complete working order; or
- knew of any technologically credible upgrades to the **security software** that could have prevented the **malicious programming**, and failed to make them.

---

**Definitions**

The definitions applicable to this contract are contained in the Property/Business Income Conditions And Definitions form included in this policy. Any definition that amends the definitions contained in the Property/Business Income Conditions And Definitions form are shown in the Amended Definition section of this contract.

---

**Amended Definition**

**Extra Expense**

**Extra expense** means necessary expenses you incur in an attempt to continue **operations**, over and above the expenses you would have normally incurred.

## **Property Insurance**

### *Property/Business Income Conditions And Definitions*

#### *Table Of Contents*

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**Property/Business Income  
Conditions And Definitions**

**Conditions**

The following conditions apply to all contracts contained within the Property/ Business Income Insurance sections of this policy, except Care, Custody or Control Legal Liability, or as otherwise stated.

**Abandonment**

There can be no abandonment of any covered property to us unless we specifically agree to such abandonment in writing.

**Appraisal**

If you and we do not agree on the amount of the loss or damage, either party may make a written demand for an appraisal of the loss or damage. In this event, you will select and pay a competent and impartial appraiser, and we will select and pay a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree on an umpire, either may request that a judge of a court having jurisdiction make the selection. Each appraiser will separately state the value of the property and the amount of the loss or damage. If the appraisers do not agree, they will submit their statements to the umpire. Agreement by the umpire and either of the appraisers will be binding on you and us.

You and we will equally share any other appraisal costs and the costs of the umpire.

If there is an appraisal, we will still retain our right to deny the claim.

**Concealment Or  
Misrepresentation**

This insurance is void if you or any other insured intentionally conceals or misrepresents any material fact or circumstance relating to this insurance at any time.

**Coverage Territory**

This insurance applies anywhere within and **in transit** within and between the contiguous United States of America, Canada, the States of Hawaii and Alaska, Puerto Rico and the territories or possessions of the United States of America or Canada, excluding:

- A. coastwise waterborne shipments to or from Alaska;
- B. intercoastal waterborne shipments via the Panama Canal; and
- C. waterborne shipments to or from:
  1. the State of Hawaii;
  2. Puerto Rico; and
  3. territories or possessions of the United States of America or Canada.

The Coverage Territory for:

- Dependent Business Premises coverage;
- Exhibition, Fair Or Trade Show coverage;
- International Air Shipments coverage; and
- Mobile Communication Property coverage,

is worldwide.

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## Conditions

### Coverage Territory (continued)

For Contractors' Equipment coverage, Contractors Property, Mobile Equipment coverage, Leasehold Interest coverage, Money or Securities coverage or Building Under Construction coverage, the Coverage Territory is:

- the United States of America and its territories and possessions;
- Canada and its territories and possessions; and
- Puerto Rico.

---

### Insured's Duties In The Event Of Loss Or Damage

You must see to it that the following are done in the event of loss or damage:

- Notify us, or one of our authorized representatives, as soon as possible, as to what occurred. Include a description of the property involved, the time and place of the loss or damage, and names and addresses of available witnesses. If there has been loss or damage that may result in a loss under any Business Income or Extra Expense Insurance, notify us by telephone, telegraph or facsimile at our expense.
- Notify the police if a law may have been violated.
- Take every reasonable step to protect the covered property from further loss or damage, and keep a record of your expenses necessary to protect such covered property for consideration in the settlement of the claim. This will not increase any Limit Of Insurance. However, we will not pay for any subsequent loss or damage resulting from a peril that is not a covered peril. Also, if feasible, set the lost or damaged property aside and in the best possible order for examination.
- If you intend to continue your business, you must resume all or part of your operations as quickly as possible.
- File with us, or with our authorized representative, sworn proof of loss within 90 days after the date of loss or damage.
- Cooperate with us in the investigation, settlement or handling of any claim.
- Authorize us to obtain records or reports necessary for our investigation.
- At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss or damage claimed.
- As often as may be reasonably required, permit us to inspect the property and examine your books and records.
- Permit us to take samples of the damaged and undamaged property for inspection, testing and analysis, and permit us to make copies of your books and records.
- Permit us to examine any insured under oath, outside the presence of any other insured at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

Failure of an agent or one of your employees, other than an officer, to notify us of any loss or damage that such agent or employee knows about will not affect the insurance afforded you by this policy.

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**Property/Business Income  
Conditions And Definitions**

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**Conditions**  
(continued)

**Joint Loss Agreement**

- A. This condition is intended to facilitate payment in the event of loss or damage to property that is covered by:
1. this insurance; and
  2. Boiler and Machinery insurance issued by a different insurer; and
- when there is agreement between the insuring companies as to the existence of coverage, but a disagreement as to the amount of the loss or damage to be paid by each insuring company.
- B. The provisions of paragraph C. of this condition apply only if all of the following requirements are met:
1. the Boiler and Machinery insurance contains a provision with substantially the same requirements and procedures as contained in this condition;
  2. the loss or damage to the covered property was caused by a peril for which both we and the other insurer admit some liability for payment under the respective policies;
  3. the total amount of the loss or damage is agreed upon by you, us and the other insurer;
  4. we and the Boiler and Machinery insurer disagree as to the amount of loss or damage that each should pay for the lost or damaged covered property; and
  5. the named insured is the same under both policies.
- C. If the requirements listed in Paragraph B. above are satisfied, we and the Boiler and Machinery insurer will make payments as follows:
1. we will pay, upon your written request, the entire amount for loss or damage that we have agreed upon as being covered solely by this insurance and one-half (1/2) the amount of loss or damage about which we and the other insurer disagree;
  2. the Boiler and Machinery insurer will pay, upon your written request, the entire amount of loss or damage agreed upon as being covered solely by the Boiler and Machinery insurance and one-half (1/2) the amount of loss or damage about which we and the other insurer disagree;
  3. the amount in disagreement to be paid by us under this condition shall not exceed the amount payable under the Loss Adjustment Condition of the Boiler and Machinery insurance;
  4. the amount to be paid under this condition shall not exceed the amount we would have paid had no Boiler and Machinery insurance been in effect at the time of loss or damage;
  5. acceptance by you of payments under this condition does not alter, waive or surrender any of our rights under this policy; and

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## Conditions

### Joint Loss Agreement (continued)

6. we and the other insurer agree to submit our differences to arbitration within 90 days after payment, and you agree to cooperate with any arbitration proceedings. There will be three arbitrators: one will be appointed by us, and the second will be appointed by the other insurer. Then, the two arbitrators will select a third arbitrator. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. A decision agreed to by any two of the three arbitrators will be binding on us and the other insurer. Judgment on any award may be sought in any court having jurisdiction.

---

### Legal Action Against Us

No legal action may be brought against us unless:

- there has been full compliance with all the terms of this insurance; and
- the action is brought within three years after the date on which the direct physical loss or damage occurred.

---

### Lenders/Loss Payee

If any Loss Payee shown in the Schedule of Mortgagees and Loss Payees is a creditor whose interest in **personal property** or **electronic data processing property** is established by a written instrument and both you and such Loss Payee have an insurable interest in lost or damaged **personal property** or **electronic data processing property**, we will:

- adjust losses with you; and
- pay any claim for loss or damage jointly to you and to each such Loss Payee, in their order of precedence, as interests may appear.

