

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:20-cv-21745**

ATMA BEAUTY, INC., individually and
on behalf of all others similarly situated,

Plaintiff,

ORAL ARGUMENT REQUESTED

v.

HDI GLOBAL SPECIALTY SE, AXIS
SPECIALTY EUROPE SE, UNDERWRITERS
AT LLOYD'S LONDON SUBSCRIBING TO
POLICY NUMBER RSK003959, and
UNDERWRITERS AT LLOYD'S LONDON
KNOWN AS SYNDICATES AFB 2623,
AFB 623, APL 1969, ARG 2121, BRT 2987,
BRT 2988, HIS 33, KLN 510, MMX 2010,
MSP 318, NVA 2007, TRV 5000, XLC 2003,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

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Plaintiff Atma Beauty, Inc. responds in opposition to the Motion to Dismiss of Defendants Certain Underwriters at Lloyd's, London Subscribing to Policy No. RSK003959. (D.E. 18.)

INTRODUCTION

Atma purchased an “all-risk” insurance policy from Defendants—with explicit, enhanced coverage for business interruption losses—to protect its thriving Miami Beach beauty salon. As the name suggests, an “all-risk” policy insures against *all* risks of loss aside from those explicitly identified in specific, written exclusions. Unlike policies issued by other insurers, Atma’s policy does not have a virus exclusion. Defendants nonetheless denied Atma’s claim for the substantial losses it suffered when it was forced to suspend its business operations as a result of the COVID-19 pandemic and related actions of various government authorities. This suit arises from Defendants’ refusal to honor their contractual obligations to Atma, as well as thousands of similarly situated policyholders, under the business income, extra expense, and civil authority provisions of their standard policy.

Defendants’ motion to dismiss offers several excuses for their refusal to abide by the policy they drafted, none of which has merit, particularly at this stage of the case. Ignoring the actual allegations of the Complaint, Defendants argue that the policy’s coverage has not been triggered because Atma has not alleged that its property suffered a direct physical loss or that the requirements for civil authority coverage have been met. And ignoring the ordinary meaning of the policy’s actual language, Defendants contend that certain exclusions bar coverage for losses relating to a virus, even though Defendants declined to include a virus exclusion in the policy. Defendants’ arguments should be rejected for several reasons.

First, Defendants’ motion is premature. Courts in this District routinely decline to resolve disputed questions of contract interpretation at the motion-to-dismiss stage. The issue is better suited for summary judgment—which is why almost all of the cases on which Defendants rely arise in the summary-judgment context. Defendants’ arguments are particularly premature here because they rely on contentions inconsistent with Atma’s factual allegations. Defendants contest, for example, the nature and extent of Atma’s losses, the effect of COVID-19 on the insured property, and the purpose and effect of various government orders. These disputed issues of fact, and thus the arguments that rely on them, cannot be resolved on a motion to dismiss. Instead, Atma’s allegations must be accepted as true. Defendants cannot shoehorn summary-judgment

arguments into a Rule 12(b)(6) motion. Defendants' motion can and should be denied on this ground alone.

Second, contrary to Defendants' arguments, Atma has pleaded sufficient facts to trigger coverage for "direct physical loss of or damage to" its property based on the transmission of the SARS-CoV-2 coronavirus and the COVID-19 pandemic. Atma's inability to physically occupy or use the salon for its functional and intended purpose constitutes the "direct physical loss of" the property, which the policy's plain language covers. Defendants chose not to define the phrase "direct physical loss of" property in the policy they drafted and issued to Atma. Accordingly, the phrase must be given its ordinary meaning. And contrary to Defendants' arguments, the ordinary meaning of the phrase "direct physical loss" does not include a requirement of structural alteration. Ultimately, Defendants seek to elide the meaningful difference between "loss" and "damage," an effort that cannot be reconciled with the disjunctive "or" that joins the terms in "direct physical loss of *or* damage to" property.

Third, Defendants' attempt to escape responsibility for the policy's civil authority coverage conflicts with the clear allegations of the Complaint. The policy extends coverage to losses from actions of a civil authority prohibiting access to the insured premises in response to dangerous physical conditions resulting from damage to property in the vicinity of the insured premises. Atma's allegations expressly satisfy these requirements: Atma alleges that orders issued by local and state authorities prohibited access to the salon, and that these orders were issued in response to dangerous physical conditions resulting from damage to property within one mile of the salon. Defendants argue otherwise only by disregarding Atma's allegations, an impermissible tactic at this stage. At most, Defendants' arguments highlight questions of fact about the effects of the civil authority orders and the reasons why they were issued. These questions cannot be resolved on a motion to dismiss.

Fourth, the exclusions on which Defendants rely—for microorganisms and pollution—do not bar coverage for Atma's losses. The ordinary meaning of the terms Defendants placed in the exclusions, which must be narrowly construed, does not encompass losses related to the coronavirus, which is, by definition, neither a microorganism nor pollution. Aware that virus-related losses do not fall within these exclusions and that such losses qualify for coverage under typical "all-risk" policies, the insurance industry drafted a specific virus exclusion in 2006, following the first SARS pandemic. Although many insurers incorporated this exclusion into their

policies, Defendants did not. The law does not permit Defendants to avoid the consequences of their own drafting decisions now that the loss they promised to cover has materialized.

Unfortunately, Atma is not alone in facing a recalcitrant insurer refusing to honor its obligations to cover the devastating business interruption losses wrought by the COVID-19 pandemic. In addition to the putative class of Defendants' policyholders that Atma seeks to represent, a growing number of businesses are suing other defiant insurers across the country. Decisions in these cases on motions to dismiss and motions for summary judgment are starting to appear, and as can be expected with litigation spanning the country, courts are not always reaching the same conclusions. So far, the most applicable and thoroughly reasoned decision in the case most similar to this one—with a beauty salon plaintiff and a policy that does not have a virus exclusion—rejected many of the same arguments Defendants raise here in denying a similar motion to dismiss. *See Studio 417, Inc. v. Cincinnati Ins. Co.*, No. 20-cv-03127, 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020). While insurers have prevailed in a few other cases, those decisions are distinguishable because they either involved policies with virus exclusions or different coverage language, or were decided at a different stage of the litigation, or rested on a body of law that does not apply here.

For these reasons and those discussed below, Defendants' motion should be denied.

FACTUAL BACKGROUND

Plaintiff is the operator of a beauty salon, Atma Beauty, in Miami Beach, Florida. *See* Compl. ¶ 11. In December 2019, Atma purchased an insurance policy from Defendants with the policy number RSK003959 (“the Policy”). *See id.* ¶¶ 2, 21. The Policy is an “all-risk” policy, meaning that it covers *all* risks of “direct physical loss of or damage to” the property unless the risk is specifically and expressly excluded.¹ The Policy also specifically provides Business Income, Extra Expense, and Civil Authority coverage. *See, e.g., id.* ¶¶ 22, 23, 33.

The Policy's grant of Business Income Coverage reads, in pertinent part, as follows:

We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations.

¹ The Policy is attached here as Exhibit A.

Ex. A at 32 of 88. For purposes of Business Income Coverage, “suspension” means, among other things, a “slowdown of cessation of [the insured’s] business activities.” *Id.* at 40 of 88; Compl. ¶ 28. And generally speaking, the “Period of restoration”—that is, the period during which the Business Income and Extra Expense coverages apply—begins after the “direct physical loss or damage” occurs, and it ends when the property should be restored or repaired:

“Period of restoration” means the period of time that . . . Begins: (1) 72 hours after the time of direct physical loss or damage for business income coverage; or (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage . . . [and] Ends on the earlier of: (1) The date when the property at the described premises should be repaired, rebuilt, or replaced with reasonable speed and similar quality; or (2) The date when business is resumed at a new permanent location.

Ex. A at 40 of 88; Compl. ¶ 29.

The Civil Authority coverage is an “Additional Coverage” under the Policy. It pays “for the actual loss of Business Income” and Extra Expense caused by an “action of civil authority that prohibits access” to the insured property when such action “is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss.” *See id.* ¶ 33. In pertinent part, the coverage provision states:

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that . . . [a]ccess to the area immediately surrounding the damaged property is prohibited as a result of the damage, and . . . [t]he action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered cause of loss that caused the damage[.]

Ex. A at 33 of 88; Compl. ¶ 33.

Significantly, although the Policy expressly excludes from coverage a variety of risks ranging from civil war to a loss of utility services, *see* Ex. A at 5 of 88 (listing endorsements and exclusions), the Policy does *not* contain any exclusions for losses related to viruses. *See* Compl. ¶¶ 36–37. Atma duly complied with its obligations under the Policy, and timely paid premiums to Defendants. *See id.* ¶ 7.

Since March 2020, the Atma Beauty salon has suffered a suspension of its business operations because of COVID-19 and the resulting mandatory government orders requiring the

shutdown and/or physical alteration of business at the salon. This suspension has included, among other things, the complete closure of the business for extended periods, an inability to physically access and occupy the insured property, and a loss of the physical use and functionality of the property. *See id.* ¶¶ 39–50. As a result, Atma has suffered significant business income losses. The Policy unambiguously covers these losses. *See, e.g., id.* ¶¶ 24–25. But Defendants have refused to provide coverage. And in so doing, Defendants have breached their core promise under the Policy. *See, e.g., id.* ¶ 53.

ARGUMENT

I. DEFENDANTS DISTORT THE APPLICABLE LEGAL STANDARDS.

Federal Rule of Civil Procedure 12(b)(6) “places the burden on the moving party.” *Cohen v. Bd. of Trustees of Univ. of D.C.*, 819 F.3d 476, 481 (D.C. Cir. 2016). The sole question is whether the complaint includes “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In answering that question, the Court must accept as true all the factual allegations in the Complaint and construe them in the light most favorable to the plaintiff. *See, e.g., Adinolfi v. United Techs. Corp.*, 768 F.3d 1161, 1169 (11th Cir. 2014). At bottom, the question is not whether the plaintiff “will ultimately prevail . . . but whether his complaint [is] sufficient to cross the federal court’s threshold.” *Skinner v. Switzer*, 562 U.S. 521, 530 (2011).

Additional rules of construction—specific to the insurance context—also apply. Namely, undefined terms in an insurance policy are interpreted liberally in favor of the insured. *See State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So.2d 1245, 1247 n.3 (Fla. 1986). Additionally, “[i]f the relevant policy language is susceptible to more than one reasonable interpretation, one providing coverage and the [other] limiting coverage, the insurance policy is considered ambiguous.” *Taurus Holdings Inc. v. United States Fid. Co.*, 913 So. 2d 528, 532 (Fla. 2005) (quotation omitted).² And in Florida, as elsewhere, “[a]mbiguous policy provisions . . . should be construed liberally in favor of coverage of the insured and strictly against the insurer.” *Dickson v. Econ. Premier Assur. Co.*, 36 So. 3d 789, 790 (Fla. Dist. Ct. App. 2010). Moreover, ambiguous “exclusionary clauses are construed *even more strictly* against the insurer than coverage clauses.” *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000) (emphasis added).

² Since the insurance contract was executed in Florida, Florida law applies. *See Prime Ins. Synd. v. B.J. Handley Trucking, Inc.*, 363 F. 3d 1089, 1091 (11th Cir. 2004).

Distorting both Florida law and the Federal Rules, Defendants appear to suggest that Atma is required to satisfy a heightened pleading standard in this case. *See* Mot. at 8–10, 14 (repeatedly invoking the insured’s ultimate burden of proof at trial). To be sure, a burden-shifting framework applies to insurance claims, under which an insured must first establish “a loss apparently within the terms of an ‘all risks’ policy,” and then “the burden shifts to the insurer to prove that the loss arose from a cause which is excepted.” *Hudson v. Prudential Prop. & Cas. Ins. Co.*, 450 So.2d 565, 568 (Fla. Dist. Ct. App. 1984). At this stage, however, the burden is on the Rule 12(b)(6) *movant*. *See* 5B Charles A. Wright et al., *Federal Practice and Procedure* § 1357 (3d ed. 2020) (“All federal courts are in agreement that the burden is on the moving party to prove that no legally cognizable claim for relief exist.”). Thus, it is Defendants’ burden to prove that Atma has not stated a legally cognizable claim for breach of contract or for declaratory relief. Defendants do not come close to carrying this burden.

II. DEFENDANTS’ ARGUMENTS ARE PREMATURE.

Given the parties’ conflicting interpretations of the Policy, Defendants’ arguments are premature, because “the Court ‘may not engage in contract interpretation at the motion to dismiss stage, as these arguments are more appropriate for summary judgment.’” *Geter v. Galardi S. Enters., Inc.*, 43 F. Supp. 3d 1322, 1328-29 (S.D. Fla. 2014) (quoting *McKissack v. Swire Pac. Holdings, Inc.*, No. 09–22086–CIV, 2011 WL 1233370, at *3 (S.D. Fla. Mar. 31, 2011)); *see also* *Managed Care Solutions, Inc. v. Cmty. Health Sys., Inc.*, No. 10–60170–CIV, 2011 WL 6024572, at *8 (S.D. Fla. Dec. 2, 2011) (“A determination of the proper interpretation of the contract should be decided at the summary judgment stage, not in a ruling on a [] motion to dismiss.”); *Ben-Yishay v. Mastercraft Dev., LLC*, 553 F. Supp. 2d 1360, 1373 (S.D. Fla. 2008) (“The proper interpretation of this [contractual] provision is not a matter that can be resolved on a motion to dismiss for failure to state a claim. Interpretation of a clear and unambiguous contractual provision is a question of law properly decided on summary judgment.”).

The relatively few decisions on motions to dismiss that Defendants cite often involve policies that “unambiguously reveal[] that the underlying claim is not covered.” *See, e.g., Cammarota v. Penn-Am. Ins. Co.*, No. 17-CV-21605, 2017 WL 5956881, at *2 (S.D. Fla. Nov. 13, 2017). For example, a claim relating to an auto accident under a policy with an auto-accident exclusion, *id.*, or a claim for medical services obtained more than 14 days after an accident under a policy that expressly excludes coverage for such services, *Arias-Bonello v. Progressive Select*

Ins. Co., No. 0:17-CV-60897-UU, 2017 WL 7792704, at *5 (S.D. Fla. Aug. 8, 2017). The analogous circumstance here might be a policy with the specific exclusion that Defendant chose not to place in Atma’s policy—the virus exclusion.

On this ground alone, the Court can and should deny Defendants’ motion to dismiss, which rests on its skewed interpretation of the Policy and counter-factual view of reality. Indeed, Defendants routinely refuse to accept the factual allegations of Atma’s Complaint, challenging, for example, allegations concerning the cause of governmental actions, the nature of Atma’s direct physical loss, the characteristics of the SARS-CoV-2 virus, and the extent of customers’ access to the salon. *See, e.g.*, Mot. at 6–7 (alleging that government measures were not the result of physical loss or damage); *id.* at 8 (contending that there was no direct physical loss or damage to the salon); *id.* at 12 (asserting that the salon’s loss is solely economic in nature); *id.* at 15 (contending that “COVID-19 does not cause physical damage or loss to property”); *id.* at 16 (alleging that access to the salon was never prohibited); *id.* at 18 (contending that “Plaintiff cannot establish that physical damage occurred due to COVID-19”); *id.* at 21 (asserting that “SARS-CoV-2 is a microorganism”). This tactic is impermissible at this stage. *See Adinolfe*, 768 F.3d at 1173 (“[Defendant] contests the accuracy of a number of the factual allegations that the plaintiffs have pled, but we must accept them as true at this stage of the case.”).

As established in the authorities cited above, Defendants’ arguments can only be considered, at the earliest, at summary judgment, once an adequate factual record has been developed. The Court, therefore, need not delve into the merits of Defendants’ strained contractual-interpretation arguments to deny their motion. *See Geter*, 43 F. Supp. 3d at 1328-29; *McKissack*, 2011 WL 1233370, at *3; *Managed Care Solutions, Inc.*, 2011 WL 6024572, at *8.

III. ATMA’S COMPLAINT STATES VALID CLAIMS FOR RELIEF.

Beyond being premature, Defendants’ arguments fail on the merits. Atma has stated valid breach-of-contract and declaratory-relief claims. Defendants’ arguments to the contrary rest on an untenable view of the law and a version of events that bears little resemblance to the facts alleged in the Complaint.

In Florida, the elements of a breach-of-contract claim are a valid contract, a material breach, and damages. *See Abbott Labs, Inc. v. Gen. Elec. Capital*, 765 So.2d 737, 740 (Fla. Dist. Ct. App. 2000); *accord Geter*, 43 F. Supp. 3d at 1328. The Complaint alleges the existence of the insurance contract and its essential terms, and the Policy itself is attached as an exhibit to the

Complaint. *See, e.g.*, Compl. ¶¶ 4 (alleging contract and mutual promises pursuant to contract), 5–6 (alleging basic terms of the contract), 21–38 (alleging terms of the contract in exhaustive detail). The Complaint also alleges that by refusing to honor their coverage obligations, Defendants have breached specific provisions of the Policy. *See, e.g., id.* ¶¶ 9 (alleging breach), 83–91 (detailing breach of business interruption provisions). Finally, the Complaint alleges the damages that Atma has suffered as a result of Defendants’ breaches of the contract. *See, e.g., id.* ¶¶ 47–49, 91, 111.

Atma’s claim for declaratory relief requires a substantial and continuing controversy that is not conjectural, hypothetical, or contingent. *See Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1346–48 (11th Cir. 2019). The Complaint alleges such a controversy. *See* Compl. ¶¶ 82, 102, 122. Specifically, the Complaint alleges a controversy regarding whether Atma’s losses are covered under the Policy’s business income, extra expense, and civil authority provisions. *See, e.g., id.* ¶¶ 53, 80, 100, 120. This is a type of controversy that federal courts routinely adjudicate under the Declaratory Judgment Act. *See, e.g., Mt. Hawley Ins. Co. v. Tactic Sec. Enforcement, Inc.*, 252 F. Supp. 3d 1307 (M.D. Fla. 2017); *Powers v. Hartford Ins. Co. of The Midwest*, No. 8-10-cv-1279, 2010 WL 2889759, at *3 (M.D. Fla. 2010) (“We believe that declaratory judgments are and can increasingly be a valuable procedure for the resolution of insurance coverage disputes[.]”).

Defendants do not seriously dispute that the Complaint sufficiently pleads the requisite elements of claims for breach of contract and declaratory relief. Indeed, the final section of Defendants’ brief primarily repackages its contractual-interpretation arguments to purportedly challenge the sufficiency of Atma’s claims. *See* Mot. at 26-27.³ Thus, if Defendants’ contractual-

³ Defendants also half-heartedly disparage Atma’s allegations as “conclusory,” but they clearly are not. Defendants fail to point to any specific deficiency in the Complaint, which contains pages and pages of detailed allegations. The authorities Defendants cite are far afield. For example, in *Timber Pines Plaza, LLC v. Kinsale Ins. Co.*, No. 8:15-CV-1821, 2016 WL 8943313 (M.D. Fla. Feb. 4, 2016), the plaintiff failed to “allege that the Policy is an all-risks policy,” and the court therefore declined to consider the all-risk nature of the policy. *Id.* at *2. Indeed, in a complaint barely spanning three pages and twenty-four paragraphs, the plaintiff failed to plead anything about the policy at all, other than its existence. For reference, the *Timber Pines* complaint is attached as Exhibit B. No such issue is present here. Atma’s Complaint contains extensive allegations about the Policy and Atma’s losses, and Atma has expressly alleged the all-risk nature of the Policy. While Defendants may disagree with Atma on the merits of its claims, such a disagreement does not render Atma’s allegations “conclusory.”

interpretation arguments are either premature or unavailing, there is no dispute that Atma has stated valid claims that pass muster under Rule 12(b)(6).

As explained in the sections below, Defendants’ contractual-interpretation arguments cannot be reconciled with the plain language of the Policy, with countless authorities construing similar policies, or with the facts alleged in the Complaint. Indeed, Defendants do not cite to a *single* Florida authority granting a motion to dismiss based on *any* of the specific arguments raised in their motion. Nor can they: to our knowledge, no Florida court has granted a motion to dismiss based on Defendants’ interpretation of “direct physical loss of or damage to” property, a microorganism exclusion, or a pollutant or hazardous materials exclusion. Defendants arguments should be swiftly rejected.

A. Atma Has Adequately Alleged “Direct Physical Loss of or Damage to” Property.

The Complaint expressly alleges that Atma suffered “direct physical loss of or damage to” the insured property. *See, e.g.*, Compl. ¶¶ 46, 87, 97, 107. Urging a strained interpretation of this phrase without support in Florida law, Defendants contend that Atma’s allegations are insufficient. *See* Mot. 8–13. Even if these arguments could be properly raised on a motion to dismiss, and they cannot, they are unavailing.

As a threshold matter, it bears emphasis that the phrase “direct physical loss of or damage to” property is undefined in the Policy. Nor has the meaning of this phrase been directly addressed by the Florida Supreme Court, let alone in a case related or analogous to the COVID-19 context. This key phrase, therefore, must be construed according to Florida’s bedrock rule for construing insurance contracts: it must be given its plain and ordinary meaning. *See, e.g., Homeowners Choice Prop. & Cas. v. Maspons*, 211 So. 3d 1067, 1069 (Fla. Dist. Ct. App. 2017). And if the phrase is susceptible to more than one reasonable interpretation, this Court must give the phrase the meaning that is most favorable to coverage. *See, e.g., Dickson*, 36 So. 3d at 790.

It also bears emphasis that because Atma’s Policy is an all-risk policy, its grant of coverage “extends to risks not usually covered under other insurance[.]” *Great Lakes Reinsurance (UK) PLC v. Kan-Do, Inc.*, 639 F. App’x 599, 603 (11th Cir. 2016) (citation omitted). *See also Sporting Prods., LLC v. Pac. Ins. Co., Ltd.*, No. 10-80656-CIV, 2012 WL 13018367, at *10 (S.D. Fla. Jan. 6, 2012) (“An ‘all-risks’ policy of insurance provides a special type of coverage that extends to risks not usually contemplated.”) (citation omitted). In other words, *all* risks of “direct physical

loss or damage” are covered “unless the [P]olicy contains a specific provision *expressly* excluding the loss from coverage.” *Great Lakes Reinsurance*, 639 F. App’x at 603 (emphasis added, citation omitted).

