

CAUSE NO. _____

**HOUSTON LIVESTOCK SHOW AND
RODEO, INC.**

Plaintiff,

v.

**HALLMARK FINANCIAL SERVICES,
INC. D/B/A HALLMARK SPECIALTY
INSURANCE COMPANY**

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY

_____ **JUDICIAL DISTRICT**

ORIGINAL PETITION AND JURY DEMAND

Plaintiff HOUSTON LIVESTOCK SHOW AND RODEO, INC. (referred hereto as “Plaintiff or “HLSR”) files this Original Petition and Jury Demand against Defendant HALLMARK FINANCIAL SERVICES, INC. d/b/a HALLMARK SPECIALTY INSURANCE COMPANY (referred hereto as “Defendant”) and would respectfully show the Court as follows:

I. DISCOVERY LEVEL

1.1 This case will be a Level II case for discovery purposes.

II. PARTIES, JURISDICTION AND VENUE

2.1 Plaintiff HOUSTON LIVESTOCK SHOW AND RODEO, INC. is a non-profit corporation organized under the laws of the State of Texas with its principal place of business in Houston, Harris County, Texas. HARRIS COUNTY SPORTS & CONVENTION CORPORATION (“HCSCC”) is the landlord to HLSR, and HLSR is named as an additional insured on HCSCC’s policy with Defendant.

2.2 Defendant HALLMARK FINANCIAL SERVICES, INC. d/b/a HALLMARK SPECIALTY INSURANCE COMPANY (“Hallmark”) is an insurance company with a principal place of business in the State of Texas at 777 Main Street, Suite 1000, Fort Worth, Texas 76102. Hallmark may be served with process through its registered agent, Jeffrey Passmore, 5420 Lyndon

B. Johnson Freeway, Suite 1100, Dallas, Texas 75240, or wherever he may be found. Citation is requested to be issued at this time.

2.3 The amount in controversy in this case is within the jurisdictional limits of this Court. Jurisdiction is proper pursuant to TEX. CIV. PRAC. & REM. CODE §37.001, et seq.

2.4 Venue is proper in Harris County, Texas because all or a substantial part of the events giving rise to the claim occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE §15.002(a)(1).

III. NATURE OF THE ACTION

3.1 This is a breach of contract and bad-faith dispute involving an insurance carrier who provided commercial business interruption coverage to Plaintiff. Defendant conducted business with the Plaintiff's landlord, HCSCC, in providing insurance coverage for damage and losses caused by the recent COVID-19 pandemic and governmental responses thereto. The policy in question, as sold by Defendant's agents, (hereafter referred to as "The Policy") contained coverage for a loss of business income. At all times pertinent hereto, Plaintiff fully complied with all the terms and conditions of under the Policy issued by Defendant.

3.2 Defendant HALLMARK SPECIALTY INSURANCE COMPANY issued Policy Number 73PRP19A01C and Renewal of 73PRP189D89.

3.3. Prior to March 11, 2020, individuals visiting NRG Park Complex Property unknowingly carried COVID-19 onto the premises and their actions of touching and breathing on handrails, doorknobs, equipment, walls, doors, and numerous other types of insured property damaged and contaminated the insured property, making it capable of contaminating visitors, volunteers and employees. On or about March 11, 2020, Dr. David Perse, Public Health Authority for the City of Houston Health Department, issued a Health Order to Quarantine the NRG Park Complex Property, which required HLSR and HCSCC to prohibit persons from

entering the property covered under The Policy. HLSR and HCSCC had no choice but to cease business operations due to a valid civil authority closure order specific to the insured property.

3.4 On or about March 13, 2020, Texas Governor Gregg Abbott declared a state of disaster in Texas due to COVID-19. As a result of the widespread pandemic in Texas, it was critical for every business owner to mitigate the spread of the virus to protect the health and welfare of Texans. Under the Texas Code § 418.016, Governor Abbott suspended any regulatory statute “prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action” as a way for business owners to manage the State-declared disaster. As a public entertainment forum, HLSR and HCSCC had no ability to remain open and were forced to suspend business operations because of the second and equally wide-reaching civil authority closure order from Governor Abbott.

3.5 Plaintiff suffered total loss of business income as a result for the remainder of the 2020 Season and accordingly submitted a notice of claim on or about April 6, 2020 for the covered losses sustained as a result of the two civil authority closure orders and the quarantine notice received from the City of Houston Health Department.

