

YES NO

EXHIBITS

CASE NO. 2021 CH 844

DATE: 2/22/2021

CASE TYPE: Declaratory Judgment

PAGE COUNT: 23

CASE NOTE

Return Date: No return date scheduled
Hearing Date: 6/24/2021 10:00 AM - 10:00 AM
Courtroom Number: 2601
Location: District 1 Court
Cook County, IL

FILED
2/22/2021 3:46 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH00844

12301757

Chancery Division Civil Cover Sheet
General Chancery Section

(12/01/20) CCCH 0623

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DESIGNER BRANDS, INC.

Plaintiff

v.

ZURICH AMERICAN INSURANCE COMPANY

Defendant

Case No: 2021CH00844

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

Only one (1) case type may be checked with this cover sheet.

- 0005 Administrative Review
- 0001 Class Action
- 0002 Declaratory Judgment
- 0004 Injunction

- 0017 Mandamus
- 0018 Ne Exeat
- 0019 Partition
- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
- 0023 Reformation of a Contract
- 0024 Rescission of a Contract
- 0025 Specific Performance
- 0026 Trust Construction
- 0050 Internet Take Down Action (Compromising Images)
- Other (specify) _____

- 0007 General Chancery
- 0010 Accounting
- 0011 Arbitration
- 0012 Certiorari
- 0013 Dissolution of Corporation
- 0014 Dissolution of Partnership
- 0015 Equitable Lien
- 0016 Interpleader

Atty. No.: 39225 Pro Se 99500

Atty Name: Perkins Coie LLP

Atty. for: Plaintiff

Address: 131 South Dearborn Street, Suite 1700

City: Chicago State: IL

Zip: 60603

Telephone: (312) 324-8400

Primary Email: BDlatt@perkinscoie.com

Pro Se Only: I have read and agree to the terms of the Clerk's Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

Email: _____

FILED DATE: 2/22/2021 3:46 PM 2021CH00844

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

DESIGNER BRANDS INC.,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

Case No.: _____

COMPLAINT

Plaintiff Designer Brands Inc. (“DBI”), by and through its attorneys, Perkins Coie LLP, for its Complaint for breach of contract and declaratory judgment pursuant to 735 ILCS § 5/2-701 against Zurich American Insurance Company (“Zurich”) states as follows:

THE PARTIES

1. DBI is an Ohio corporation, with its principal place of business in Columbus, Ohio.
2. Zurich is a New York corporation domiciled in Schaumburg, Illinois.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to 735 ILCS § 5/2-209(a)(1), because Zurich at all relevant times was registered with the Illinois Department of Insurance to transact insurance business within the State of Illinois and transacted insurance business within the State. Jurisdiction is additionally proper under 735 ILCS § 5/2-701, because an actual controversy exists between DBI and Zurich regarding the parties’ rights and obligations under the insurance policy at issue.

4. Venue is proper in this Court pursuant to 735 ILCS § 5/2-103(e), because Zurich is licensed and does business in the State of Illinois and has its principal place of business in Cook

County, Illinois. Venue is also proper pursuant to 735 ILCS § 5/2-101, because part of the transaction from which this action arose occurred in Cook County, Illinois.

NATURE OF THE ACTION

5. DBI is one of North America’s largest designers, producers, and retailers of footwear and accessories. DBI owns the Designer Shoe Warehouse (“DSW”) retail chain, which operates stores across the United States.

6. This is a civil action for breach of contract and declaratory relief arising out of Zurich’s wrongful failure and refusal to honor its obligation to provide DBI with coverage under a commercial property insurance policy for the multi-million-dollar losses of business income collectively incurred by DBI’s more than 500 nationwide stores arising out of direct physical loss of or damage to property caused by the 2020 novel coronavirus pandemic, commonly referred to as the “COVID-19 pandemic,” and governmental orders issued in response to the public health crisis.

GENERAL ALLEGATIONS

The Policy

7. Zurich issued EDGE Global Policy No. PPR6819187-00 to DBI for the policy period of December 15, 2019 to December 15, 2020 (the “Policy”). A true and correct copy of the Policy is attached as **Exhibit A**. The Policy provides up to \$50,000,000 in coverage “for the total of all coverages combined[.]”

8. DBI timely paid all premiums due for the Policy.

9. The Policy “insures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property, at an Insured Location.” Policy § 1.01. A Covered Cause of Loss is defined as “[a]ll risks of direct physical loss of or damage from any cause unless excluded.”