Each Loss Payee has the right to receive loss payment, even though:

- we denied your claim because you failed to comply with the terms of this insurance; or
- such Loss Payee starts foreclosure or similar actions on the **personal property** or **electronic data processing property**,

if such Loss Payee:

- pays any premium due at our request if you have failed to do so;
- submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- has notified us of any change in ownership, occupancy or substantial change in risk known to such Loss Payee.

Each Loss Payee's right to receive loss payment is limited to the lesser of the following:

- the actual cash value as described under Loss Payment Basis of the lost or damaged **personal property** or **electronic data processing property**;
- their financial interest in the **personal property** or **electronic data processing property** as shown in the written evidence; or
- the applicable Limit Of Insurance for Personal Property or Electronic Data Processing Property shown in the Declarations.



**Property/Business Income  
Conditions And Definitions**

**Conditions**

**Lenders/Loss Payee  
(continued)**

If we pay any Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this insurance, such Loss Payee's rights:

- will be transferred to us to the extent of the amount we pay; and
- to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to any Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

To satisfy the requirements of any Loss Payee shown in the Schedule of Mortgages and Loss Payees, copies of policies or certified copies of policies may be sent to these Loss Payees. In no event are copies of policies sent to Loss Payees to be considered as increasing the Limits Of Insurance shown in the Declarations or changing the terms of this insurance, nor are they to be considered duplicate or contributing insurance.

**Liberalization**

If we adopt any changes:

- within 60 days prior to the effective date shown in the declarations; or
- during the policy period,

which could broaden this insurance without an additional premium charge, you will automatically receive the benefit of such change.

**Loss Payment**

- A. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this insurance, and:
1. we have reached agreement with you on the amount of loss; or
  2. an appraisal award has been made.
- B. We will not pay you more than your financial interest in the covered property.
- C. We may adjust losses with the owners of lost or damaged covered property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' covered property. We will not pay the owners more than their financial interest in such property.
- D. We may elect to defend you against suits arising from claims of owners of covered property. We will do this at our expense.

**Mortgage Holder -  
Buildings**

We will pay for loss or damage to **building** jointly to you and the mortgage holder shown in the Schedule of Mortgagees and Loss Payees, as interests may appear.

Your mortgage holder has the right to receive loss payment, even though:

- you failed to comply with the terms of this insurance; or
- your mortgage holder starts foreclosure or similar actions on the **building**,

if such mortgage holder:

- pays any premium due at our request if you have failed to do so;
- submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so, and



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**Conditions**
**Mortgage Holder -  
Buildings  
(continued)**

- has notified us of any change in ownership, occupancy or substantial change in risk known to such mortgage holder.

If we make loss payments to your mortgage holder when you fail to comply with the terms of this insurance, you will have to pay us to the extent we pay the mortgage holder. Your mortgage holder will still have the right to receive the balance of the mortgage debt from you.

We also have the right to take over your mortgage after making loss payment to the mortgage holder. If we do, you will pay your remaining mortgage debt to us.

If you fail to pay your premium, we may request it from your mortgage holder.

The mortgage holder must notify us of any change in ownership known to the mortgage holder.

If we cancel this insurance, we will give written notice to the mortgage holder at least:

- 20 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- 60 days before the effective date of cancellation, if we cancel for any other reason.

Failure to provide such notice shall not invalidate such cancellation.

To satisfy the requirements of any mortgage holder shown in the Schedule of Mortgages and Loss Payees, copies of policies or certified copies of policies may be sent to these mortgage holders. In no event are copies of policies sent to mortgage holders to be considered as increasing the Limits Of Insurance shown in the Declarations or changing the terms of this insurance, nor are they to be considered duplicate or contributing insurance.

---

**No Benefit To Carrier Or  
Bailee**

No person or organization, other than you, having custody of covered property will benefit from this insurance.

---

**Other Insurance**

If you have any other insurance covering the same loss or damage as is insured against by this policy, we will only pay for the amount of loss or damage which is insured against by this policy in excess of the amount due from such other insurance, whether you can collect on such other insurance or not.

---

**Recovered Property**

If any lost or damaged covered property is recovered by you or us, after a loss payment is made, the party making the recovery must give the other parties prompt notice.

If any recovered property has a salvage value, we shall control the disposition of such salvage.

When covered property is recovered, you may keep the:

- recovered property and return the loss payment to us; or
- loss payment and we will keep the recovered property.

When any recovered covered property which you choose to keep is in need of repair, we will pay for the repairs subject to the:

- applicable Limit Of Insurance shown in the Declarations; and
- Loss Payment Basis provision, Our Loss Payment Options.



**Property/Business Income  
Conditions And Definitions**

**Conditions**

**Recovered Property  
(continued)**

If any recovered property has a salvage value or if there is any money recovered through subrogation, such recoveries shall be applied, net of the expense of such recovery, in the following order:

- first, to you for any uninsured loss or damage resulting from an insufficient limit of insurance;
- second, to us for any amounts paid in settlement of your claim; and
- third, to you for any deductible amount that you paid or penalties you paid as a result of coinsurance or the **personal property** reporting condition of this insurance, if applicable.

We shall determine the amount of loss or damage on the basis on which it would have been settled had the amount of recovery been known at the time the loss was originally determined.

If there are expenses:

- in recovering any lost or damaged covered property; or
- as a result of subrogation,

we shall share the expense with you and any insurer providing excess insurance in proportion to the amount we are each reimbursed. If there should be no recovery and proceedings are conducted solely by us, we shall bear the expenses of the proceedings.

**Transfer Of Rights Of  
Recovery To Us**

If any person to or for whom we make payment under this insurance has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair our rights.

You may waive your rights against another party in writing:

- A. prior to direct physical loss or damage to covered property; or
- B. after direct physical loss or damage to covered property only if, at the time of direct physical loss or damage, that party is one of the following:
  1. someone insured by this insurance;
  2. an individual who owns or controls the majority of capital stock of your business;
  3. a related business firm majority-owned or controlled by you, or that owns or controls the majority of the capital stock of your business; or
  4. your tenant.

This will not restrict your insurance.

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## **Property/Business Income Conditions And Definitions**

### **Definitions**

When used with respect to insurance under this policy:

#### **Accounts Receivable**

**Accounts receivable** means:

- the money due you that you are unable to collect from customers;
- interest charges on any loan that you secure to offset your reduced cash flow; and
- additional collection costs.

#### **Accounts Receivable Records**

**Accounts receivable records** means accounting records, including support records such as invoices and accounting records in any form, used to control and document the collection of money due from customers.

#### **Blank Media**

**Blank media** means the blank medium upon which **electronic data** is recorded, but not **electronic data** itself.

#### **Bonus Payments**

**Bonus payments** means that portion of any cash bonus you paid based on the percentage of your lease remaining at the time of direct physical loss or damage.

**Bonus payments** does not mean rent, securities or cash bonuses refunded to you, even if you prepaid the rent or security.