3.6 On May 29, 2020, Defendant Hallmark issued a reservation of rights letter. Hallmark failed to fully and thoroughly investigate the loss in that it failed to conduct any testing to quantify the degree and extent of virus contamination at the insured property, failed to interview employees of HLSR or HCSCC about the loss, failed to consider or even address the civil authority closure orders or the quarantine order, and otherwise failed to do what any other reasonable property insurer would have done when investigating a catastrophic loss of this magnitude.

3.7 Plaintiff sustained a significant loss of business income related to its business disruption caused by the COVID-19 virus and the municipal, county and state governmental response to the virus specifically related to this insured and this property.

3.8 HLSR is one of the largest livestock shows and rodeos in the world, but is deemed non-essential. The Rodeo and associated events take place every year beginning in February and continuing through March and typically attract more than 2 million people from throughout the United States and countries around the world. HLSR awards millions of dollars in scholarships to students enrolled in Texas colleges and universities each year. As a result of the COVID-19 shutdown orders, numerous income-generating concerts and other on-premise events and attractions were cancelled, and other out-of-pocket expenses were incurred and caused a significant financial impact. Plaintiff's landlord, HCSCC, purchased the Policy in question, and named HLSR as an additional insured, with the intent of providing coverage for the precise business-interruption losses HLSR suffered as a result of the virus and responses to it. HLSR is an historical event whose business model inherently depends on large group gatherings such as convention shows, concerts, carnival attractions and trade-shows. These types of gatherings, which provide the economic lifeblood of HLSR, were also the precise types of gatherings that were prohibited by multiple governmental orders and which were impossible because of the physical presence of the virus on the insured property which damaged it, made it dangerous to visitors, volunteers and employees on the insured property, and which prevented the customary and intended use of the insured property. HLSR suffered tremendous business interruption losses in 2020 because of the business interruption occasioned by the presence of the COVID-19 virus on insured property and the civil authority responses and closure orders related to such property damage.

IV. GENERAL ALLEGATIONS

4.1 All facts previously pled are incorporated herein by reference as if set forth in full here.

4.2 The Policy establishes legal obligations on the Defendant.

4.3 On March 11, 2020, the City of Houston Health Department declared that the HLSR event represented a high risk of danger to the public, because attendees could become "... infected or contaminated with SARS-CoV-2 or COVID-19."

4.4 At the time of the loss, Plaintiff's landlord, HCSCC, carried business interruption insurance under the Policy issued by Defendant, which named HLSR as an additional insured and for which HLSR is an intended beneficiary. The policy includes the following in the Declarations:

5. PROGRAM LIMITS OF LIABILITY

In the event of loss or damage insured under this policy, this **insurer** shall be liable for its proportional share of **USD 600,000,000** per occurrence except as respects the following sub-limits, excess of the policy deductibles:

The following sub-limits are part of and not in addition to the policy limit of liability. These sub-limits of liability are per Occurrence unless otherwise indicated.

USD	53,750,468	Business Interruption
USD	600,000	Business Interruption – For loss of revenue with respect to the parking lot area – in the event of loss or damage resulting from covered loss to parking lot and / or other insured locations shown in the SOV on file with the company.
USD	25,000,000	Extra Expense
USD	25,000,000	Contingent Business Interruption (other than attraction properties)
USD	25,000,000	Ingress/Egress – 120 days
USD	25,000,000	Civil Authority – 120 days
USD	5,000,000	Decontamination Expense – clean up, removal & disposal in the aggregate annually – excluding land & water
USD	5,000,000	Exhibition, Exposition, Fair, or Trade Show

USD 5,000,000 as respects Cancelled reservations and estimated lost food and beverage receipts due to impending or actual landfall of a Named Storm at the Insured Location, when no physical loss or damage occurs.

USD 5,000,000 Contingent Business Interruption (Attraction Properties Only)

25% or USD50M A sub-limit of 25% of the amount of covered physical loss or damage payable for all insured locations, or USD 50,000,000 whichever is greater shall apply to debris removal.

