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7 Attorneys for Plaintiff  
8 BEAZLEY UNDERWRITING, LTD.

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

11  
12 BEAZLEY UNDERWRITING, LTD.,  
13 Plaintiff,  
14 v.  
15 FITNESS INTERNATIONAL, LLC,  
16 Defendants.  
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CASE NO. 8:21-cv-642

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

18  
19 COMES NOW, Plaintiff BEAZLEY UNDERWRITING, LTD. (“Beazley”), and  
20 files this Complaint for Declaratory Judgment against FITNESS INTERNATIONAL,  
21 LLC (“Fitness International”), showing the Court as follows:

22 **I. NATURE OF THE ACTION**

23 1. This insurance coverage declaratory action arises out of Fitness  
24 International’s claim for business interruption coverage related to the COVID-19  
25 pandemic.

26 2. Beazley subscribed to Policy No. W2C215200101, which provides  
27 Fitness International certain commercial property coverage, subject to the policy’s  
28

1 terms, conditions, limitations, and exclusions, from August 4, 2020, to August 4, 2021  
2 (the “Policy”). A copy of the Policy is attached as Exhibit A.

3 3. Beazley seeks a judicial determination pursuant to Federal Rule of Civil  
4 Procedure 57 and 28 U.S.C. § 2201 concerning whether Fitness International is entitled  
5 to business income coverage and/or coverage for property damage for its claimed  
6 COVID-19 losses and/or the extent to which payment may be owed.

## 7 **II. THE PARTIES**

8 4. Plaintiff Beazley is a United Kingdom corporation and is a citizen and  
9 resident of the United Kingdom. Beazley was incorporated and formed under the laws  
10 of England and Wales, with its principal place of business at 22 Bishops Gate, London,  
11 United Kingdom EC2N 4BQ.

12 5. Defendant Fitness International is a California company with its principal  
13 place of business in Irvine, California. It can be served through its registered agent:  
14 National Registered Agents, Inc., 818 West Seventh Street, Suite 930, Los Angeles,  
15 California 90017.

16 6. Upon information and belief, the members of Fitness International are  
17 citizens of the States of California, Delaware, Idaho, Massachusetts, New Jersey,  
18 Virginia, Illinois, and South Dakota, and at a minimum, none of the members of  
19 Fitness International are citizens of the United Kingdom and Beazley is not a citizen of  
20 these states. For the purposes of citizenship, Fitness International is a citizen of  
21 California.

## 22 **III. JURISDICTION AND VENUE**

23 7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332  
24 and 2201 because complete diversity exists between the parties, the amount in  
25 controversy exceeds the sum of \$75,000 exclusive of interest and costs, and Beazley  
26 seeks declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*, the Federal Declaratory  
27 Judgment statute.

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1 8. Beazley subscribes to Policy No. W2C215200101 and has more than  
2 \$75,000 at issue in this litigation, and the subscriber to a Lloyd’s insurance policy is a  
3 proper party.

4 9. An actual case and controversy of a justiciable exists among the parties  
5 regarding the duties, rights, and obligations, if any, under the subject insurance policy.

6 10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because  
7 over 125 of the properties at issue are located in California, with over half of those  
8 properties in this district, and Fitness International resides in this district.

9 **IV. INTRODUCTION AND BACKGROUND**

10 11. Fitness International is the Named Insured under a commercial property  
11 policy subscribed to by Beazley, Policy No. W2C215200101 (the “Policy”). The  
12 Policy is an individual policy which forms part of a large commercial property  
13 insurance program for the 2020-2021 policy year, providing property damage and  
14 business income coverage to over 700 fitness centers owned and operated by Fitness  
15 International (the “Properties”).

16 12. The overall policy limit for the 2020-2021 policy is \$500,000,000 with  
17 various applicable sub-limits. Beazley subscribes to 10% of the \$100,000,000 primary  
18 loss layer. Pursuant to the Policy, Beazley’s obligations are several and not joint.

19 13. This declaratory judgment action arises from Fitness International’s  
20 insurance claim for business income losses resulting from COVID-19.

21 14. The Policy was negotiated through and delivered to Fitness International’s  
22 broker located in Los Angeles, California.

23 15. On September 14, 2020, Fitness International filed a lawsuit against  
24 insurers who subscribed to Fitness International’s 2019-2020 policy in the Superior  
25 Court of California, Orange County, in the action styled *Fitness International, LLC v.*  
26 *Zurich American Insurance Company, et. al.*, Case No. 30-2020-01160031-CU-IC-  
27 CJC (the “California State Lawsuit”). Beazley was not named as a defendant in this  
28 suit as it did not subscribe to Fitness International’s policy for the 2019-2020 policy

1 year. At that time, Fitness International had not even notified Beazley of a potential  
2 claim.

3 16. The California State Lawsuit was removed to this Court on October 23,  
4 2020, in the action styled *Fitness International, LLC v. Zurich American Insurance*  
5 *Company, et. al.*, Case No. 8:20-cv-02040-JVS-JDE.

6 17. On January 6, 2021, Fitness International voluntarily dismissed the  
7 California State Lawsuit.

8 18. That same day, Fitness International filed a complaint in the Superior  
9 Court of the State of Washington, King County, styled *Fitness International, LLC v.*  
10 *Zurich American Insurance Company, et. al.*, Case. No. 21-2-00261-3-SEA against the  
11 insurers who subscribed to Fitness International’s 2019-2020 policy (the “Washington  
12 State Lawsuit”). Again, Beazley was not named as a defendant in the Washington  
13 State Lawsuit.

14 19. On or about January 11, 2021, Fitness International first made a claim  
15 with Beazley regarding business income losses due to COVID-19 under the Policy.