Policy § 7.11. Covered Property includes DBI's "interest in buildings (or structures) including new construction, additions, alterations, and repairs that the Insured owns, occupies, leases or rents."

Policy § 3.01.

10. The Policy's Time Element Coverages Form provides:

The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at an Insured Location. The **Suspension** must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at the **Location**, or as provided in Off Premises Storage for Property Under Construction Coverages.

The Company will also pay for the actual Time Element loss sustained by the Insured, during the Period of Liability at other Insured Locations. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at the other Insured Locations. Such other Location must depend on the continuation of business activities at the **Location** that sustained direct physical loss or damage caused by a **Covered Cause of Loss**.

11. The Time Element Coverages provide coverage for loss of "Gross Earnings" which is defined as "the actual loss sustained by the Insured during the period of liability."

Policy § 4.02.01. The Policy Declarations state that this coverage is initially provided for 12 months.

12. The Time Element Coverages provide coverage for an Extended Period of Liability, which extends the Gross Earnings coverage for an additional 365 days pursuant to the Policy Declarations. Policy § 4.02.02.

13. The Time Element Coverages provide "Extra Expense" coverage "for the reasonable and necessary Extra Expenses incurred by the Insured during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise

would be necessarily suspended, due to direct physical loss of or damage caused by a **Covered Cause of Loss** to Property of the type insurable under this policy at a **Location**.” Policy § 4.02.03.

14. The Time Element Coverages provide “Leasehold Interest” coverage for the “loss incurred by the Insured (as lessee) resulting from direct physical loss of or damage caused by a **Covered Cause of Loss** to a building (or structure) which is leased and not owned by the Insured.” Policy Section § 4.02.04.

15. In addition to the above-referenced Time Element Coverages, the Policy provides certain coverages that supplement and enhance the Time Element Coverages, including “Civil or Military Authority” coverage, “Contingent Time Element” coverage, and “Ingress/Egress” coverage. The Policy provides “Civil or Military Authority” coverage for “the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** is caused by order of civil or military authority that prohibits access to the **Location**. That order must result from a civil authority's response to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured's Location as stated in the Declarations.” Policy § 5.02.03.

16. The Policy provides “Contingent Time Element” coverage for the “actual Time Element loss as provided by the Policy, sustained by the Insured during the Period of Liability directly resulting from the necessary **Suspension** of the Insured's business activities at an Insured Location if the **Suspension** results from direct physical loss of or damage caused by a **Covered Cause of Loss** to Property (of the type insurable under this Policy) at **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and**

Attraction Properties located worldwide,” except for certain countries enumerated in the Policy. Policy § 5.02.05.

17. The Policy provides “Ingress/Egress” coverage for “the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured’s business activities at an Insured Location if ingress or egress to that Insured Location by the Insured’s suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within the distance of the Insured Location as stated in the Declarations.” Policy § 5.02.15. The Policy Declarations state that this distance is 5 miles.

18. In addition to the various Time Element coverages, the Policy provides “Protection and Preservation of Property” coverage, and “Tenants Prohibited Access” coverage.

19. The Policy provides “Protection and Preservation of Property” coverage for the reasonable and necessary costs incurred, and the Gross Earnings or Gross Profit loss sustained, “for actions to temporarily protect or preserve Covered Property; provided such actions are necessarily due to actual or imminent physical loss or damage due to a **Covered Cause of Loss** to such Covered Property.” Policy § 5.02.23.

20. The Policy provides “Tenants Prohibited Access” coverage for the actual Gross Earnings or Gross Profit loss sustained, resulting from “the necessary **Suspension** of the Insured’s business activities at an Insured Location if access to that **Location** by the Insured’s suppliers, customers or employees is physically obstructed due to the owner, landlord or a legal representative of the building owner or landlord, prohibiting access to the Insured Location.” Policy § 5.02.28.

21. The Policy contains an exclusion for “**Contamination**, and any cost due to **Contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.” Policy § 3.03. The Policy’s Louisiana Amendatory Endorsement deletes the Policy’s definition of “Contamination (Contaminated)” and “Contaminant(s)” and replaces it with the following definitions:

Contamination (Contaminated) - Any condition of property due to the actual presence of any **Contaminant(s)**.

...

