

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

7<sup>th</sup> Inning Stretch LLC d/b/a Everett §  
AquaSox; DeWine Seeds Silver §  
Dollars Baseball, LLC; Whitecaps §  
Professional Baseball Corporation §

Plaintiffs, §

v. §

Arch Insurance Co.; Federal §  
Insurance Co. §

Defendants. §

**JURY TRIAL DEMANDED**

Case No: \_\_\_\_\_

**PLAINTIFFS' ORIGINAL COMPLAINT**

Plaintiffs 7<sup>th</sup> Inning Stretch LLC d/b/a Everett AquaSox (3802 Broadway Avenue, Everett, WA 98201); DeWine Seeds Silver Dollars Baseball, LLC (30 Buchanan Place, Asheville, NC 28801); and Whitecaps Professional Baseball Corporation (4500 West River Drive, Comstock Park, MI 49321) (the "Teams"), by and through their undersigned attorneys, as and for their Complaint against Arch Insurance Co. (Harborside 3; 210 Hudson St Suite 300, Jersey City, NJ 07311) and Federal Insurance Co. (202 Halls Mill Rd A, Whitehouse Station, NJ 08889) (the "Insurers"), allege as follows:

**INTRODUCTION**

1. In 2019, for the 15th straight year, more than 40,000,000 fans attended games played by 160 Minor League Baseball ("MiLB") teams located in

smaller cities and communities throughout the United States. An excursion to the minor league ballpark has been a low-cost American family tradition for more than 100 years. This is the first year in that entire period of time—through prior pandemics, two world wars, and many other global and national crises—that those magic words, “Play Ball,” will not be heard in any of the ballparks around the country in which minor league baseball is played.

2. There are several causes of the first-ever cessation of Minor League Baseball in 2020. These include continuing concerns for the health and safety of players, employees, and fans related to the SARS-CoV-2 virus; action and inaction by federal and state governments related to controlling the spread of the virus; and the decision by Major League Baseball (“MLB”) that its teams will not meet their contractual obligations to provide players under contract to their affiliated minor league teams.

3. The cancellation of the MiLB season is a catastrophic financial loss for all minor league teams, including the Plaintiff Teams.

4. The operating model for MiLB teams is entirely dependent on receiving players, coaches, and other team personnel from the MLB team with which they have an affiliation agreement requiring that MLB team to provide players and other personnel. It is also dependent on being permitted by federal, state, and local governments to allow the admission of the thousands of fans who flock to every minor league game to enjoy a ball game, partake in the entertainment and food and beverage amenities associated with the minor league baseball

experience, and purchase baseball caps and other merchandise sold in the ballpark. Though some MiLB teams have limited revenue from advertising and sponsorships, this revenue is largely tied to the number of fans the team can attract to the ballpark in a given year.

5. The vast majority of MiLB teams' operating expenses, by contrast, bears little relationship to whether the teams are able to bring fans to the ballpark for ball games. The largest expense for many teams is the lease they pay to the municipal owners of the ballpark in which they play games. Most teams are responsible for a fixed lease payment of as much as one million dollars or more. In addition, MiLB teams generally have permanent employees needed to operate the team over an annual business cycle. The teams also have incurred many 2020 expenses related to marketing and advertising and the purchase and stocking of merchandise and food and beverage in preparation for the 2020 baseball season. Thus, on average, MiLB teams incur more than \$2,000,000 in expenses to operate their teams without regard to whether they suffer interruption of their operations.

6. Because of this business model, which requires variable revenue tied to game attendance but significant fixed operating expenses, and the fact that most MiLB team owners are small business owners or family businesses rooted in the community in which they own a team, the teams have little prospect for economic survival if the operation of their businesses is interrupted for any significant period of time within a season. These dire economic consequences are worsened by the obligation many teams will have to refund ticket, event, advertising, and

sponsorship revenue received in expectation that a full season of minor league baseball would be played in 2020.

7. Given the business model for MiLB as described above, prudent owners of MiLB teams, including the Plaintiff Teams, purchased business-interruption insurance from the Defendant Insurers and paid significant premiums to protect themselves from business interruption, including the cancellation of games. These “all risks” policies cover MiLB teams for business interruption in circumstances where, as here, there has been direct physical loss or damage, including, but not limited to loss of use, to the teams’ ballparks or elsewhere caused by the SARS-CoV-2 virus, the governmental response to it, or MiLB teams’ inability to obtain players. As described in detail below, however, the Insurers have failed to meet their obligations, thereby placing the Teams in serious risk of economic failure and jeopardizing the future of America’s Pastime as we know it.