1. The plain meaning of “direct physical loss or damage” supports coverage in this case.

Legal and lay dictionaries define the key terms in the phrase “direct physical loss of or damage to” property as follows. “Direct” means “[f]ree from extraneous influence,” “immediate,” and “characterized by close logical, causal, or consequential relationship.”⁴ “Physical” means, among other things, “[o]f, relating to, or involving the material universe and its phenomena;” “relating to the physical sciences;” and “[o]f, relating to, or involving material things.”⁵ “Loss” means, among other things, “[a]n undesirable outcome of a risk,” “the disappearance or diminution of value,” “[t]he failure to maintain possession of a thing,”⁶ “deprivation” and “the act of losing possession.”⁷ “Damage,” according to Black’s Law Dictionary, means “[l]oss or injury to person or property,” and “any bad effect on something.”⁸ Other dictionaries similarly define “damage” to mean, for example, “loss or harm resulting from injury to person, property or reputation.”⁹ *Homeowners Choice Prop. & Cas.*, 211 So. 3d at 1069 (relying on dictionaries to define “direct physical loss” to mean “actual loss,” and holding that a failure “to perform its function” is therefore a “direct physical loss”). Critically, because the phrase uses the disjunctive “or,” the Policy’s all-risk coverage may be triggered *either* by “loss” *or* by “damage.”

⁴ Direct (adjective), Black’s Law Dictionary (11th ed. 2019); Direct (adjective), Merriam-Webster Dictionary, www.merriam-webster.com/dictionary/direct (last visited August 11, 2020). Accord Direct (adjective), Oxford English Dictionary, <https://www.lexico.com/en/definition/direct> (last visited July 27, 2020) (“Without intervening factors or complications”).

⁵ Physical, Black’s Law Dictionary (11th ed. 2019).

⁶ Loss, Black’s Law Dictionary (11th ed. 2019). Other dictionaries define the term similarly. See, e.g., Loss, Collins English Dictionary, <https://www.collinsdictionary.com/us/dictionary/english/loss> (last visited July 27, 2020) (defining “loss” as “the fact of no longer having something or having less of it than before”).

⁷ Loss, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/loss> (last visited July 27, 2020).

⁸ Damage, Black’s Law Dictionary (11th ed. 2019).

⁹ Damage, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/damage> (last visited July 27, 2020).

The Complaint alleges physical loss of and damage to the insured property, consistent with the plain meaning of these terms. *See, e.g.*, Compl. ¶¶ 39–50 (alleging loss and damage due to, among other things, COVID-19 and actions of civil authority). Atma suffered “[a]n undesirable outcome of a risk,” has sustained a “diminution of value” of its property and business, has suffered a “failure to maintain possession” of its property, and has “less of something than before.” Namely, Atma partly or completely lost, among other things, the ability to access the insured property, to occupy the property, to use the property for its intended purpose, and to physically conduct its business at the property. *See, e.g., id.* ¶¶ 46 (alleging that property was unusable and uninhabitable, causing a suspension of business operations); 47–49 (further alleging suspension of business operations).

As alleged in the Complaint, this loss of and damage to property was “physical.” There is no reasonable dispute that COVID-19 and the coronavirus are, relate to, and involve material things, the material universe and/or the physical sciences. And there is no reasonable dispute that the effects of the COVID-19 pandemic and the coronavirus on the property have been physical, as well. Far from being purely “economic,” Atma’s losses and damages include the complete physical closure of the property, the inability to physically occupy the property, and other physical alterations and restrictions. *See, e.g., id.* ¶¶ 8, 46, 77, 87, 97.¹⁰ Nor can there be any dispute as to the plausibility of Plaintiffs’ allegations of property loss, for the governing local authority recognized in an emergency declaration “the propensity of COVID-19 to ‘caus[e] property loss and damage in certain circumstances.’” *Id.* ¶ 41.

Defendants urge a strained interpretation of “direct physical loss of or damage to” property that would require inserting additional terms that are conspicuously *absent* from the Policy’s plain language. For example, Defendants appear to contend that “direct physical loss of or damage to” property requires that the damage be structural and irreparable. *See* Mot. at 10 (arguing that “if the property can be cleaned and restored to its original function, no covered loss has been suffered”). But nothing in the phrase “direct physical loss of or damage to” property, or elsewhere in the Policy, requires that the loss or damage be “structural” or otherwise impossible to restore. Indeed,

¹⁰ Defendants’ reliance on *Bahama Bay II Condo. Ass’n, Inc. v. United National Ins. Co.*, 374 F. Supp. 3d 1274, 1281 (M.D. Fla. 2019), is therefore misplaced. *Bahama Bay* stands for the unremarkable proposition that an insured’s decision to hire security guards and install fencing is at most an economic loss and does not, without more, amount to physical loss or damage. Here, Atma has alleged physical loss and damage, not merely economic loss.

as outlined in more detail below, courts in Florida and elsewhere have repeatedly rejected the notion that “physical loss of or damage to” property requires structural injury to the property.

Defendants’ restrictive view of “direct physical loss of or damage to” property rests on ignoring the key word “or,” in violation of the guiding principle that “[n]o word or part of an agreement is to be treated as a redundancy or surplusage if any meaning, reasonable and consistent with other parts, can be given to it.” *Fla. Inv. Grp. 100, LLC v. Lafont*, 271 So. 3d 1, 5 (Fla. Dist. Ct. App. 2019) (internal quotation marks omitted); *see Twin City Fire Ins. Co. v. Leonel R. Plasencia, P.A.*, No. 19-80021-CV, 2019 WL 7899222, at *3 (S.D. Fla. Sept. 30, 2019) (“When interpreting a contract ‘an interpretation of a contract which gives a reasonable, lawful and effective meaning to all of the terms is preferred to an interpretation which leaves a part unreasonable, unlawful or of no effect.’”) (quoting *Herian v. Se. Bank, N.A.*, 564 So. 2d 213, 214 (Fla. Dist. Ct. App. 1990)). The use of the disjunctive “or” indicates that “direct physical loss” and “damage” cannot be afforded the same meaning. While “damage to” property may include structural damage to property, the “direct physical loss of” property must mean something else. *See Landrum v. Allstate Ins. Co.*, 811 F. App’x 606, 609 (11th Cir. 2020) (“Use of the disjunctive ‘or’ in the policy ‘indicates alternatives and requires that those alternatives be treated separately[.]’”) (quoting *Quindlen v. Prudential Ins. Co. of Am.*, 482 F.2d 876, 878 (5th Cir. 1973), and citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 116 (2012) (“Under the conjunctive/disjunctive canon, ... *or* creates alternatives.”)).

Moreover, the sweeping rule that Defendants urge—that there can be no coverage under an all-risk policy where the property can be restored—is nonsensical and impossible to square with a holistic reading of the Policy. *See Talbott v. First Bank Florida, FSB*, 59 So.3d 243, 245 (Fla. Dist. Ct. App. 2011) (“A contract should be read as a whole.”); *City of Homestead v. Johnson*, 760 So. 2d 80, 84 (Fla. 2000) (explaining that courts must “read provisions of a contract harmoniously in order to give effect to all portions thereof”). Indeed, the Policy provides Business Interruption coverage during a period of time called the “Period of *restoration*.” *See, e.g.*, Compl. ¶¶ 25, 29. The entire scheme of business interruption insurance contemplates coverage for losses sustained during an *interruption* of business, pending *recovery* or *restoration* of the property. It is therefore flatly incorrect to state, as Defendants do, that there can be “no covered loss” where “the property can be cleaned and restored.” Adopting such an interpretation would render the Policy’s grant of business interruption coverage a nullity, something that is expressly disfavored by Florida law. *See*

First Mercury Ins. Co. v. Sudderth, 620 Fed. App'x 826, 830 (11th Cir. 2015). And it would be inconsistent with the facts alleged to deny coverage on the grounds that Atma's property could be "cleaned and restored," as Defendants argue, because the property could not be restored for months—due to the health risks posed by having people congregate indoors during the COVID-19 pandemic, it has not been possible for Atma to use or occupy the salon for an extended period of time. Compl. ¶¶ 46, 50.

Likewise, nothing in the phrase "direct physical loss of or damage to" property, or elsewhere in the Policy, requires that the loss or damage be manifested by some "visible" or "tangible" alteration to the property. Compare Mot. at 10–11 (suggesting that a "physical" loss must be tangible) with *Sullivan v. Standard Fire Ins. Co.*, 956 A.2d 643, at *3 (Del. 2008) (concluding that mold contamination constitutes a "physical loss" and explaining that "[m]old spores and other bacteria . . . undoubtedly have a 'material existence,' even though they are not tangible or perceptible to the naked eye"). See also *Sentinel Mgmt. Co. v. New Hampshire Ins. Co.*, 563 N.W.2d 296, 300 (Minn. Ct. App. 1997) (rejecting the argument that the requisite harm must be "tangible"); *Columbiaknit, Inc. v. Affiliated FM Ins. Co.*, No. Civ. 98-434, 1999 WL 619100, at *6 (D. Or. Aug. 4, 1999) (explaining that "physical damage can occur at the molecular level and can be undetectable in a cursory inspection"). Indeed, if the Policy provided coverage only for tangible loss or damage, it would render superfluous one of the exclusions that Defendants invoke, the Microorganism Exclusion, which deals exclusively with risks that are by definition invisible to the naked eye and intangible. Cf. *Anderson*, 756 So.2d at 34 (explaining that Florida law disfavors interpretations of insurance policies that render policy language superfluous).

Defendants also contend that the words "rebuild," "repair," and "replace"—which form part of the definition of the "Period of restoration"—support their strained interpretation of "physical loss or damage." See Mot. at 11–12. But rather than supporting Defendants' arguments, the plain meaning of these words undermines them.¹¹ "Restore" means, among other things, "to

¹¹ Defendants cite two cases in support of their contention that "rebuild," "repair," and "replace" suggest a narrow interpretation of "physical loss or damage." Those cases are inapposite here. *Newman Myers Kreines Gross Harris, P.C. v. Great N. Ins. Co.*, 17 F. Supp. 3d 323 (S.D.N.Y. 2014), was decided on summary judgment and concerned losses related to a power outage. Its discussion of "rebuild," "repair" and "replace" was expressly dicta. See *id.* at 332. The other case, *Philadelphia Parking Auth. v. Fed. Ins. Co.*, 385 F. Supp. 2d 280, 287 (S.D.N.Y. 2005), concerned purely economic damage resulting from the post-9/11 grounding of aircraft. Both cases were decided under foreign law. Therefore, even if the cases supported Defendants'

put back into existence or use,” “to bring back or put back into a former or original state,” “to renew,” and “to put back again in possession of something.”¹² And “repair” means “[t]o restore to a sound or good condition . . .” or “[t]o renew, revive, or rebuild after loss, expenditure, exhaustion etc.”¹³ In sum, the “Period of restoration” plainly refers to the period of time until the business can physically be renewed, restored, or put back into use. Nothing in the definition of the “Period of restoration” supports Defendants’ arguments that “physical loss of or damage to” property must be structural and tangible.

If Defendants wanted to restrict coverage only to “tangible” or “structural” loss or damage, they should have done so. But they did not. And Defendants cannot retroactively impose such limitations on the Policy’s all-risk grant of coverage.

2. A holistic reading of the Policy supports coverage in this case.

Under well-settled Florida law, insurance contracts must be read as a whole. *See Talbott*, 59 So.3d at 245. And here, Defendants’ proposed construction of “physical loss of or damage to” property is impossible to square with a holistic reading of the Policy. In an all-risk policy, the exclusions from coverage, by definition, encompass losses that would otherwise be covered. In other words, the categories of risks that are subject to express exclusions are risks of “direct physical loss or damage.” *See, e.g., Great Lakes Reinsurance*, 639 F. App’x at 603 (“[E]xclusions in coverage are expressly intended to modify coverage clauses and to limit their scope.”) (citations omitted). *See also Allstate Ins. Co. v. Preferred Fin. Sols., Inc.*, 8 F. Supp. 3d 1039, 1053 (S.D. Ind. 2014) (“Exclusions operate to preclude coverage otherwise afforded by the indemnity provisions of the contract.”). Otherwise, the exclusions would be superfluous, a result that is expressly disfavored under Florida law. *See Anderson*, 756 So.2d at 34.

Here, the Policy expressly excludes risks that, by definition, do *not* require structural injury to property. For example, the Policy excludes risks of “confiscation or nationalization” of property by a governmental authority, *see Ex. A* at 85 of 88, and risks related to “[t]he failure of power, communication, water or other utility service,” *see id.* at 46 of 88. Moreover, the Policy’s

contention that “physical loss or damage” must be structural and tangible, such a requirement has no support in the law of Florida.

¹² Restore, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/restore> (last visited July 31, 2020).

¹³ Repair (verb), Black’s Law Dictionary (11th ed. 2019).

Microorganism Exclusion, which Defendants here invoke, expressly bars coverage for “loss of use, occupancy, or functionality” due to microorganisms. *See id.* at 63 of 88. Although, as explained below, viruses are *not* microorganisms, and thus the exclusion does not bar coverage, its scope is nonetheless instructive. If, as Defendants urge, “physical of loss or damage to” property could *not* encompass a loss of use, occupancy or functionality of property, there would be no need for any of these exclusions.

The presence and scope of these exclusions undermines Defendants’ narrow and strained interpretation of “physical loss of or damage to” property, because if the phrase referred only to *structural* or *tangible* damage, these exclusions would all be superfluous.

3. *Authorities from Florida and elsewhere interpreting and applying the phrase “direct physical loss of or damage to” property support coverage in this case.*

Consistent with the plain meaning of the phrase “direct physical loss of or damage to” property, courts in Florida have expressly rejected the restrictive interpretation that Defendants urge in their motion. For example, courts have rejected the notion that “physical loss or damage” requires *structural* damage to the property. *See, e.g., Azalea, Ltd. v. American States Ins. Co.*, 656 So. 2d 600, 602 (Fla. Dist. Ct. App. 1995). In *Azalea*, the court explained that Defendants’ preferred interpretation was “not supported by the facts or law.” *Id.* Rather, the key fact in that case was that “[t]he facility could not operate or exist” based on the presence of an “unknown substance.” *Id.*; *see also Sentinel Mgmt. Co.*, 563 N.W.2d at 300 (explaining that the relevant inquiry is not whether “some tangible injury to the physical structure itself could be detected,” but rather whether the property has been rendered “useless to its owners”). Therefore, “under Florida law ‘direct physical loss’ includes more than losses that harm the structure of the covered property.” *Three Palms Pointe, Inc. v. State Farm Fire & Cas. Co.*, 250 F. Supp. 2d 1357, 1364 (M.D. Fla. 2003), *aff’d*, 362 F.3d 1317 (11th Cir. 2004).

When applying Florida law, this Court has likewise recognized that a loss of use or function can give rise to coverage under an all-risk policy. *See Mama Jo’s, Inc. v. Sparta Ins. Co.*, No. 17-CV-23362, 2018 WL 3412974, at *9 (S.D. Fla. Jun. 11, 2018). In *Mama Jo’s*—a case that Defendants rely on extensively—a road construction project allegedly caused some dust and debris to migrate onto or into the plaintiff’s restaurant. The restaurant remained open and continued its normal operations. The insurer moved for summary judgment, and the court granted the motion, ruling that the restaurant had not suffered physical loss or damage because it “was not ‘uninhabitable’ or ‘unusable.’” *Id.* at *9. Instead, “the restaurant remained open every day,

customers were always able to access the restaurant, and there [was] no evidence that dust had an impact on the operation other than requiring daily cleaning.” *Id.*

The key facts of *Mama Jo’s* are distinguishable. Most importantly, unlike in *Mama Jo’s*, the Complaint alleges that the salon was unusable and uninhabitable, that customers have been prohibited from accessing the salon, that the salon has had to physically shut down for extended periods of time, and that operations were substantially impacted. *See* Compl. ¶ 46 (alleging that Atma’s property was unusable and uninhabitable, causing a suspension of business operations); *id.* ¶¶ 47–49 (further alleging suspension of business operations). The reasoning of *Mama Jo’s*, moreover, undercuts Defendants’ argument, because the court recognized that a loss of the ability to physically use the property may satisfy the requirement of “physical loss or damage.” 2018 WL 3412974, at *9. As an example, the court explained that physical loss or damage can arise when an accident or other event causes the insured property “to become unsatisfactory for future use.” *Id.* (citing *MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 779 (Cal. Ct. App. 2010)). The court also noted that “[s]everal courts have held that ‘physical loss’ occurs when property becomes ‘uninhabitable’ or substantially ‘unusable.’” *Id.*

Mama Jo’s is therefore consistent with *Azalea* and other Florida authorities in reasoning that “direct physical loss of or damage to” property can occur when a property becomes uninhabitable or unusable, even though the property itself is structurally unaltered. Indeed, courts in jurisdictions across the country have reached the same conclusion and recognized that “physical loss of or damage to” property can arise from a wide variety of risks, harms and threats. *See, e.g., One Plaza Condo., LLC v. Travelers Prop. Cas. Co. of Am.*, No. 11 C 2520, 2015 WL 2226202, at *9 (N.D. Ill. Apr. 22, 2015) (explaining that in an all-risk policy, “‘physical’ damage may take the form of loss of use of otherwise undamaged property, which in turn suffices as a covered loss”); *Customized Distrib. Servs. v. Zurich Ins. Co.*, 862 A.2d 560, 566 (N.J. App. Div. 2004) (“Since ‘physical’ can mean more than material alteration or damage, it was incumbent on the insurer to clearly and specifically rule out coverage in the circumstances where it was not to be provided[.]”)

These risks, harms and threats include the presence of unpleasant or noxious odors. *See, e.g., Farmers Ins. Co. of Oregon v. Trutanich*, 858 P.2d 1332 (Or. Ct. App. 1993).¹⁴ They include bacterial contamination of a water well, even though the well and the insured house were

¹⁴ *See also Essex Ins. Co. v. BloomSouth Flooring Corp.*, 562 F.3d 399, 406 (1st Cir. 2009); *Mellin v. N. Sec. Ins. Co., Inc.*, 115 A.3d 799, 805 (N.H. 2015).

unharmful. *See Motorists Mutual Ins. Co. v. Hardinger*, 131 F. App'x 823, 826 (3d Cir. 2005).¹⁵ They include the buildup of carbon monoxide, even though the chemical is harmless to the insured property itself. *See Matzner v. Seaco Ins. Co.*, No. 96-0498-B, 1198 WL 566658, at *3 (Mass. Super. Aug. 12, 1998) (explaining that “the phrase ‘direct physical loss or damage’ is ambiguous [and can include more than] tangible damage to the structure of insured property”).¹⁶ They include smoke and ash from a wildfire, which forced the insured performing arts company to cancel future performances. *See Or. Shakespeare Festival Ass'n v. Great AM. Ins. Co.*, No 1:15-CV-01932, 2016 WL 3267247 (D. Or. Mar. 6, 2017). They include the loss of merchantability of an unpleasant tasting but otherwise safe soft drink. *See PepsiCo, Inc. v. Winterthur Int'l Am. Ins. Co.*, 24 A.D.3d 743, 744 (N.Y. App. 2005). They include the release of ammonia, which rendered the insured premises unfit for occupancy. *See Gregory Packaging, Inc. v. Travelers Property Cas. Co. of Am.*, No. 2:12-cv-04418, 2014 WL 6675934, at *3 (D. N.J. Nov. 25, 2014) (“While structural alteration provides the most obvious sign of physical damage, both New Jersey courts and the Third Circuit have also found that property can sustain physical loss or damage without experiencing structural alteration.”). The list goes on.¹⁷

¹⁵ *See also Cooper v. Travelers Indem. Co. of Ill.*, No. C-01-2400-VRW, 2002 WL 32775680, at *5 (N.D. Cal. Nov. 4, 2002) (closure of tavern due to e-coli contamination of well).

¹⁶ *See also Western Fire Ins. Co. v. First Presbyterian Church*, 437 P.2d 52 (Colo. 1968).

¹⁷ *See General Mills, Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 152 (Minn. Ct. App. 2001) (oats treated with unapproved pesticide but otherwise safe to consume); *Widder v. La. Citizens Prop. Ins. Co.*, 82 So. 3d 294, 296 (La. Ct. App. 2011) (lead dust); *Stack Metallurgical Services, Inc. v. Travelers Indem. Co. of Connecticut*, No. 05-1315, 2007 WL 464715, at *8 (D. Or. Feb. 7, 2007) (lead particles, which limited commercial use of furnace); *Hughes v. Potomac Ins. Co. of D.C.*, 18 Cal. Rptr. 650, 655 (Ct. App. 1962) (landslide that caused house to be perched at edge of cliff but left house structurally undamaged was a physical loss because condition rendered the premises “useless to its owners”); *TRAVCO Ins. Co. v. Ward*, 715 F. Supp. 2d 699, 709 (E.D. VA. 2010), *aff'd*, 504 F. App'x 251 (4th Cir. 2013) (gas from a defective drywall); *Fountain Powerboat Indus., Inc. v. Reliance Ins. Co.*, 119 F. Supp. 2d 552, 557 (E.D.N.C. 2000); *Murray v. State Farm Fire & Casualty Ins. Co.*, 509 S.E.2d 1, 17 (W. Va. 1998) (threat of future rock fall from an abandoned rock quarry, even “in the absence of structural damage to the insured property”); *Dundee Mut. Ins. Co. v. Marifjeren*, 587 N.W.2d 191, 194 (N.D. 1998) (“interruption of electrical power ‘damaged’ the storage facilities by impairing their value or usefulness”). Countless cases have also found “physical loss or damage” resulting from asbestos, which poses risks to human health but is an otherwise harmless—indeed, intentional—feature of the insured properties. *See, e.g., Port Authority of New York & New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 230 (3d Cir. 2002); *U.S. Fidelity & Guar. Co. v. Wilkin Insulation Co.*, 144 Ill. 2d 64, 75 (Ill. 1991); *Sentinel Mgmt. Co.*, 563 N.W.2d at 300.

These risks, harms and threats also include risks related to COVID-19 and the SARS-CoV-2 virus. Just this week, a federal district court specifically analyzed whether losses arising from the COVID-19 pandemic met the “physical loss of or damage to” requirement of an all-risk insurance policy materially similar to Atma’s Policy. *Studio 417, Inc. v. Cincinnati Ins. Co.*, No. 20-cv-03127, 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020) (“*Studio 417 Order*”).¹⁸ In *Studio 417*, the plaintiffs, including a beauty salon, asserted claims for breach of contract and for declaratory relief based on their insurer’s denial of coverage, including business interruption coverage and civil authority coverage. The policies at issue were all-risk policies that covered “accidental [direct] physical loss or accidental [direct] physical damage.” *See id.* at 2. The defendant insurer moved to dismiss the complaint, arguing that a tangible or structural alteration of the property was required to show a “physical loss.” The court disagreed and denied the defendant’s motion.