Contaminant(s) - Any solid, liquid, gaseous, thermal or other irritant, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste (including materials to be recycled, reconditioned or reclaimed), other hazardous substances, **Fungus** or **Spores**.

Louisiana Amendatory Endorsement ¶¶ 1, 11-12. Unlike the “Contamination” definition in Policy Section 3.03, the Louisiana Amendatory Endorsement excludes pathogens, viruses, and disease-causing agents from its definition of “Contamination.” *See* Policy § 7.09. Because COVID-19 is not a “solid, liquid, gaseous, thermal or other irritant,” the Policy’s contamination exclusion provides no basis for excluding coverage for the loss at issue. Furthermore, the governmental orders arising from the public health crisis are not “Contamination.”

22. The Policy has exclusions for “[l]oss or damage arising from delay, loss or market, or loss of use” and “[l]oss or damage resulting from the Insured’s suspension of business activities, except to the extent provided by this Policy.” Policy § 3.03.02. These exclusions do not apply, because DBI’s losses were caused by the presence of the novel coronavirus itself and government orders issued in response to the public health crisis, both of which constitute a Covered Cause of Loss under the Policy.

23. The Policy has an exclusion for “[l]oss or damage arising from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation,

repair, replacement, improvement, modification, demolition, occupancy, operation or other use, or removal including debris removal of any property.” Policy § 3.03.01. This exclusion does not apply, because DBI’s losses were caused by the presence of the novel coronavirus itself and the governmental orders issued in response to the public health crisis, both of which constitute a Covered Cause of Loss under the Policy.

The COVID-19 Pandemic

24. COVID-19 is a communicable disease believed to be caused by a novel coronavirus now known as SARS-CoV-2.

25. On January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On March 11, 2020, the WHO upgraded its declaration to recognize COVID-19 as a global pandemic.

26. WHO reporting reflects that COVID-19 is highly transmissible and can be passed, among other ways, through:

- a. “direct, indirect, or close contact with infected people”;
- b. exposure to respiratory droplets from a person “in close contact (within 1 metre) with an infected person who has respiratory symptoms (e.g. coughing or sneezing) or who is talking or singing”;
- c. airborne or aerosol transmission where droplets remain in the air for extended periods of time and over long distances; and
- d. coming into contact with an infected surface as “viable SARS-CoV-2 virus and/or RNA . . . can be found on . . . surfaces for periods ranging from hours to days, depending on the ambient environment (including temperature and humidity) and the type of surface.”¹

¹ *Transmission of SARS-CoV-2: implications for infection prevention precautions*, World Health Org. (Jul. 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

27. The U.S. Centers for Disease Control and Prevention (“CDC”) has similarly concluded that COVID-19 “is spreading very easily and sustainably between people.”²

28. At least one aerosols expert, University of Colorado chemistry professor Jose-Luis Jimenez, stated in a March 2020 interview that individuals should maintain at least 25 feet of distance between themselves and others to prevent the aerosol spread of SARS-CoV-2.³

29. With respect to surfaces, a March 2020 National Institutes of Health study published in the *New England Journal of Medicine* reported that SARS-CoV-2 “remained active on plastic and stainless steel surfaces for two to three days” and “remained infectious for up to 24 hours on cardboard and four hours on copper.”⁴ The same study found that SARS-CoV-2 “was detectable in aerosols for up to three hours.” All of these materials are present in DBI’s Insured Locations.

30. Other studies have found that SARS-CoV-2 may be found on various surfaces for even longer periods of time. For example, the CDC determined that SARS-CoV-2 RNA was identifiable on surfaces within the Diamond Princess cruise ship up to 17 days after the cabins had been vacated.⁵

31. Another study published on October 7, 2020 in the *Virology Journal* determined that “SARS-CoV-2 can be recovered from non-porous surfaces for at least 28 days at ambient temperature and humidity (20 °C and 50% RH).”⁶

² *How it Spreads*, Ctr. for Disease Control and Prevention (Updated Jun. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

³ Chris Bianchi, *Coronavirus: Tips to stay safe while exercising outdoors*, PIONEER PRESS (March 27, 2020), <https://www.twincities.com/2020/03/27/coronavirus-exercising-outdoors-jogging-staying-safe-tips/>

⁴ *Study Suggests New Coronavirus May Remain on Surfaces for Days*, Nat’l Inst. of Health (Mar. 24, 2020), <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

⁵ Leah F. Moriarty, et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February-March 2020*, Ctr. for Disease Control and Prevention (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

⁶ Riddell, S., Goldie, S., Hill, A. et al. *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, *Virology Journal* 17, 145 (2020), <https://doi.org/10.1186/s12985-020-01418-7>.