#### **Building**

**Building** means:

- a structure;
- **building components**;
- completed additions;
- additions to the structure under construction; and
- alterations and repairs to the structure.

**Building** does not mean:

- land, water or air, either inside or outside of a structure;
- dams;
- dikes;
- paved or concrete surfaces;
- underground mines or mine shafts or any property within such underground mines or mine shafts;
- retaining walls;
- foundations or supports below the surface of the lowest floor or basement;
- **outdoor trees, shrubs, plants or lawns**; or
- any structure you do not own, occupy and are not legally or contractually required to insure.

**Definitions***(continued)***Building Components****Building components** means:

- glass forming a part of a structure;
- **personal property** consisting of materials, machinery, equipment, supplies and temporary structures used for making additions or repairs to a structure;
- outdoor fixtures;
- outdoor and indoor signs;
- permanently installed fixtures, machinery and equipment; and
- **personal property** used to maintain or service a structure or its premises.

**Building Or Renovations Under Construction****Building or renovations under construction** means:

- **buildings under construction**; or
- **renovations under construction**.

**Building Under Construction****Building under construction** means:

- A. a structure in the course of construction; and
- B. the following, if attached to the structure, intended to become a part of the structure, or within 1,000 feet of the premises shown in the Declarations where the structure is under construction:
  1. foundations;
  2. **building components**;
  3. building materials and supplies, including those in your care, custody or control:
    - a. at a job site awaiting and during installation; or
    - b. **in transit** to a job site; and
  4. temporary structures built or assembled on site, including cribbing, scaffolding and construction forms, if not covered by other insurance.

**Building under construction** does not mean:

- land, water or air, either inside or outside of a structure in the course of construction;
- dams;
- dikes;
- paved or concrete surfaces;
- underground mines or mine shafts or any property within such underground mines or mine shafts;
- retaining walls;



## **Property/Business Income Conditions And Definitions**

### **Definitions**

#### **Building Under Construction (continued)**

- **outdoor trees, shrubs, plants or lawns;**
- **contractors' equipment;**
- **mobile equipment;** or
- any structure in the course of construction you do not own, occupy and are not legally or contractually required to insure.

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#### **Business Income**

##### **Business income** means:

- A. net profit or loss, including rental income from tenants and net sales value of production, that would have been earned or incurred before income taxes;
- B. your continuing normal:
  1. operating; and
  2. payroll, expenses;
- C. charges you incur which are the legal obligation of your tenant which would otherwise be your obligations; and
- D. the cost you are required to pay to rent temporary premises when that portion of the premises shown in the Declarations occupied by you is untenable, not to exceed the fair rental value of such untenable portion of the **building** you occupy.

**Business income** does not mean bank interest or investment income.

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#### **Communication Property**

##### **Communication property** means:

- analog or digital communication equipment; or
- other equipment used to interactively communicate with others through voice, picture, video or writing,

you own or in your care, custody or control.

##### **Communication property** does not mean:

- **electronic data processing equipment;**
  - **electronic data;**
  - **mobile communication property;**
  - **contractors' equipment;**
  - communication systems for sale or sold; or
  - **mobile equipment.**
-

**Definitions***(continued)***Contractors' Equipment**

**Contractors' equipment** means contractors' machinery and equipment, including accessories, tools and spare parts for the contractors' machinery and equipment, usual to your business, which you own, lease or borrow, and for which you are legally liable.

**Contractors' equipment** does not mean:

- aircraft or watercraft;
- motor vehicles required to be licensed for highway use, except motor vehicles on which your contractors' machinery or equipment is permanently mounted;
- **personal property;**
- property while underground, except while **in transit** through vehicular or railroad tunnels;
- office equipment, which is the contents of trailers, unless that equipment is otherwise shown;
- property while waterborne or while being loaded or unloaded for waterborne transit, except while **in transit** on public ferries or car floats for hire;
- property while leased or loaned to others;
- property while on any platform anchored, permanently or temporarily, in any body of water;
- **mobile communication property;** or
- **electronic data processing property.**

**Covered Peril**

**Covered peril** means a peril covered by the Form(s) shown in the Property Insurance Schedule Of Forms, except Care, Custody Or Control Legal Liability, applicable to the lost or damaged **property.**

For the purposes of:

- **personal property of a dependent business premises;**
- **personal property of a utility;** or
- **service property,**

**covered peril** means a peril covered by the Building and Personal Property Contract included in this policy applicable to **building** or **personal property** at a premises shown in the Declarations.

**Dependent Business Premises**

**Dependent business premises** means premises operated by others on whom you depend to:

- deliver materials or services to you or to others for your account (contributing premises);
- accept your products or services (recipient premises);
- manufacture products for delivery to your customers under contract of sale (manufacturing premises); or
- attract customers to your business (leader premises).



**Property/Business Income  
Conditions And Definitions**

**Definitions**

**Dependent Business  
Premises  
(continued)**

**Dependent business premises** does not mean any:

- A. premises operated by others on whom you depend to:
  - 1. deliver utility services to you; or
  - 2. accept utility services from you; or
- B. premises of **on-line access** providers.

**Electronic Data**

**Electronic data** means software, data or other information that is in electronic form.

**Electronic Data  
Processing Equipment**

**Electronic data processing equipment** means:

- computers;
- computer peripherals;
- climate control and protection equipment used solely for electronic data processing operations;
- separately identifiable and removable component computer devices that are attached to covered property and are designed to control such property, but not the property itself; and
- **blank media.**

**Electronic data processing equipment** does not mean:

- **electronic data;**
- computers, peripherals, equipment or parts held for sale or distribution;
- computers, peripherals, equipment or parts that have been sold;
- computers, peripherals, equipment or parts in the course of manufacture;
- **communication property;**
- **contractors' equipment;**
- **mobile communication property;** or
- **mobile equipment.**

**Electronic Data  
Processing Property**

**Electronic data processing property** means:

- **electronic data;**
- **electronic data processing equipment;**
- **mobile communication property;** and
- **communication property.**

**Electronic data processing property** does not mean:

- **contractors' equipment;** or
- **mobile equipment.**



**Definitions***(continued)***Electronic Data Recovery Costs****Electronic data recovery costs** means the reasonable and necessary costs you incur to:

- copy, re-create, replace or retrieve **electronic data** you own or use, or which resides on a system you own or lease; and
- restore a system you own or lease to the functionality that existed prior to the **malicious programming**.

**Electronic data recovery costs** does not include the cost to repair or replace **electronic data processing equipment** or **communication property** which suffers direct physical loss or damage.**Extra Expense****Extra expense** means necessary expenses you incur:

- A. in an attempt to continue **operations**, over and above the expenses you would have normally incurred; and
- B. to repair or replace any **property**, or to research or restore the lost information on damaged **valuable papers**, records and media, if such action will reduce any loss we would pay under this insurance.

Paragraph B. does not apply to Fungus Clean-up Or Removal Premises Coverage.

**Fine Arts****Fine arts** means:

- paintings, rare books, sculptures, manuscripts, pictures, prints, etchings, drawings, tapestries, bronzes, statuary, potteries, porcelains, marbles and other bona fide works of art; or
- items of rarity or historical value.