4.5 The Policy provides All Risks coverage of over \$79,000,000 limits of liability for loss or damage associated to business interruption under the policy issued. The Policy states as follows:

1. COVERAGE

This policy insures the interest of the Insured in the following:

B. Business Interruption - Gross Earnings

1. Loss due to the necessary interruption of business conducted by the Insured, including all interdependencies between or among companies owned or operated by the Insured resulting from loss or damage insured herein and occurring during the term of this policy to real and/or personal property described in Clause 7.A.
2. Such loss shall be adjusted on the basis of the actual loss sustained by the Insured, consisting of the net profit which is prevented from being earned including ordinary payroll and payroll;
and
all charges and other expenses (including soft costs) to the extent that these must necessarily continue during the interruption of business, but only to the extent to which such charges and expenses would have been incurred had no loss occurred.
3. In determining the amount of net profit, charges, and expenses insured hereunder for the purposes of ascertaining the amount of the actual loss sustained, due consideration shall be given to the experience of the business before the date of the loss or damage and to the probable experience thereafter had no loss occurred.
4. In the event of insured loss or damage to property as described in Clause 7.A. which results in an interruption of research and development activities, which in themselves would not have produced income during the recovery period, this policy shall insure the actual loss sustained of the continuing charges and expenses, including **ordinary payroll** and payroll, directly attributable to such research and development activities.
5. As respects coverage provided under Clause 7.B., the **Insurer** shall not be liable for any loss resulting from loss or damage to **finished stock** nor for the time required to reproduce said **finished stock**.

C. Business Interruption - Loss of Profits

Coverage under this clause applies only where there is a Loss of Profits policy in force insuring the location where the loss is incurred.

1. Loss of gross profit as hereinafter defined, resulting from interruption of or interference with the business and caused by loss or damage to real or personal property as described in Clause 7. A. of this policy during the term of the policy.
2. Indemnity: The amount of loss of gross profit shall be based on REDUCTION IN TURNOVER and on INCREASE IN COST OF WORKING, and the amount payable as indemnity thereunder shall be:
 - (a) In respect to REDUCTION IN TURNOVER: The sum produced by applying the rate of gross profit to the amount by which the turnover during the indemnity period shall, in consequence of the damage, fall short of the standard turnover;
 - (b) In respect to INCREASE IN COST OF WORKING: The additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in turnover which but for that expenditure would have taken place during the indemnity period in consequence of the damage, but not exceeding the sum produced by applying the rate of gross profit to the amount of the reduction thereby avoided;
 - (c) In respect to auditors fees, the reasonable charges payable by the Insured to their auditors for producing and certifying any particulars or details in the Insured's books of account or other books or documents or such other profits, information or evidence as may be required by the **Insurer**;

less any sum saved during the indemnity period in respect of such of the standing charges of the business payable out of gross profit as may cease or be reduced in consequence of the damage.

2. EXTENSIONS OF COVERAGE

THIS CLAUSE EXTENDS THE COVERAGES DESCRIBED IN CLAUSES 7.B, 7.C, 7.D, 7.E., 7.F., 7.G., 7.H and 7.I.

- A. This policy insures loss resulting from or caused by loss or damage insured herein to the following:
 1. **Contingent Business Interruption/Contingent Extra Expense:** Property, including **Attraction Properties**, that directly or indirectly prevents a supplier (including suppliers of any tier) of goods or services to the Insured from rendering their goods or services, or

property that prevents customers (including customers of any tier) of goods or services from the Insured from accepting the Insured's goods or services.

B. Interruption by Civil or Military Authority

This policy is extended to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6., access to property is impaired by order or action of civil or military authority.

C. Ingress/Egress

This policy is extended to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6., ingress to or egress from real or personal property is impaired.

D. Extra Expense

1. Extra Expense incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following loss or damage insured herein and occurring during the term of this policy to real and/or personal property as described in Clause 7.A.
2. The term Extra Expense, as used herein, is defined as the excess (if any) of the total cost chargeable to the operation of the Insured's business, over and above the total cost that would normally have been incurred to conduct the business had no loss or damage occurred, including **soft costs**.

E. Accounts Receivable

In the event of loss or damage to records or accounts receivable from customers caused by loss or damage insured herein, this **Insurer** will indemnify the Insured as follows:

1. All sums due the Insured (from customers), provided the Insured is unable to effect collection thereof as a result of loss or damage to records of accounts receivable by loss or damage insured by this policy.
2. All sums due the Insured from factoring transactions, when the property of the debtor has been lost or damaged by loss or damage insured by this policy and the Insured has been unable to effect collection thereof.
3. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage.