8. The Teams thus bring this action against the Insurers for breach of contract, anticipatory breach of contract, and a declaratory judgement that they are entitled to the full amount of coverage for which they paid premiums and of which they badly need.

### **THE PARTIES**

## **I. THE TEAMS**

9. Plaintiff 7<sup>th</sup> Inning Stretch LLC d/b/a Everett AquaSox (the “Everett AquaSox”)<sup>1</sup> is a limited liability company whose members are citizens of California and Texas. During the applicable period of loss, the Everett AquaSox were insured under Arch Insurance Company Policy No. 88CMP0003102.

10. Plaintiff DeWine Seeds Silver Dollars Baseball, LLC (the “Asheville Tourists”), is a limited liability company whose members are citizens of North Carolina and Ohio. During the applicable period of loss, the Asheville Tourists were insured under Arch Insurance Company Policy No. SSCMP0001303.

11. Plaintiff Whitecaps Professional Baseball Corporation (“West Michigan Whitecaps”) is a corporation organized under the laws of the State of Michigan with a principal place of business in Michigan. During the applicable period of loss the West Michigan Whitecaps were insured by Federal Insurance Company under Policy No. 3579-42-58-EUC.

## **II. THE INSURERS**

12. Defendant Arch Insurance Company (“Arch”) is incorporated under the laws of Missouri with its principal place of business in New Jersey.

13. Defendant Federal Insurance Company (“CHUBB”) is incorporated under the laws of Indiana with its principal place of business in New Jersey.

## **JURISDICTION AND VENUE**

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<sup>1</sup> Each Plaintiff owns and/or operates a minor league baseball team and is referred to herein by the name of that team.

14. The Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship among the parties to the action and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

15. The Court has personal jurisdiction over each of these claims because Arch's and CHUBB's principal places of business are in New Jersey.

16. The Court is a proper venue for this action under 28 U.S.C. § 1391 because Defendants are subject to the Court's personal jurisdiction.

### **FACTUAL ALLEGATIONS**

#### **I. THE NATURE OF THE COVID-19 PANDEMIC**

17. COVID-19 is an infectious disease caused by a recently discovered novel coronavirus, formally known as SARS-CoV-2. The first instances of the disease spreading to humans were diagnosed in China in or around December 2019, and the first reported case in the United States was in January 2020.

18. The impact of the virus and the resulting pandemic on life and property has been staggering. Though testing has been severely limited, as of the filing date of this Complaint, more than 2,000,000 Americans have had confirmed cases of COVID-19, and more than 120,000 have died from it.

19. The virus is easily transmitted from person to person and from surface to person. According to the World Health Organization (the "WHO"), the virus can spread from person to person through small droplets from the nose or mouth that are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch the virus by

touching these objects or surfaces, then touching their eyes, noses, or mouths.

People can also catch the virus if they breathe in droplets from a person infected with the virus who coughs or exhales droplets.<sup>2</sup>

20. Infected individuals can be completely asymptomatic—and thus unaware that they may be spreading the virus through the mere touching of objects and surfaces. Indeed, studies have estimated that more than 40% of infected individuals may never develop any symptoms.<sup>3</sup> But even individuals who appear healthy and present no identifiable symptoms of the disease might still spread the virus by breathing, speaking, or touching objects and surfaces.

21. According to a report in *The New York Times*, “[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough.”<sup>4</sup> And one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles an hour.<sup>5</sup>

22. Although these droplets are smaller than mold, rust, or paint chips, they are physical objects that travel and attach to other surfaces and cause harm.

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<sup>2</sup> *Q&A on Coronaviruses (COVID-19)*, World Health Organization (April 17, 2020), <https://www.who.int/news-room/q-a-detail/q-acoronaviruses>.

<sup>3</sup> Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected* (May 27, 2020, 12:43 PM), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>.

<sup>4</sup> See Yuliya Pashina-Kottas, et al., This 3-D Simulation Shows Why Social Distancing Is So Important, *The New York Times* (April 21, 2020), available at <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-around.html> (last visited June 12, 2020).

<sup>5</sup> Sarah Gibbens, “See how a sneeze can launch germs much farther than 6 feet,” *National Geographic* (April 17, 2020), available at [www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/](http://www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/) (last visited June 12, 2020).

23. Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials.<sup>6</sup> The virus can survive and remain virulent on stainless steel and plastic for 3 to 6 days, on glass and banknotes for 3 days, and on wood and cloth for 24 hours.<sup>7</sup> Testing of similar viruses suggests that SARS-CoV-2 can survive on ceramics, silicon, and paper for at least 5 days. And the Centers for Disease Control (the “CDC”) confirmed that the virus was identified on surfaces of the *Diamond Princess* cruise ship a full 17 days after the cabins were vacated.<sup>8</sup>

24. Without a vaccine to protect against COVID-19, effective control of the pandemic relies on measures designed to reduce human-to-human and surface-to-human exposure. The CDC have stated that the virus can spread when people are within 6 feet of each other or when a person comes in contact with a surface or object that has the virus on it.

25. The nature of the virus has caused authorities to issue stay-in-place orders to protect persons and property. Indeed, authorities in each of the Teams’ respective states have issued such orders, and many such orders observe the virus’s threat to property.

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<sup>6</sup> *Cleaning and Disinfection for Community Facilities*, Centers for Disease Control and Prevention (May 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

<sup>7</sup> Letter from Neeltje van Doremalen et al. to N. Eng. Journal of Med. (April 16, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973>.

<sup>8</sup> *Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February–March 2020*, Centers for Disease Control and Prevention (March 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.



26. For these reasons, it is statistically certain that the virus is present at the Teams' ballparks and nearby properties or that the threat of the virus's presence at the ballparks is imminent. Moreover, the ballparks are incapable of their intended function—serving as a venue for ball games attended by fans.

27. The nature of the virus, and the social distancing required to mitigate its spread, have contributed to cancellations of the Teams' MiLB games.

## **II. GOVERNMENTS' RESPONSES TO THE PANDEMIC**

28. On December 31, 2019, the Chinese government notified the WHO of a "pneumonia of unknown cause" discovered in China's Wuhan province. On January 3, 2020, the U.S. federal government received its first formal notification of the outbreak in China. The United States reported its first COVID-19 case on January 20, and on January 30, the WHO declared the COVID-19 pandemic a "Public Health Emergency of International Concern." Yet in the first few months of 2020, the federal government failed to recognize the severity of the pandemic and did not contain the virus.

29. By the beginning of February, 11,000,000 people in China's Wuhan province were under quarantine, and the extent of human-to-human transmission was clear. Aside from limiting travel from Wuhan, however, the U.S. federal government took little action. Even though funding and medical equipment were being depleted by the day, the U.S. federal government did not authorize new funds or require the production of testing kits, ventilators, or personal protective equipment for healthcare workers.

30. In February, the virus spread throughout the United States largely undetected. Though the CDC began shipping testing kits to laboratories on February 5, the kits were later determined to be flawed, rendering the test unreliable. By February 26, the CDC were still testing fewer than 100 patients daily, notwithstanding that the CDC were telling state and local officials that their testing capacity was more than adequate to meet current testing demands.

31. On March 13, 2020, the U.S. federal government declared a national emergency. Three days later, the CDC and members of the national Coronavirus Task Force issued public guidance, styled as “30 Days to Slow the Spread,” that advocated for the first time far-reaching social-distancing measures, such as working from home; avoiding shopping trips and gatherings of more than 10 people; and staying away from bars, restaurants, and food courts.

32. The failure of the federal government to build an effective wall preventing the continued migration of the virus from states that were hit early to the rest of the country meant that states took the lead in combating the virus’s spread. State after state imposed sweeping restrictions on citizens’ daily lives to protect them and stop the spread. Most states restricted or prohibited the operation of non-essential businesses, prohibited public gatherings, or required individuals to stay at home except for essential purposes.

33. According to a Columbia University study, if the government had imposed social-distancing measures just one week earlier—on March 8 instead of March 15—the United States would have avoided 703,975 confirmed cases (62%)

and 35,927 reported deaths (55%) as of May 3.<sup>9</sup> And if social distancing and lockdowns had begun just two weeks earlier—on March 1—the country would have seen a reduction of 960,937 (84%) cases and 53,990 (83%) deaths.

34. The governmental response to the virus is a cause of the Teams' business interruptions.

### III. MAJOR LEAGUE BASEBALL DOES NOT PROVIDE PLAYERS

35. Fans come to MiLB baseball games to see the players. But the Teams do not employ or manage the baseball players who draw fans to the park. Rather, Major League Baseball teams supply the players to each Team through player development contracts.