**Finished Stock****Finished stock** means goods you have manufactured which are in their completed state and ready for sale.**Finished stock** does not include goods you have manufactured which are in their completed state and ready for sale on the premises of any retail outlet.**Flood****Flood** means:

- waves, tidal water or tidal waves; or
- rising or overflowing or breaking of any boundary,

of natural or man-made lakes, reservoirs, ponds, brooks, rivers, streams, harbors, oceans, or any other body of water or watercourse, whether driven by wind or not.

**Flood** does not include:

- a **specified peril** that ensues from flood; or
- tsunami resulting from earthquake.

**Property/Business Income  
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**CHUBB®**

**Definitions**  
(continued)

**Fungus**

**Fungus** means any:

- A. 1. mildew, mold or other fungi;
2. other microorganisms; or
3. any mycotoxins, spores, or other by-products of the foregoing; or
- B. colony or group of any of the foregoing.

**Insider**

**Insider** means a person, organization or computer you have expressly authorized to access a system.

**In Transit**

**In transit** means being shipped by air, surface or waterborne conveyance from the time beginning:

- when, if shipped from your premises in or on conveyances you own, lease or operate, the property departs your premises;
- when, if shipped from premises of others in or on conveyances you own, lease or operate, the property is transferred into your care, custody or control; or
- when the property is actually moved from the point of shipment bound for a specified destination, if shipped in or on any other conveyance;

and ending:

- when the property is accepted by, or on behalf of, the consignee at the intended destination;
- when the property is accepted by, or on behalf of, the consignee at any intermediate point short of reaching the original intended destination;
- at such point where you, or the owner of the property if other than you, order the property stopped and held pending instructions. However, this does not apply to property while in the custody of a carrier for hire and which is being held at a location other than the intended destination by such carrier's "on-hand" department for a period not to exceed 30 days; or
- when, if shipped to your premises in or on conveyances you own, lease or operate, the property arrives at your premises.

**In transit** includes ordinary, reasonable, and necessary stops, interruptions, delays, or transfers incidental to the route and method of shipment, but not while at premises you own, lease or operate.

**In transit** also includes the period of time during which:

- there is a substantial and unauthorized deviation from the normal route by a carrier for hire; or
- the contract of carriage is, without your knowledge, abandoned en route by a carrier for hire, its agent, or its driver.

**In transit** does not mean:

- A. property shipped by mail, unless shipped by registered mail;
- B. import shipments, within the Coverage Territory, until such time as ocean marine insurance has ceased to cover such property;

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## Definitions

### *In Transit (continued)*

- C. export shipments once:
  1. loaded on board any steamer or other watercraft; or
  2. ocean marine insurance has begun to cover such property, whichever occurs first; or
- D. property owned by others when you are acting as a carrier for hire.

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### *Malicious Programming*

**Malicious programming** means an illegal or malicious entry into **electronic data** or a **system** which results in functions that:

- distort;
- corrupt;
- manipulate;
- copy;
- delete;
- destroy; or
- slow down,

such **electronic data** or **system**.

**Malicious programming** does not mean:

- theft of telephone services; or
- direct physical loss or damage to **electronic data processing property** or **mobile communication property**.

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### *Market Value*

**Market value** means the price which the **fine arts** might be expected to realize if offered for sale in a fair market on the date of loss or damage.

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### *Mechanical Or Electrical System Or Apparatus*

**Mechanical or electrical system or apparatus** means any:

- boiler, fired pressure vessel, unfired pressure vessel normally subject to vacuum or internal pressure other than weight of its content, refrigerating and air conditioning vessels, including metal piping and its accessory equipment connected thereto; and
- mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power.

**Mechanical or electrical system or apparatus** does not mean any:

- A. part of a boiler or fired vessel or electric steam generator that does not contain steam or water;
- B. insulating or refractory material;
- C. non-metallic vessels, equipment, machines and apparatus, including their glass linings and non-metallic parts, unless constructed in accordance with the American Society of Mechanical Engineers;
- D. glass linings of vessels, equipment, machines and apparatus;

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**CHUBB®**

**Definitions**

**Mechanical Or Electrical  
System Or Apparatus  
(continued)**

- E. catalyst;
- F. piping, vessels or electrical cables, not enclosed in conduit, buried directly in the ground;
- G. sewer piping;
- H. sprinkler system piping or water piping other than:
  - 1. feedwater piping between any steam boiler and its feed pumps or injectors;
  - 2. steam boiler condensate return piping; and
  - 3. metal water piping interconnecting vessels forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating;
- I. part of an unfired pressure vessel that is not under:
  - 1. pressure; or
  - 2. internal vacuum;
- J. structure, foundation, cabinet or compartment containing any vessel, equipment, machine or apparatus;
- K. felt, wire, screen, die, extrusion plate, swing hammer, grinding disk, cutting blade, cable, chain, belt, rope, clutch plate, brake pad, non-metallic part or any part or tool subject to frequent periodic replacement;
- L. vessel, equipment, machine or apparatus manufactured by you for sale;
- M. power shovel, dragline, excavation vehicle (whether or not licensed for road use), aircraft, floating vessel or structure, penstock, draft tube or well casings; or
- N. **electronic data processing property**, except for component computer devices that are used solely to control a mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power.

When a vessel uses a heat transfer medium other than water or steam, we will consider the medium used and its vapor as substitutes for the words "water" or "steam".

**Merchandise**

**Merchandise** means goods:

- held for sale by you; or
- manufactured by you and ready for sale on the premises of any retail outlet.

**Mobile Communication  
Property**

**Mobile communication property** means:

- cellular telephone;
- laptop computers;
- pagers;
- personal digital assistants;
- mobile hand held global positioning systems; and
- other hand held communication devices.

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## Definitions

### *Mobile Communication Property* (continued)

**Mobile communication property** does not mean:

- **personal property;**
- **electronic data processing equipment;**
- **electronic data;**
- **communication property;**
- **contractors' equipment;** or
- **mobile equipment.**

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### *Mobile Equipment*

**Mobile equipment** means machinery and equipment, including accessories, tools and spare parts for the machinery and equipment, usual to your business which you own, lease or borrow, and for which you are legally liable.

**Mobile equipment** does not mean:

- aircraft or watercraft;
- motor vehicles required to be licensed for highway use, except motor vehicles on which your machinery or equipment is permanently mounted;
- **personal property;**
- property while underground, except while **in transit** through vehicular or railroad tunnels;
- office equipment, which is the contents of trailers, unless that equipment is otherwise shown;
- property while waterborne or while being loaded or unloaded for waterborne transit, except while **in transit** on public ferries or car floats for hire;
- property while leased or loaned to others;
- property while on any platform anchored, permanently or temporarily, in any body of water;
- **mobile communication property;** or
- **electronic data processing property.**

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### *Money*

**Money** means:

- currency, coins, bank notes or bullion;
- food stamps;
- checks or drafts drawn on any account; or
- travelers checks, registered checks and money orders, held for sale to the public.

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### *Non-Owned Detached Trailers*

**Non-owned detached trailers** means trailers that you do not own that:

- are used in your business; and
- are in your care, custody or control.