8. DEBRIS REMOVAL

The necessary and reasonable expenses actually incurred by the Insured due to physical loss or damage as insured against occurring during the term of this policy to remove from the premises of the Insured debris of covered property remaining after any such loss or damage, except that no liability is assumed for the expense of removal of:

- a. any foundation, other than damaged portions which must be removed for repair or rebuilding of any covered building or structure; or
- b. any property or part thereof, the removal of which is required by the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of such property; or
- c. Pollutants from land or water, nor for the cost to remove, restore or replace polluted land or water except for \$5,000,000 separate Pollution clean-up coverage.

Liability for loss under this provision is subject to the Limit of Liability stated on the Declarations, and this provision shall not increase any amounts or limits of insurance provided by this policy.

No liability exists under this provision unless such expenses are reported to the Insurer within one hundred eighty (180) days of the date of direct physical loss or damage, or within one hundred eighty (180) days of the expiration date of this policy, whichever shall be earlier.

9. DECONTAMINATION AND CLEAN UP EXPENSE

This policy insures any cost or expense of decontamination or removal or disposal of water, soil or any similar substance on or under the premises of the Insured incurred during emergency measures undertaken in order to mitigate any circumstances pertaining to seepage, pollution and/or contamination, whether or not at the instruction of any government agency or other authority.

It is the condition precedent to recovery under this clause that the Insurer shall have paid, or agreed to pay for, loss or damage to the property insured hereunder unless such payment is precluded solely by the operation of any deductible.

It is also a condition precedent to recovery under this clause that the Insured shall give written notice to the Insurer of intent to claim for decontamination and clean up expense not later than one hundred eighty (180) consecutive days after the date of such loss or damage.

A. COVID-19 Triggered Coverage Under the Policy

4.6 The presence of the COVID-19 virus triggered coverage under the Policy. Visitors to the insured premises in late February and early March 2020 were unknowingly infected with COVID-19, brought the virus into the insured property through touching, breathing, coughing and other forms of transmission, and transferred the virus onto certain portions of the insured property, thus damaging it. Visitors unknowingly spread the virus to other attendees as well as to significant other portions of the physical properties at NRG Park, including the appurtenances and fixtures of the property (collectively, “the Property” or “the Premises”).,

4.7 The existence and presence of COVID-19 on the insured Property damaged it, made it dangerous and unusable, caused its loss of use, and triggered coverage under The Policy. The

City of Houston Health Department quarantine order specifically referenced the existence of and physical presence of COVID-19 at the HLSR complex, resulting in the forced closure of the 2020 HLSR event (the “2020 Rodeo”). This closure was necessary to prevent the further spread of the virus to other visitors coming into contact with the damaged insured property and other infected visitors.

4.8 COVID-19 caused physical loss of and physical damage to Plaintiff’s Property. The Property was physically impaired, and such impairment caused Plaintiff to have to shut down the 2020 Rodeo. As of mid-March, the insured Premises could no longer safely be used in the usual manner due to the presence of COVID-19 on insured property at the insured premises.

4.9 COVID-19 damaged and impaired other properties within a five-mile radius of the insured property including health care facilities, nursing homes, restaurants, bars, churches, retail stores and other public forums, but none were affected to the extent HLSR was affected. Those other properties, including multiple facilities at the Texas Medical Center near the insured property, as well as other bars, restaurants, shopping centers, churches and other businesses in close proximity of the insured property, were also damaged by COVID-19, could no longer be used in the manner in which they were used before the discovery of COVID-19 at the other properties and were also closed by valid civil authority closure orders from city, county and state officials. Where once people could enter businesses and stand or sit shoulder to shoulder, to do so after March of 2020 presented a grave danger to the property owners, employees, and visitors. Because the HLSR’s events naturally involve large groups of people in close proximity to each other and because the event lasts a discrete period of time, the physical presence of COVID-19 on and around the insured property caused uniquely significant and uniquely damaging losses to Plaintiff – there was simply no way HLSR could operate at *any capacity* during the time-frame

scheduled for the events, performances, attractions, meetings and entertainment opportunities which had been planned months and years in advance.

4.10 The loss of functionality is no less physical than the impact of rain and wind on a property having lost its roof to a tornado, hurricane, fire or other covered event. Where once the property could carry on its normal business functions, on a stormy day, the property with a missing or otherwise damaged roof cannot operate in its normally intended manner. Where once the property could host patrons protected and shielded from the elements, it could no longer do so. That meets the historic meaning of physical damage, as is the loss of function and loss of use of Plaintiff's insured property caused by the physical presence of COVID-19 at and on the insured property.