The reasoning of the *Studio 417* court is instructive. There, as here, the defendant urged a narrow construction of “physical loss,” which would require a tangible or structural alteration. But the court noted that authority from Missouri and elsewhere “recognize[s] that even absent a physical alteration, a physical loss may occur when the property is uninhabitable or unusable for its intended purpose.” *Id.* at 10. There, as here, the defendant relied on out-of-circuit cases purportedly supporting its narrow interpretation of “physical loss or damage,” including many of the same cases on which Defendants here rely. But the court explained that those cases “were decided at the summary judgment stage, are factually dissimilar, and/or are not binding.” *Id.* There, as here, the defendant contended that the plaintiffs had alleged merely economic harm. But the court rejected this argument, reasoning that the plaintiffs’ economic harm was “tethered to their alleged physical loss caused by COVID-19 and the Closure Orders.” *Id.* at 12. Here, Defendants’ strained arguments fail for similar reasons, among others.

As noted above, Defendants’ failure to expressly include additional coverage limitations—such as “structural” or “tangible”—in the Policy’s coverage language bars them from invoking such limitations now. In fact, that Defendants crafted a policy lacking such limitations *despite* the above-cited case law *further* undermines Defendants’ argument. After all, insurers routinely introduce or amend policy provisions in response to case law that they consider unfavorable or

¹⁸ The court’s order is attached as Exhibit C.

misguided. *See, e.g., Thompson v. Commercial Union Ins. Co. of New York*, 250 So.2d 259, 261 n.2 (Fla. 1971) (noting that judicial decision “precipitated changes in policy provisions by insurers to eliminate the language resulting in liability”); *Queen City Farms, Inc. v. Cent. Nat. Ins. Co. of Omaha*, 827 P.2d 1024, 1036 (Wash. Ct. App. 1992) (citing 7A J. Appleman, *Insurance Law and Practice* § 4491 (1979)) (“New policy language has been introduced in an attempt to clarify troublesome areas for the underwriters, or where court decisions were counter to insurer intentions.”), *aff’d* 882 P.2d 703 (Wash. 1994). And for decades, courts in multiple jurisdictions have interpreted “physical loss or damage” as *not* requiring structural or tangible injury. If Defendants wanted to provide a narrower type of coverage to Atma, they should have done so in plain terms.

Moreover, the Insurance Services Office (ISO), whose copyright is credited for numerous provisions of the Policy, has implicitly recognized that virus-related losses amount to “direct physical loss or damage.” As detailed in the Complaint, “[t]he ISO is a company that drafts standard policy language for use in insurance contracts.” Compl. ¶ 35. In other words, the ISO is the drafting arm of the insurance industry. Here, for example, the Business Income (and Extra Expense) Coverage Form, which contains the phrase “direct physical loss or damage,” is ISO Form CP 00 30 10 12, and subject to an ISO copyright dated 2011.

As alleged in the Complaint, “[i]n 2006, the ISO drafted a new endorsement, CP 01 40 07 06[.]” Compl. ¶ 36. This endorsement, titled Exclusion of Loss due to Virus or Bacteria, was expressly intended and drafted to exclude virus-related losses from coverage under all-risk insurance policies. In other words, absent such a virus exclusion, virus-related losses are generally covered. Otherwise, the entire endorsement would be superfluous. *Cf. Anderson*, 756 So.2d at 34 (Florida law disfavors construing insurance contracts in such a way as to render a provision superfluous). Indeed, the ISO characterized the virus exclusion form as a “New Amendatory Endorsement,” making clear that its purpose was to *amend* the scope of coverage.¹⁹

Concurrently with the publication of the new virus exclusion, the ISO also issued a circular explaining why it was necessary to introduce the new endorsement. As the ISO explained, under a typical all-risk Policy, an insured business could make “[a]n allegation of property damage [from virus or bacterial]” which could “be a point of disagreement in a particular case.” Moreover, “the

¹⁹ Notably, the ISO published this new virus exclusion in the aftermath of the SARS outbreak, an international epidemic caused by a strain of coronavirus.

specter of pandemic . . . raises the concern that insurers employing [property] policies may face claims . . . for recovery of such losses[.]” And although insurers could conceivably seek to exclude such losses under other exclusions, such as pollution exclusions, the ISO circular noted that such exclusions might not apply to losses caused by viruses or bacteria.²⁰ In short, since at least 2006, the ISO has understood and expressly recognized that a specific virus exclusion is necessary to unambiguously exclude virus-related losses from all-risk coverage. Therefore, not only is Defendants’ narrow interpretation of “physical loss or damage” out of step with the plain meaning of the phrase and the case law, but it is also impossible to square with how the Policy language has been interpreted by the ISO.²¹

4. Defendants misread the cases on which their arguments rely.

As explained earlier, Defendants overreach in claiming that “[i]f the property can be cleaned and restored to its original function, no covered loss has been suffered.” Mot. at 10. The only case Defendants cite for this proposition, *Mama Jo’s*, does not support such a broad, insurance-nullifying rule. Indeed, as explained in the preceding section, *Mama Jo’s* actually supports Atma’s understanding of the Policy, because it acknowledges that “direct physical loss of or damage to” property may occur when property “becomes ‘uninhabitable’ or substantially ‘unusable.’” 2018 WL 3412974, at *9.²² And reading *Mama Jo’s* to impose a structural-alteration requirement for “physical loss of or damage to” property cannot be reconciled with other Florida authorities rejecting such a requirement. *See, e.g., Azalea*, 656 So. 2d at 602.

Defendants also rely extensively on transcripts of hearings in recent or ongoing cases related to COVID-19. This reliance is misplaced. For example, Defendants cite the transcript of a hearing on a proposed order to show cause, in a district court in New York. *See* Teleconference, Order to Show Cause, *Social Life Magazine, Inc. v. Sentinel Ins. Co. Ltd.*, No. 20-CV-3311

²⁰ The circular is attached to this brief as Exhibit D.

²¹ In referring to the ISO circular, Atma does *not* adopt the ISO’s reasoning wholesale. Indeed, because the ISO’s customer base is comprised of insurers and reinsurers, it generally interprets coverage provisions narrowly, and exclusion provisions broadly. Nor does Atma argue or concede that the ISO’s 2006 virus exclusion would validly or necessarily bar coverage for Atma’s losses here. But Defendants’ failure to incorporate this exclusion or any other express virus or pandemic exclusion forecloses their argument that they intended to exclude virus-related losses from coverage.

²² Contrary to Defendants’ mischaracterization, the *Mama Jo’s* court did not “reject[] the notion that loss of use equates to physical damage.” Mot. at 11 n. 3.

(S.D.N.Y. July 14, 2020). That case is distinguishable in several respects. First, the court in that case *did not* dismiss the complaint. Nor did the court even hold a hearing on a motion to dismiss. Rather, Defendants' citations are to the transcript of a hearing on a proposed order to show cause why the court should not grant a preliminary injunction in the plaintiff insured's *favor*.

Second, the court's reasoning in *Social Life* is inapplicable to this case, because it turns significantly on key facts that are not present here. For example, the plaintiff in *Social Life* was a publishing business, and the insured property was an office. As the *Social Life* court noted, the business appears to have been able to maintain its overall function and generally continue its operations notwithstanding the impact of the pandemic and alleged government actions. In other words, like the restaurant in *Mama Jo's*, the publishing business was not clearly interrupted. *See id.* at 14 (district court observing that plaintiff insured's manager and even some employees could continue to go into the office). Here, by contrast, Atma's business is a beauty salon, whose fundamental use, purpose, and functionality is based on voluminous customer traffic as well as direct physical contact between customers and employees. *See* Compl. ¶ 46 (alleging a loss of use and functionality). And here, unlike in *Social Life*, the insured facility was fully closed, and Atma was physically unable to operate its business.

Third, *Social Life* concerned a contract governed by New York law. Therefore, even if the phrase "physical loss or damage" is interpreted under New York law as narrowly as Defendants here urge, that would set New York apart from Florida and many other jurisdictions. As it happens, even New York courts do not uniformly construe "physical loss of or damage to" property as requiring a structural alteration of the insured property. *See, e.g., Pepsico*, 24 A.D. 3d at 744 (explaining that "we disagree with [the insurer] that to prove 'physical damages' the plaintiffs must prove that there has been a distinct demonstrable alteration of the physical structure of the plaintiff's products" and that it suffices "that the product's function and value have been seriously impaired") (citation and quotation marks omitted); *Schlamm Stone & Dolan, LLP v. Seneca Ins. Co.*, 800 N.Y.S. 356, at *4 (N.Y. Sup. Ct. 2005) (explaining that noxious particles present in carpet and in air inside offices constitute property damage because they "clearly impair[] plaintiff's ability to make use of [it]").

Defendants' reliance on *Gavrilides Mgmt. Co. v. Mich. Ins. Co.*, No. 20-000258-CB (Mich. Cir. Ct. July 1, 2020), is misplaced for similar reasons. First, in that case, it appears that the

plaintiff insured never alleged any physical loss of or damage to the property.²³ Second, as Defendants here note, the Michigan Circuit Court based its ruling on the notion that “physical loss or damage” requires structural and tangible alteration to the property. *See* Mot. at 11. Indeed, counsel for the defendant insureds in that case repeatedly referred to a purported requirement under Michigan law that damage be “structural” and “tangible.”²⁴ Whatever the merits of those arguments and legal standards as a matter of Michigan law, they have been expressly rejected by courts in Florida and other jurisdictions. Finally, the *Gavrilides* case, like virtually all the cases on which Defendants here rely, was not decided at the pleading stage, but rather on a motion for summary disposition.²⁵

B. Atma Has Sufficiently Alleged Coverage Under The Civil Authority Provision.

Civil Authority coverage under the Policy arises where there is “direct physical loss,” not to the insured property, but to one or more properties within one mile of the insured property and, in response, a governmental authority prohibits access to the insured property. Atma has successfully pleaded such a claim. While the Civil Authority coverage also implicates the “physical loss” question addressed in the preceding section (albeit for property other than the

²³ *See, e.g.*, D.E. 18-4, Transcript of *Gavrilides* Summary Disposition Hearing, at 19.

²⁴ *See id.* at 8, 9, 19, 20.

²⁵ Since Defendants filed their motion, two other courts have issued rulings in cases related to COVID-19. *See Rose’s I, LLC, et al., v. Erie Ins. Exchange*, No. 2020 CA 002424 B, 2020 WL 4589206 (D.C. Super. Ct. Aug. 6, 2020); *Diesel Barbershop, LLC v. State Farm Lloyds*, No. 5:20-CV-461-DAE, 2020 WL 4724305 (W.D. Tex. Aug. 13, 2020). The *Rose’s I* decision is distinguishable because it was issued at summary judgment, and it rested on reasoning that “direct physical loss,” under District of Columbia law, required an “effect on the material or tangible structure of the insured properties,” 2020 WL 4589206 at *2, a requirement that finds no support in Florida law. Similarly, the decision in *Diesel Barbershop* is distinguishable because the Texas policy contained a virus exclusion, unlike Atma’s Policy, and the coverage provision is different. *See* 2020 WL 4724305, at *2. Whereas the Texas policy in *Diesel Barbershop* covered “direct physical loss to that Covered Property,” *id.* (emphasis added), Atma’s Policy covers “direct physical loss of or damage to property,” Ex. A at 32 of 88 (emphasis added). Courts have found this distinction to be “significant” in construing the meaning of “direct physical loss” in insurance disputes. *Source Food Tech., Inc. v. U.S. Fid. & Guar. Co.*, 465 F.3d 834, 838 (8th Cir. 2006) ([T]he policy’s use of the word ‘to’ in the policy language ‘direct physical loss to property’ is significant. [The insured’s] argument might be stronger if the policy’s language included the word ‘of’ rather than ‘to,’ as in ‘direct physical loss of property’ or even ‘direct loss of property.’); *see Cueto v. Allstate Ins. Co.*, 544 A.2d 906, 909 (N.J. Super. Ct. Law. Div. 1987) (distinguishing between policy that covered loss “of” a vehicle from policy that covered loss “to” a vehicle”).

salon), there are independent points that must be addressed here. Namely, Defendants incorrectly argue that Civil Authority coverage is not available because “(1) access to the Property has not been ‘prohibited;’ and (2) the subject government orders were not taken ‘in response’ to damaged property.” Mot. at 16.

In the first instance, Defendants’ argument that access to the salon was not “prohibited” fails because it is a factual argument, and therefore premature and inappropriate at this stage of the litigation. Moreover, as alleged and detailed in the Complaint, access to Atma Beauty *was* prohibited. The salon was required to fully close pursuant to at least one and often multiple overlapping government orders. This includes Miami-Dade County Emergency Order 07-20, requiring the closure of certain businesses including beauty salons, and Florida Executive Order 20-89, requiring counties to “restrict public access” to businesses including beauty salons. *See* Compl. ¶¶ 42–44. By the plain and ordinary meaning of the word “prohibit,” these orders prohibited access to the Atma Beauty salon.²⁶

In support of their contention that these orders do not amount to “prohibitions” on access, Defendants cite to cases in which government orders never directly *closed* the insured business, but rather indirectly *diverted customers* away from the insured business. *See, e.g., S. Hosp., Inc. v. Zurich Am. Ins. Co.*, 393 F.3d 1137, 1140 (10th Cir. 2004) (hotel operators lost customers who could not fly due to post-9/11 flight restrictions); *54th Street Partners v. Fid. & Guar. Ins. Co.*, 305 A.2d 67, 67 (N.Y. Super. Ct. App. Div. 2003) (government order diverted vehicular and pedestrian traffic away from insured business). Those cases are inapposite. Here, Atma does not allege that government orders merely led to a change in customer behavior or made it more difficult for customers to reach the insured property. Rather, Atma alleges that government orders *directly* closed the insured business itself. *See, e.g.,* Compl. ¶¶ 42–43. Defendants do not cite any case supporting the proposition that an order requiring the closure of a business does not amount to a “prohibition” on access, and for good reason—it would defy common sense.

Indeed, in *Studio 417*, a broadly similar insurance coverage dispute related to COVID-19, the court expressly rejected an argument identical to the one Defendants raise here. In *Studio 417*, the plaintiffs alleged that access to their beauty salons and restaurants was prohibited pursuant to several government orders related to COVID-19. The defendant insurer argued that none of these

²⁶ *See* Prohibit, Black’s Law Dictionary (11th ed. 2019) (defined as “[t]o forbid by law” and “[t]o prevent, preclude, or severely hinder”).

orders “prohibited” access to the premises, because, as an example, some of the restaurants remained open for take-out service. The court rejected this argument and concluded that even though some of the insured businesses did not fully shut down, a government order prohibiting indoor service at a restaurant amounts to a prohibition on access. *See Studio 417* Order at 14.

Defendants’ second argument, that the government orders cited in the Complaint were not issued “in response” to dangerous physical conditions, also fails. In essence, Defendants’ contention is that these orders were about stopping the spread of COVID-19 and were therefore *preventive* rather than *responsive* in nature. *See* Mot. at 17 (contending that orders were not responsive but rather precautionary measures). But that is a distinction without a difference. As a general matter, most actions of civil authority taken “in response to” physical loss or damage are also intended to prevent further loss or damage. In other words, they are *both* preventive *and* responsive.²⁷ That is no less true here.

At the time that the relevant orders were issued, COVID-19 was already widespread in Florida, including within one mile of the Atma Beauty salon. Indeed, Miami-Dade County and the City of Miami Beach were and remain hotspots of COVID-19. The civil authority actions that prohibited access to the Atma Beauty salon, including those cited in the Complaint, make clear that the orders were issued in response to harm and damage from COVID-19 that had already occurred and was ongoing. That the orders also had the purpose and effect of preventing *additional* damage is immaterial.

In any event, Defendants’ argument is impossible to reconcile with the text of the Policy, which unambiguously provides coverage where a government takes action in response to *ongoing* risks and harms. Specifically, the Policy provides Civil Authority coverage where the relevant government action “is taken in response to dangerous physical conditions resulting from . . . the *continuation* of Covered Cause of Loss that caused the damage.” Ex. A at 33 of 88.

Again, Defendants cite to cases that are inapplicable in various respects. For example, Defendants cite to *Syufy Enter. v. Home Ins. Co. of Ind.*, No. 94-0756 FMS, 1995 WL 129229 (N.D. Cal. Mar. 21, 1995). In that case, the insured businesses were movie theaters that lost some business because of curfews but were not directly ordered to close. Here, the Atma salon, like so

²⁷ *Cf. Narricot Indus., Inc. v. Fireman’s Fund Ins. Co.*, CIV.A.01-4679, 2002 WL 31247972, at *5 (E.D. Pa. Sept. 30, 2002) (discussing the preventive and responsive nature of civil authority orders).

many other businesses, was subject to a mandatory closure order. Moreover, in *Syufy*, the policy's civil authority coverage required that neighboring property be damaged or destroyed, and the plaintiffs failed to allege such damage or destruction. *See id.* at *1. Defendants also cite to *City of Chicago v. Factory Mut. Ins. Co.*, No. 02-C-7023, 2004 WL 549447 (N.D. Ill. Mar. 18, 2004). But in that case, the insured business, Chicago's Midway Airport, was *indirectly* harmed by a government order grounding commercial flights in response to the September 11th terrorist attacks, which took place hundreds of miles away. The order did not close the airport itself. And as the court noted, civil authority coverage in that case required that physical damage take place "within 1,000 feet" of the insured airport. *Id.* at *4. Here, by contrast, there is no reasonable dispute that the actions of civil authority were taken in response to *local* conditions.

C. No Exclusion Bars Coverage.

Defendants crafted and sold Atma a contract that is primarily based on ISO forms and endorsements, and expressly excludes losses ranging from asbestos, to terrorism, to the corruption of electronic data. But the Policy *lacks* the ISO virus exclusion form, or indeed any other virus exclusion endorsement. If Defendants wanted to exclude virus-related losses from coverage, they could and should have done so in plain terms. Since at least 2006, an ISO virus exclusion has been readily available and widely used in the industry.

But having chosen not to adopt a virus exclusion, Defendants cannot now seek to deny coverage for virus-related losses. *See Container Corp. v. Am. v. Maryland Cas. Co.*, 707 So.2d 733, 736 (Fla. 1998) ("Had Maryland wished to limit Container's coverage . . . it could have done so by clear policy language."). Indeed, the Florida Supreme Court has recognized that where an exclusion form is available and an insurer elects not to adopt that exclusion form in a policy, that itself is an argument in favor of coverage. *See U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871, 884 (Fla. 2007) (discussing, among other things, an ISO endorsement form).

Unwilling to accept the consequences of its deliberate choice to not exclude virus-related losses from the Policy, Defendants attempt to stretch three inapplicable exclusions beyond recognition to make them fit. These interpretative gymnastics should be rejected.

1. The Microorganism Exclusion is inapplicable.

Defendants contend that coverage is barred by the Policy's Microorganism Exclusion. *See* Mot. 18–21. Again, this argument, like most in Defendants' motion, rests on disputed issues of

fact and contractual interpretation. Accordingly, it should be rejected as premature at this stage of the litigation.

It likewise fails on the merits. It is well-settled in Florida that it is the *insurer's* burden to demonstrate the applicability of an exclusion. *See, e.g., Mejia v. Citizens Prop. Ins. Corp.*, 161 So. 3d 576, 578 (Fla. Dist. Ct. App. 2014). More precisely, the insurer must demonstrate that an exclusion applies *unambiguously*, because ambiguous “exclusionary clauses are construed *even more strictly* against the insurer than coverage clauses.” *Anderson*, 756 So. 2d at 34 (emphasis added). Here, therefore, even if Defendants could raise the applicability of the Microorganism Exclusion at this stage of the litigation, their burden would be to demonstrate that taking Atma’s allegations as true, and construing them in the light most favorable to Atma, the exclusion unambiguously applies.

Defendants cannot meet this burden. In pertinent part, the Policy’s Microorganism Exclusion bars coverage for any loss or claim arising from or relating to “mold, mildew, fungus, spores or other micro-organisms of any type nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.”²⁸ Defendants contend that this exclusion applies here because “SARS-CoV-2 is a microorganism.” Mot. at 21. But Defendants are simply wrong.

A “microorganism” is, by definition, “an organism (such as a bacterium or protozoan) of microscopic or ultramicroscopic size[.]”²⁹ In other words, a “microorganism” is simply a very small “organism,” *i.e.*, a living thing.³⁰ It is undisputed and uncontroversial that the types of

²⁸ Although the catch-all term “any substance” is potentially so broad as to be limitless, such an overbroad interpretation would be both absurd and contrary to the plain text of the exclusion. Florida law strongly disfavors absurd interpretations of contracts. *See, e.g., Vyfvinkel v. Vyfvinkel*, 135 So.3d 384, 386 (Fla. Dist. Ct. App. 2014) (“[W]here one interpretation of a contract would be absurd and another would be consistent with reason and probability, the contract should be interpreted in the rational manner.”) (citation omitted). And here, an overbroad interpretation of the catch-all term in the microorganism exclusion would give rise to the same type of absurdity discussed below, in the context of the hazardous material exclusion. After all, a wide variety of substances “pose [] an actual or potential threat to human health.” And it would violate the plain meaning and intent of the Microorganism Exclusion—as well as render much of the coverage under the Policy a nullity—to exclude losses arising from *all* such substances.

²⁹ Microorganism, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/microorganism> (last visited July 27, 2020).

³⁰ *See, e.g.,* Microorganism, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/microorganism> (last visited July 27, 2020)

microorganisms enumerated in the Policy’s Microorganism Exclusion—mold, mildew, fungi, and so on—are organisms. Viruses, however, are not living things, and therefore cannot be microorganisms.³¹ This fact is not only reflected in the technical scientific literature, but also taught in high-school biology classes, reported in the lay press’s coverage of the COVID-19 crisis, and even detailed in the Merriam-Webster dictionary.³² It is also a fact with important real-world implications. For example, because viruses are not living things, they cannot be eliminated using antibiotics.³³ Put differently, viruses present fundamentally distinct risks and containment challenges compared to microorganisms. It therefore defies belief that viruses would be encompassed in the Microorganism Exclusion *sub silentio*.

To be sure, viruses are occasionally and casually grouped with “microorganisms,” but the fact that viruses are *mis*classified as microorganisms does not make them so. As the National Institutes of Health (NIH) and other federal agencies explain, viruses may be “sometimes classified as microorganisms,” but to be precise, they “are not considered living organisms.”³⁴ And although

(defining “microorganism” as “a living thing that on its own is too small to be seen without a microscope”); Organism, Oxford English Dictionary, <https://www.lexico.com/en/definition/organism> (last visited July 27, 2020) (a “life form”).

³¹ See Taylor McNeil, *What Are Viruses and How Do They Work?*, Tufts University (Apr. 3, 2020), <https://now.tufts.edu/articles/what-are-viruses-and-how-do-they-work> (interview with Tufts microbiology professor John Coffin explaining that “[v]iruses are completely different from bacteria” because they are not living things); Amanda Heidt, *Giant viruses aren’t alive. So why have they stolen the genes essential for life?*, Science (Apr. 16, 2020) <https://www.sciencemag.org/news/2020/04/giant-viruses-aren-t-alive-so-why-have-they-stolen-genes-essential-life>.