36. Each Team manages the business aspects of its operations, such as marketing and promotions and sales of tickets, parking, advertising, concessions, and merchandise. But under the player development contracts, the parent Major League Baseball club controls and makes all decisions related to the players, including paying their salaries and determining which teams they play for and when.

37. The Teams' players are thus under the exclusive control of the parent club, which decides which players the Team receives and, indeed, whether it receives any players at all.

38. The Professional Baseball Agreement entered into between Major League and Minor League Baseball and the Player Development Contract between

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<sup>9</sup> Jeffrey Shaman et al., *Differential Effects of Intervention Timing on COVID-19 Spread in the United States*, MedRxiv (May 29, 2020), <https://www.medrxiv.org/content/10.1101/2020.05.15.20103655v2.full.pdf+html>.

MLB and MiLB teams set forth the contractual obligations of MLB teams to supply players to MiLB teams. Pursuant to those agreements, MLB teams were required to provide players to MiLB teams to enable the start of the MiLB season in early-April 2020. However, the MLB has informed MiLB that it will not be providing the MiLB with players for the 2020 season. As a result, MiLB's 2020 season has been cancelled. .

39. MLB's denial of players to MiLB Teams is a cause of the Teams' business interruptions.

#### **IV. THE TEAMS SUFFER BUSINESS-INCOME LOSSES**

40. As a result of the virus, the governmental response, and Major League Baseball's failure to provide baseball players, the Teams have been deprived of their primary source of revenue—fans coming to the ballpark and paying for game tickets, merchandise, food and beverage, and partaking in other amenities. Though some MiLB teams have limited revenue from advertising and sponsorships, this revenue is largely tied to the number of fans the team can attract to the ballpark in a given year.

41. 2019, for example, was a stellar year for MiLB. More than 40,000,000 fans attended such games, marking the 15th consecutive season that MiLB's teams drew more than 40,000,000 fans. The 2019 season also marked MiLB's largest year-over-year increase in attendance since the 2006 season and marked the 9th-largest single-season total in MiLB's history.

42. This year, however, there are no games and no fans. As such, the Teams' primary income streams have come to a halt. Yet the fixed costs of operating

a baseball stadium remain, such as fixed lease payments and payroll for permanent employees needed to operate the team over an annual business cycle.

43. The Teams have therefore suffered, and will continue to suffer, significant business-income losses, expenses, and damages in a number of forms, including, but not limited to:

- a. Loss of or diminished ticket sales;
- b. Loss of or diminished parking sales;
- c. Loss of or diminished concessions sales;
- d. Loss of or diminished merchandise sales; and
- e. Loss of or diminished advertising sales.

44. The Teams have incurred, and will continue to incur, further losses, expenses, and damages in the form of normal operating expenses, including, but not limited to, lease payments and payroll costs.

45. With no players, no games, and no fans, the Teams' losses of business income for the 2020 MiLB baseball season have been near total. With virtually no source of income, and accruing expenses, the Teams face catastrophic financial losses.

## **V. THE POLICIES PROVIDE COVERAGE**

46. In exchange for substantial premiums, the Insurers sold insurance policies covering the Teams as the named insureds. The policies are all commercial all-risk first-party property & casualty policies with similar, if not identical, grants of coverage for "business income" losses (the "Policies"). Thus, the teams are

similarly situated with respect to the coverage available under the Policies. For ease of explication, the description of the Policies is grouped by insurance carrier.

**A. The Arch Policies**

47. The policy Arch issued to the Everett AquaSox covers the period from December 30, 2019 through December 30, 2020. *See **Exhibit A**.*

48. The policy Arch issued to the Asheville Tourists covers the period from April 1, 2020 through April 1, 2021. *See **Exhibit B**.*

49. The Arch Policies use the same policy form and, except for variations with respect to the policy period, covered locations, and limits of liability, include the same material terms and conditions with respect to the scope of coverage (the “Arch Policies”).

50. The Arch Policies are divided into, among other types of coverage, a “Property Coverage Part,” *see* Exhibits A and B, CO 1000 10 02 at 1-31, and an “Income Coverage Part,” *see* Exhibits A and B, CO 1001 04 02 at 1-6.

51. The Property Coverage Part covers “direct physical loss to covered property at a ‘covered location’<sup>10</sup> caused by a covered peril.<sup>11</sup> *See* Exhibits A and B, CO 1000 10 02, at 6.