32. COVID-19 is particularly dangerous because it has an incubation period (the time between exposure and manifesting symptoms) of up to 14 days, during which time an individual who has been exposed to COVID-19 but is “pre-symptomatic” can unknowingly shed and/or transmit SARS-CoV-2 particles.⁷

33. Even more concerning, as many as 40 percent of individuals infected with COVID-19 never manifest symptoms.⁸ Scientific studies suggest that even asymptomatic individuals can shed and/or transmit SARS-CoV-2 particles at a level sufficient to infect others.

34. Based on this evidence, SARS-CoV-2 plainly can cause direct physical damage to property.

35. Additionally, SARS-CoV-2 plainly can cause direct physical loss of property.

The COVID-19 Pandemic and Civil Authority Orders Issued in Response to the Public Health Crisis Caused Direct Physical Loss of or Damage to DBI’s Property

36. COVID-19 was first reported in Wuhan City, China in or around December 2019.⁹ Available evidence “suggests that the start of the outbreak resulted from a single point introduction in the human population around the time that the virus was first reported in humans in Wuhan, China in December 2019.”¹⁰

37. On or about January 21, 2020, the United States confirmed what was then believed to be the first known case of COVID-19 in the country, involving an individual who entered the

⁷ *Coronavirus Disease (COVID-19) Situation Report - 73*, World Health Org. (Apr. 2, 2020), <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19>.

⁸ Apoorva Mandavilli, *Even Asymptomatic People Carry the Coronavirus in High Amounts*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/health/coronavirus-asymptomatic-transmission.html>; see also Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected* (May 27, 2020), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-maybe-more-common-suspected-n1215481>.

⁹ *Coronavirus Disease (COVID-19) Situation Report - 94*, World Health Org. (Apr. 23, 2020), <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19>.

¹⁰ *Id.*

United States in Seattle, Washington and resided in State of Washington. Investigations concerning potential earlier cases remain on-going.

38. On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency to combat COVID-19.¹¹

39. Thereafter, COVID-19 began to rapidly spread across the United States, including in, at, and near the Insured Locations and nearby attractions

40. After the late January/early February time period, COVID-19 spread rapidly across the country, going from 24 confirmed cases at the end of February to over 186,000 confirmed cases by the end of March.

41. In response to the rapid spread of COVID-19, states began enacting stay at home orders.

42. On March 11, 2020, the WHO declared COVID-19 to be a “pandemic.”

43. On March 13, 2020, the White House issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.

44. Upon information and belief, many thousands (if not millions) more cases of COVID-19 went unconfirmed due to, among other things, lack of adequate testing infrastructure and capacity and lack of public and scientific understanding about COVID-19, including the ability for individuals to carry and/or shed the virus while pre-symptomatic and/or asymptomatic.

45. On March 17, 2020, DBI temporarily closed its stores to the public in the United States and Canada based on the CDC’s recommendations on cancelling gatherings of more than fifty (50) people and implanting social distancing measures to curb transmission of COVID-19.¹²

¹¹ *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus*, U.S. Dep’t of Health and Human Serv. (Jan. 31, 2020), <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

¹² <https://designerbrands.com/news/a-message-from-ceo-roger-rawlins-protecting-our-communities/>.

46. Following this closure, DBI gradually began reopening its stores based on state and local orders. By June 2020, most of DBI's stores had reopened, although certain stores did not reopen until September 2020.

47. The first known confirmed COVID-19 case at a DBI Insured Location was on or about June 18, 2020, at a location in Raleigh, North Carolina.

48. Since then, over 450 confirmed COVID-19 cases have been reported at DBI locations across the country, including but not limited to locations in Illinois, North Carolina, Florida, Texas, Virginia, New Jersey, Kentucky, Tennessee, South Carolina, Tennessee, Georgia, Ohio, Indiana, Massachusetts, Colorado, Michigan, Washington, Arizona, Pennsylvania, Connecticut, North Dakota, Wisconsin, Utah, Oklahoma, Alabama, California, New York, Minnesota, Maryland, Nevada, Nebraska, New Hampshire, Kansas, Arkansas, Missouri, Oregon, Rhode Island, and Washington, DC.