³² See *Usage Notes - ‘Virus’ v. ‘Bacteria’: The key differences between two common pathogens*, Merriam-Webster, <https://www.merriam-webster.com/words-at-play/virus-vs-bacteria-difference>.

³³ See Denise Chow, *Why are viruses hard to kill? Virologists explain why these tiny parasites are so tough to treat*, NBC News (May 7, 2020), <https://www.nbcnews.com/science/science-news/why-are-viruses-hard-kill-virologists-explain-why-these-tiny-n1202046> (explaining that compared to bacteria, viruses “are harder to target with drugs” because they “have none of the hallmarks of living things”).

³⁴ See Microorganism, NIH National Cancer Institute Dictionary of Cancer Terms, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/microorganism>. Accord Microorganism, NIH AIDS Glossary, available at <https://aidsinfo.nih.gov/understanding-hiv-aids/glossary/456/microorganism>. See also NIH Curriculum Supplement Series: Understanding Emerging and Re-emerging Infectious Diseases, available at <https://www.ncbi.nlm.nih.gov/books/NBK20370/> (“Viruses, however, are not organisms[.]”).

Defendants rely on the National Institutes of Health (NIH) for the supposed proposition that “SARS-CoV-2 is a microorganism,” the NIH has made no such pronouncement.

Given that viruses are not microorganisms—or, at a minimum, that their occasional categorization as microorganisms is incorrect—the absence of the word “virus” from the Microorganism Exclusion is telling. If Defendants wanted to exclude viruses pursuant to this exclusion, they could have and should have done so expressly. Indeed, as noted above, insurers have incorporated express virus exclusions in their policies since at least 2006. But having failed to adopt a virus exclusion at the time of formation of the policy contract, Defendants cannot now rewrite the Microorganism Exclusion to bar coverage for “viruses,” which are not expressly named in the exclusion, are unlike the other items on the list, and, in any event, are not microorganisms.³⁵

Although Defendants cite to two cases concerning the applicability of microorganism exclusions to bacteria,³⁶ those cases are inapplicable. For one thing, bacteria are not viruses. Indeed, Defendants cite to no case extending a microorganism exclusion to viruses. And unlike viruses, it is uncontroversial and indisputable to classify bacteria as microorganisms. Moreover, both cases—like most cited in Defendants’ motion—were decided on summary judgment, rather than at the pleading stage. They provide no support to Defendants here. The Microorganism Exclusion does not apply.

2. The pollutant and hazardous material exclusions do not apply.

Defendants also contend that coverage is barred by two pollution exclusions in the Policy. *See* Mot. at 23. The first exclusion bars coverage for “loss or damage caused by or resulting from . . . [d]ischarge, dispersal, seepage, migration, release, or escape of ‘pollutants’ unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any one of the ‘specified causes of loss.’” Ex. A at 47 of 88. For purposes of this exclusion, “pollutant” is

³⁵ Even if this Court finds reasonable Defendants’ strained interpretation of the exclusion, that would merely render the exclusion ambiguous as to its application to viruses. And as noted above, in Florida, ambiguous “exclusionary clauses are construed even more strictly against the insurer than coverage clauses.” *Anderson*, 756 So. 2d at 34.

³⁶ *See* Mot. at 20 (citing *Certain Underwriters at Lloyd’s of London Subscribing to Policy No. SMP 3791 v. Creagh*, 563 F. App’x 209, 211 (3d Cir. 2014) and *Certain Underwriters at Lloyd’s, London Subscribing to Policy No. W15F03160301 v. Houligan’s Pub & Club, Inc.*, No. 2017-31808-CICI, 2019 WL 5611557 (Fla. Cir. Ct. Oct. 24, 2019).

defined, in relevant part, as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.” Ex. A at 40 of 88.

The second exclusion bars coverage for losses arising from “any kind of seepage or any kind of pollution and/or contamination, or threat thereof[.]” This phrase is further defined as, among other things, “seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as ‘hazardous material’ by the [U.S.] Environmental Protection Agency or as ‘hazardous material’ by the [U.S.] Department of Transportation . . . or any substance designated or defined as toxic, dangerous, hazardous, or deleterious to persons or the environment under any . . . law, ordinance or regulation,” and “the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.” Ex. A at 79 of 88.

Although Defendants’ motion refers to both exclusions as “pollution exclusions,” Defendants raise distinct arguments as to each provision. Therefore, for clarity, we address each exclusion separately, referring to the first exclusion as the “pollutant exclusion,” and to the second exclusion as the “hazardous material exclusion.”

As with the Microorganism Exclusion, Defendants’ arguments regarding these exclusions are premature. But even if Defendants could properly raise these arguments at this stage, they cannot carry their burden of demonstrating that, with Atma’s allegations taken as true and construed in the light most favorable to Atma, one or both of the exclusions applies.

a. The pollutant exclusion does not apply.

Defendants argue that SARS-CoV-2 is a “pollutant.” *See* Mot. at 23. In support of this contention, Defendants rely extensively on *Nova Cas. Co. v. Wasserstein*, 424 F. Supp. 2d 1325 (S.D. Fla. 2006). That case concerned a pollutant exclusion that, like the exclusion here, defined “pollutant” to mean “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot fumes, acids, alkalis, chemicals and waste.” In *Wasserstein*, the losses at issue resulted from, among other things “living organisms,” “microbial populations,” “microbial contaminants,” and “indoor allergens,” and the court considered whether the losses were excluded from coverage because they resulted from “pollutants.” *Id.* at 1329. The court concluded that the exclusion was unambiguous and barred coverage for the losses claimed. *See id.*

The *Wasserstein* case is distinguishable in at least two important respects. First, it was a decision reached on summary judgment. Second, *Wasserstein* did not involve a communicable

virus and pandemic, but rather other harmful substances that were negligently released and dispersed throughout a property and injured individuals. *See J.S.U.B., Inc.*, 979 So.2d at 882–83 (explaining that “whether a decision is binding on another is dependent upon there being similar facts and legal issues” and that “where the [insurance] policies and underlying facts are different, then a previous decision should not be binding”). Here, in contrast, Atma’s covered losses do not rest solely on establishing that SARS-CoV-2 was present at the salon, but instead also arise from the forced deprivation of the physical use and occupancy of the salon due to the health risks of having people congregate indoors during the COVID-19 pandemic. The risk that simply having *people* present at the property will injure others cannot reasonably be construed as “pollution.”

Moreover, at least one other federal court applying Florida law has rejected the reasoning of *Waserstein* and reached the opposite conclusion. *See Westport Ins. Corp. v. VN Hotel Group, LLC*, 761 F. Supp. 2d 1337, 1344 (M.D. Fla. 2010). In *VN Hotel*, the District Court for the Middle District of Florida “respectfully disagree[d] with [*Waserstein*’s] conclusion” that “living organisms, microbial populations, microbial contaminants, and indoor allergens” are pollutants. *Id.* As the court explained, the reasoning “in *Waserstein* would permit any living organism with a contaminating effect—including bacteria, insects, rodents, and the like—to be ‘pollutants’ triggering the Pollution Exclusion.” *Id.* Such a result, the court reasoned, would be “too far afield from the enumerated examples of ‘pollutants’—smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste[.]” *Id.* Therefore, the court ruled that the insured’s losses, which were related to the Legionnaire bacteria, were *not* encompassed by the pollutant exclusion.

To the extent that there is a tension between the interpretation of “pollutant” in the two cases, *VN Hotel* is more persuasive. Expanding the pollutant exclusion to “any . . . irritant,” no matter how dissimilar to smoke, vapor, soot, fumes, and so on, would not comport with the plain language of the exclusion and render it absurdly overbroad. Consistent with the reasoning of *VN Hotel*, other courts have similarly concluded that standard pollutant exclusions do not apply viruses and/or bacteria. *See, e.g., Keggi v. Northbrook Prop. & Cas. Ins.*, 199 P.3d 785, 789 (Kan. 2000) (holding that water-borne bacteria are not “pollutants”); *Motorists Mutual Ins. v. Hardinger*, 131 F. App’x 823, 828 (3d Cir. 2005) (Ambro, J., concurring). And even if the interpretation in *Waserstein* were reasonable, so, too is that of *VN Hotel*. That would render the exclusion ambiguous as to its application to viruses. And when an exclusion is ambiguous, it must be interpreted *particularly* strictly against the insurer. *See Anderson*, 756 So. 2d at 34.

Indeed, as even the *Wasterstein* court acknowledged, to the extent that the definition of “pollutant” is ambiguous, it must be interpreted using the interpretive canon of *ejusdem generis*. See *Waserstein*, 424 F. Supp. 2d at 1336 (citing *Jacobo v. Bd. of Trustees of the Miami Police*, 788 So.2d 362, 364 (Fla. Dist. Ct. App. 2001)). As relevant here, this canon provides that the general word “pollutant” must be construed to refer to things of “the same kind or species as those [things] specifically enumerated.” *Green v. State*, 604 So.2d 471, 473 (Fla. 1992). In other words, “pollutant” must be construed to refer to things of the same kind as smoke, vapor, soot, fumes and so on. And because all the enumerated things here are fundamentally dissimilar from viruses—among other things, the enumerated pollutants are not transmitted and spread by humans—the catch-all term “pollutant” cannot reasonably be construed to refer to viruses.

It also bears emphasis that the pollutant exclusion encompasses *only* losses caused by the “[d]ischarge, dispersal, seepage, migration, release, or escape of ‘pollutants.’” Those terms make perfect sense as applied to the enumerated examples of pollutants. In other words, chemicals, smoke and fumes regularly seep, migrate and escape. See *Landrum*, 811 F. App’x at 609 (examining definitions of “seepage” and “leakage”). But the terms are inapposite to Atma’s losses, which were not caused by the discharge, dispersal, seepage, migration, release, or escape of *anything*, let alone a “pollutant.” To the extent that Defendants’ apparent theory is that the SARS-CoV-2 virus is a pollutant, it would be a strained reading of the Policy language to say that the virus “migrated,” “seeped,” or “escaped.” Indeed, Defendants cite to no case expressly applying these terms to a virus. Therefore, these terms, no less than the term “pollutant” itself, are at most ambiguous as applied to the facts here and must be construed strictly against Defendants.

Other cases cited by Defendants are distinguishable for similar reasons. For example, *James River Ins. Co. v. Epic Hotel, LLC*, No. 11-CV-24292, 2013 WL 12085984 (S.D. Fla. 2013), concerned the Legionnaire bacteria, not a virus. And the pollutant exclusion at issue in that case expressly barred coverage for losses related to “biological infectants.” The exclusion in Atma’s Policy contains no such language.³⁷ Similarly, in *U.S. Fire Ins. Co. v. City of Warren*, 87 F. App’x

³⁷ Defendants cite to one case applying a similarly worded pollution exclusion to the Cocksackie virus. See *First Specialty Ins. Corp. v. GRS Mgmt. Assocs., Inc.*, No. 08-81356, 2009 WL 2524613 (S.D. Fla. Aug. 17, 2009). But that case simply relied on the reasoning of *Waserstein* and, like *Waserstein*, was decided on a motion for summary judgment. In addition, the case involved waterborne contamination in a swimming pool, which fits better with the “seepage” language of the pollution exclusion, unlike SARS-CoV-2 risks here.

485 (6th Cir. 2003), the insured’s losses were caused by “the escape of sewage waste onto the [insured] property” and therefore clearly fell under a pollutant exclusion that expressly excluded losses due to “waste.” *See also Certain Underwriters at Lloyd’s London v. B3, Inc.*, 262 P.3d 397, 400 (Okla. Ct. App. 2011) (summary-judgment case concerning application of exclusion to sewage from wastewater treatment plant). Here, there is no reasonable argument that Atma’s losses arise from “waste,” or any other expressly enumerated “pollutant.” The pollution exclusion thus does not apply.

b. The hazardous material exclusion does not apply.

Defendants also contend that Atma’s losses are barred under the hazardous material exclusion. Defendants’ strained argument for the application of this exclusion is that “SARS-CoV-2 has been ‘designated or defined’ as ‘dangerous’ by both Federal and State ordinances or regulations.” Mot. at 25 (quoting the Policy). This argument lacks merit.

To fit a virus within the “hazardous material” exclusion requires giving its terms a boundless interpretation that would yield absurd results. For example, the exclusion defines “any kind of seepage or any kind of pollution and/or contamination” to include, but not be limited to, “the presence, existence, or release of *anything* which endangers or threatens to endanger the health, safety, or welfare of persons or the environment.” (emphasis added). Under Defendants’ preferred interpretation, the exclusion could be read bar coverage for an unlimited universe of risks, from bacteria, insects, and rodents; to fire; to negligent, violent, or otherwise dangerous persons; to defective products and machinery; to inclement weather. This would allow the exclusion to effectively consume and nullify the entirety of the “all-risk” Policy.

This Court must reject such absurd interpretations. *See, e.g., Vyfvinkel*, 135 So.3d at 386. Indeed, Florida law *specifically* disfavors interpretations of insurance exclusions so broad as to effectively render a policy’s grant of coverage a nullity. *See Sudderth*, 620 Fed. App’x at 830. And here, an overbroad interpretation of the hazardous material exclusion’s catch-all term—which is required to stretch the exclusion to fit a virus—would nullify much, if not all, of the coverage under the Policy. Virtually everything that can cause “direct physical loss or damage” is also something the presence or existence of which “endangers or threatens to endanger the healthy, safety or welfare of persons or the environment.”

Florida law also disfavors interpretations that would render other policy language superfluous. *See, e.g., Universal Prop. and Cas. Ins. Co. v. Johnson*, 114 So.3d 1031, 1036 (Fla.

Dist. Ct. App. 2013). And here, an overbroad interpretation of the hazardous material exclusion, as would be required to extend the exclusion to virus-related risks, would render many other exclusions under the Policy superfluous, including but not limited to: the Nuclear Incident Exclusion, the Terrorism Exclusion, the Biological or Chemical Materials Exclusion, the War And Civil War Exclusion, the Asbestos Exclusion, and the Exclusion of Certain Computer-Related Losses. After all, because terrorism, asbestos, and war are all things that “threaten[] to endanger the health, safety, or welfare of persons or the environment,” there would be no need to specifically exclude those risks under Defendants’ interpretation of the hazardous materials exclusion.

Therefore, the hazardous materials exclusion must be construed in a manner consistent with “reason and probability,” *Vyfvinkel*, 135 So.3d at 386, as well as with its plain meaning and unambiguous intent. Here, although it refers to “any substance designated or defined as . . . dangerous,” the exclusion, like the Policy itself, must be read as a whole. *See Talbott*, 59 So.3d at 245. And a holistic reading of the exclusion makes clear that its scope is limited to “hazardous materials” or similar substances, and it must ultimately be confined to the ordinary meaning of “pollution and/or contamination,” of which it is a part. Indeed, the enumerated examples of excluded risks are quite narrow and specific, referring to materials and substances designated as “hazardous” or “toxic” under the *environmental protection* laws of the U.S. and Canada. It also refers to the potential of such materials and substances to undergo “seepage.” These examples are instructive as to the exclusion’s scope, because an exclusion in an insurance policy must not be interpreted so as to stray “too far afield from [its] enumerated examples.” *VN Hotel Group*, 761 F. Supp. 2d at 1344.³⁸

Generally speaking, materials that are designated “hazardous” or “toxic” by environmental agencies are used or transported in the regular course of business or industrial processes. Often, they are manmade. The exclusion’s reference to “seepage,” which is “[t]he slow escape of a liquid

³⁸ Although the exclusion also refers to substances designated by government agencies as “toxic, dangerous, hazardous or deleterious to persons or the environment,” interpreting this phrase without regard to the exclusion’s enumerated examples would lead to absurd consequences. For example, governments routinely declare dangerous or deleterious an enormous variety of substances, from alcoholic beverages to trans fats. *See, e.g.*, Food and Drug Administration, Trans Fat, <https://www.fda.gov/food/food-additives-petitions/trans-fat> (last visited July 31, 2020). But for the reasons noted in this section, to exclude all losses related to that broad universe of substances would render many exclusions in the Policy superfluous, render much of the Policy’s grant of coverage a nullity, and fail to comport with reason and probability.

or gas through porous material or small holes,” similarly indicates that the exclusion contemplates materials that are in storage or transit.³⁹ So construed, the exclusion does not and cannot encompass naturally occurring viruses. Indeed, although the U.S. agencies enumerated in the exclusion—the EPA and the Department of Transportation—designate an enormous variety of substances as “hazardous” or “dangerous,” *none* of these designated substances is a virus.⁴⁰ Moreover, Defendants do not cite any case—and we are not aware of any case—extending the scope of this type of hazardous materials exclusion to encompass risks related to viruses.

Finally, like the first pollutant exclusion, the hazardous material exclusion does not bar coverage because Atma’s claim does not solely rest on the presence of a dangerous substance on the property. Instead, it also arises from the inability to use the property safely at all due to the public health risk it would create during the COVID-19 pandemic. The risk of a pandemic is not excluded from coverage, and the hazardous material exclusion cannot be stretched under any reasonable interpretation of the language to encompass such a risk.

CONCLUSION

Defendants’ coverage arguments should be disregarded as premature. They also lack merit. Defendants’ interpretation of the Policy’s coverage and exclusion provisions is unreasonable and unsupported by Florida law. At worst, Defendants’ arguments, along with Atma’s response, point to competing interpretations of the Policy, with Atma’s view favoring coverage and Defendants’ view barring coverage. Under such circumstances, Florida law compels adoption of the interpretation that favors coverage. *See, e.g., Dickson*, 36 So. 3d at 790. Accordingly, this Court should deny Defendants’ motion to dismiss.

REQUEST FOR HEARING

Plaintiff respectfully requests a hearing before this Court due to the complexity of the questions at issue, the parties’ apparent disputes about the applicable legal standards, and the

³⁹ *See* Seepage, Oxford English Dictionary, <https://www.lexico.com/en/definition/seepage> (last visited July 27, 2020).

⁴⁰ *See* U.S. Dep’t of Transp., Check the Box: Is it Hazmat?, *available at* <https://www.transportation.gov/check-box/check-box-it-hazmat> (last visited Aug. 5, 2020); EPA, Defining Hazardous Waste: Listed, Characteristic and Mixed Radiological Wastes, *available at* <https://www.epa.gov/hw/defining-hazardous-waste-listed-characteristic-and-mixed-radiological-wastes> (last visited Aug. 5, 2020).

dispositive nature of the Defendant's motion. Plaintiff estimates that approximately one hour of argument, in total, will be sufficient.

Dated: August 14, 2020

Respectfully submitted,

PODHURST ORSECK, P.A.

/s/ Steven C. Marks

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record and any other electronic filer as of the time of the filing.

/s/ Steven C. Marks

Steven C. Marks

EXHIBIT A

**State of Florida
Policy Cover Page**

Named Insured: ATMA Beauty, Inc
Policy Number: RSK003959
Policy Period: Effective From: 12/19/2019 To: 12/19/2020
Surplus Lines Agent's Name: Edward P. Jackson
Surplus Lines Agent's Address: 6951 W. Sunrise Blvd
Plantation, FL 33313
Surplus Lines Agent's License: A128903
Producing Agent's Name: Robert Roberts
Producing Agent's Address: 3201 North Federal Hwy, Suite 200, Ft.Lauderdale, FL 33306

"THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER."

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

Total Premium:		\$2,211.00
Fees:	Insp Fee	\$0.00
	Policy Fee	\$100.00
	Broker Fee	
Surplus Lines Tax:		\$115.55
Service Office		\$2.31
Fee: FEMA		\$4.00
Surcharge: FHCF		
CPIE:		
Total:		\$2,432.86

Surplus Lines Agent's Countersignature:  _____

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COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS PAGE

CERTIFICATE NO. RSK003959

EFFECTIVE DATE 12/19/2019
12.01 A.M. Standard Time

THIS SUPPLEMENTAL DECLARATIONS AND THE COMMERCIAL PROPERTY DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED CERTIFICATE.