52. The Income Coverage Part covers lost earnings, extra expense, and lost rent during the “restoration period” when the insured’s property is “necessarily

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<sup>10</sup> “Covered location” is defined as the insured’s “buildings, structures, or business personal property...” *See* Exhibits A and B at CO 10001 10 02. The Arch Policies each include a list of Scheduled Locations. *See* Exhibits A and B at CO 1052 04 02.

<sup>11</sup> “Perils covered” is defined in the Arch Policies as “risks of direct physical loss unless the loss is limited or caused by a peril that is excluded. *See* Exhibits A and B at CO 1000 10 02.

wholly or partially interrupted by direct physical loss of or damage to property at a ‘covered location’ or in the open (or in vehicles) within 1,000 feet thereof as a result of a covered peril.” *See* Exhibits A and B, CO 1001 04 02, at 1.

53. The Income Coverage Part defines net earnings as “loss of net income (net profit or loss before income taxes) that would have been earned or incurred and continuing operating expenses normally incurred...including but not limited to payroll expenses.” *See* Exhibits A and B, CO 1001 04 02 at 1.

54. The Income Coverage Part defines “Extra Expense” as expenses incurred by the insured “to avoid or reduce the interruption of ‘business’ and continue operating at a ‘covered location,’ replacement location, or a temporary location.” *See* Exhibits A and B, CO 1001 04 02 at 1.

55. The Income Coverage Part defines the period of restoration as “the time it should reasonably take to resume ‘your’ business to a similar level of service” beginning 72 hours after the direct physical loss of or damage to property for earnings, and immediately for extra expense, and ending on the date “the property should be rebuilt, repaired, or replaced or the date the business is resumed at a new permanent location.” *See* Exhibits A and B, CO 1281 04 02 at 1. A “Period of Loss Extension” extends this coverage period from the date when the property is rebuilt, repaired or restores for an additional 90 days or to date the insured could reasonably resume its business, whichever is earlier. *See* Exhibits A and B, CO 1001 04 02 at 2.

56. The Income Coverage Part provides “Income Coverage Extensions,” including coverage for lost earnings and extra expense “sustained while access to ‘covered locations’ or a ‘dependent location’ is specifically denied by an order of a civil authority...as a result of direct physical loss of or damage to property, other than at a ‘covered location’... caused by a covered peril.” See Exhibits A and B, CO 1001 04 02 at 2.

57. The Arch Policies purport to exclude from coverage “loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness or physical distress” (the “Exclusion”). See Exhibits A and B, CO 0700 10 06. That Exclusion does not preclude the Teams’ claims for coverage because, among other reasons, it is void, unenforceable, and inapplicable. Nor does any other policy provision exclude the Teams’ claims for coverage.

#### **B. The CHUBB Policy**

58. The policy CHUBB issued to the West Michigan Whitecaps covers the period from March 1, 2020 through March 1, 2021 (the “CHUBB Policy”). See

#### **Exhibit C.**

59. The CHUBB Policy is divided into, among other types of coverage, a “Building And Personal Property” coverage part *see* Exhibit C, Form80-02-1000 at 1-29, and a “Business Income With Extra Expense” coverage form,” *see* Exhibit C, Form CP 80-02-1004 at 1-14.



60. The Building And Personal Property coverage part covers “direct physical loss or damage to...[a] building or personal...caused by or resulting from a peril not otherwise excluded....” *See* Exhibit C, Form 80-02-1000 at 3.

61. The Business Income With Extra Expense coverage part provides coverage for the “business income<sup>12</sup> loss [the insured] incurs due to the actual impairment of [the insured’s] operations<sup>13</sup>...and...extra expense<sup>14</sup> [the insured] incurs[s] due to the actual or potential impairment of [the insured’s] operations...during the period of restoration<sup>15</sup>...caused by or result[ing] from direct physical loss or damage by a covered peril to property....”<sup>16</sup> *See* Exhibit C, Form 80-02-1004 at 3.

62. The Business Income With Extra Expense coverage part also covers “business income loss [the insured incurs] due to the actual impairment of [the insured’s] operations...and...extra expense [the insured] incurs due to the actual or

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<sup>12</sup> The CHUBB Policy defines “business income” to include (1) “net profit or loss, including rental income from tenants and net sales value of production, that would have been earned or incurred before incoming taxes,” (2) the insured’s continuing operating and payroll expenses. *See* Exhibit C, Form 80-02-1097 at 11.