49. On information and belief, SARS-CoV-2 was present at DBI's other Insured Locations starting no later than March 2020 and at all relevant times thereafter due to (i) the prevalence of COVID-19 across the United States; (ii) the fact that DBI's Insured Locations are heavily trafficked public spaces; (iii) the lack of available testing at high volumes; and (iv) the general lack of public knowledge prior to April 2020 that COVID-19 may be spread by pre-symptomatic and asymptomatic individuals.

50. During the same general time period, state and local governments in DBI's Insured Location jurisdictions issued orders that, among other things, closed all but "essential" businesses; imposed occupancy restrictions; urged and/or required the public to avoid all non-essential travel; barred large group gatherings and events, and required DBI to incur costs to provide for social distancing of customers (the "Government Shutdown Orders").

51. As a result of the Government Shutdown Orders, DBI incurred direct physical loss of and damage to its Insured Locations, because many of its stores were closed as non-essential businesses and/or required to implement occupancy restrictions mandated by government orders.

52. As of the date of this filing, DBI's stores have reopened. Many of DBI's stores have been required to implement occupancy restrictions to comply with government orders. All stores have incurred costs in preparing to safely reopen in compliance with applicable municipal, state, and/or federal guidance concerning COVID-19.

Zurich's Denial of Coverage

53. On April 23, 2020, DBI provided Zurich with notice of loss under the Policy ("Claim").

54. On July 21, 2020, Zurich sent a letter requesting information relating to the Claim and stating that Zurich would continue its investigation of the Claim under a reservation of rights. A true and correct copy of the July 21, 2020 letter is attached as **Exhibit B**.

55. On October 22, 2020, DBI's counsel sent a letter to Zurich disputing Zurich's coverage position and providing the information requested in the July 21, 2020 letter. A true and correct copy of the October 22, 2020 letter is attached as **Exhibit C**.

56. Having received no response from Zurich to the October 22, 2020 letter, DBI's counsel sent a follow up letter on February 2, 2021 requesting a status update on Zurich's response to DBI's correspondence, and further requesting that Zurich agree to toll the 12-month service of suit deadline until December 1, 2021 in order to allow time for the parties to resolve this dispute. A true and correct copy of the February 2, 2021 letter is attached as **Exhibit D**.

57. Zurich responded on February 8, 2021, stating it had concluded that the Policy does not provide coverage for the Claim. Zurich's letter did not address DBI's request for an extension

of the deadline in the suit limitations clause. A true and correct copy of the February 8, 2021 letter is attached as **Exhibit E**.

58. On February 9, 2021, DBI's counsel sent an email to Zurich requesting a response to DBI's request for an extension of the service of suit deadline. A true and correct copy of the February 9, 2021 email from DBI's counsel is attached as **Exhibit F**.

59. That same day, Zurich sent an email to DBI's counsel stating that Zurich would not grant the suit extension. A true and correct copy of the February 9, 2021 email from Zurich is attached as **Exhibit G**.

**DBI's Claim for COVID-19 Related Losses Triggers the
"All Risks" Zurich Policy and Various Coverages Therein**

60. The presence of SARS-CoV-2 at DBI's Insured Locations and Government Shutdown Orders arising from the public health crisis first arose during the Policy period, and caused direct physical loss of and direct physical damage to covered property caused by a Covered Cause of Loss at the Insured Locations as defined in the Policy.

61. SARS-CoV-2 and the Government Shutdown Orders are both Covered Causes of Loss that caused direct physical loss of and direct physical damage to the Insured Locations by, among other things, requiring material alterations to the Insured Locations and operations and systems used therein, imposing occupancy restrictions on Insured Locations, and forcing closure of the Insured Locations that rendered them physically nonfunctional and inaccessible for the conduct of DBI's ordinary business operations.

i. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Time Element Coverages

62. Starting no later than March 2020, the spread of SARS-CoV-2 and the Government Shutdown Orders arising from the public health crisis caused DBI to incur a necessary Suspension,

both partial and total, in its business activities caused by direct physical loss of or damage to Insured Locations caused by a Covered Cause of Loss during the Policy period as defined by the Policy.

63. This Suspension triggers the Policy's Time Element Coverages, including but not limited to Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest Coverages as defined by the Policy.