"X" If Supplemental
Declarations Is Attached

NAMED INSURED

ATMA Beauty, Inc

DESCRIPTION OF PREMISES

Prem. #	Bldg. No.	Location, Construction And Occupancy
1	1	1874 West Avenue, Miami Beach, FL. 33139, Masonry Non-Combustible, Beauty Salon X-WIND Property

COVERAGES PROVIDED Insurance At The Described Premises Applies Only For Coverages For Which A Limit Of Insurance Is Shown

Prem. #	Bldg. #	Coverage	Limit Of Ins.	Covered Cause Of Loss	Val	Coins/Monthly	AOP Ded.	Rates	Premium
1	1	BPP & Content	\$200,000	Special X-Theft	RCV	80%	\$1,000	0.2106	421.00
1	1	IMP/BETT	\$450,000	Special X-Theft	RCV	80%	\$1,000	0.2106	948.00
1	1	Business Income	\$400,000	Special X-Theft		1/4 Monthly		0.2106	842.00

DEDUCTIBLE

- Coverage:
- Coverage:
- Coverage:
- Coverage:
- Coverage:
- Coverage:

Policy Number: RSK003959

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**SCHEDULE OF FORMS AND ENDORSEMENTS****Common Forms**

Form Number	Form Description
BassForms (04-17)	Schedule Of Forms And Endorsements
BassPart (06-19)	Insurer Participation Schedule
AOL COM 100 (08-19)	Contract Allocation Endorsement
BU-AOB-001 (10-19)	Assignment Of Claim Benefits
CCE 100 (00-00)	Collective Certificate Endorsement
CommonDec (06-19)	Common Policy Declarations
IL 0017 (11-98)	Common Policy Conditions
IL 0255 (03-16)	Florida Changes-Cancellation And Non-Renewal
IL 0935 (07-02)	Exclusion Of Certain Computer-Related Losses
LMA 3100 (08-10)	Sanction Limitation And Exclusion Clause
LMA 5018 (09-05)	Absolute Microorganism Exclusion
LMA 5019 (09-05)	Asbestos Exclusion
LMA 5020 (09-05)	Service Of Suit (U.S.A)
LMA 5021 (09-05)	Applicable Law
LMA 5062 (04-06)	Fraudulent Claim Clause
LMA 5092 (12-07)	U.S. Terrorism Risk Insurance Act Of 2002 As Amended Not Purchased Clause
LMA 9037 (09-13)	Florida Guaranty Act Notice
LMA 9038 (11-13)	Florida Rates And Forms Notice
LMA 9040 (09-13)	Florida Co-Pay Notice
LSW 1001 (08-94)	Several Liability Notice
LSW 1135B (00-00)	Lloyds Privacy Policy Statement
NMA 1191 (07-59)	Radioactive Contamination Clause
NMA 1256 (03-60)	Nuclear Incident Exclusion
NMA 1331 (4-61)	Cancellation Clause
NMA 2340 (11-88)	Land, Water And Air Exclusion/Seepage And/Or Pollution And/Or Contamination Exclusion/Debris Removal Endorsement
NMA 2802 (12-97)	Electronic Date Recognition Exclusion
NMA 2915 (01-01)	Electronic Data Endorsement B
NMA 2920 (10-01)	Terrorism Exclusion Endorsement
NMA 2962 (02-03)	Biological Or Chemical Materials Exclusion
NMA 464 (1-38)	War And Civil War Exclusion
Syndicate (10-17)	Syndicate Split Breakdown

Property Forms

Form Number	Form Description
BassProp (00-00)	Commercial Property Declarations
BU-CP-002 (12-16)	Protective Safeguard Endorsement
BU-CP-009 (07-12)	Total Or Constructive Total Loss Endorsement
CP 0010 (10-12)	Building And Personal Property Coverage

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Policy Number: RSK003959

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF FORMS AND ENDORSEMENTS

Property Forms

Form Number	Form Description
CP 0030 (10-12)	Business Income W/Ee
CP 0090 (07-88)	Commercial Property Conditions
CP 0125 (07-08)	Florida Changes
CP 1030 (06-07)	Special Form
CP 1033 (10-12)	Theft Exclusion
CP 1054 (06-95)	Windstorm Or Hail Exclusion
LSW699 (02-98)	Minimum Earned Premium
NMDSTRMEXCL06 (09-19)	Hurricane Or Tropical Storm Dorian Exclusion

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Policy Number: RSK003959

INSURER PARTICIPATION SCHEDULE

Coverage under this Policy is provided by the subscribing insurers listed below:

	Peril	Premium	Participation
Lloyds of London	Property	\$221	10%
	Property	\$1,106	50%
	Total	\$1,327	60%
HDI Global Specialty SE	Property	\$221	10%
	Total	\$221	10%
AXIS Specialty Europe SE	Property	\$663	30%
	Total	\$663	30%

CONTRACT ALLOCATION ENDORSEMENT

This insurance is effected with certain insurance underwriters (hereinafter called the "Underwriters"). The following words shall be deemed to be synonymous: "Underwriters", "Insurers" and "Company". The liability of each Underwriter on this contract with the Insured is limited to the participation amount shown in the schedule below. The liability of each separate contract listed and for each Underwriter represented thereby for any loss or losses or amounts payable is several as to each and shall not exceed its participation percentage shown below and there is no joint liability of any Underwriters pursuant to this contract. An Underwriter shall not have its liability hereunder increased or decreased by reason of failure or delay of another Underwriter, its successors, assigns, or legal representatives. Any loss otherwise payable under the provisions of the attached policy that exceeds the allocation of "Risk" as defined herein shall be borne proportionately by the contracts as to their limit of liability at the time and place of the loss bears to the total allocated limits herein.

This contract shall be constructed as a separate contract between the Insured and each of the Underwriters. This evidence of coverage consists of separate sections of a composite insurance for all Underwriter's at Lloyd's combined and separate policies issued by the insurance company(ies), all as identified below. This evidence of coverage does not constitute in any manner or form a joint certificate of coverage by Underwriter's at Lloyd's with any other insurance company(ies).

In witness whereof, the following Underwriters execute and attest these presents, and subscribe for the amount of insurance provided.

The security is as noted below.

PERILS (AS PER POLICY)	CONTRACT #	COMPANY CODE	POLICY #	PARTICIPATION	PREMIUM
SP EXCL WH	B0831P020742018RS	001	RSK003959	\$105,000 10%	\$221
SP EXCL WH	B08313031302019	002	RSK003959	\$315,000 30%	\$663
SP EXCL WH	B08313019002019RS	003	RSK003959	\$525,000 50%	\$1,106
SP EXCL WH	B08313040002018RS	003	RSK003959	\$105,000 10%	\$221

ALLOCATION OF LIABILITY:

The contracts herein cover mutually exclusive perils. The maximum limit of liability is not to exceed the per occurrence participation stated herein, regardless of whether multiple perils and multiple contracts are involved. Recognition of liability by either of the contracts reduces the limit of liability of any corresponding contract.

The liability otherwise determined to exist under the terms and conditions of this policy shall be borne by the contract covering the proximate cause of loss identified in the allocation of security. Any loss covered by the policy by a peril not allocated to a contract herein shall be borne by the contract covering the most comprehensive perils, generally in accordance with the ISO Special Causes of Loss Contracts. The liability of the policy shall not be increased or decreased by any condition of the allocation to specific contracts on this endorsement.

Covered perils shall be defined by the applicable forms attached to this policy or otherwise as per the industry standard definition.

SYMBOLS USED HEREIN:

LINE OF COVERAGE / CAUSE OF LOSS	SYMBOL	COMPANY CODE	INSURER
Occurrence General Liability (CG 00 01)	GL-O	001	HDI Global Specialty SE
Claims Made General Liability (CG 00 02)	GL-C	002	AXIS Specialty Europe SE
Assault & Battery	AB	003	Lloyds of London
Abuse & Molestation	AM		
Tenant Discrimination	TD		
Basic (CP 10 10)	BA		
Broad (CP 10 20)	BR		
Special (CP 10 30)	SP		
All Risk excl F/Q	AR		
Difference in Conditions	DIC		
Windstorm and Hail	WH		
Named Storm	NS		
Hurricane	H		
All Other Windstorm	AOW		
Named Storm Flood	NF		
Flood	F		
All Other Flood	AOF		
Earthquake	Q		
Certified Terrorism as Defined by TRIA	T1		
Equipment Breakdown	EBD		
Cyber and Data Compromise	CYB		
Excluding	EXCL		
Including	INCL		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASSIGNMENT OF CLAIM BENEFITS

No assignment of claim benefits, regardless of whether made before a loss or after a loss, shall be valid without the written consent of all insureds, all additional insureds and all mortgagee(s) named in this policy. Such written consent must be signed and dated by those providing the consent prior to any assignment.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Policy Number: RSK003959

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROTECTIVE SAFEGUARD ENDORSEMENT

Issued To: ATMA Beauty, Inc

Endorsement Effective Date: 12/19/2019

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART – BUILDING AND PERSONAL PROPERTY COVERAGE FORM

FAILURE TO COMPLY WITH THE PROTECTIVE SAFEGUARD CLAUSES SPECIFIED AS APPLICABLE IN THE SCHEDULE BELOW SHALL SUSPEND THIS INSURANCE.

In consideration of the premium at which this policy is written, based on the protection of the premises by the protective safeguard system or systems indicated below, it is a condition of this policy that the insured shall exercise due diligence in maintaining in complete working order all equipment and services pertaining to the system which are under the control of the insured, including any special maintenance or service requirements indicated below. It is also a condition of this insurance that the insured shall give immediate notice to your insurance agent of any impairment in or suspension of any equipment or service pertaining to the system within the knowledge of the insured.

Location/Building #'s:

Automatic Sprinkler System

In further consideration of the premium at which this policy is written, it is a condition of this policy that the insured shall have the automatic sprinkler system serviced by an independent contractor licensed to service and maintain automatic sprinkler systems in the state in which the premises are located. It is also a condition of this policy that the insured shall have the automatic sprinkler system inspected and tested at least once per year by an independent contractor licensed to inspect and test automatic sprinkler systems in the state in which the premises are located.

Location/Building #'s:

Automatic Fire Alarm, reporting to a public or private fire alarm station

Location/Building #'s: 1-1

Activated and operational Central Station Burglar Alarm, (Certified 'Underwriters Laboratory')

To cover all openings in the insured's premises; with motion detectors, covering all Contents/Business Personal Property covered for burglary. Alarm must be in the "on" position during all non-working hours and/or whenever the insured's premises are unoccupied.

Location/Building #'s:

Automatic Extinguishing System and Hood and Duct Cleaning

It is a condition of this insurance that all ranges, deep-fat fryers, broilers and other cooking appliances, including their hoods, are protected by an approved, automatic fire extinguishing system, and insofar as such protective equipment is under the control of the insured, due diligence shall be used to maintain such system in complete working order.

All automatic extinguishing systems and hoods and duct work shall be cleaned and inspected by an outside cleaning service no less than twice a year. It is a condition of this insurance that all hoods and ducts are equipped with approved grease filters, which shall be routinely cleaned.

Location/Building #'s:

Professional on Premises Guard Service: 24 Hour

Overnight

Location/Building #'s:

'Underwriters Laboratory' (U/L) approved Spray Paint Booth

Location/Building #'s:

Activated and operational Dust Abatement or Collection System

Location/Building #'s:

Fully functional and actively engaged smoke detectors in all units and hallways.

Location/Building #'s:

All flammables (including paints and solvents) must be in NFPA30 approved containers and stored in an approved NFPA flammable liquids storage cabinet. Used or soiled rags must be stored in metal containers and removed daily.

Location/Building #'s:

NFPA33 approved spray booth with proper exhaust system and fire extinguishing system.

Location/Building #'s:

Property to be fully secured against unauthorized entry and visited at least every two weeks by the insured or a representative of the insured.

Location/Building #'s: 1-1

Other:

P-9 Portable Fire Extinguisher. (1-1)

This Endorsement must be attached to change endorsement when issued after the policy is written.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

BU-CP-009 (07/12) Total or Constructive Total Loss Endorsement

*Entry is optional if shown in the Common Policy Declarations. If no entry is shown, the effective date of the endorsement is the same as the effective date of the policy.

*ATTACHED TO AND FORMING PART OF POLICY NO:	*EFFECTIVE DATE OF ENDORSEMENT:	*ISSUED TO:
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Property Earned Premium Endorsement – It is understood and agreed that in the event of a total loss or constructive total loss under this policy, the entire policy premium shall be earned in full and no return premium shall be due the named insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above-mentioned Certificate, other than as above stated

LLOYDS COLLECTIVE CERTIFICATE ENDORSEMENT

The Underwriters whose contract numbers are hereunto subscribed, hereby agree that:

1. Bass Underwriters, Inc., has procured insurance with certain Underwriters through our Broker in London, England, under the below listed contract numbers. The subscribing Insurers' obligations under contracts of Insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.
2. Each contract shall be liable for such proportion of any loss as the amount underwritten by such contract, as specified hereunder, in no event shall any of the Underwriters under such contract be liable for an amount greater than that underwritten by it, as specified herein.
3. It is understood and agreed that service of process or suit or any notice as proof of loss required by the Certificate when served upon any of the Underwriters of such contract executing the "Collective Certificate" endorsement shall be deemed to be service upon all such Underwriters under each contract.

UMR	Percentage			Premium			Total
	Property	Liability	EQB	Property	Liability	EQB	
B08313019002019RS	83%			\$1,106.00			\$1,106.00
B08313040002018RS	17%			\$221.00			\$221.00
Total	100%			\$1,327.00	\$0.00		\$1,327.00

CCE100

COMMON POLICY DECLARATIONS

This Declaration Page is attached to and forms part of certificate provisions.

Previous No. Authority Ref. No. Certificate No. RSK003959

1 Name and address of the Assured
 ATMA Beauty, Inc
 1874 West Avenue, Miami Beach, FL 33139

Broker
 Gulfstream Insurance Group, Inc.
 3201 North Federal Hwy, Suite 200, Ft.Lauderdale, FL 33306

Business description: Beauty Parlor

2 Effective from 12/19/2019 to 12/19/2020
 both days at 12:01 a.m. standard time

3 INSURER
 See attached form BassPart (06/19).

4 This Certificate consists of the following Coverage Parts for which a Premium is indicated. This Premium may be subject to adjustment.

	Premium
Commercial Property Coverage Part	\$ <u>2,211.00</u>
Commercial Inland Marine Coverage Part	\$ <u>Not Covered</u>
Commercial General Liability Coverage Part	\$ <u>Not Covered</u>
Commercial Crime Coverage Part	\$ <u>Not Covered</u>
Commercial Auto Coverage Part	\$ <u>Not Covered</u>
Commerical Equipment Breakdown Coverage Part	\$ <u>Not Covered</u>
	\$ _____
Policy Fee \$100.00	FEES: \$ <u>100.00</u>
Inspection Fee \$0.00	
Surplus Lines Tax \$115.55	TAXES: \$ <u>121.86</u>
FEMA \$4.00	
Service Office Fee \$2.31	Total: \$ <u>2,432.86</u>

This insurance is issued pursuant to the Florida Surplus Lines Law. Persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent insurer.

5 Forms Applicable to all Coverage Parts: SEE ATTACHED SCHEDULE OF FORMS AND ENDORSEMENTS TERMS: 25% MINIMUM EARNED PREMIUM

6 Service of Suit may be made upon: SEE FORM LMA 5020

In return for the Payment of the premium, and subject to all the terms of this Certificate, we agree to provide the insurance as stated in this certificate.

by 

 AUTHORIZED REPRESENTATIVE

Agency Code

Correspondent: BASS UNDERWRITERS
 6951 W. SUNRISE BLVD.
 PLANTATION, FL 33313

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **H**. Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2**. Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire-extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;
 - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. Your Business Personal Property

consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, **n.**, does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
 - (c) Rowboats or canoes out of water at the described premises; or
 - (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or
- q. The following property while outside of buildings:
- (1) Grain, hay, straw or other crops;
 - (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
 - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
 - (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;

- (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
 - (e) Remove deposits of mud or earth from the grounds of the described premises;
 - (f) Extract "pollutants" from land or water; or
 - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
 - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if **(4)(a)** and/or **(4)(b)** applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

(5) Examples

The following examples assume that there is no Coinsurance penalty.

Example 1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000
	(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph **(3)**.

Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph **(3)** is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph **(4)**, because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph **(4)**. Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1)** While it is being moved or while temporarily stored at another location; and
- (2)** Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

- (1)** Assumed by contract or agreement prior to loss; or
- (2)** Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

- (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- (b) Any costs associated with the enforcement of or compliance with an ordinance or law which 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 "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

- (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced at the same or another premises; and
 - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.
- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment and Valuation Conditions and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of or compliance with an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.

f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
 - (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
 - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
 - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
 - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:
 - (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
 - (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Effects And Property Of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

c. Valuable Papers And Records (Other Than Electronic Data)

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

d. Property Off-premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
 - (a) In or on a vehicle; or
 - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
 - (a) The trailer is used in your business;
 - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
 - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
 - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
 - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

g. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.

- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
 - (a) Will end 90 days after the business personal property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

Example 1

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Building 1:	\$ 60,000
Limit of Insurance – Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

$$\begin{array}{r}
 \$ 60,100 \\
 - \quad 250 \\
 \hline
 \end{array}$$

\$ 59,850 Loss Payable – Building 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:
 \$59,850 + \$80,000 = \$139,850

Example 2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable – Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable – Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.
Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
 - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
 - (8) Cooperate with us in the investigation or settlement of the claim.
- b.** We may examine any insured under oath, while not in the presence of any other insured and 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.

4. Loss Payment

- a.** In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b.** The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c.** We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d.** We will not pay you more than your financial interest in the Covered Property.
- e.** We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f.** We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g.** 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 Coverage Part, and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

a. Description Of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1)(a)** and **(1)(b)** below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i)** Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or
- (ii)** Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:

- (a)** Vandalism;
- (b)** Sprinkler leakage, unless you have protected the system against freezing;
- (c)** Building glass breakage;
- (d)** Water damage;
- (e)** Theft; or
- (f)** Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a.** At actual cash value as of the time of loss or damage, except as provided in **b.**, **c.**, **d.** and **e.** below.
- b.** If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value, even when attached to the building:

- (1) Awnings or floor coverings;
 - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
 - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
 - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- (3) Nothing if others pay for repairs or replacement.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies:

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

Example 1 (Underinsurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 100,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

Step (1): $\$250,000 \times 80\% = \$200,000$
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

Step (3): $\$40,000 \times .50 = \$20,000$

Step (4): $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

Example 2 (Adequate Insurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 200,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$250,000 \times 80\%$). Therefore, the Limit of Insurance in this example is adequate, and no penalty applies. We will pay no more than \$39,750 ($\$40,000$ amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

Example 3

When: The value of the property is:

Building at Location 1:	\$ 75,000
Building at Location 2:	\$ 100,000
Personal Property at Location 2:	<u>\$ 75,000</u>
	\$ 250,000
The Coinsurance percentage for it is: 90%	
The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is:	\$ 180,000
The Deductible is:	\$ 1,000
The amount of loss is:	
Building at Location 2:	\$ 30,000
Personal Property at Location 2:	<u>\$ 20,000</u>
	\$ 50,000

Step (1): $\$250,000 \times 90\% = \$225,000$
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): $\$180,000 \div \$225,000 = .80$

Step (3): $\$50,000 \times .80 = \$40,000$

Step (4): $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder 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 Coverage Part:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
 - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example

If: The applicable Limit of Insurance is: \$ 100,000
 The annual percentage increase is: 8%
 The number of days since the beginning of the policy year (or last policy change) is: 146
 The amount of increase is:
 $\$100,000 \times .08 \times 146 \div 365 =$ \$ 3,200

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;
 - (2) Contents of a residence;
 - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
- (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **F**. Definitions.

A. Coverage

1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:

- (1) Business Income Including "Rental Value".
- (2) Business Income Other Than "Rental Value".
- (3) "Rental Value".

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a) The portion of the building which you rent, lease or occupy;
- (b) The area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

- (2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Limitation – Interruption Of Computer Operations

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
- d. This Additional Limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
 - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

b. Alterations And New Buildings

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
 - (a) Used in the construction, alterations or additions; or
 - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

c. Extended Business Income

(1) Business Income Other Than "Rental Value"

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
 - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(2) "Rental Value"

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
 - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

d. Interruption Of Computer Operations

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.

- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations does not apply based on Paragraph **A.4.d.** therein.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

6. Coverage Extension

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

Newly Acquired Locations

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location, unless a higher limit is shown in the Declarations.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
 - (1) This policy expires;

- (2) 30 days expire after you acquire or begin to construct the property; or
- (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

B. Limits Of Insurance

The most we will pay for loss in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

- 1. Alterations And New Buildings;
- 2. Civil Authority;
- 3. Extra Expense; or
- 4. Extended Business Income.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.

C. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Loss

a. You must see that the following are done in the event of loss:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
 - (7) Cooperate with us in the investigation or settlement of the claim.
 - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and 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.

3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
 - (1) The Net Income of the business before the direct physical loss or damage occurred;
 - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net 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 Cause of Loss on customers or on other businesses;
 - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
 - (4) Other relevant sources of information, including:
 - (a) Your financial records and accounting procedures;
 - (b) Bills, invoices and other vouchers; and
 - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
 - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
 - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
 - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
 - (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
 - (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

4. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

D. Additional Condition

COINSURANCE

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:

- 1. The Coinsurance percentage shown for Business Income in the Declarations; times
- 2. The sum of:
 - a. The Net Income (Net Profit or Loss before income taxes), and
 - b. Operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

- Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;
- Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and
- Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

- (1) Prepaid freight – outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);
- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form **CP 15 11** is attached);
- (11) All payroll expenses or the amount of payroll expense excluded (if Form **CP 15 10** is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

Example 1 (Underinsurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000
 The Coinsurance percentage is: 50%
 The Limit of Insurance is: \$ 150,000
 The amount of loss is: \$ 80,000

Step (1): $\$400,000 \times 50\% = \$200,000$
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$150,000 \div \$200,000 = .75$

Step (3): $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

Example 2 (Adequate Insurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000
 The Coinsurance percentage is: 50%
 The Limit of Insurance is: \$ 200,000
 The amount of loss is: \$ 80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$400,000 \times 50\%$). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

- b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:
 - (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
 - (2) The Limit Of Insurance shown in the Declarations.

2. Monthly Limit Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
 - (1) The Limit of Insurance, multiplied by
 - (2) The fraction shown in the Declarations for this Optional Coverage.

Example

When: The Limit of Insurance is: \$ 120,000
 The fraction shown in the Declarations for this Optional Coverage is: 1/4
 The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000
 (\$120,000 x 1/4 = \$30,000)
 If, in this example, the actual amount of loss is:

Days 1–30:	\$ 40,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	\$ 90,000

We will pay:

Days 1–30:	\$ 30,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	\$ 80,000

The remaining \$10,000 is not covered.

3. Business Income Agreed Value

- a. To activate this Optional Coverage:
 - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
 - (a) During the 12 months prior to the date of the Work Sheet; and

- (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
- (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:
 - (a) The Coinsurance percentage shown in the Declarations; multiplied by
 - (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.
- b. The Additional Condition, Coinsurance, is suspended until:
 - (1) 12 months after the effective date of this Optional Coverage; or
 - (2) The expiration date of this policy; whichever occurs first.
- c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:
 - (1) Within 12 months of the effective date of this Optional Coverage; or
 - (2) When you request a change in your Business Income Limit of Insurance.
- d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:
 - (1) The Business Income Limit of Insurance; divided by
 - (2) The Agreed Value.

Example

When: The Limit of Insurance is: \$ 100,000
 The Agreed Value is: \$ 200,000
 The amount of loss is: \$ 80,000
 Step (1): $\$100,000 \div \$200,000 = .50$
 Step (2): $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

4. Extended Period Of Indemnity

Under Paragraph A.5.c., **Extended Business Income**, the number 60 in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

F. Definitions

1. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:
 - a. Your business activities occurring at the described premises; and
 - b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.
3. "Period of restoration" means the period of time that:
 - a. Begins:
 - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
 - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;
caused by or resulting from any Covered Cause of Loss at the described premises; and
 - b. Ends on the earlier of:
 - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or

- (2) 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 "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
 - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
 - b. Continuing normal operating expenses incurred in connection with that premises, including:
 - (1) Payroll; and
 - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
 - a. The slowdown or cessation of your business activities; or
 - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

COMMERCIAL PROPERTY

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
 - a. During the policy period shown in the Declarations; and
 - b. Within the coverage territory.
2. The coverage territory is:
 - a. The United States of America (including its territories and possessions);
 - b. Puerto Rico; and
 - c. Canada.

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Part 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 them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
 - a. Someone insured by this insurance;
 - b. A business firm:
 - (1) Owned or controlled by you; or
 - (2) That owns or controls you; or
 - c. Your tenant.

This will not restrict your insurance.

COMMERCIAL PROPERTY
CP 01 25 07 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FLORIDA CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

A. When this endorsement is attached to the Standard Property Policy **CP 00 99**, the term Coverage Part in this endorsement is replaced by the term Policy.