4.11 COVID-19 has also caused Plaintiff to experience significant covered business interruption losses. Plaintiff submitted a claim pursuant to The Policy as a result of sustaining losses covered by The Policy. Notwithstanding that fact, Defendant improperly, unreasonably and without valid factual or legal reasons denied coverage for Plaintiff's claim by contending that no physical loss has taken place and that various exclusions apply to Plaintiff's losses. Defendant did so without conducting a reasonable, thorough or necessary investigation of Plaintiff's claim for these losses. Specifically, Defendant failed to test to determine the scope and extent of COVID-19 at and on insured property, failed to interview Plaintiff's representatives about the nature and extent of physical loss and the damages suffered, and failed to do what a reasonable insurer should have done when investigating a claim of this nature. Defendant's acts and omissions in this regard were done in bad faith and in violation of the requirements of the Texas Insurance Code, sections 541 and 542, based on an apparent systematic and intentional company practice designed to

minimize payments for covered COVID-19 claims and reap a financial windfall from the premiums accepted by Defendant to cover these precise physical and economic losses.

B. Multiple Coverages are Triggered under the Policy

4.12 In addition to triggering The Policy’s “all risks” coverage, Plaintiff’s claim also triggers multiple Additional Coverages and Coverage Extensions provided under The Policy including but not limited to the following:

1. *COVID-19 Triggered the Policy’s Additional Coverage for Protection of Property*

4.13 COVID-19 also caused and continues to cause actual physical loss and damage to insured’s property. In addition, COVID-19 has threatened and continues to threaten to cause immediately impending physical loss and damage to property.

4.14 This actual and threatened physical loss and damage to insured property has prompted Plaintiff to take action to temporarily protect or preserve its property, thereby triggering the Policy’s Protection of Property coverage.

2. *COVID-19 Triggered the Policy’s Business Interruption Coverage*

4.15 The Policy affords coverage for Plaintiff’s business interruption losses, subject to the Policy’s terms and conditions. COVID-19 has caused Plaintiff to suffer covered business interruption loss as a direct result of physical loss and damage of the type insured under the Policy.

4.16 This loss triggers coverage under The Policy’s Business Interruption provisions including, without limitation, coverage for up to 365 days of Gross Earnings loss, Gross Profits loss, and Rental Income Loss.

3. *COVID-19 Triggered the Policy’s Extra Expense Coverage*

4.17 COVID-19 caused Plaintiff to incur reasonable and necessary expenses to continue, as close to normal as possible, the conduct of Plaintiff’s business. Such expenses are beyond those

that would have normally been incurred in conducting the business absent the presence of COVID-19.

4.18 The expense incurred by Plaintiff beyond those necessary in the normal operation of its business solely as a result of the physical loss and damage caused by COVID-19 trigger coverage under the Policy's Extra Expense coverage.

4. *COVID-19 Triggered the Policy's Contingent Business Interruption – Attraction Properties Coverage*

4.19 COVID-19 also caused physical loss and damage to property away from the insured premises, including property in close proximity to the insured property. Plaintiff has sustained a loss of business income directly resulting from physical loss and damage of the type insured to property that attracts visitors to the area around the insured property.

5. *COVID-19 Triggered the Policy's Civil Authority Coverage*

4.20 The presence of COVID-19 at the Property resulted in the issuance of orders and directives by the City of Houston Health Department expressly prohibiting access to the 2020 Rodeo specifically and to the insured Property in general. Plaintiff sustained significant business interruption losses because of the civil authority orders issued as a direct result of the physical damage and potential property and human health risks associated with the presence of COVID-19 at the 2020 Rodeo before it was closed by orders of local officials. Plaintiff has suffered significant covered losses and, to date, Defendant has refused to pay one penny of Plaintiff's insured losses. Such failures constitute a breach of the insurance contract and also violate multiple other aspects of Texas law.

6. *COVID-19 Triggered the Policy's Ingress/Egress Coverage*

4.21 COVID-19 and the physical loss and damage it has caused, and continues to cause, has resulted in the necessary interruption of Plaintiff's 2020 business activities by totally or

partially preventing ingress to or egress from the insured property as a direct result of physical loss and damage of the type insured to property of the type insured.

4.22 The business interruption losses sustained by Plaintiff as a result of the total or partial denial of access to the insured property triggers the coverage under the Policy's Ingress/Egress coverage.