**Property/Business Income  
Conditions And Definitions**

**CHUBB®**

**Definitions**

**Non-Owned Detached Trailers**  
(continued)

**Non-owned detached trailers** does not mean:

- trailers attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion; or
- trailers during hitching or unhitching operations, or when trailers become accidentally unhitched from a motor vehicle or motorized conveyance.

**Occurrence**

**Occurrence** means:

- A. for earthquake, including any resulting tsunami:
  1. one earthquake; or
  2. a series of earthquake shocks occurring within any period of 168 hours;
- B. for volcanic eruption:
  1. one volcanic eruption; or
  2. a series of volcanic eruptions occurring within any period of 168 hours;
- C. for windstorm involving, in whole or in part, any of the perils of weather:
  1. one weather event; or
  2. a series of related weather events; or
- D. for all other perils:
  1. one event; or
  2. a series of causally related events that:
    - a. contribute concurrently to; or
    - b. contribute in any sequence to, the loss or damage.

For the purposes of this definition:

- earthquake does not include a **specified peril** that ensues from earthquake; and
- any earthquake or volcanic eruption, or series of earthquake shocks or volcanic eruptions, will be deemed to occur at the time of the first shock or eruption.

**Off Premises**

**Off premises** means:

- in the custody of an armored motor vehicle company; or
- in the possession of any person authorized by you, but not while in the mail or in the custody of a carrier for hire other than an armored motor vehicle company.

**Definitions***(continued)***On Premises****On premises** means:

- on the premises shown in the Declarations;
- in a bank; or
- in a recognized place of safe deposit.

**On-Line Access****On-line access** means:

- accessing information made available by third parties; or
  - making information available to third parties,
- via computer or other electronic system.

**Operations****Operations** means your business activities occurring at your premises, including your activities as a lessor of premises, prior to the loss or damage.**Outdoor Trees, Shrubs, Plants Or Lawns****Outdoor trees, shrubs, plants or lawns** means outdoor trees, shrubs, plants or lawns you own on the premises shown in the Declarations.**Outdoor trees, shrubs, plants or lawns** does not mean:

- outdoor trees, shrubs, plants or lawns that you hold for sale; or
- growing crops.

**Outsider****Outsider** means a person, organization or computer not authorized to access a **system**.**Overhead Communication, Transmission Or Distribution Equipment****Overhead communication, transmission or distribution equipment** means:

- overhead communication, transmission or distribution lines;
  - overhead transformers; or
  - other similar overhead communication, transmission or distribution equipment,
- and all their supporting towers and poles.

**Period Of Recovery Of Computer Service****Period of recovery of computer service** means the period of time that:

- for **electronic data recovery costs** and **extra expense**, begins immediately after the **malicious programming** occurs; and
- for **business income**, begins twenty-four (24) normal business hours after the **malicious programming** occurs.

**Period of recovery of computer service** will continue until the earlier of the following:

- the date your **operations** are restored, with due diligence and dispatch, to the condition that would have existed had there been no **malicious programming**; or



## **Property/Business Income Conditions And Definitions**

### **Definitions**

#### **Period Of Recovery Of Computer Service (continued)**

- sixty (60) days after the date you restore, with due diligence and dispatch, a **system** to the functionality that existed prior to the **malicious programming**.

In determining the condition of **operations** that would have existed had there been no **malicious programming**, no consideration will be given to unfavorable market conditions or competitive advantage gained by others as a result of such **malicious programming**.

#### **Period Of Restoration**

**Period of restoration** means the period of time that, for **business income**, begins:

- A. immediately after the time of direct physical loss or damage by a **covered peril to property**; or
- B. on the date **operations** would have begun if the direct physical loss or damage had not occurred, when loss or damage to any of the following delays the start of **operations**:
  1. new **buildings** whether complete or under construction;
  2. alterations or additions to existing **buildings**; or
  3. **personal property** consisting of materials, machinery, equipment, supplies and temporary structures used in the construction of, or for making additions to, alterations or repairs to the structure.

**Period of restoration** means the period of time that, for **extra expense**, begins immediately after the time of direct physical loss or damage by a **covered peril to property**.

**Period of restoration** will continue until your **operations** are restored, with reasonable speed, to the level which would generate the **business income** amount that would have existed if no direct physical loss or damage occurred, including the time required to:

- A. repair or replace the **property**; or
- B. repair or replace the **property** to comply with the minimum standards of any enforceable ordinance or law that:
  1. regulates the repair or replacement of any **property**;
  2. requires the tearing down of parts of any **property** not damaged by a **covered peril**; and
  3. is in force prior to the date of the direct physical loss or damage,

not to exceed the applicable number of days shown as Extended Period in the Declarations, beginning on the date that:

- for manufacturing risks, the lost or damaged **property** is actually repaired or replaced and production capability is restored to the level that existed prior to the date the direct physical loss or damage occurred; or
- for all other risks, the lost or damaged **property** is actually repaired or replaced and your **operations** are restored.

The expiration date of this policy will not cut short the **period of restoration**.



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## Definitions

### *Period Of Restoration (continued)*

If loss or damage occurs at a:

- **dependent business premises;** or
- utility,

for the purpose of determining **period of restoration** following such loss or damage, **property** includes:

- **personal property of a utility;** or
- **personal property of a dependent business premises.**

In determining the **business income** amount that would have existed if no direct physical loss or damage occurred, we will reduce such amount to the extent necessary to reflect unfavorable economic conditions attributable to the impact the **covered peril** had in the geographic area where the lost or damaged **property** is located.

**Period of restoration** does not include any increased period required to comply with any ordinance or law:

- you were required to comply with before the direct physical loss or damage;
- involving any property outside the legal boundary of the premises shown in the Declarations;
- that regulates the repair or replacement of any property that was lost or damaged by an excluded peril. If direct physical loss or damage is caused by or results from both a **covered peril** and an excluded peril, the **period of restoration** only includes the length of time required to repair or replace the property lost or damaged by a **covered peril**; or
- that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **fungus** or **pollutants**, except as provided under the Fungus Clean-up Or Removal Premises Coverage or the Pollutant Clean-up Or Removal Additional Coverage.

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### *Personal Property*

**Personal property** means:

- all your business personal property;
- business personal property you lease;
- **personal property of others;**
- labor, materials and services furnished or arranged by you on **personal property of others;**
- signs, fixtures, glass and other **tenant's improvements and betterments;** and
- glass in **buildings** you do not own if you are legally or contractually required to maintain such glass.

**Personal property** does not mean:

- **building**, except **tenant's improvements and betterments** and glass in **buildings** you do not own if you are legally or contractually required to maintain such glass;
- land, water or air, either inside or outside of a structure;
- retaining walls;
- growing crops;
- **outdoor trees, shrubs, plants or lawns;**



## **Property/Business Income Conditions And Definitions**

### **Definitions**

#### **Personal Property (continued)**

- vehicles or machines required to be licensed for use on public roads;
- trailers;
- **contractors' equipment;**
- self-propelled watercraft, or any other watercraft over 50 feet in length, in water;
- aircraft, except aircraft manufactured, processed, warehoused or held for sale while on the ground;
- **electronic data;**
- **money or securities;**
- personal property sold under a conditional sale or trust agreement or an installment or deferred payment plan after delivery to customers, except as provided under the Deferred Payments Additional Coverage;
- import shipments prior to either discharge from aircraft or oceangoing vessel or termination of the risk assumed by cargo insurance;
- export shipments after either being loaded on aircraft or oceangoing vessel or having come under the protection of cargo insurance;
- animals, except animals owned by others and boarded by you or animals owned by you and held for sale;
- any personal property which is in or below underground mines or mine shafts; or
- **mobile communication property.**

#### **Personal Property Of A Dependent Business Premises**

**Personal property of a dependent business premises** means business personal property owned or leased by a **dependent business premises**.