B. The following provision applies when a Coinsurance percentage is shown in the Declarations:

Florida law states as follows:

Coinsurance contract: The rate charged in this policy is based upon the use of the coinsurance clause attached to this policy, with the consent of the Insured.

C. The following is added:

If windstorm is a Covered Cause of Loss and loss or damage to Covered Property is caused by or results from windstorm, the following exclusion applies in:

1. Broward County;
2. Dade County;
3. Martin County;
4. Monroe County;
5. Palm Beach County; and
6. All the areas east of the west bank of the Intra-Coastal Waterway in the Counties of:
 - a. Indian River; and
 - b. St. Lucie.

WINDSTORM EXTERIOR PAINT AND WATERPROOFING EXCLUSION

We will not pay for loss or damage caused by windstorm to:

1. Paint; or
2. Waterproofing material;

applied to the exterior of Buildings unless the Building to which such loss or damage occurs also sustains other loss or damage by windstorm in the course of the same storm event. But such coverage applies only if windstorm is a Covered Cause of Loss.

When loss or damage to exterior paint or waterproofing material is excluded, we will not include the value of paint or waterproofing material to determine:

- a. The amount of the Windstorm or Hail Deductible; or
- b. The value of Covered Property when applying the Coinsurance Condition.

D. The **Loss Payment** Condition dealing with the number of days within which we must pay for covered loss or damage is replaced by the following:

Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage upon the earliest of the following:

- (1) Within 20 days after we receive the sworn proof of loss and reach written agreement with you;
- (2) Within 30 days after we receive the sworn proof of loss and:
 - (a) There is an entry of a final judgment; or
 - (b) There is a filing of an appraisal award with us; or
- (3) Within 90 days of receiving notice of claim, unless we deny the claim during that time or factors beyond our control reasonably prevent such payment. If a portion of the claim is denied, then the 90-day time period for payment of claim relates to the portion of the claim that is not denied.

Paragraph (3) applies only to the following:

- (a) A claim under a policy covering residential property;
- (b) A claim for building or contents coverage if the insured structure is 10,000 square feet or less and the policy covers only locations in Florida; or

- (c) A claim for contents coverage under a tenant's policy if the rented premises are 10,000 square feet or less and the policy covers only locations in Florida.

E. Sinkhole Collapse Coverage Removed

Sinkhole Collapse coverage is removed as indicated in Paragraphs **E.1.** through **E.4.**; and coverage for Catastrophic Ground Cover Collapse is added instead as set forth in Paragraph **F.**

1. In the Causes of Loss – Basic Form and in the Standard Property Policy, Sinkhole Collapse is deleted from the Covered Causes of Loss and sinkhole collapse is no longer an exception to the Earth Movement exclusion.
2. In the Causes of Loss – Broad Form, Sinkhole Collapse is deleted from the Covered Causes of Loss and from the Additional Coverage – Collapse; and sinkhole collapse is no longer an exception to the Earth Movement exclusion.
3. In the Causes of Loss – Special Form, sinkhole collapse is deleted from the "specified causes of loss" and is no longer an exception to the Earth Movement exclusion.
4. In the Mortgageholders Errors And Omissions Coverage Form, sinkhole collapse is deleted from the Covered Causes of Loss under Coverage **B** and from the "specified causes of loss", and is no longer an exception to the Earth Movement exclusion.

Further, this Coverage Part does not insure against Sinkhole Loss as defined in Florida law unless an endorsement for Sinkhole Loss is made part of this policy. However, if Sinkhole Loss causes Catastrophic Ground Cover Collapse, coverage is provided for the resulting Catastrophic Ground Cover Collapse even if an endorsement for Sinkhole Loss is not made part of this policy.

- F.** The following is added to this Coverage Part as a Covered Cause Of Loss. In the Causes Of Loss – Special Form and Mortgageholders Errors And Omissions Coverage Form, the following is also added as a "specified cause of loss". However, as a "specified cause of loss", the following does not apply to the Additional Coverage – Collapse.

CATASTROPHIC GROUND COVER COLLAPSE

We will pay for direct physical loss or damage to Covered Property caused by or resulting from catastrophic ground cover collapse, meaning geological activity that results in all of the following:

- (a) The abrupt collapse of the ground cover;
- (b) A depression in the ground cover clearly visible to the naked eye;
- (c) Structural damage to the building, including the foundation; and
- (d) The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

However, structural damage consisting merely of the settling or cracking of a foundation, structure or building does not constitute loss or damage resulting from a catastrophic ground cover collapse.

The Earth Movement exclusion and the Collapse exclusion do not apply to coverage for Catastrophic Ground Cover Collapse.

Coverage for Catastrophic Ground Cover Collapse does not increase the applicable Limit of Insurance. Regardless of whether loss or damage attributable to catastrophic ground cover collapse also qualifies as Sinkhole Loss or Earthquake (if either or both of those causes of loss are covered under this Coverage Part), only one Limit of Insurance will apply to such loss or damage.

- G.** The following applies to the **Additional Coverage – Civil Authority** under the Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form and Extra Expense Coverage Form:

1. The Additional Coverage – Civil Authority includes a requirement that the described premises are not more than one mile from the damaged property. With respect to described premises located in Florida, such one-mile radius does not apply.
2. The Additional Coverage – Civil Authority is limited to a coverage period of up to four weeks. With respect to described premises located in Florida, such four week period is replaced by a three-week period.
3. Civil Authority coverage is subject to all other provisions of that Additional Coverage.

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G.**, Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section **B.**, Exclusions; or
2. Limited in Section **C.**, Limitations; that follow.

B. Exclusions

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

a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) 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
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.

But if Water, as described in **g.(1)** through **g.(4)** above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- 1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
- 2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

- 2. We will not pay for loss or damage caused by or resulting from any of the following:
 - a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:
 - (1) Electrical or electronic wire, device, appliance, system or network; or
 - (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or micro-waves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
 - (a) Dampness or dryness of atmosphere;
 - (b) Changes in or extremes of temperature; or
 - (c) Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
 - (1) You do your best to maintain heat in the building or structure; or
 - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
 - (1) Acting alone or in collusion with others; or
 - (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, including any of the following conditions of property or any part of the property:

- (1) An abrupt falling down or caving in;
- (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, **k.**, does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or
- (b) To collapse caused by one or more of the following:
 - (i) The "specified causes of loss";
 - (ii) Breakage of building glass;
 - (iii) Weight of rain that collects on a roof; or
 - (iv) Weight of people or personal property.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, **l.**, does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph **1.** above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.
- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (5) Any other consequential loss.

b. Leasehold Interest Coverage Form

- (1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
- (a) Your cancelling the lease;
 - (b) The suspension, lapse or cancellation of any license; or
 - (c) Any other consequential loss.

c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:
- (a) Paragraph **B.1.a.**, Ordinance Or Law;
 - (b) Paragraph **B.1.c.**, Governmental Action;
 - (c) Paragraph **B.1.d.**, Nuclear Hazard;
 - (d) Paragraph **B.1.e.**, Utility Services; and
 - (e) Paragraph **B.1.f.**, War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

5. Additional Exclusion

The following provisions apply only to the specified property.

LOSS OR DAMAGE TO PRODUCTS

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
 - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
 - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
 - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
 - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
 - d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

 - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
 - (2) Business Income Coverage or Extra Expense Coverage.
 - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
 - f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
 - a. Animals, and then only if they are killed or their destruction is made necessary.
 - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.
 - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

 - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income Coverage or to Extra Expense Coverage.
3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
 - a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

D. Additional Coverage – Collapse

The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage – Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (1) A cause of loss listed in **2.a.** or **2.b.**;
 - (2) One or more of the "specified causes of loss";
 - (3) Breakage of building glass;
 - (4) Weight of people or personal property; or
 - (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does **not** apply to:

- a. A building or any part of a building that is in danger of falling down or caving in;
- b. A part of a building that is standing, even if it has separated from another part of the building; or
- c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

6. This Additional Coverage – Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
7. This Additional Coverage – Collapse will not increase the Limits of Insurance provided in this Coverage Part.
8. The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in **D.1.** through **D.7.**

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
 - a. A "specified cause of loss" other than fire or lightning; or
 - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
 - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
 - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
 - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.2.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.
6. The following, **6.a.** or **6.b.**, applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.

- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
 - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
 - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
 - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, **F.3.**, does not increase the Limit of Insurance.

G. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
 - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or
 - (2) Sinking or collapse of land into man-made underground cavities.

- b. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

POLICY NUMBER: RSK003959

COMMERCIAL PROPERTY
CP 10 33 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THEFT EXCLUSION

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – SPECIAL FORM

SCHEDULE

Premises Number	Building Number
1	1

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

With respect to the location(s) indicated in the Schedule, the following is added to the **Exclusions** section:

We will not pay for loss or damage caused by or resulting from theft.

But we will pay for:

1. Loss or damage that occurs due to looting at the time and place of a riot or civil commotion;
or

2. Building damage caused by the breaking in or exiting of burglars.

And if theft results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

POLICY NUMBER: RSK003959

COMMERCIAL PROPERTY
CP 10 54 06 95

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WINDSTORM OR HAIL EXCLUSION

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – BASIC FORM
CAUSES OF LOSS – BROAD FORM
CAUSES OF LOSS – SPECIAL FORM
STANDARD PROPERTY POLICY

A. The following is added to the EXCLUSIONS section and is therefore **not** a Covered Cause of Loss:

WINDSTORM OR HAIL

We will not pay for loss or damage:

1. Caused directly or indirectly by Windstorm or Hail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage; or
2. Caused by rain, snow, sand or dust, whether driven by wind or not, if that loss or damage would not have occurred but for the Windstorm or Hail.

But if Windstorm or Hail results in a cause of loss other than rain, snow, sand or dust, and that resulting cause of loss is a Covered Cause of Loss, we will pay for the loss or damage caused by such Covered Cause of Loss. For example, if the Windstorm or Hail damages a heating system and fire results, the loss or damage attributable to the fire is covered subject to any other applicable policy provisions.

B. Under ADDITIONAL COVERAGE – COLLAPSE, in the Causes of Loss – Broad Form, Windstorm or Hail is deleted from paragraph **a.(1)**.

C. In the Causes of Loss – Special Form, Windstorm or Hail is deleted from the "specified causes of loss".

D. Under ADDITIONAL COVERAGE EXTENSIONS – PROPERTY IN TRANSIT, in the Causes of Loss – Special Form, Windstorm or Hail is deleted from paragraph **b.(1)**.

IL 00 17 11 98

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FLORIDA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
STANDARD PROPERTY POLICY

A. Paragraph **2.** of the **Cancellation** Common Policy Condition is replaced by the following:

2. Cancellation For Policies In Effect 90 Days Or Less

a. If this policy has been in effect for 90 days or less, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 20 days before the effective date of cancellation if we cancel for any other reason, except we may cancel immediately if there has been:

(a) A material misstatement or misrepresentation; or

(b) A failure to comply with underwriting requirements established by the insurer.

b. We may not cancel:

(1) On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property; or

(2) Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

B. Paragraph **5.** of the **Cancellation** Common Policy Condition is replaced by the following:

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will mail the refund within 15 working days after the date cancellation takes effect, unless this is an audit policy.

If this is an audit policy, then, subject to your full cooperation with us or our agent in securing the necessary data for audit, we will return any premium refund due within 90 days of the date cancellation takes effect. If our audit is not completed within this time limitation, then we shall accept your own audit, and any premium refund due shall be mailed within 10 working days of receipt of your audit.

The cancellation will be effective even if we have not made or offered a refund.

C. The following is added to the **Cancellation Common Policy Condition**:

7. Cancellation For Policies In Effect For More Than 90 Days

a. If this policy has been in effect for more than 90 days, we may cancel this policy only for one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) The policy was obtained by a material misstatement;
- (3) In the event of failure to comply, within 90 days after the effective date of coverage, with underwriting requirements established by us before the effective date of coverage;
- (4) There has been a substantial change in the risk covered by the policy;
- (5) The cancellation is for all insureds under such policies for a given class of insureds;
- (6) On the basis of property insurance claims that are the result of an act of God, if we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;
- (7) On the basis of a single property insurance claim which is the result of water damage, if we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property; or
- (8) The cancellation of some or all of our policies is necessary to protect the best interests of the public or policyholders and such cancellation is approved by the Florida Office of Insurance Regulation.

b. If we cancel this policy for any of these reasons, we will mail or deliver to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

- (1) 10 days before the effective date of cancellation if cancellation is for nonpayment of premium;

(2) 45 days before the effective date of cancellation if:

(a) Cancellation is for one or more of the reasons stated in Paragraphs **7.a.(2)** through **7.a.(7)** above, and this policy does not cover a residential structure or its contents; or

(b) Cancellation is based on the reason stated in Paragraph **7.a.(8)** above;

(3) 120 days before the effective date of cancellation if:

(a) Cancellation is for one or more of the reasons stated in Paragraphs **7.a.(2)** through **7.a.(7)** above; and

(b) This policy covers a residential structure or its contents.

c. If this policy has been in effect for more than 90 days and covers a residential structure or its contents, we may not cancel this policy based on credit information available in public records.

D. The following is added:

Nonrenewal

1. If we decide not to renew this policy, we will mail or deliver to the first Named Insured written notice of nonrenewal, accompanied by the specific reason for nonrenewal, at least:

a. 45 days prior to the expiration of the policy if this policy does not cover a residential structure or its contents, or if nonrenewal is for the reason stated in Paragraph **D.5.**; or

b. 120 days prior to the expiration of the policy if this policy covers a residential structure or its contents.

2. Any notice of nonrenewal will be mailed or delivered to the first Named Insured at the last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

3. We may not refuse to renew this policy:

a. On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;

b. On the basis of filing of claims for sinkhole loss. However, we may refuse to renew this policy if:

- (1) The total of such property insurance claim payments for this policy equals or exceeds the policy limits in effect on the date of loss for property damage to the covered building; or
- (2) You have failed to repair the structure in accordance with the engineering recommendations upon which any loss payment or policy proceeds were based; or

c. Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

4. Notwithstanding the provisions of Paragraph **D.3.**, we may refuse to renew this policy if this policy includes Sinkhole Loss coverage. If we nonrenew this policy for purposes of removing Sinkhole Loss coverage, pursuant to section 627.706, Florida Statutes, we will offer you a policy that includes catastrophic ground cover collapse coverage.

5. Notwithstanding the provisions of Paragraph **D.3.**, we may refuse to renew this policy if nonrenewal of some or all of our policies is necessary to protect the best interests of the public or policyholders and such nonrenewal is approved by the Florida Office of Insurance Regulation.

E. Limitations On Cancellation And Nonrenewal In The Event Of Hurricane Or Wind Loss – Residential Property

1. The following provisions apply to a policy covering a residential structure or its contents, if such property has sustained damage as a result of a hurricane or windstorm that is the subject of a declaration of emergency by the Governor and filing of an order by the Commissioner of Insurance Regulation:

a. Except as provided in Paragraph **E.1.b.**, we may not cancel or nonrenew the policy until at least 90 days after repairs to the residential structure or its contents have been substantially completed so that it is restored to the extent that it is insurable by another insurer writing policies in Florida. If we elect to not renew the policy, we will provide at least 100 days' notice that we intend to nonrenew 90 days after the substantial completion of repairs.

b. We may cancel or nonrenew the policy prior to restoration of the structure or its contents for any of the following reasons:

- (1) Nonpayment of premium;
- (2) Material misstatement or fraud related to the claim;
- (3) We determine that you have unreasonably caused a delay in the repair of the structure; or
- (4) We have paid the policy limits.

If we cancel or nonrenew for nonpayment of premium, we will give you 10 days' notice. If we cancel or nonrenew for a reason listed in Paragraph **b.(2)**, **b.(3)** or **b.(4)**, we will give you 45 days' notice.

2. With respect to a policy covering a residential structure or its contents, any cancellation or nonrenewal that would otherwise take effect during the duration of a hurricane will not take effect until the end of the duration of such hurricane, unless a replacement policy has been obtained and is in effect for a claim occurring during the duration of the hurricane. We may collect premium for the period of time for which the policy period is extended.

3. With respect to Paragraph **E.2.**, a hurricane is a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service (hereafter referred to as NHC). The hurricane occurrence begins at the time a hurricane watch or hurricane warning is issued for any part of Florida by the NHC and ends 72 hours after the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the NHC.

IL 09 35 07 02

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
- 1.** The failure, malfunction or inadequacy of:
 - a.** Any of the following, whether belonging to any insured or to others:
 - (1)** Computer hardware, including microprocessors;
 - (2)** Computer application software;
 - (3)** Computer operating systems and related software;
 - (4)** Computer networks;
 - (5)** Microprocessors (computer chips) not part of any computer system; or
 - (6)** Any other computerized or electronic equipment or components; or
 - b.** Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;
due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
 - 2.** Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:
- 1.** In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
 - 2.** Under the Commercial Property Coverage Part:
 - a.** In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss – Special Form; or
 - b.** In a Covered Cause of Loss under the Causes Of Loss – Basic Form or the Causes Of Loss – Broad Form;we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100
15 August 2010

MICROORGANISM EXCLUSION (ABSOLUTE)

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This Exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This Exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

14/09/2005

LMA5018

Form approved by Lloyd's Market Association

ASBESTOS ENDORSEMENT

- A. This Policy only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically damaged during the period of insurance by one of these Listed Perils:
- fire; explosion; lightning; windstorm; hail; direct impact of vehicle, aircraft or vessel; riot or civil commotion, vandalism or malicious mischief, or accidental discharge of fire protective equipment.

This coverage is subject to each of the following specific limitations:

1. The said building or structure must be insured under this Policy for damage by that Listed Peril.
 2. The Listed Peril must be the immediate, sole cause of the damage of the asbestos.
 3. The Assured must report to Underwriters the existence and cost of the damage as soon as practicable after the Listed Peril first damaged the asbestos. However, this Policy does not insure any such damage first reported to the Underwriters more than 12 (twelve) months after the expiration, or termination, of the period of insurance.
 4. Insurance under this Policy in respect of asbestos shall not include any sum relating to:
 - (i) any faults in the design, manufacture or installation of the asbestos;
 - (ii) asbestos not physically damaged by the Listed Peril including any governmental or regulatory authority direction or request of whatsoever nature relating to undamaged asbestos.
- B. Except as set forth in the foregoing Section A, this Policy does not insure asbestos or any sum relating thereto.

14/09/2005

LMA5019

Form approved by Lloyd's Market Association

SERVICE OF SUIT CLAUSE (U.S.A.)

This Service of Suit Clause will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in any Arbitration provision within this Policy. This Clause is intended as an aid to compelling arbitration or enforcing such arbitration or arbitral award, not as an alternative to such Arbitration provision for resolving disputes arising out of this contract of insurance (or reinsurance).

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon:

Mendes & Mount, 750 Seventh Avenue, New York, New York 10019-6829, U.S.A.

and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

14/09/2005

LMA5020

Form approved by Lloyd's Market Association

APPLICABLE LAW (U.S.A.)

This Insurance shall be subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of the Service of Suit Clause (U.S.A.)

14/09/2005

LMA5021

Form approved by Lloyd's Market Association

Fraudulent Claim Clause

If the (re)insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this contract shall become void and all claim hereunder shall be forfeited.

LMA5062

04/06/2006

Form approved by Lloyd's Market Association

**U.S. Terrorism Risk Insurance Act of 2002 as amended
Not Purchased Clause**

This Clause is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended as summarized in the disclosure notice.

It is hereby noted that the Underwriters have made available coverage for "insured losses" directly resulting from an "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA") and the Insured has declined or not confirmed to purchase this coverage.

This Insurance therefore affords no coverage for losses directly resulting from any "act of terrorism" as defined in TRIA except to the extent, if any, otherwise provided by this policy. All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

LMA5092

21/12/2007

Form approved by Lloyd's Market Association

FLORIDA SURPLUS LINES NOTICE (GUARANTY ACT)

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

LMA9037
01 September 2013

FLORIDA SURPLUS LINES NOTICE (RATES AND FORMS)

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

LMA9038
01 November 2013

**FLORIDA SURPLUS LINES NOTICE (PERSONAL LINES
RESIDENTIAL PROPERTY CO-PAY PROVISION)**

**THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN
HIGH OUT-OF-POCKET EXPENSES TO YOU.**

LMA9040
01 September 2013

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

08/94
LSW1001 (Insurance)

LSW1135b
LLOYD'S PRIVACY POLICY STATEMENT

UNDERWRITERS AT LLOYD'S, LONDON

The Certain Underwriters at Lloyd's, London want you to know how we protect the confidentiality of your non-public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

INFORMATION WE COLLECT

The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

INFORMATION WE DISCLOSE

We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

CONFIDENTIALITY AND SECURITY

Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION

You have a right to request access to or correction of your personal information that is in our possession.

CONTACTING US

If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please contact the agent or broker who handled this insurance. We can provide a more detailed statement of our privacy practices upon request

MINIMUM EARNED PREMIUM CLAUSE

In the event of cancellation of this Policy by the Assured, a minimum earned premium of 25% as of inception shall become earned; any conditions of the Policy to the contrary notwithstanding.

In the event of cancellation by the Underwriters for non-payment by the Assured, the minimum premium shall be due and payable; provided however, such non-payment cancellation shall be rescinded if the Assured remits the full premium within 10 days of receiving notice of it.

In the event of any other cancellation by the Underwriters, the earned premium shall be computed pro rata, not subject to the minimum premium.

AIF 2336 (01/98)
02/98
LSW699

U.S.A.

**RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-
PHYSICAL DAMAGE-DIRECT**

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction nuclear radiation or radioactive contamination however such nuclear reaction nuclear radiation or radioactive contamination may have been caused * NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction nuclear radiation or radioactive contamination any loss or damage arising directly from that Fire shall (subject to the provisions of this policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

*NOTE.-If Fire is not an insured peril under this policy the words "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

7/5/59
N.M.A. 1191

U.S.A.

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)

(Approval by Lloyd's Underwriters' Non-Marine Association)

For attachment to insurances for the following classification in the U.S.A., its Territories and Possessions,

Puerto Rico and the Canal Zone:-

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This policy* does not apply:-

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction
 - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organisation is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organisation.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organisation.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or

equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in the endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or byproduct material; "source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by product material and (2) resulting from the operation by any person or organisation of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

any includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause

is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

*NOTE:- As respects policies which afford liability coverage's and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

17/3/60

N.M.A 1256

USA/CANADA

CANCELLATION CLAUSE

NOTWITHSTANDING anything contained in this Insurance to the contrary this Insurance may be cancelled by the Assured at any time by written notice or by surrender of this contract of insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured or by mailing to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this Insurance, written notice stating when, not less than **Thirty (30) days** thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Assured the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the customary short rate proportion of any minimum premium stipulated herein whichever is the greater.