C. No Exclusion Impacts Coverage

4.23 No exclusion in The Policy applies to preclude or limit coverage for the actual presence of COVID-19 at the insured premises, the physical loss and damage to property at the Rodeo complex, and/or the business interruption losses that has and will continue to result from the physical loss and damage to property. To the extent that Defendant contends any exclusion(s) apply, such exclusion(s) are vague, ambiguous and unenforceable.

D. Defendant's Bad Faith Conduct

1. *Defendant Conducted an Inadequate and Improper Investigation of Plaintiff's Claim*

4.24 Based on information and belief, Defendant engaged in a calculated scheme to deny Plaintiff and its other insureds' similar COVID-19 related claims. Defendant failed to conduct a thorough and reasonable investigation of Plaintiff's COVID-19 claims. In fact, it conducted no investigation at all and instead simply denied Plaintiff's COVID-19 claim without conducting any testing, any interviews, any physical investigation or giving any consideration to the governmental closure orders specific to this insured and this property.

4.25 Defendant intentionally conducted a pretextual "investigation" with a pre-determined coverage decision regarding COVID-19. Defendant intentionally failed to consider the relevant facts related to Plaintiff's entire claim against the Policy language.

4.26 Plaintiff suffered and continues to suffer substantial damages due to Defendant's bad faith conduct.

V. CLAIMS

COUNT I

Breach of Contract (Property Damage)

5.1 Plaintiff repeats and realleges the allegations in preceding Paragraphs as if fully set forth herein. The Policy is a valid and enforceable contract between Plaintiff and Defendant.

5.2 In the Policy, Defendant agreed to cover property against all risks of physical loss or damage not otherwise excluded.

5.3 COVID-19 has caused and is continuing to cause actual physical loss and/or physical damage to Plaintiff's insured property.

5.4 No exclusions apply to bar coverage.

5.5 Plaintiff is entitled to coverage for the physical loss and/or damage up to the Policy's per-occurrence limit of liability or any applicable sub-limits.

5.6 Plaintiff complied with all applicable Policy provisions. Plaintiff's landlord HCSCC paid all premiums, and Plaintiff provided timely notice of its claim.

5.7 Nonetheless, Defendant unjustifiably refused to pay for Plaintiff's covered physical loss or covered physical damage in breach of the Policy.

5.8 Plaintiff has suffered and continues to suffer damages as a result of Defendant's breach(es) of the Policy.

5.9 Plaintiff is entitled to damages as a result of Defendant's breach in an amount to be determined at trial, including all available Policy benefits and coverages, attorney fees and

reasonable expenses, pre- and post-judgment interest and any other costs and other relief that this Court deems appropriate.

COUNT II

Breach of Contract (Business Interruption)

5.10 Plaintiff repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

5.11 The Policy is a valid and enforceable contract between HCSCC, with HLSR as an additional insured, and Defendant.

5.12 In the Policy, Defendant agreed to cover Business Interruption loss and incurred Extra Expense, as provided in the Business Interruption Coverage, as a direct result of physical loss or damage of the type insured under the Policy.

5.13 COVID-19 caused actual physical loss and/or physical damage to Plaintiff's property and the property of others that caused Plaintiff to suffer covered business interruption losses and incur covered extra expenses.

5.14 No exclusions apply to bar coverage.

5.15 Plaintiff is entitled to coverage for its covered business interruption losses and incurred covered extra expenses related to COVID-19 up to the Policy's per-occurrence limits of liability for business interruption losses or any applicable sub-limits.

5.16 Plaintiff complied with all applicable Policy provisions.

5.17 Nonetheless, Defendant unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

5.18 Plaintiff suffered and continues to suffer economic damages as a result of Defendant's breaches of The Policy.

5.19 Plaintiff is entitled to damages as a result of Defendant's breach in an amount to be determined at trial, including all available Policy benefits and coverages, attorney fees and reasonable expenses, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT III

Breach of Contract (Additional Coverages and Coverage Extensions)

5.20 Plaintiff repeats and realleges the allegations in the preceding paragraphs, as if fully set forth herein.

5.21 The Policy is a valid and enforceable contract between HCSCC, with HLSR as an additional insured, and Defendant.

5.22 In The Policy, Defendant agreed to afford additional coverage as provided in the Policy's Additional Coverages and Coverage Extensions.

5.23 COVID-19 has caused actual physical loss and/or physical damage to Plaintiff's insured property and caused Plaintiff to suffer losses under the Policy's Additional Coverages and Coverage Extensions.