64. DBI's business Suspension is on-going due to the continuing physical loss of or damage to its Insured Locations caused by the spread of SARS-CoV-2 and Government Shutdown Orders arising from the public health crisis.

ii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Gross Earnings and Extended Period of Liability Coverages

65. SARS-CoV-2 and the Government Shutdown Orders arising from the public health crisis have caused a business Suspension resulting in an actual loss of gross earnings sustained by DBI during the Policy's Period of Liability, thus triggering the Policy's Gross Earnings coverage for up to 12 months. Furthermore, at the conclusion of that Period of Liability, the Policy's Extended Period of Liability coverage is triggered for actual gross earnings loss resulting from business Suspension up to an additional 365 days.

66. The duration and amount of the Policy's Gross Earnings coverage and Extended Period of Liability coverage will be proven at trial.

iii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Extra Expense Coverage

67. SARS-CoV-2 and the Government Shutdown Orders arising from the public health crisis have caused covered loss of or damage to insurable Property at the Insured Locations. This has forced DBI to incur expenses in excess of the total cost chargeable to the operation of DBI's

business over and above the total cost that would normally have been incurred to conduct the business had no covered loss of or damage to insurable Property occurred at the Insured Locations.

68. Such extra expenses include without limitation: purchasing personal protective equipment, sanitizer, and thermometers, disinfecting and sanitizing costs, security costs, costs for signage, costs for installing plexiglass barriers, and costs for implementing additional social distancing measures.

69. The foregoing and any similar expenses incurred by DBI trigger the Policy's Extra Expense coverage, for a duration and in an amount to be proven at trial.

iv. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Leasehold Interest Coverage

70. Various building premises leased by DBI became wholly untenable or unusable as a result of direct physical loss of or damage caused by SARS-CoV-2 and the Government Shutdown Orders, which are Covered Causes of Loss. DBI has incurred Leasehold Interest loss as a result of rent paid by DBI as a lessee of such building premises, for which DBI remained obligated to pay rent.

71. The foregoing and any similar expenses incurred by DBI trigger the Policy's Leasehold Interest coverage, for a duration and in an amount to be proven at trial.

v. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Civil or Military Authority Coverage

72. Starting no later than March 2020, state and local governments in various jurisdictions in which DBI does significant business issued proclamations and orders that, among other things, closed all but "essential" businesses; imposed occupancy restrictions; urged and/or required the public to avoid all non-essential travel; barred large group gatherings and events; and,

even if stores remained open, required DBI to incur costs to provide for social distancing of customers and employees.

73. These state, county, and/or municipal proclamations and orders partially or totally prohibited access to DBI's Insured Locations.

74. Such proclamations and orders were issued as a direct result of the COVID-19 pandemic and public health crisis, which is a "Covered Cause of Loss" under the Policy and led DBI to incur substantial losses at its Insured Locations, thus triggering the Policy's Civil or Military Authority coverage for a duration and in an amount to be proven at trial.

vi. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Contingent Time Element Coverage

75. DBI's claim under the Policy includes loss resulting from Suspension of DBI's activities at Insured Locations caused by direct physical loss of or damage to the properties of DBI's customers, suppliers, contract manufacturers, or contract service providers in connection with the COVID-19 pandemic and the Government Shutdown Orders as a result of the public health crisis. As a result of that loss or damage, DBI's customers, suppliers, contract manufacturers, or contract service providers were prevented from being able to accept or deliver the goods or services required or provided by DBI.

76. In other words, and without limitation, because individuals or businesses that would have otherwise patronized DBI's stores or supplied DBI could not do so due to the loss or damage to their own properties caused by the COVID-19 pandemic and Government Shutdown Orders, DBI itself incurred Suspension that triggers the Contingent Time Element coverage under the Policy, for duration and in an amount to be proven at trial.

vii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Ingress/Egress Coverage

77. DBI has sustained an actual Time Element Loss due to Suspension of DBI's business activities at Insured Locations, because ingress or egress to its Insured Locations by suppliers, customers, or employees was prevented by physical obstruction due to direct physical loss of or damage to property within 5 miles of the Insured Locations caused by the COVID-19 pandemic and Government Shutdown Orders.