**Personal property of a dependent business premises** does not mean:

- **building;**
- land, water or air, either inside or outside of a structure;
- retaining walls;
- growing crops;
- **outdoor trees, shrubs, plants or lawns;**
- vehicles or machines required to be licensed for use on public roads;
- trailers;
- **contractors' equipment;**
- self-propelled watercraft, or any other watercraft over 50 feet in length, in water;
- aircraft, except aircraft manufactured, processed, warehoused or held for sale while on the ground;
- **electronic data;**
- **money or securities;**

**Definitions**

*Personal Property Of A Dependent Business Premises (continued)*

- personal property sold under a conditional sale or trust agreement or an installment or deferred payment plan after delivery to customers;
- animals;
- any personal property which is in or below underground mines or mine shafts; or
- **mobile communication property.**

*Personal Property Of Employees*

**Personal property of employees** means personal property owned or leased by your employees and in your care, custody or control.

**Personal property of employees** does not mean:

- **building;**
- land, water or air, either inside or outside of a structure;
- retaining walls;
- growing crops;
- **outdoor trees, shrubs, plants or lawns;**
- vehicles or machines required to be licensed for use on public roads;
- trailers;
- **contractors' equipment;**
- self-propelled watercraft, or any other watercraft over 50 feet in length, in water;
- aircraft, except aircraft manufactured, processed, warehoused or held for sale while on the ground;
- **electronic data;**
- **money or securities;**
- personal property sold under a conditional sale or trust agreement or an installment or deferred payment plan after delivery to customers;
- import shipments prior to either discharge from aircraft or oceangoing vessel or termination of the risk assumed by cargo insurance;
- export shipments after either being loaded on aircraft or oceangoing vessel or having come under the protection of cargo insurance;
- animals, except animals owned by your employee and boarded by you;
- any personal property which is in or below underground mines or mine shafts; or
- **mobile communication property.**



## **Property/Business Income Conditions And Definitions**

### **Definitions**

*(continued)*

#### **Personal Property Of Others**

**Personal property of others** means personal property not owned by you and in your care, custody or control.

**Personal property of others** does not mean:

- business personal property you lease; or
- **personal property of employees.**

#### **Personal Property Of A Utility**

**Personal property of a utility** means personal property owned or leased by a utility.

**Personal property of a utility** does not mean:

- **building;**
- land, water or air, either inside or outside of a structure;
- retaining walls;
- growing crops;
- **outdoor trees, shrubs, plants or lawns;**
- vehicles or machines required to be licensed for use on public roads;
- trailers;
- **contractors' equipment;**
- self-propelled watercraft, or any other watercraft over 50 feet in length, in water;
- aircraft;
- **electronic data;**
- **money or securities;**
- personal property sold under a conditional sale or trust agreement or an installment or deferred payment plan after delivery to customers;
- animals;
- any personal property which is in or below underground mines or mine shafts; or
- **mobile communication property.**

#### **Pollutants**

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fibers, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Pollutants** does not mean **fungus.**

**Definitions***(continued)***Prepaid Rent**

**Prepaid rent** means that portion of any prepaid rent you paid based on the percentage of your lease remaining at the time of direct physical loss or damage.

**Prepaid rent** does not mean the customary rent due at the beginning of any rental period.

**Property**

**Property** means:

- **building;**
- **personal property;**
- **personal property of employees;**
- **electronic data processing property;**
- **valuable papers;**
- **fine arts;** or
- **research and development property.**

**Prototypes**

**Prototypes** mean a first or original model of a new type of design.

**Raw Stock**

**Raw stock** means material in the state in which you receive it for conversion into **finished stock**.

**Renovations Under Construction**

**Renovations under construction** means additions, improvements, alterations or repairs to an existing structure, including:

- A. the following property located in the structure, on premises, within 1,000 feet of the premises shown in the Declarations or while **in transit** to the premises shown in the Declarations if such property is intended to become a permanent part of the structure:
  1. fixtures, machinery and equipment used to service the structure; and
  2. your building materials and supplies, or those in your care, custody or control, used in the construction; and
- B. temporary structures built or assembled on the premises shown in the Declarations, including cribbing, scaffolding and construction forms, if not covered by other insurance.

**Renovations under construction** does not mean:

- any portion of a structure existing prior to the additions, improvements, alterations or repairs;
- paved or concrete surfaces;
- retaining walls;
- **building under construction;**
- **contractors' equipment;**
- land, water or air, either inside or outside of a structure;
- dams;



## **Property/Business Income Conditions And Definitions**

### **Definitions**

#### **Renovations Under Construction (continued)**

- dikes;
- underground mines or mine shafts and any property within such underground mines or mine shafts;
- **mobile communication property**; or
- **mobile equipment**.

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#### **Rental Income**

##### **Rental income** means:

- A. net profit or loss that would have been earned or incurred, before income taxes, from the rental income from tenant occupancy of the premises shown in the Declarations;
- B. your continuing normal:
  1. operating; and
  2. payroll,
 expenses that you incur solely from tenant occupancy of the premises shown in the Declarations;
- C. charges you incur which are the legal obligation of your tenant(s) which would otherwise be your obligations; and
- D. the cost you are required to pay to rent temporary premises when that portion of the premises shown in the Declarations occupied by you is untenable, not to exceed the fair rental value of such untenable portion of the **building** you occupy.

**Rental income** does not mean bank interest or investment income.

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#### **Research And Development Income**

##### **Research and development income** means:

- grants, endowments and other financial contributions made to you pursuant to written agreements to further **research and development operations**; less
- expenses, including any research and development payroll expense, that you do not continue to incur, due to the actual impairment of such **research and development operations**,

provided you:

- report the value of such agreements to us by the inception of this policy;
- report the value of any agreements executed after the inception of this policy to us within 90 days of their execution;
- report any amendments to such agreements that change the value of such agreements within 90 days of the execution of such amendments; and
- continue your **research and development operations**.

Except as provided under the Newly Acquired Research And Development Income Premises Coverage, insurance for agreements executed after the inception of this policy will begin on the date you report the values for such agreements to us.

**Definitions***(continued)***Research And Development Operations**

**Research and development operations** means your business activities occurring at your premises, which are directly related to the development of new products or enhancement of existing products.