If this Insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater.

Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of Cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

20/4/61

N.M.A. 1331

USA & CANADA

LAND, WATER AND AIR EXCLUSION

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure land (including but not limited to land on which the insured property is located), water or air, howsoever and wherever occurring, or any interest or right therein.

SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure:

- a) any loss, damage, cost or expense, or
- b) any increase in insured loss, damage, cost or expense, or
- c) any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term 'any kind of seepage or any kind of pollution and/or contamination' as used in this Endorsement includes (but is not limited to):

- a) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a 'hazardous substance' by the United States Environmental Protection Agency or as a 'hazardous material' by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
- b) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

DEBRIS REMOVAL ENDORSEMENT

THIS ENDORSEMENT CONTAINS PROVISIONS WHICH MAY LIMIT OR PREVENT RECOVERY UNDER THIS POLICY FOR LOSS WHERE COSTS OR EXPENSES FOR DEBRIS REMOVAL ARE INCURRED.

Nothing contained in this Endorsement shall override any Seepage and/or Pollution and/or Contamination Exclusion or any Radioactive Contamination Exclusion or any other Exclusion applicable to this Policy.

Any provision within this Policy (or within any other Endorsement which forms part of this Policy) which insures debris removal is cancelled and replaced by the following:

- 1) In the event of direct physical damage to or destruction of property, for which Underwriters hereon agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay (hereinafter referred to as 'Damage or Destruction'), this Policy also insures, within the sum insured, subject to the limitations and method of calculation below, and to all the other terms and conditions of the Policy, costs or expenses;
 - (a) which are reasonably and necessarily incurred by the Assured in the removal, from the premises of the Assured at which the Damage or Destruction occurred, of debris which results from the Damage or Destruction; and
 - (b) of which the Assured becomes aware and advises the amount thereof to Underwriters hereon within one year of the commencement of such Damage or Destruction.

- 2) In calculating the amount, if any, payable under this Policy for loss where costs or expenses for removal of debris are incurred by the Assured (subject to the limitations in paragraph 1 above):
 - (a) the maximum amount of such costs or expenses that can be included in the method of calculation set out in (b) below shall be the greater of USD 25,000 (twenty-five thousand dollars) or 10% (ten percent) of the amount of the Damage or Destruction from which such costs or expenses result; and
 - (b) the amount of such costs or expenses as limited in (a) above shall be added to:
 - (i) the amount of the Damage or Destruction; and
 - (ii) all other amounts of loss, which arise as a result of the same occurrence, and for which Underwriters hereon also agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay; and

the resulting sum shall be the amount to which any deductible or underlying amount to which this Policy is subject and the limit (or applicable sub-limit) of this Policy, shall be applied.

RFI750

ELECTRONIC DATE RECOGNITION EXCLUSION (EDRE)

This policy does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not; or
- b) any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not.

This clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

EDRE NMA 2802 (17/12/1997)
Form approved by Lloyd's Underwriters' Non-Marine Association
Limited

ELECTRONIC DATA ENDORSEMENT B

1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- (a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- (b) However, in the event that a peril listed below results from any of the matters described in paragraph (a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils

Fire
Explosion

2 Electronic Data Processing Media Valuation

notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled

NMA2915 25/01/01

TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

08/10/01
NMA2920

Biological or Chemical Materials Exclusion

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

NMA 2962

06/02/03

Form approved by Lloyd's Market Association [Non-Marine]

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WAR AND CIVIL WAR EXCLUSION CLAUSE

(Approved by Lloyd's Underwriters' Non-Marine Association)

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

1/1/38
NMA 464

**THIS ENDORSEMENT CHANGES THE POLICY
PLEASE READ IT CAREFULLY**

This Endorsement must be attached to the policy.

HURRICANE or TROPICAL STORM DORIAN EXCLUSION

It is hereby noted and agreed that this policy does not cover loss caused by, resulting from, contributed to by or aggravated by, resulting directly or indirectly from the above Named Storm.

Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

All other Terms, Clauses and Conditions remain unaltered.



Schedule of Lloyd's Underwriters is as follows:

Property %	General Liability %	Flood %	Contract #	Syndicate #	Syndicate %
83.00%			B08313019002019R S	AFB 2623	5.74%
				AFB 623	1.26%
				APL 1969	14.00%
				ARG 2121	9.00%
				BRT 2987	5.50%
				BRT 2988	2.00%
				HIS 33	10.00%
				KLN 510	22.50%
				MMX 2010	4.50%
				MSP 318	1.00%
				NVA 2007	13.50%
				TRV 5000	5.00%
				XLC 2003	6.00%
17.00%			B08313040002018R S	HIS 33	100.00%
100.00%					

Policy # RSK003959
Insured ATMA Beauty, Inc
Effective 12/19/2019

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TIMBER PINES PLAZA, LLC

Plaintiff,

v.

Case No.:

8:15 cv 1821 T 17 TBM

KINSALE INSURANCE COMPANY,

Defendant.

COMPLAINT AND JURY TRIAL DEMAND

Plaintiff, Timber Pines Plaza, LLC, ("Timber Pines" or "Plaintiff"), by and through its undersigned counsel, hereby sues Defendant, KINSALE INSURANCE COMPANY ("Kinsale" or "Defendant"), and as grounds therefore would state as follows:

1. This is an action for damages in excess of seventy-five thousand dollars (\$75,000) exclusive of interest, attorneys' fees, and costs.
2. At all times material hereto, Plaintiff was and is a Florida corporation with its principal place of business located at 3023-3077 Commercial Way, Spring Hill, Hernando County, Florida (the "Building" or "Property").
3. Defendant was and is a foreign corporation, organized and existing under the laws of the State of Virginia and located at 2221 Edward Holland Drive, Suite 600, Richmond, Virginia 23230.
4. Complete diversity exists between the parties in accordance with 28 U.S.C. § 1332.

TBA-31545
\$400

5. At all times material hereto, Plaintiff was and is the owner of that certain real property located at 3023-3077 Commercial Way, Spring Hill, Hernando County, Florida.

6. On or about September 9, 2010, Plaintiff procured or renewed a policy of property insurance from Defendant for the above-referenced property, a copy of which is attached hereto as **Exhibit "A"** ("the Policy") and incorporated herein.

7. Plaintiff has renewed said Policy each and every year and has paid all premiums due thereunder.

8. On or about March 24, 2011, while said Policy was in full force and effect, Plaintiff discovered damage to the Building, including, but not limited to, progressive physical damage to the walls and floors of the building consistent with damage caused by sinkhole activity.

9. Damage to the Plaintiff's Building is caused by sinkhole activity and is a covered peril under the Policy.

10. Plaintiff has made an application for insurance benefits under the Policy.

11. As a result of Plaintiff's application for insurance benefits, Defendant retained a firm to conduct geotechnical testing at the at the Building.

12. The testing performed by Defendant's retained expert demonstrated that the subject residence was sitting atop soils undergoing sinkhole activity.

13. Despite the fact that Defendant was aware that the Building was suffering from damages to the structure consistent with sinkhole activity and that sinkhole activity had been identified at the Building by Defendant's retained expert, Defendant failed and

refused to pay said benefits Plaintiff is entitled to for its loss.

14. Defendant continues to refuse to pay said benefits Plaintiff is entitled to for her loss.

15. All conditions precedent to obtaining payment of said benefits under the policy from Defendant have been complied with, met, or waived.

16. The Defendant has breached the policy of insurance by failing to pay all the benefits due thereunder.

17. Plaintiff is suffering direct physical damage to its property.

18. Plaintiff is entitled to the full cost of repairs of the damage to the Building including, but not limited to, remediation of subsurface conditions, restoration of the foundation, cosmetic repair, repairs of the cracks, structural repair, temporary repairs and other expenses necessary to repair the subject Building and, if the Building is not repairable within the applicable coverage limits, an amount equal to such limits for the total loss.

19. Due to Defendant's refusal to pay the losses sustained by Plaintiff, Plaintiff has been required to retain the services of the undersigned counsel and is obligated to pay them a reasonable fee for their services.

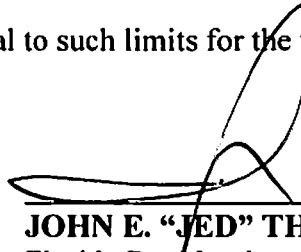
20. Accordingly, Plaintiff was forced to engage counsel in this matter and become liable for attorneys' fees and costs which include, but are not limited to, the geotechnical investigation by George Sinn of CFTL, Inc. that is reflected in the geotechnical report which is attached hereto as **Exhibit "B"** and incorporated herein (the "CFTL Report." Mr. Sinn, a geotechnical engineer, confirms sinkhole loss in the report.

21. On June 10, 2015, Plaintiff, through, counsel sent Defendant, a courtesy copy of the CFTL Report in order to request that Defendant change its denial of coverage decision.

22. To date, Defendant has not responded to Plaintiff and litigation has become unfortunately necessary.

23. Plaintiff is entitled to attorneys' fees pursuant to section 626.9373, Florida Statutes.

24. Defendant owes prejudgment interest, expert fees, costs, attorneys' fees, the costs of all structurally necessary repairs, and, if the home is not repairable within applicable coverage limits, an amount equal to such limits for the total loss.



JOHN E. "JED" THOMAS

Florida Bar Number: 097519

ERIK C. "RICK" NUTTER, JR.

Florida Bar Number: 963461

BARBARA M. HERNANDO

Florida Bar No: 0091469

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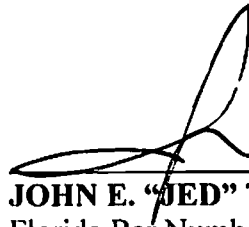
Attorneys for Plaintiff

WHEREFORE, Plaintiff demands judgment against Defendant for: (i) all general and special damages including, but not limited to the full cost of repair or replacement of Plaintiff's building; (ii) pre-judgment interest; and (iii) Court costs, costs, expert fees and attorneys' fees pursuant to section 626.9373, Florida Statutes, and such other and further relief as the court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Dated this 4th day of August, 2015.



JOHN E. "JED" THOMAS
Florida Bar Number: 097519
ERIK C. "RICK" NUTTER, JR.
Florida Bar Number: 963461
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Email: BHernando@tntattorneys.com
Attorneys for Plaintiff

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

STUDIO 417, INC., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 20-cv-03127-SRB
)	
THE CINCINNATI INSURANCE COMPANY,)	
)	
Defendant.)	

ORDER

Before the Court is Defendant The Cincinnati Insurance Company’s (“Defendant”) Motion to Dismiss. (Doc. #20.) For the reasons set forth below, the motion is DENIED.

I. BACKGROUND

Because this matter comes before the Court on a motion to dismiss, the following allegations in Plaintiffs’ First Amended Class Action Complaint (the “Amended Complaint”) are taken as true. (Doc. #16); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations and quotation marks omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *Zink v. Lombardi*, 783 F.3d 1089, 1098 (8th Cir. 2015).¹

The named Plaintiffs in this case are Studio 417, Inc. (“Studio 417”), Grand Street Dining, LLC (“Grand Street”), GSD Lenexa, LLC (“GSD”), Trezomare Operating Company, LLC (“Trezomare”), and V’s Restaurant, Inc. (“V’s Restaurant”) (collectively, the “Plaintiffs”). Studio 417 operates hair salons in the Springfield, Missouri, metropolitan area. Grand Street, GSD, Trezomare, and V’s Restaurant own and operate full-service dining restaurants in the Kansas City metropolitan area.

¹ The Amended Complaint is 54 pages long and contains 253 separate allegations. This Order only discusses those allegations and issues necessary to resolve the pending motion.

Plaintiffs purchased “all-risk” property insurance policies (the “Policies”) from Defendant for their hair salons and restaurants. (Doc. #1-1, ¶ 26.) All-risk policies cover all risks of loss except for risks that are expressly and specifically excluded. The Policies include a Building and Personal Property Coverage Form and Business Income (and Extra Expense) Coverage Form. Defendant issued each Plaintiff a separate policy, and all were in effect during the applicable time period. The parties agree that the Policies contain the same relevant language.

The Policies provide that Defendant would pay for “direct ‘loss’ unless the ‘loss’ is excluded or limited” therein. (Doc. #16, ¶ 27.) A “Covered Cause of Loss” “is defined to mean accidental [direct] physical loss *or* accidental [direct] physical damage.” (Doc. #16, ¶ 31) (emphasis supplied); (Doc. #1-1, pp. 24, 57.)² The Policies do not define “physical loss” or “physical damage.” The Policies also “do not include, and are not subject to, any exclusion for losses caused by viruses or communicable diseases.” (Doc. #16, ¶ 13.) A loss, as defined above, is a prerequisite to invoke the different types of coverage sought in this lawsuit. (*See* Doc. #21, p. 15.) These coverages are set forth below.

First, the Policies provide for Business Income coverage. Under this coverage, Defendant agreed to:

pay for the actual loss of ‘Business Income’ . . . you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’ The suspension must be caused by direct ‘loss’ to property at a ‘premises’ caused by or resulting from any Covered Cause of Loss.

(Doc. #1-1, pp. 37-38.)

Second, the Policies provide “Civil Authority” coverage. This coverage applies to:

the actual loss of ‘Business Income’ sustained ‘and necessary Extra Expense’ sustained ‘caused by action of civil authority that prohibits access to’ the Covered

² All page numbers refer to the pagination automatically generated by CM/ECF.

Property when a Covered Cause of Loss causes direct damage to property other than the Covered Property, the civil authority prohibits access to the area immediately surrounding the damaged property, and ‘the action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage[.]’

(Doc. #16, ¶ 42.)

Third, the Policies provide “Ingress and Egress” coverage. This coverage is specified as follows:

We will pay for the actual loss of ‘Business Income’ you sustain and necessary Extra Expense you sustain caused by the prevention of existing ingress or egress at a ‘premises’ shown in the Declarations due to direct ‘loss’ by a Covered Cause of Loss at a location contiguous to such ‘premises.’ However, coverage does not apply if ingress or egress from the ‘premises’ is prohibited by civil authority.

(Doc. #1-1, p. 95.)

Fourth, the Policies provide “Dependent Property” coverage. This coverage applies if the insured suffers a loss of Business Income because of a suspension of its business “caused by direct ‘loss’ to ‘dependent property.’” (Doc. #1-1, pp. 63-64.) “Dependent property means property operated by others whom [the insured] depend[s] on to . . . deliver materials or services to [the insured] . . . [a]ccept [the insured’s] products or services . . . [and] [a]ttract customers to [the insured’s] business.” (Doc. #1-1, p. 64.)

Finally, the Policies provide what is commonly known as “Sue and Labor” coverage. In relevant part, the Policies require the insured to “take all reasonable steps to protect the Covered Property from further damage,” and to keep a record of expenses incurred to protect the Covered Property for consideration in the settlement of the claim. (Doc. #1-1, pp. 49-50.) The Policies do not exclude or limit losses from viruses, pandemics, or communicable diseases. (Doc. #16, ¶ 28.)

Plaintiffs seek coverage under the Policies for losses caused by the Coronavirus (“COVID-19”) pandemic. Plaintiffs allege that over the last several months, it is likely that customers, employees, and/or other visitors to the insured properties were infected with COVID-19 and thereby infected the insured properties with the virus. (Doc. #1-1, ¶ 60.) Plaintiffs allege that COVID-19 “is a physical substance,” that it “live[s] on” and is “active on inert physical surfaces,” and is “emitted into the air.” (Doc. #16, ¶¶ 47, 49-60.) Plaintiffs further allege that the presence of COVID-19 “renders physical property in their vicinity unsafe and unusable,” and that they “were forced to suspend or reduce business at their covered premises.” (Doc. #1-1, ¶¶ 14, 58, 102.)

In response to the COVID-19 pandemic, civil authorities in Missouri and Kansas issued orders requiring the suspension of business at various establishments, including Plaintiffs’ businesses (the “Closure Orders”). The Closure Orders “have required and continue to require Plaintiffs to cease and/or significantly reduce operations at, and . . . have prohibited and continue to prohibit access to, the[ir] premises.” (Doc. #16, ¶¶ 106-107.) Plaintiffs allege that the presence of COVID-19 and the Closure Orders caused a direct physical loss or direct physical damage to their premises “by denying use of and damaging the covered property, and by causing a necessary suspension of operations during a period of restoration.” (Doc. #16, ¶¶ 102.) Plaintiffs allege that their losses are covered by the Business Income, Civil Authority, Ingress and Egress, Dependent Property, and Sue and Labor coverages discussed above. (Doc. #16, ¶¶ 103-108.) Plaintiffs provided Defendant notice of their losses, but Defendant denied the claims. (Doc. #16, ¶¶ 110-115.)

On April 27, 2020, Plaintiffs filed this lawsuit against Defendant. The Amended Complaint asserts claims for a declaratory judgment and for breach of contract based on

Business Income coverage (Counts I, II), Extra Expense coverage (Counts III, IV), Dependent Property coverage (Counts V, VI), Civil Authority coverage (Counts VII, VIII), Extended Business Income coverage (Counts IX, X), Ingress and Egress coverage (Counts XI, XII), and Sue and Labor coverage (Counts XIII, XIV). The Amended Complaint also seeks class certification for 14 nationwide classes (one for each cause of action) and a Missouri Subclass that consists of “all policyholders who purchased one of Defendant’s policies in Missouri and were denied coverage due to COVID-19.” (Doc. #16, ¶¶ 117-125; *see also* Doc. #21, pp. 12-13.)

Defendant responded to the Amended Complaint by filing the pending motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Defendant’s overarching argument is that the Policies provide coverage “only for income losses tied to physical damage to property, not for economic loss caused by governmental or other efforts to protect the public from disease . . . the same direct physical loss requirement applies to all the coverages for which Plaintiffs sue.” (Doc. #21, p. 8.) Even if a loss is adequately alleged, Defendant argues that the Amended Complaint fails to state a claim as to each type of coverage at issue. Plaintiffs oppose the motion, and the parties’ arguments are addressed below.

II. LEGAL STANDARD

Rule 12(b)(6) provides that a defendant may move to dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ash v. Anderson Merchs., LLC*, 799 F.3d 957, 960 (8th Cir. 2015) (quoting *Iqbal*, 556 U.S. at 678). When

deciding a motion to dismiss, “[t]he factual allegations of a complaint are assumed true and construed in favor of the plaintiff, even if it strikes a savvy judge that actual proof of those facts is improbable.” *Data Mfg., Inc. v. United Parcel Serv., Inc.*, 557 F.3d 849, 851 (8th Cir. 2009) (citations and quotations omitted).

Because this case is based on diversity jurisdiction, “state law controls the construction of [the] insurance policies[.]” *J.E. Jones Const. Co. v. Chubb & Sons, Inc.*, 486 F.3d 337, 340 (8th Cir. 2007). Under Missouri law, “[t]he interpretation of an insurance policy is a question of law to be determined by the Court.” *Lafollette v. Liberty Mut. Fire Ins. Co.*, 139 F. Supp. 3d 1017, 1021 (W.D. Mo. 2015) (quoting *Mendota Ins. Co. v. Lawson*, 456 S.W.3d 898, 903 (Mo. App. W.D. 2015)).³ “Missouri courts read insurance contracts ‘as a whole and determine the intent of the parties, giving effect to that intent by enforcing the contract as written.’” *Id.* (citing *Thiemann v. Columbia Pub. Sch. Dist.*, 338 S.W.3d 835, 840 (Mo. App. W.D. 2011)). “Insurance policies are to be given a reasonable construction and interpreted so as to afford coverage rather than to defeat coverage.” *Cincinnati Ins. Co. v. German St. Vincent Orphan Ass’n, Inc.*, 54 S.W.3d 661, 667 (Mo. App. E.D. 2001).

“Policy terms are given the meaning which would be attached by an ordinary person of average understanding if purchasing insurance.” *Vogt v. State Farm Life Ins. Co.*, 963 F.3d 753, 763 (8th Cir. 2020) (applying Missouri law) (quotations omitted). When interpreting policy terms, “the central issue . . . is determining whether any ambiguity exists, which occurs where there is duplicity, indistinctness, or uncertainty in the meaning of the words used in the contract.” *Id.* (quotations omitted). If the “insurance policies are unambiguous, they will be enforced as

³ Defendant notes that Kansas law may apply to one policy, but contends that Missouri and Kansas law are indistinguishable for purposes of the pending motion. (Doc. #21, p. 13 n.10.) Plaintiffs do not challenge this assertion. For purposes of this Order, the Court assumes that Missouri law applies.

written absent a statute or public policy requiring coverage. If the language is ambiguous, it will be construed against the insurer.” *Id.* (quotations omitted).

III. DISCUSSION

A. Plaintiffs Have Adequately Alleged a Direct “Physical Loss” Under the Policies.

Defendant’s first argument is that Plaintiffs have not adequately pled a “physical loss” as required by the Policies. (Doc. # 21, pp. 7-8, 15-16, 19-25; Doc. #37, pp. 2-10.) Defendant argues that “direct physical loss requires actual, tangible, permanent, physical alteration of property.” (Doc. #21, p. 19) (citing cases). Defendant claims that the Policies provide property insurance coverage, and “are designed to indemnify loss or damage to property, such as in the case of a fire or storm. [COVID-19] does not damage property; it hurts people.” (Doc. #21, p. 7.) According to Defendant, the requirement of a tangible physical loss applies to—and precludes—each type of coverage sought in this case.

In response, Plaintiffs agree that “physical loss” and “physical damage” are “the key phrases” in the Policies. (Doc. #31, p. 7.) However, Plaintiffs emphasize that the Policies expressly cover “physical loss *or* physical damage.” (Doc. #31, p. 11) (emphasis supplied). This “necessarily means that either a ‘loss’ or ‘damage’ is required, and that ‘loss’ is distinct from ‘damage.’” (Doc. #31, p. 11.) As such, Plaintiffs argue that Defendant’s focus on an actual physical alteration ignores the coverage for a “physical loss.” Plaintiffs further argue that Defendant could have defined “physical loss” and “physical damage,” but failed to do so. Plaintiffs argue this case should not be disposed of on a motion to dismiss because “even if [Defendant’s] interpretation of the policy language is reasonable . . . Plaintiffs’ interpretation is also reasonable[.]” (Doc. #31, p. 11.)