78. The foregoing Suspension incurred by DBI triggers the Policy's Ingress/Egress coverage, for a duration and in an amount to be proven at trial.

viii. SARS-CoV-2 and the Government Shutdown Orders Trigger the Policy's Protection and Preservation of Property Coverage

79. DBI has incurred reasonable and necessary costs, and Gross Earnings or Gross Profit losses, for actions to temporarily protect or preserve Covered Property due to imminent physical loss of or damage to such Covered Property due to the COVID-19 pandemic and the Government Shutdown Orders.

80. The foregoing costs and losses trigger the Policy's Protection and Preservation of Property coverage, for a duration and amount to be proven at trial.

ix. An Owner or Landlord's Physical Obstruction of Access to an Insured Location Causing Business Suspension Triggers the Policy's Tenants Prohibited Access Coverage

81. DBI has incurred Gross Earnings and Gross Profit losses as a result of Suspension of DBI's business activities at Insured Locations, because access to Insured Locations by DBI's

suppliers, customers, or employees has been physically obstructed and prohibited by the Insured Locations' owners, landlords, or their representatives.

82. The foregoing Suspension triggers the Policy's Tenants Prohibited Access coverage, for a duration and amount to be proven at trial.

83. The Claim is covered under each of the foregoing Policy coverages, and there are no Policy exclusions or conditions that preclude coverage for the Claim under the Policy.

The Contamination Exclusion Does Not Apply to This Claim

84. The Policy's Contamination Exclusion does not apply to the Claim, because the definition of contamination, as amended by the Louisiana Amendatory Endorsement, does not identify a virus, a communicable disease, or any government order(s).

85. Moreover, SARS-CoV-2, COVID-19, and/or the Government Shutdown Orders are not a "solid, liquid, gaseous or thermal irritant or contaminant" as those terms are commonly understood.

86. Even if SARS-CoV-2 or COVID-19 could be considered an "irritant or contaminant," which it is not, there was no "[d]ischarge, dispersal, seepage, migration, release or escape," as those terms are commonly understood and applied. This exclusion is applied as a matter of law only to traditional forms of environmental pollution, which are not involved in this Claim.

87. Furthermore, in no event could the Contamination Exclusion apply to Government Shutdown Orders, which were issued in response to a public health crisis.

The Loss of Market and Law/Ordinance Exclusions Do Not Apply to This Claim

88. The Policy's exclusions relating to delay, loss of market, and loss of use do not apply to this Claim, because DBI's losses were caused by the COVID-19 pandemic and Government Shutdown Orders, both of which are a Covered Cause of Loss under the Policy and

are plainly not within the scope of the exclusions.

89. The Policy’s exclusion for loss or damage resulting from enforcement of a government ordinance does not apply because the presence of SARS-CoV-2 and the Government Shutdown Orders at issue, both of which are a Covered Cause of Loss under the Policy, are plainly not within the scope of the exclusion.

COUNT ONE
Breach of Contract

90. DBI realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

91. DBI and Zurich entered into a legally binding written contract when Zurich issued the Policy.

92. DBI made a claim to Zurich under the Policy for substantial, multi-million-dollar losses arising out of the COVID-19 pandemic and the Government Shutdown Orders, both of which were the result of a “Covered Cause of Loss.”

93. DBI’s property damage costs, business interruption losses, extra expenses, and other losses are covered under various coverages in the Policy as outlined herein and are not excluded.

94. DBI has complied in all material respects with the conditions and requirements of the Policy, or such conditions and requirements have been waived, or their satisfaction otherwise excused by operation of law or by Zurich’s conduct. Such conditions or requirements include without limitation paying the premium and providing timely notice of its claim.

95. By failing and refusing to provide coverage to DBI, Zurich has breached the Policy.

96. As a direct and proximate result of such breach, DBI has been deprived of the benefit of its insurance coverage and has incurred damages in an amount to be proven at trial.

COUNT TWO
Declaratory Judgment Pursuant to 735 ILCS § 5/2-701

97. DBI realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

98. DBI is an Insured under the Policy, which is a valid and enforceable contract sold to DBI by Zurich that provides up to \$50,000,000 in coverage for property loss or damage, business interruption, extra expense, and other coverages.

99. DBI gave Zurich timely notice of its Claim for property loss or damage, business interruption, extra expense, and other coverages, each of which involve a “Covered Cause of Loss” that is sufficient to trigger the Policy’s Time Element Coverages (including Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest), Civil or Military Authority coverage, Contingent Time Element coverage, Ingress/Egress coverage, Protection and Preservation of Property coverage, and Tenants Prohibited Access coverage, as well as any other coverages or benefits potentially available under the Policy.