**Research And Development Property**

**Research and development property** means:

- written, printed or inscribed documents, plans, records or formulas;
- processes or cultures and resulting products, samples or other materials produced by such processes or cultures; and
- **prototypes,**

if produced and directly associated with your **research and development operations.**

**Research and development property** does not mean:

- animals;
- **money** or **securities;**
- property held for sale or held for delivery after sale;
- goods you have manufactured which are in their completed state and ready for sale; or
- **mobile communication property.**

**Robbery Of Money Or Securities**

**Robbery of money or securities** means the unlawful taking of **money** or **securities** from:

- you;
- your partner;
- your employee; or
- any other person authorized by you to have custody of the **money** or **securities,**

by violence, threat of violence or any other overt felonious act committed in the presence and with cognizance of any such person.

**Salespersons' Samples**

**Salespersons' samples** means **personal property** that is in the custody of any one of your salespersons and used only for sample purposes.

**Securities**

**Securities** means:

- all negotiable and nonnegotiable instruments or contracts that represent either **money** or other property held by you in any capacity;
- revenue and other stamps in current use;
- tokens;



**Property/Business Income  
Conditions And Definitions**

**Definitions**

**Securities**  
(continued)

- tickets; and
- property of others that you hold as a pledge or as collateral for a loan.

**Securities** does not mean **money**.

**Security Software**

**Security software** means software or other computer applications or programming principally designed to detect, prevent or mitigate **malicious programming**.

**Service Property**

**Service property** means property outside of a **building**, owned or leased by you and used either on or off the premises shown in the Declarations, to supply such premises with water, communication, power, natural gas or sewage treatment service.

**Sinkhole Collapse**

**Sinkhole collapse** means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite.

**Sinkhole collapse** does not mean:

- the cost of filling land; or
- the sinking or collapse of land into man-made cavities.

**Soft Costs**

**Soft costs** means costs over and above the costs you would have incurred during construction work, including:

- extra construction costs you incur to continue construction and meet contract dates;
- construction loan interest on money borrowed to finance construction;
- realty taxes and other assessments on the construction site accruing during a period of delay;
- architect, engineering and consultant fees;
- legal and accounting fees;
- insurance premiums;
- advertising and promotional expenses; and
- costs and commissions resulting from renegotiating leases.

**Specified Peril**

**Specified peril** means:

- aircraft or self-propelled missiles;
- explosion;
- fire;
- leakage from fire protection equipment;
- lightning;
- mine subsidence;



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**Definitions**

**Specified Peril**  
(continued)

- riot or civil commotion;
- **sinkhole collapse**;
- smoke;
- vandalism;
- vehicles;
- volcanic action; or
- windstorm or hail.

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**Stock**

**Stock** means:

- goods held in storage or for sale;
- **raw stock**;
- **stock in process**;
- **finished stock**; or
- **merchandise**,

including supplies used in their packing or shipping.

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**Stock In Process**

**Stock in process** means **raw stock** that has undergone any aging, seasoning, mechanical or other process of manufacture but which has not become **finished stock**.

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**Sublease Profit**

**Sublease profit** means the net profit you earn through subleasing the **building** or portion of the **building** that you rent for the unexpired term of the canceled lease or sublease, whichever would expire first. This amount is discounted based on the prime rate of interest at the time of direct physical loss or damage for the unexpired term of the canceled lease or sublease.

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**System**

**System** means a computer and all input, output, processing, storage, off-line media library, and communication facilities which are connected to such computer, provided such computer and facilities are:

- owned and operated by you;
- leased and operated by you; or
- utilized by you pursuant to a written contract.

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**Technology Peril**

**Technology peril** means:

- A. for **electronic data processing equipment, communication property** or **mobile communication property**, a peril not otherwise excluded; or
- B. for **electronic data**:
  1. aircraft;
  2. explosion;

**Property/Business Income  
Conditions And Definitions**

**CHUBB®**

**Definitions**

**Technology Peril  
(continued)**

3. falling objects;
4. fire;
5. freezing;
6. leakage from fire protection equipment;
7. lightning;
8. riot or civil commotion;
9. **sinkhole collapse**;
10. smoke;
11. vehicles;
12. weight of snow;
13. windstorm or hail; or
14. earthquake (except in California) or **flood** to the extent covered under the Electronic Data Processing Property contract included in this policy.

**Tenant's Improvements  
And Betterments**

**Tenant's improvements and betterments** means fixtures, alterations, installations or additions:

- you make a part of a **building** you occupy but do not own; and
- you acquire or make at your expense but cannot legally remove.

**Tenant's improvements and betterments** does not mean:

- land, water or air, either inside or outside of a structure;
- paved or concrete surfaces;
- retaining walls;
- foundations or supports below the surface of the lowest floor or basement;
- **outdoor trees, shrubs, plants or lawns**; or
- growing crops.

**Tenants' Lease Interest**

**Tenants' lease interest** means:

- the difference between the appraised rental value of the leased premises at the time of direct physical loss or damage for the unexpired term of the lease and the actual rent due for the same period, discounted by the prime rate of interest at the time of direct physical loss or damage, for the unexpired term of the canceled lease; or
- the difference between the rent due for the unexpired term of the canceled lease and the rent due under the new lease for that same time period, not to exceed the difference between the actual rent due for the unexpired term of the canceled lease and the appraised rental value of the leased premises for that same period. This difference is discounted by the prime rate of interest at the time of direct physical loss or damage for the unexpired term of the canceled lease.

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**Definitions**

(continued)

**Unamortized**

**Unamortized** means the period of time remaining in your lease at the time of loss or damage divided by the period of time from the date the **tenant's improvements and betterments** were made to the date that your lease expires.

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**Valuable Papers**

**Valuable papers** means valuable:

- papers, documents, records, negatives, transparencies;
- tapes of all types;
- original plans, blueprints, specifications or designs; and
- original source material used to enter or program **electronic data**, but not the **electronic data** itself.

**Valuable papers** does not mean:

- **electronic data**;
- prepackaged software programs;
- **money**; or
- **securities**.

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**Water**

**Water** means water that:

- escapes from processing equipment, plumbing systems, refrigeration systems, cooling systems or heating systems (other than underground storage tanks, underground piping or underground tubing) provided such water is intended to be contained in such processing equipment, plumbing systems, refrigeration systems, cooling systems or heating systems;
- backs up or overflows through sewers, drains or sump;
- seeps or leaks through basements, foundations, roofs, walls, floors or ceilings of any building or other structure; or
- enters doors, windows or other openings in any building or other structure.

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**Workday**

**Workday** means the 24-hour period that begins at midnight, during which your **operations** were or normally would be performed.

***Property Insurance Section***

***Endorsements***

CHUBB®

**Property Insurance****Endorsement**

<i>Policy Period</i>	MAY 1, 2019 TO MAY 1, 2020
<i>Effective Date</i>	MAY 1, 2019
<i>Policy Number</i>	7956-75-28
<i>Insured</i>	ANOTHER PLANET ENTERTAINMENT, LLC
<i>Name of Company</i>	VIGILANT INSURANCE COMPANY
<i>Date Issued</i>	MAY 14, 2019

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This Endorsement applies to the following forms:

BUILDING AND PERSONAL PROPERTY  
 BUSINESS INCOME WITH EXTRA EXPENSE  
 ELECTRONIC DATA PROCESSING PROPERTY  
 EXTRA EXPENSE  
 ACCOUNTS REC., FINE ARTS, MONEY & SEC., VALUABLE PAPERS  
 PROPERTY/BUSINESS INCOME CONDITIONS & DEFINITIONS

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Under Loss Payment Limitations, and only with respect to the forms shown above that:

- contain an Electronic Data Loss Payment Limitation, such limitation is deleted and replaced with the following; or
- do not contain an Electronic Data Loss Payment Limitation, the following is added:

**Loss Payment  
Limitations****Electronic Data**

We will not pay for any loss or damage to **electronic data** caused by or resulting from **malicious programming**, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

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If Business Income With Extra Expense, Business Income With Extra Expense And Research And Development Income, Rental Income, Business Income Without Extra Expense, Extra Expense or Valued Use and Occupancy are shown above, the following applies.