<sup>13</sup> The CHUBB Policy defines “Operations” as the insured’s “business activities occurring at your premises, including your activities as a lessor of premises, prior to loss or damage.” *See* Exhibit C, Form 80-02-1093 at 20.

<sup>14</sup> The CHUBB Policy defines “extra expense” as the “necessary expenses [the insured] incur[s]...in an attempt to continue operations, over and above the expenses [the insured] would have normally incurred; and...to repair or replace any property....” *See* Exhibit C, Form 80-02-1097 at 13.

<sup>15</sup> The CHUBB Policy defines the “period of restoration” to include the period beginning “immediately after the time of direct physical loss or damage by a covered peril to property” and ending when the insured’s “operations are restored, with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage occurred....” *See* Exhibit C, Form 80-02-1097 at 21.

<sup>16</sup> The CHUBB Policy also includes a separate Extra Expense coverage part. *See* Exhibit C, Form 80-02-1018 at 3.

potential impairment of [the insured's] operations... when existing ingress to or egress from a premises shown in the Declarations is prevented due to direct physical loss or damage by a covered peril to property..." See Exhibit C, Form 80-02-1004 at 5.

63. The Business Income With Extra Expense coverage part provides "Additional Coverages," including "business income loss [the insured incurs] due to the actual impairment of [the insured's] operations...and...extra expense [the insured] incurs due to the actual or potential impairment of [the insured's] operations...directly caused by the prohibition of access to...[the insured's] premises...or...a dependent business premises...by civil authority" as a "direct result of direct physical loss or damage to property away from such premises or such dependent business premises by a covered peril..." See Exhibit C, Form 80-02-1004 at 6.

## **VI. THE INSURERS FAIL TO COVER THE TEAMS' CLAIMS FOR COVERAGE**

64. All Teams have made timely claims for coverage with their respective Insurers.

65. On May 18, 2020, CHUBB denied the West Michigan Whitecaps claim for coverage on various inapplicable grounds, including that there was "no evidence of direct physical loss or damage to building or personal property" and that access to insured premises was not prohibited.

66. On May 19, 2020, Arch requested additional information from the Everett AquaSox regarding their claim, but noted various policy provision that

could “impact the coverage available,” including an exclusion in the policy for “loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness or physical distress.” Arch also reserved “the right to limit or deny coverage if your loss was not the result of interruption of business caused by direct physical loss of or damage to property....”

67. The positions Arch has taken in its letter make clear that, like the insurance industry as a whole, it has no intention of covering the Everett AquaSox’s claim, and that its “investigation” of the claim is mere pretext.

68. Although Arch has not yet responded to the Asheville Tourists’ notice of claim, its correspondence with the Everett Aquasox makes clear that it intends to deny the Asheville Tourists’ claim as well.

69. The positions taken in CHUBB’s denial letter, and in Arch’s reservation of rights letter, are wrong. As set forth herein, there has been direct physical loss or damage, including, but not limited to, property damage and/or loss of use at the Teams’ ballparks or elsewhere caused by the SARS-CoV-2 virus, the governmental response to it, or the Teams’ inability to obtain players. Further, regarding the Arch Policies, the Exclusion is among other things, void, unenforceable, and inapplicable.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract Against CHUBB)**

70. This cause of action is brought by the West Michigan Whitecaps against CHUBB.

71. The West Michigan Whitecaps repeat and reallege the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

72. The CHUBB Policy is a valid and enforceable contract between CHUBB and the West Michigan Whitecaps.

73. As described above, the West Michigan Whitecaps have sustained, and are continuing to sustain, losses covered under the CHUBB Policy.

74. The West Michigan Whitecaps provided prompt notice of their losses and performed all obligations required of them under the policy, and/or were ready, willing, and able to perform their obligations under the CHUBB Policy.

75. No terms, conditions, or exclusion in the CHUBB Policy bar coverage for the West Michigan Whitecaps' losses.

76. CHUBB is obligated under the CHUBB Policy to pay for the West Michigan Whitecaps' loss, subject to the policy's limits of liability, time limits, or deductibles for specific coverages.

77. CHUBB breached this contract when it denied coverage to the West Michigan Whitecaps based on various inapplicable grounds.