5.24 No exclusions apply to bar coverage.

5.25 Plaintiff is entitled to coverage for losses related to COVID-19 up to each Additional Coverage's and Coverage Extension's limit of liability or any applicable sub-limits.

5.26 Plaintiff complied with all applicable Policy provisions.

5.27 Nonetheless, Defendant unjustifiably refuses to pay for these losses and expenses in breach of The Policy.

5.28 Plaintiff suffered and continues to suffer damages as a result of Defendant's breach of The Policy.

5.29 Plaintiff is entitled to damages as a result of Defendant's breach in an amount to be determined at trial, including all available Policy benefits and coverages, attorney fees and reasonable expenses, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT IV

Breach of the Covenant of Good Faith and Fair Dealing

5.30 Plaintiff repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

5.31 Defendant denied Plaintiff's claim for coverage under the Policy relating to its losses from COVID-19 without a reasonable basis and when its contractual liability was reasonably clear (or should have been reasonably clear had it done a thorough and reasonable investigation of the claim).

5.32 Defendant's denial of Plaintiff's claim lacked any reasonable basis based on the existing facts and existing Texas law.

5.33 Defendant failed to conduct a thorough and reasonable investigation of Plaintiff's claim under The Policy and, therefore, Defendant's basis for its denial is unreasonable. Specifically, Defendant failed to timely test the insured property to evaluate the extent and scope of the existing property damage at the time the claim was submitted, failed to interview any representatives of Plaintiff regarding the extent of covered losses and the resulting damages and failed to consider or address the governmental closure orders specific to this insured and this property.

5.34 Defendant employed a systematic "one-size-fits-all" approach to adjusting and denying coverage for all COVID-19 claims, including Plaintiff's claim. Without investigating the

insured property or talking to its insured's representatives, it engaged in a systemic denial of ALL COVID-19 claims submitted to it under the false assumption that every COVID-19 claim was the same, every COVID-19 claim was not covered, and every COVID-19 claim should be denied. That overly broad, institutional handling of every COVID-19 claim submitted, including Plaintiff's, without considering the unique facts of each insured property, each submitted claim, each applicable governmental closure order and each damage claim is the epitome of fraud, institutional bad faith, illegal insurance practice and reprehensible claims conduct which should subject Defendant to additional damages as allowed by law, including statutory penalties and punitive damages.

5.35 Defendant knew or was actually or implicitly aware of the lack of any reasonable basis to deny coverage. Defendant's claim adjusters and claim managers made an intentional and knowing decision to forgo testing of Plaintiff's property, forgo interviewing Plaintiff's representatives, and forgo considering the specific governmental closure orders specific to Plaintiff and its insured property. Defendant knew there were reasonable actions it could have taken to thoroughly investigate Plaintiff's claim but it knowingly failed to do so because such actions might have uncovered facts demonstrating that Plaintiff's claims were in fact covered.

5.36 Defendant acted with reckless disregard as to the unreasonableness of its denial.

5.37 Defendant breached its duty of good faith and fair dealing by failing to reasonably investigate Plaintiff's claim and provide coverage.

5.38 Defendant's denial of coverage constitutes bad faith as that term has been repeatedly defined by the Texas Supreme Court.

5.39 As a result of Defendant's bad faith, Plaintiff suffered and continues to suffer tremendous economic damages.

5.40 Plaintiff is entitled to an award of actual and additional damages as a result of Defendant's bad faith in an amount to be determined at trial, including consequential damages caused by Defendant's bad faith denial of Plaintiff's claim, punitive damages as allowed by Texas law, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT V

Violation of the Texas Unfair Claim Settlement Practices Act – Tex. Ins. Code §542.001 and Tex. Ins. Code § 541

5.41 Plaintiff repeats and realleges the allegations in the preceding paragraphs as if fully set forth herein.

5.42 Defendant's systemic practice of either ignoring or mischaracterizing the facts provided by policyholders in connection with claims for coverage for losses from COVID-19 constitutes an unfair or deceptive act or practice in the business of insurance prohibited by Tex. Ins. Code §542.003(b)(1). Rather than conduct *any meaningful* investigation of Plaintiff's claim Defendant merely wrote a "reservation of rights" and then, without investigating anything further, it denied Plaintiff's claim. Although it had an opportunity to inspect Plaintiff's damaged property, it chose to do nothing. Although it had an opportunity to interview representatives of Plaintiff regarding its covered losses, it chose to do nothing. Although it had an opportunity to consider and discuss multiple city, county and state closure orders specific to this insured and this property, it chose to do nothing. These failures are violations of Section 541 of the Texas Insurance Code and subject this Defendant to statutory penalties under Section 542 of the same Code.