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**Property Endorsement**  
(continued)

Under Loss Payment Limitations, the provision titled Electronic Data is deleted and replaced with the following:

**Loss Payment Limitations**

**Electronic Data**

We will not pay for any:

- **business income** loss;
- **rental income** loss;
- **extra expense**; or
- valued use and occupancy loss,

you incur caused by or resulting from direct physical loss or damage to **electronic data** caused by or resulting from **malicious programming**, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to,

the loss or damage, even if such other cause or event would otherwise be covered.

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Under Definitions, the definition of Technology Peril is deleted and replaced with the following:

**Definitions**

**Technology Peril**

**Technology peril:**

- A. means a peril not otherwise excluded.
- B. does not mean **malicious programming**.

Paragraph B. only applies to **electronic data**.

All other terms and conditions remain unchanged.

Authorized Representative



CHUBB®

**Property Insurance****Endorsement**

<i>Policy Period</i>	MAY 1, 2019 TO MAY 1, 2020
<i>Effective Date</i>	MAY 1, 2019
<i>Policy Number</i>	7956-75-28
<i>Insured</i>	ANOTHER PLANET ENTERTAINMENT, LLC
<i>Name of Company</i>	VIGILANT INSURANCE COMPANY
<i>Date Issued</i>	MAY 14, 2019

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This Endorsement applies to the following forms:

BUILDING AND PERSONAL PROPERTY  
 PROPERTY/BUSINESS INCOME CONDITIONS & DEFINITIONS  
 BUSINESS INCOME WITH EXTRA EXPENSE  
 EXTRA EXPENSE  
 ELECTRONIC DATA PROCESSING PROPERTY

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If Business Income With Extra Expense, Business Income With Extra Expense And Research And Development Income, Rental Income, Business Income Without Extra Expense or Extra Expense, is shown above, the following are added under Premises Coverages:

**Premises Coverages****Alternative Power  
Generation**

We will pay for the actual:

- A. **extra expense** you incur, if such coverage is provided:
1. due to the actual or potential impairment of your **operations**; and
  2. during the **period of restoration**,  
to purchase substitute power from a third party; and
- B. **business income** or **rental income** loss you incur, if such coverage is provided:
1. due to the actual impairment of your **operations**; and
  2. during the **period of restoration**.

due to the loss of credits, reimbursements, rebates or other sums you receive from a third party that utilizes surplus power that you generate from **alternative power generating equipment**.

The actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to **alternative power generating equipment**.

## **Property Endorsement**

(continued)

This Premises Coverage applies until the **alternative power generating equipment** is repaired or replaced and fully operational in accordance with the manufacturer's specifications.

The most we will pay for Alternative Power Generation loss is the applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense shown in the Declarations.

This Alternative Power Generation Premises Coverage does not apply at any premises that supplies your premises with utility services.

### **Alternative Water Systems**

We will pay for the actual **extra expense** you incur:

- due to the actual or potential impairment of your **operations**; and
- during the **period of restoration**,

to purchase substitute water from a third party.

The actual or potential impairment of **operations** must be caused by or result from direct physical loss or damage by a **covered peril** to **alternative water system**.

This Premises Coverage applies until the **alternative water system** is repaired or replaced and fully operational in accordance with the manufacturer's specifications.

The most we will pay for Alternative Water Systems loss is the applicable Limit Of Insurance for Business Income or Extra Expense shown in the Declarations.

This Alternative Water Systems Premises Coverage does not apply at any premises that supplies your premises with utility services.

Under Loss Payment Basis, the following is added:

### **Loss Payment Basis**

#### **Green Standards**

Subject to the applicable Limits Of Insurance shown in the Declarations, if you repair or replace covered property, the valuation will include necessary and incurred expenses to:

- hire professionals accredited pursuant to **green standards** to participate in the repair or replacement of the covered property;
- register and certify the repaired or replaced covered property pursuant to **green standards**;
- dispose of debris, certified pursuant to **green standards**, at recycling facilities, if such debris can be recycled; and
- ventilate the repaired or replaced covered property in a manner consistent with **green standards**.

When direct physical loss or damage is caused by or results from both:

- a peril not otherwise excluded; and



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**Property Insurance****Endorsement***Effective Date* MAY 1, 2019*Policy Number* 7956-75-28

- an excluded peril,

the valuation will not include the **green standards** costs attributable to the excluded peril. Instead, the valuation will be based on that portion of such costs equal to the proportion that the covered direct physical loss or damage bears to the total direct physical loss or damage, not including **green standards** costs, unless the **green standards** apply solely to that portion of the covered property which suffered the covered direct physical loss or damage.

This Loss Payment Basis does not include any increase in costs, loss or damage;

- to clean up or remove **pollutants** from land, water or air either inside or outside of a **building**;
- to clean up, remove, restore or replace covered property because of the presence of **fungus** either inside or outside of a **building**;
- to clean up, remove, restore or replace polluted land, water or air either inside or outside of a **building**; or
- attributable to any **green standards** you did not comply with before the loss, regardless of when such **green standards** became effective.

This Green Standards Loss Payment Basis does not apply to:

- loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination;
- the Fungus Clean-up Or Removal Premises Coverage or Pollutant Clean-up Or Removal Additional Coverage; or
- **stock**.

Under Definitions, the following are added:

**Definitions****Alternative Power  
Generating Equipment**

**Alternative power generating equipment** means equipment that has been certified pursuant to **green standards**, which is used in:

- solar energy systems;
- wind energy systems;
- geothermal energy systems;

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**Property Endorsement**  
(continued)

- low impact hydroelectric systems; or
- any other system that generates electricity from renewable resources.

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**Alternative Water System**

**Alternative water system** means equipment situated above or below ground which is used to collect and circulate gray water, ground water or rain water to the domestic, non-potable water supply of a **building** or to water treatment facilities or outside irrigation facilities at the premises shown in the Declarations.

**Alternative water system** does not include underground pipes or sprinkler heads intended solely for landscape irrigation.

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**Green Standards**

**Green standards** means:

- the LEED<sup>®</sup> Green Building Rating System<sup>™</sup> of the United States Green Building Council;
- requirements of the Green Globes<sup>®</sup> Assessment And Rating System of the Green Building Initiative;
- Energy Star<sup>®</sup> qualified requirements; or
- other site development, water savings, energy efficiency, materials or equipment selection and other environmental quality standards for the design and construction of property.

All other terms and conditions remain unchanged.

Authorized Representative