78. As a direct and proximate result of CHUBB's breach of contract, the West Michigan Whitecaps have suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

**SECOND CAUSE OF ACTION**  
**(Anticipatory Breach of Contract against Arch)**

79. This cause of action is brought by the Everett AquaSox and the Asheville Tourists against Arch.

80. The Everett AquaSox and the Asheville Tourists repeat and reallege the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

81. The Arch Policies are valid and enforceable contracts between Arch and the Everett AquaSox and the Asheville Tourists, respectively.

82. As described above, the Everett AquaSox and the Asheville Tourists have sustained, and are continuing to sustain, losses covered under the policy.

83. The Everett AquaSox and the Asheville Tourists provided prompt notice of their losses, performed all obligations required of them under the policies, and/or were ready, willing, and able to perform their obligations under the policies.

84. Arch is obligated under the Arch Policies to pay for the Everett AquaSox's and the Asheville Tourists' loss, subject to the Arch Policies' respective limits of liability, time limits, or deductibles for specific coverages.

85. By virtue of Arch's reservation of rights issued to the Everett AquaSox Arch has repudiated its contractual obligations to the Everett AquaSox by declaring an unconditional intent not to cover losses relating in way to COVID-19 under the Arch Policies. Because the Arch Policies include materially similar terms and conditions, and because the Everett AquaSox and the Asheville Tourists have incurred similar types of loss, the positions Arch has taken in its reservation of

rights letter to the Everett AquaSox extends with equal force to the Asheville Tourists.

86. Arch has not paid any or all amounts due to the Everett AquaSox and the Asheville Tourists under the Arch Policies in connection with their respective claims. Instead, Arch has made clear that it will not cover these losses.

87. As a direct and proximate result of Arch's anticipatory breach of contract, the Everett AquaSox and the Asheville Tourists have suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgement Against All Defendants)**

88. The Teams repeat and reallege the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

89. This cause of action is brought by all Plaintiffs against all Defendants.

90. Pursuant to the terms of the Policies, the Insurers are obligated to pay, up to the limit of liability or any applicable sublimit or time period, for property damage or business-interruption losses covered under the Policies and not otherwise excluded from coverage.

91. As detailed above, the Teams' losses are covered under multiple coverages of the Policies and are not excluded from coverage.

92. The Insurers dispute, or the Teams reasonably believe the Insurers will dispute, their respective legal obligations to pay the Teams' claims.

93. Pursuant to 28 U.S.C. § 2201, the Teams are entitled to a declaration by this Court of their respective Insurers' obligations under the Policies.

94. An actionable and justiciable controversy exists or will exist between the Teams and their respective Insurers concerning the proper construction of the Policies, and the rights and obligations of the parties thereto, with respect to the Teams' claims for expenses or losses arising out of the coronavirus pandemic.

95. Pursuant to 28 U.S.C. § 2201, this Court should enter a declaratory judgment in favor of the Teams and against their respective Insurers, declaring that there is coverage available for the Teams' claims up to the full limits or applicable sublimits of the Policies and, pursuant to 28 U.S.C. § 2202, declaring any other relief this Court deems proper. Such a declaration would resolve the current controversy between the Teams and their respective Insurers.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Teams pray for relief as follows:

(a) On the First Cause of Action, the West Michigan Whitecaps request that the Court enter judgment against CHUBB, awarding the West Michigan Whitecaps damages in an amount to be determined at trial, but more than \$75,000, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;

(b) On the Second Cause of Action, the Everett AquaSox and the Asheville Tourists request that the Court enter judgment against Arch, awarding the Everett AquaSox and the Asheville Tourists damages in an

amount to be determined at trial, but more than \$75,000, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;

(c) On the Third Cause of Action the Teams request that the Court enter a declaratory judgment in their favor and against their respective Insurers that the Teams' losses are covered under the Policies and that the Insurers are required to pay their respective losses up to the applicable limits of the Policies;

(d) For all Causes of Action, all pre-judgment and post-judgment interest as allowed by law and all the Teams' costs incurred as a consequence of having to prosecute this lawsuit, including attorneys' fees; and

(e) The Teams request such other and further relief as the Court deems just and proper.

### **JURY DEMAND**

The Teams hereby demand a trial by jury on all issues so triable.

Date: July 2, 2020

Respectfully submitted,

/s/ Robin Cohen

Robin Cohen

(N.J. Bar # 30501986)

John Briody (*pro hac vice* to follow)

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/s/ Andrew L Sandler

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