100. Zurich has wrongfully denied coverage for the Claim, erroneously contending that certain Policy exclusions purportedly preclude coverage for the Claim.

101. As such, an actual and justiciable controversy exists between Zurich and DBI concerning the application of the Policy to the Claim, including whether the presence of SARS-CoV-2 at an insured location constitutes a “Covered Cause of Loss”; whether Government Shutdown Orders that limit or prohibit access to Insured Property constitute a “Covered Cause of Loss”; whether the “contamination exclusion” applies; and whether certain other exclusions, such as the “loss of market” and exclusion for “law/ordinance” enforcement apply.

102. DBI seeks a declaration from the Court that: (a) the presence of SARS-CoV-2 at an Insured Location is a “Covered Cause of Loss” under the Policy; (b) the Government Shutdown

Orders prohibiting or limiting access to DBI's Insured Property constitute a "Covered Cause of Loss"; (c) DBI is entitled to coverage under the Policy's Time Element Coverages (including Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest) for its COVID-19-related losses or damages; (d) DBI is entitled to coverage under the Policy's Civil or Military Authority coverage for its COVID-19-related losses or damages; (e) DBI is entitled to coverage under the Policy's Contingent Time Element coverage for its COVID-19-related losses or damages; (f) DBI is entitled to coverage under the Policy's Ingress/Egress coverage for its COVID-19-related losses or damages; (g) DBI is entitled under the Policy's Protection and Preservation of Property coverage for its COVID-19-related losses or damages; (h) DBI is entitled to coverage under the Policy's Tenants Prohibited Access coverage for its COVID-19-related losses or damages; and (i) there is no applicable Policy exclusion or condition that precludes coverage for the Claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DESIGNER BRANDS INC. prays for the following relief:

A. Enter a judgment in favor of DBI and against Zurich, as requested herein, on each of the Counts in DBI's Complaint;

B. Award DBI its actual and consequential damages sustained as a result of Zurich's breach of the Policy in an amount to be established through proof;

C. Enter a declaration that: (a) the presence of SARS-CoV-2 at an Insured Location is a "Covered Cause of Loss" under the Policy; (b) the Government Shutdown Orders prohibiting or limiting access to DBI's Insured Property constitute a "Covered Cause of Loss"; (c) DBI is entitled to coverage under the Policy's Time Element Coverages (including Gross Earnings, Extended Period of Liability, Extra Expense, and Leasehold Interest) for its COVID-19-related losses or damages; (d) DBI is entitled to coverage under the Policy's Civil or Military Authority coverage for its COVID-19-related losses or damages; (e) DBI is entitled to coverage under the Policy's Contingent Time Element coverage for its COVID-19-related losses or damages; (f) DBI is entitled to coverage under the Policy's Ingress/ Egress coverage for its COVID-19-related losses or damages; (g) DBI is entitled to coverage under the Policy's Protection and Preservation of Property coverage for its COVID-19-related losses or damages; (h) DBI is entitled to coverage under the Policy's Tenants Prohibited Access coverage for its COVID-19-related losses or damages; and (i) there is no applicable Policy exclusion or condition that precludes coverage for the Claim.

D. Enter a judgment awarding DBI pre-judgment interest and post-judgment interest under applicable law; and

E. Enter a judgment awarding DBI its costs of court and any other and further relief to which it may justly be entitled.

Dated: February 22, 2021

Respectfully submitted,

By: /s/ Bradley H. Dlatt

Selena J. Linde (*pro hac vice* forthcoming)
Vivek Chopra (*pro hac vice* forthcoming)
Peter L. Tracey (*pro hac vice* forthcoming)
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 800
Washington, DC 20005-3960
Phone: 202.654.6200
SLinde@perkinscoie.com
VChopra@perkinscoie.com
PTracey@perkinscoie.com

Bradley H. Dlatt
PERKINS COIE LLP
131 S. Dearborn Street Suite 1700
Chicago, IL 60603-5559
BDlatt@perkinscoie.com

Molly E. Mitchell (*pro hac vice* forthcoming)
PERKINS COIE LLP
1111 West Jefferson Street, Suite 500
Boise, ID 83702-5391
Phone: 208.343.3434
MMitchell@perkinscoie.com

Counsel for Designer Brands Inc.