Upon review of the record, the Court finds that Plaintiffs have adequately stated a claim for direct physical loss. First, because the Policies do not define a direct “physical loss” the Court must “rely on the plain and ordinary meaning of the phrase.” *Vogt*, 963 F.3d at 763; *Mansion Hills Condo. Ass’n v. Am. Family Mut. Ins. Co.*, 62 S.W.3d 633, 638 (Mo. App. E.D. 2001) (recognizing that standard dictionaries should be consulted for determining ordinary meaning). The Merriam-Webster dictionary defines “direct” in part as “characterized by close logical, causal, or consequential relationship.” Merriam-Webster, www.merriam-webster.com/dictionary/direct (last visited August 12, 2020). “Physical” is defined as “having material existence: perceptible especially through the senses and subject to the laws of nature.” Merriam-Webster, www.merriam-webster.com/dictionary/physical (last visited August 12, 2020). “Loss” is “the act of losing possession” and “deprivation.” Merriam-Webster, www.merriam-webster.com/dictionary/loss (last visited August 12, 2020).

Applying these definitions, Plaintiffs have adequately alleged a direct physical loss. Plaintiffs allege a causal relationship between COVID-19 and their alleged losses. Plaintiffs further allege that COVID-19 “is a physical substance,” that it “live[s] on” and is “active on inert physical surfaces,” and is also “emitted into the air.” (Doc. #16, ¶¶ 47, 49-60.) COVID-19 allegedly attached to and deprived Plaintiffs of their property, making it “unsafe and unusable, resulting in direct physical loss to the premises and property.” (Doc. #16, ¶ 58.) Based on these allegations, the Amended Complaint plausibly alleges a “direct physical loss” based on “the plain and ordinary meaning of the phrase.” *Vogt*, 963 F.3d at 963.

Second, the Court “must give meaning to all [policy] terms and, where possible, harmonize those terms in order to accomplish the intention of the parties.” *Macheca Transp. v. Philadelphia Indem. Ins. Co.*, 649 F.3d 661, 669 (8th Cir. 2011) (applying Missouri law). Here,

the Policies provide coverage for “accidental physical loss *or* accidental physical damage.” (Doc. #1-1, p. 57) (emphasis supplied). Defendant conflates “loss” and “damage” in support of its argument that the Policies require a tangible, physical alteration. However, the Court must give meaning to both terms. *See Nautilus Grp., Inc. v. Allianz Global Risks US*, No. C11-5281BHS, 2012 WL 760940, at * 7 (W.D. Wash. Mar. 8, 2012) (stating that “if ‘physical loss’ was interpreted to mean ‘damage,’ then one or the other would be superfluous”).

The Court’s finding that Plaintiffs have adequately stated a claim is supported by case law. In *Hampton Foods, Inc. v. Aetna Cas. & Sur. Co.*, 787 F.2d 349 (8th Cir. 1986), the relevant provision provided that “[t]his policy insures against loss of or damage to the property insured . . . resulting from all risks of direct physical loss[.]” *Id.* at 351. Applying Missouri law, the Eighth Circuit found this provision was ambiguous and affirmed the district court’s decision that it covered “any loss or damage due to the *danger* of direct physical loss[.]” *Id.* at 352 (emphasis in original).

In *Mehl v. The Travelers Home & Marine Ins. Co.*, Case No. 16-CV-1325-CDP (E.D. Mo. May 2, 2018), the plaintiff discovered brown recluse spiders in his home. *Id.* at p. 1. The plaintiff unsuccessfully attempted to eliminate the spiders, and then left the home. *Id.* The plaintiff considered the property uninhabitable and filed a claim under his homeowners insurance policy for loss of use of the property. *Id.* After his insurance company denied the claim, the plaintiff filed suit for breach of contract. The insurance company moved for summary judgment and argued that the policy only covered “direct physical loss” which required “actual physical damage.” *Id.* at p. 2.

Mehl rejected this argument. As in this case, the *Mehl* policy did not define “physical loss” and the insurance company “point[ed] to no language in the policy that would lead a

reasonable insured to believe that actual physical damage is required for coverage.” *Id.*

Although the policy in *Mehl* provided coverage for “loss of use,” *Mehl* supports the conclusion that “physical loss” is not synonymous with physical damage. *Id.*

Other courts have similarly recognized that even absent a physical alteration, a physical loss may occur when the property is uninhabitable or unusable for its intended purpose. *See Port Auth. of New York and New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 236 (3d Cir. 2002) (affirming denial of coverage but recognizing that “[w]hen the presence of large quantities of asbestos in the air of a building is such as to make the structure uninhabitable and unusable, then there has been a distinct [physical] loss to its owner”); *Prudential Prop. & Cas. Ins. Co. v. Lilliard-Roberts*, CV-01-1362-ST, 2002 WL 31495830, at * 9 (D. Or. June 18, 2002) (citing case law for the proposition that “the inability to inhabit a building [is] a ‘direct, physical loss’ covered by insurance”); *General Mills, Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 152 (Minn. Ct. App. 2001) (“We have previously held that direct physical loss can exist without actual destruction of property or structural damage to property; it is sufficient to show that insured property is injured in some way.”).

To be sure, and as argued by Defendant, there is case law in support of its position that physical tangible alteration is required to show a “physical loss.” (Doc. #21, pp. 19-25; Doc. #37, pp. 3-10.)⁴ However, Plaintiffs correctly respond that these cases were decided at the summary judgment stage, are factually dissimilar, and/or are not binding. For example, Defendant argues that “[a] seminal case concerning the direct physical loss requirement is *Source Food Tech., Inc. v. U.S. Fid. & Guar. Co.*, 465 F.3d 834 (8th Cir. 2006).” (Doc. #21, pp.

⁴ See also Scott G. Johnson, “What Constitutes Physical Loss or Damage in a Property Insurance Policy?” 54 Tort Trial & Ins. Prac. L.J. 95, 96 (2019) (“[W]hen the insured property’s structure is unaltered, at least to the naked eye . . . [c]ourts have not uniformly interpreted the physical loss or damage requirement[.]”)

19-20.) However, *Source Food* was decided in the summary judgment context and under Minnesota law. *Source Food*, 465 F.3d at 834-36. Moreover, the facts of *Source Foods* are distinguishable. In that case, the insured's beef was not allowed to cross from Canada into the United States because of an embargo related to mad cow disease. *Id.* at 835. Because of the embargo, the insured was unable to fill orders and had to find a new supplier. Importantly, there was no evidence that the beef was actually contaminated. *Id.*

The insured sought coverage based on a provision requiring “direct physical loss to property.” The district court denied coverage, and the Eighth Circuit affirmed, explaining that:

[a]lthough Source Food's beef product in the truck could not be transported to the United States due to the closing of the border to Canadian beef products, the beef product on the truck was not—as Source Foods concedes—physically contaminated or damaged in any manner. To characterize Source Food's inability to transport its truckload of beef product across the border and sell the beef product in the United States as direct physical loss to property would render the word ‘physical’ meaningless.

Id. at 838.

The facts alleged in this case do not involve the transportation of uncontaminated physical products. Instead, Plaintiffs allege that COVID-19 is a highly contagious virus that is physically “present . . . in viral fluid particles,” and is “deposited on surfaces or objects.” (Doc. #16, ¶¶ 47, 50.) Plaintiffs further allege that this physical substance is likely on their premises and caused them to cease or suspend operations. Unlike *Source Foods*, the Plaintiffs expressly allege physical contamination. Finally, *Source Foods* recognized (under Minnesota law) that physical loss could be found without structure damage. *Source Foods*, 465 F.3d 837 (stating that property could be “physically contaminated . . . by the release of asbestos fibers”). Neither *Source Foods* nor the other cases cited by Defendant warrant dismissal under Rule 12(b)(6).

Defendant’s reply brief cites recent out-of-circuit decisions which found that COVID-19 does not cause direct physical loss. (Doc. #37, pp. 5-6.) For example, Defendant relies on *Social Life Magazine, Inc. v. Sentinel Ins. Co., Ltd.*, 1:20-cv-03311-VEC (S.D.N.Y. 2020). Defendant argues that “*Social Life* famously states that the virus damages lungs, not printing presses.” (Doc. #37, p. 6.) But the present case is not about whether COVID-19 damages lungs, and the presence of COVID-19 on premises, as is alleged here, is not a benign condition. Regardless of the allegations in *Social Life* or other cases, Plaintiffs here have plausibly alleged that COVID-19 particles attached to and damaged their property, which made their premises unsafe and unusable.⁵ This is enough to survive a motion to dismiss.

Defendant also contends that if Plaintiffs’ interpretation is accepted, physical loss would be found “whenever a business suffers economic harm.” (Doc. #21, p. 22; Doc. #37, p. 2.) That is not what the Court holds here. Although Plaintiffs allege economic harm, that harm is tethered to their alleged physical loss caused by COVID-19 and the Closure Orders. (Doc. #1-1, ¶¶ 106-107) (alleging that the COVID-19 pandemic and Closure Orders required Plaintiffs to “cease and/or significantly reduce operations at, and . . . have prohibited and continue to prohibit access

⁵ Defendant also relies on *Gavrilides Mgmt. Co., LLC v. Michigan Ins. Co.*, Case No. 20-258-CB (Ingham County, Mich. July 1, 2020) (transcript regarding defendant’s motion for summary disposition). (Doc. #37-2.) *Gavrilides* is distinguishable, in part, because the court recognized that “the complaint also states a[t] no time has Covid-19 entered the Soup Shop of the Bistro . . . and in fact, states that it has never been present in either location.” (Doc. #37-2, p. 21.)

to, the premises.”)⁶ For all these reasons, the Court finds that Plaintiffs have adequately alleged a direct physical loss under the Policies.⁷

B. Plaintiffs Have Plausibly Stated a Claim for Civil Authority Coverage.

Defendant next argues that Plaintiffs’ claim for civil authority coverage should be dismissed for failure to state a claim. Defendant presents two arguments in support of dismissal. Defendant first contends that civil authority coverage requires “direct physical loss to property other than the Plaintiffs’ property,” and that “[j]ust as the Coronavirus is not causing direct physical loss to Plaintiffs’ premises, it is not causing direct physical loss to other property.” (Doc. #21, p. 27.)

This argument is rejected for substantially the same reasons as discussed above. Plaintiffs adequately allege that they suffered a physical loss, and such loss is applicable to other property. Additionally, Plaintiffs allege that civil authorities issued closure and stay at home orders throughout Missouri and Kansas, which includes property other than Plaintiffs’ premises.

Defendant’s second argument is that civil authority coverage “requires that access to Plaintiffs’ premises be prohibited by an order of Civil Authority. But, none of the orders Plaintiffs allege prohibit access to their premises. To the contrary, the Plaintiffs admit . . . that the Closure Orders allowed restaurant premises to remain open for food preparation, take-out and

⁶ Defendant argues that COVID-19 does not present a physical loss because “the virus either dies naturally in days, or it can be wiped away.” (Doc. #21, pp. 24-25.) However, as stated, a physical loss has been adequately alleged insofar as the presence of COVID-19 and the Closure Orders prohibited or significantly restricted access to Plaintiffs’ premises. See *Gregory Packaging, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2014 WL 6675934, at * 6 (D.N.J. Nov. 25, 2014) (recognizing that “courts considering non-structural property damage claims have found that buildings rendered uninhabitable by dangerous gases or bacteria suffered direct physical loss or damage”). Defendant also argues that Plaintiffs have failed to adequately allege that COVID-19 was actually present on their premises. Based on Plaintiffs’ allegations, and because of COVID-19’s wide-spread, this argument is also rejected.

⁷ Although it appears to be persuasive, the Court need not address Defendant’s additional argument that the Amended Complaint fails to allege “physical damage.”

delivery. Likewise, Plaintiffs concede that the Closure Orders did not prohibit access to salon premises.” (Doc. #21, pp. 28-29) (citations omitted).

Upon review of the record, the Court finds that Plaintiffs have adequately alleged that their access was prohibited. With respect to Studio 417’s hair salons, the Amended Complaint alleges that a Closure Order “required hair salons and all other businesses that provide personal services to suspend operations.” (Doc. #16, ¶ 67.) With respect to Plaintiffs’ restaurants, the Closure Orders mandated “that all inside seating is prohibited in restaurants,” and that “every person in the State of Missouri shall avoid eating or drinking at restaurants,” with limited exceptions for “drive-thru, pickup, or delivery options.” (Doc. #16, ¶¶ 71-80.)

At the motion to dismiss stage, these allegations plausibly allege that access was prohibited to such a degree as to trigger the civil authority coverage. *Compare TMC Stores, Inc. v. Federated Mut. Ins. Co.*, No. A04-1963, 2005 WL 1331700, at * 4 (Minn. Ct. App. June 7, 2005) (“Because access remained and the level of business was not dramatically decreased, the civil authority section of the insurance policy is inapplicable and the district court did not err in granting summary judgment.”). This is particularly true insofar as the Policies require that the “civil authority prohibits access,” but does not specify “all access” or “any access” to the premises. For these reasons, Plaintiffs have adequately stated a claim for civil authority coverage.

C. Plaintiffs Have Plausibly Stated a Claim for Ingress and Egress Coverage.

Defendant argues that Plaintiffs’ claim for ingress and egress coverage should be dismissed for two reasons. First, Defendant argues that such coverage “requires both a direct physical loss at a location contiguous to the insured’s property and the prevention of access to the insured’s property as a result of that direct physical loss,” and that Plaintiffs fail to allege a direct physical

loss to any location. (Doc. #21, p. 30.) For substantially the same reasons discussed above, this argument is rejected.

Second, Defendant argues that this “coverage does not apply if ingress or egress from the ‘premises’ is prohibited by civil authority.” (Doc. #21, p. 24; Doc. #1-1, p. 95.) Defendant contends that “[h]ere, the Closure Orders issued by civil authorities are the only identified causes of Plaintiffs’ alleged losses.” (Doc. #21, p. 30.) However, Plaintiffs have alleged that both COVID-19 and the Closure Orders rendered the premises unsafe for ingress and egress. (Doc. #1-1, p. 3, ¶ 14 (“Plaintiffs were forced to suspend or reduce business at their covered premises due to COVID-19 and the ensuing orders issued by civil authorities[.]”). The Court finds that Plaintiffs have adequately stated a claim for ingress and egress coverage.

D. Plaintiffs Have Plausibly Stated a Claim for Dependent Property Coverage.

Defendant argues that Plaintiffs’ claim for dependent property coverage should be dismissed for two reasons. First, Defendant argues that this coverage “requires both a direct physical loss to dependent property and a necessary suspension of the insured’s business as a result of that direct physical loss.” (Doc. #21, p. 30.) Defendant contends that “[h]ere, again, the [Amended] Complaint does not allege any facts that show direct physical loss at any location, let alone a dependent property.” (Doc. #21, pp. 30-31.) For substantially the same reasons discussed above, this argument is rejected.

Second, Defendant argues that Plaintiffs have failed to adequately allege a suspension of their businesses because of the lack of material or services from a “dependent property.” (Doc. #21, pp. 30-31.) As stated above, dependent property is defined as “property operated by others whom [the insured] depend[s] on to . . . deliver materials or services to [the insured] . . . [a]ccept [the insured’s] products or services . . . [or] [a]ttract customers to [the insured’s] business.”

(Doc. #1-1, p. 64.) The Amended Complaint adequately alleges that Plaintiffs suffered a loss of materials, services, and lack of customers as a result of COVID-19 and the Closure Orders. The Court therefore finds that Plaintiffs have adequately stated a claim for dependent property coverage.

E. Plaintiffs Have Plausibly Stated a Claim for Sue and Labor Coverage.

Finally, Defendant moves to dismiss Plaintiffs' claim for sue and labor coverage. Defendant argues that this is not an additional coverage, but instead imposes a duty on the insured to prevent further damage and to keep a record of expenses incurred in the event of a covered loss. Defendant argues that because Plaintiffs have failed to adequately allege a covered loss, a claim has not been stated for this coverage.

However, regardless of the title of this claim, Defendant acknowledges that in the event of a covered loss, "the insured can recover these expenses[.]" (Doc. #21, p. 31.) As discussed above, the Court finds that Plaintiffs have adequately stated a claim for a covered loss. Moreover, Plaintiffs allege that in complying with the Closure Orders and by suspending operations, they "incurred expenses in connection with reasonable steps to protect Covered Property." (Doc. #16, ¶ 250.) Consequently, the Court finds that Plaintiffs have adequately stated a claim for sue and labor coverage.

In sum, Defendant's motion to dismiss will be denied in its entirety. The Court emphasizes that Plaintiffs have merely pled enough facts to proceed with discovery. Discovery will shed light on the merits of Plaintiffs' allegations, including the nature and extent of COVID-19 on their premises. In addition, the Court emphasizes that all rulings herein are subject to further review following discovery. Subsequent case law in the COVID-19 context, construing

similar insurance provisions, and under similar facts, may be persuasive. If warranted, Defendant may reassert its arguments at the summary judgment stage.

IV. CONCLUSION

Accordingly, Defendant The Cincinnati Insurance Company's Motion to Dismiss (Doc. #20) is DENIED.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: August 12, 2020

EXHIBIT D



FORMS - FILED

JULY 6, 2006

FROM: LARRY PODOSHEN, SENIOR ANALYST

COMMERCIAL PROPERTY

LI-CF-2006-175

NEW ENDORSEMENTS FILED TO ADDRESS EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This circular announces the submission of forms filings to address exclusion of loss due to disease-causing agents such as viruses and bacteria.

BACKGROUND

Commercial Property policies currently contain a pollution exclusion that encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

ISO ACTION

We have submitted forms filing CF-2006-OVBEF in all ISO jurisdictions and recommended the filing to the independent bureaus in other jurisdictions. This filing introduces new endorsement [CP 01 40 07 06](#) - Exclusion Of Loss Due To Virus Or Bacteria, which states that there is **no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.**

Note: In Alaska, District of Columbia, Louisiana*, New York and Puerto Rico, we have submitted a different version of this filing, containing new endorsement [CP 01 75 07 06](#) in place of CP 01 40. The difference relates to lack of implementation of the mold exclusion that was implemented in other jurisdictions under a previous multistate filing.

Both versions of CF-2006-OVBEF are attached to this circular.

* In Louisiana, the filing was submitted as a recommendation to the Property Insurance Association of Louisiana (PIAL), the independent bureau with jurisdiction for submission of property filings.

PROPOSED EFFECTIVE DATE

Filing CF-2006-OVBEF was submitted with a proposed effective date of January 1, 2007, in accordance with the applicable effective date rule of application in each state, with the exception of various states for which the insurer establishes its own effective date.

Upon approval, we will announce the actual effective date and state-specific rule of effective date application for each state.

RATING SOFTWARE IMPACT

New attributes being introduced with this revision:

- A new form is being introduced.

CAUTION

This filing has not yet been approved. If you print your own forms, do not go beyond the proof stage until we announce approval in a subsequent circular.

RELATED RULES REVISION

We are announcing in a separate circular the filing of a corresponding rules revision. Please refer to the **Reference(s)** block for identification of that circular.

REFERENCE(S)

[LI-CF-2006-176](#) (7/6/06) - New Additional Rule Filed To Address Exclusion Of Loss Due To Virus Or Bacteria

ATTACHMENT(S)

- Multistate Forms Filing CF-2006-OVBEP
- State-specific version of Forms Filing CF-2006-OVBEP (Alaska, District of Columbia, Louisiana, New York, Puerto Rico)

We are sending these attachments only to recipients who asked to be put on the mailing list for attachments. If you need the attachments for this circular, contact your company's circular coordinator.

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COMMERCIAL FIRE AND ALLIED LINES
FORMS FILING CF-2006-OVBEF

Amendatory Endorsement - Exclusion Of Loss Due To Virus Or Bacteria

About This Filing

This filing addresses exclusion of loss due to disease-causing agents such as viruses and bacteria.

New Form

We are introducing:

- ◆ Endorsement **CP 01 40 07 06** - Exclusion Of Loss Due To Virus Or Bacteria

Related Filing(s)

Rules Filing CF-2006- OVBEB

Introduction

The current pollution exclusion in property policies encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

An example of bacterial contamination of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part to inherent qualities in the property itself. Some other examples of viral and bacterial contaminants are rotavirus, SARS, influenza (such as avian flu), legionella and anthrax. The universe of disease-causing organisms is always in evolution.

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.

Current Concerns

Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. In addition, pollution exclusions are at times narrowly applied by certain courts. In recent years, ISO has filed exclusions to address specific exposures relating to contaminating or harmful substances. Examples are the mold exclusion in property and liability policies and the liability exclusion addressing silica dust. Such exclusions enable elaboration of the specific exposure and thereby can reduce the likelihood of claim disputes and litigation.

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.

In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms.

Features Of New Amendatory Endorsement

The amendatory endorsement presented in this filing states that there is **no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease**. The exclusion (which is set forth in Paragraph B of the endorsement) applies to property damage, time element and all other coverages; introductory Paragraph A prominently makes that point. Paragraphs C and D serve to avoid overlap with other exclusions, and Paragraph E emphasizes that other policy exclusions may still apply.

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COMMERCIAL PROPERTY
CP 01 40 07 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

- A.** The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.
However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C.** With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supersedes any exclusion relating to "pollutants".
- D.** The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
 - 1.** Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
 - 2.** Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E.** The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

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ALASKA, DISTRICT OF COLUMBIA, LOUISIANA, NEW YORK, PUERTO RICO
COMMERCIAL FIRE AND ALLIED LINES
FORMS FILING CF-2006-OVBEF

Amendatory Endorsement - Exclusion Of Loss Due To Virus Or Bacteria

About This Filing

This filing addresses exclusion of loss due to disease-causing agents such as viruses and bacteria.

New Form

We are introducing:

- ◆ Endorsement **CP 01 75 07 06** - Exclusion Of Loss Due To Virus Or Bacteria

Related Filing(s)

Rules Filing CF-2006-OVBER

Introduction

The current pollution exclusion in property policies encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

An example of bacterial contamination of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part to inherent qualities in the property itself. Some other examples of viral and bacterial contaminants are rotavirus, SARS, influenza (such as avian flu), legionella and anthrax. The universe of disease-causing organisms is always in evolution.

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.

Current Concerns

Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. In addition, pollution exclusions are at times narrowly applied by certain courts. In recent years, ISO has filed exclusions to address specific exposures relating to contaminating or harmful substances. Examples are the mold exclusion in property and liability policies and the liability exclusion addressing silica dust. Such exclusions enable elaboration of the specific exposure and thereby can reduce the likelihood of claim disputes and litigation.

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.

In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms.

Features Of New Amendatory Endorsement

The amendatory endorsement presented in this filing states that there is **no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease**. The exclusion (which is set forth in Paragraph B of the endorsement) applies to property damage, time element and all other coverages; introductory Paragraph A prominently makes that point. Paragraph C serves to avoid overlap with another exclusion, and Paragraph D emphasizes that other policy exclusions may still apply.

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COMMERCIAL PROPERTY
CP 01 75 07 06

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

- A.** The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.
- However, this exclusion does not apply to loss or damage caused by or resulting from fungus. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C.** With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supercedes any exclusion relating to "pollutants".
- D.** The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

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