5.43 Defendant's pre-determined conclusions regarding coverage for claims based on losses from COVID-19 without consideration of the particular facts or applicable law constitute

an unfair or deceptive act or practice in the business of insurance pursuant to Tex. Ins. Code §542.003(b)(1), (3) and §541.060(3).

5.44 Defendant's systemic institutional practice of denying coverage for all claims by all policyholders for all losses from COVID-19 without conducting an adequate investigation of the unique facts applicable to Plaintiff's unique COVID-19 losses in the context of applicable Texas law constitutes an unfair or deceptive act or practice in the business of insurance, pursuant to Tex. Ins. Code §542.003(b)(1), (3) and §541.060(3).

5.45 Defendant failed to adopt and implement reasonable standards for the prompt investigation and processing of claims related to losses based on COVID-19, which constitutes a violation of Tex. Ins. Code §542.003(3) and §541.060(3). In fact, the systematic and institutional practices it adopted were intended to treat *all* COVID-19 claims exactly the same, minimize its investigative time and expenses, and deny them all without regard to any unique factors indicating the existence of coverage under the Policy and the compensability of covered losses suffered by Plaintiff, such acts and omissions being in gross violation of Section 541 of the Texas Insurance Code for which Plaintiff is entitled to damages and penalties under Section 542 of the same Code.

5.46 Defendant's systemic practices and procedures have compelled Plaintiff to initiate this litigation to recover amounts due under the Policy in response to Defendant's attempt to restrict Plaintiff's recovery to the limited coverage available for communicable disease coverage, which constitutes a violation of Tex. Ins. Code §542.003(b)(5).

5.47 As a result of Defendant's unfair or deceptive acts or practices, Plaintiff suffered and continues to suffer actual contractual damages, actual consequential damages, additional damages, and attorney fees.

5.48 Plaintiff is entitled to an award of actual and additional damages as a result of Defendant's unfair or deceptive acts or practices in an amount to be determined at trial, including actual contractual damages, actual consequential damages, statutory penalties, attorney's fees, pre- and post-judgment interest and any other costs and other relief that this Court deems appropriate.

5.49 Plaintiff has been required to retain the services of attorneys to commence this action and are further entitled to all reasonable and necessary attorneys' fees, costs and expenses in the amounts allowed by Texas law.

VI. REQUEST FOR RELIEF

6.1 **WHEREFORE**, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant as follows:

- 1) Judgment against Defendant for actual damages in an amount to be determined by the jury as allowed by the Policy made the basis of this suit;
- 2) For special and consequential damages against Defendant in an amount proved at trial, in excess of \$10,000;
- 3) Additional damages and/or punitive damages as allowed by applicable Texas law;
- 4) Statutory penalties under Texas Insurance Code 542 as allowed by Texas law;
- 5) Reasonable and necessary attorney's fees, expenses and costs of court as allowed by Texas law;
- 6) Pre- and post-judgment interest, as provided by law;
- 7) For such other and further relief as the Court deems just and proper.

VII. RULE 193.7 NOTICE OF INTENT TO USE DISCOVERY AT TRIAL

7.1 Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby gives notice of intent to use documents produced in discovery as evidence.

VIII. REQUEST FOR DISCLOSURES

8.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is to disclose, within fifty (50) days of service of this request, the information and material described in the Texas Rules of Civil Procedure 194.2 (a)-(l).

IX. REQUEST FOR JURY TRIAL

9.1 Plaintiff requests a jury trial of all applicable causes of action herein and pursuant to TEX. CIV. PRAC. & REM. CODE §37.007.

X. PRAYER

10.1 Plaintiff requests that Defendant be cited to appear and answer, and that on final trial Plaintiff have:

- 1) Judgment against Defendant for sum in excess of the minimum jurisdictional limits of the Court;
- 2) Prejudgment interest as provided by law;
- 3) Post judgment interest as provided by law;
- 4) Attorney's fees and expenses;
- 5) Costs of Suit; and
- 6) Such other and further declaratory, legal and equitable relief as sought and prayed for herein to which Plaintiff may be justly entitled.

Dated: October 8, 2020

Respectfully submitted,

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This is the ONLY electronic service e-mail address for Derek Merman and Kane Kenney, and service through any other e-mail address will be considered invalid.