16 20. Beazley timely acknowledged Fitness International’s claim on February 2,  
17 2021.

18 21. Beazley requested that Fitness International provide additional  
19 information concerning the facts and circumstances surrounding the claim in order to  
20 properly investigate the claim. These requests have not been responded to.

21 22. On or about March 18, 2021, Fitness International sent an Insurance Fair  
22 Conduct notice (the “IFCA Notice”) to Beazley and other insurers pursuant to  
23 Washington State statute. The IFCA Notice is directed at insurers under both the 2019-  
24 2020 and 2020-2021 policies.

25 23. The IFCA Notice states that Fitness International intends to file an action  
26 against Beazley for bad faith arising out of Beazley’s denial of coverage, despite the  
27 lack of denial and Beazley’s ongoing efforts to obtain information related to the claim.

28 ///

1 24. Beazley has filed this declaratory judgment action for a determination  
2 concerning whether Fitness International is entitled to business income coverage  
3 and/or coverage for property damage for its claimed COVID-19 losses and/or the  
4 extent to which payment may be owed.

5 **V. SUMMARY OF COVERAGE ISSUES**

6 25. Beazley seeks a declaration as to the following coverage issues:

7 a. Whether the claimed business income losses for COVID-19 constitute  
8 covered losses under the Policy;

9 b. Whether the Policy requires direct physical loss of or damage to property  
10 for business income losses, and whether Fitness International has sustained direct  
11 physical loss of or damage to property from COVID-19 at any of its Properties;

12 c. Whether the Policy excludes coverage for the claimed business income  
13 losses, including claims for losses arising from (a) communicable disease, (b)  
14 contamination, (c) an ordinance or law regulating the use of property, (d) loss of use,  
15 (e) loss of market, (f) a microorganism of any type, nature, or description, including  
16 but not limited to any substance whose presence poses an actual or potential threat to  
17 human health, and/or (g) the presence, existence, or release of anything which  
18 endangers or threatens to endanger the health, safety or welfare of persons;

19 d. Whether the loss was fortuitous;

20 e. Whether the claim is otherwise covered and not excluded or limited from  
21 coverage under the Policy; and

22 f. Whether any payment is owed by Beazley to Fitness International under  
23 the Policy, and if a payment is owed, how much.

24 **VI. THE INSURANCE POLICY**

25 26. The terms, conditions, definitions, exclusions, and other provisions of the  
26 Policy are incorporated herein by reference.

27 27. All conditions precedent to Beazley filing this lawsuit have occurred, but  
28 Fitness International has not complied with its obligations precedent to suit.

1 28. The Policy contains a choice-of-law provision which states that it “shall  
2 be governed by the laws of California. . .” Form (LMA3102A).

3 29. The Policy’s insuring agreement provides as follows:

4 1.01 INSURING AGREEMENT

5 This Policy Insures against direct physical loss of or  
6 damage caused by a **Covered Cause of Loss** to Covered  
7 Property, at an insured Location described in Section II-  
8 2.01, all subject to the terms, conditions and exclusions  
9 stated in this Policy.

10 \* \* \*

11 30. Covered Cause of Loss is defined as “[a]ll risks of direct physical loss of  
12 or damage from any cause unless excluded.”

13 31. The Policy provides certain “Time Element” coverage as follows:

14 **SECTION IV-TIME ELEMENT**

15 4.01 Loss Insured

16 4.01.01 The Company will pay for the actual Time Element  
17 loss the Insured sustains, as provided in the Time  
18 Element Coverages, during the Period of Liability.  
19 The Time Element loss must result from the  
20 necessary **Suspension** of the Insured’s business  
21 activities at an Insured Location. The **Suspension**  
22 must be due to direct physical loss of or damage to  
23 Property (of the type insurable under this Policy  
24 other than **Finished Stock**) caused by a **Covered**  
**Cause of Loss** at the **Location**, or as provided in  
25 Off Premises Storage for Property Under  
26 Construction Coverages.

27 The Company will also pay for the actual Time  
28 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

1 must depend on the continuation of business  
2 activities at the **Location** that sustained direct  
3 physical loss or damage caused by a **Covered**  
4 **Cause of Loss**.

5 32. The Policy's "Extra Expense" provision provides as follows:

6 4.02.03 EXTRA EXPENSE  
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8 The Company will pay for the reasonable and  
9 necessary Extra Expenses incurred by the Insured,  
10 during the Period of Liability, to resume and  
11 continue as nearly as practicable the Insured's  
12 normal business activities that otherwise would be  
13 necessarily suspended, due to direct physical loss of  
14 or damage caused by a **Covered Cause of Loss** to  
15 Property of the type insurable under this policy at a  
16 **Location**.

17 The Company will reduce the amount payable as  
18 Extra Expense by the fair market value remaining at  
19 the end of the Period of Liability for property  
20 obtained in connection with the above.

21 Extra Expenses mean that amount spent to continue  
22 the Insured's business activities over and above the  
23 expenses the Insured would have normally incurred  
24 had there been no direct physical loss of or damage  
25 caused by a **Covered Cause of Loss** to Property of  
26 the type insurable under this policy at a **Location**.  
27 Extra Expense does not include any Gross Earnings  
28 loss or Gross Profit loss, the cost of permanent  
repair or replacement of property that has suffered  
direct physical loss or damage, or expenses  
otherwise payable elsewhere in the Policy.

33. The Period of Liability is defined as follows:

4.03. PERIOD OF LIABILITY

4.03.01. The Period of Liability applying to all Time  
Element Coverages, except Gross Profit and

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Leasehold Interest, and as shown below or if otherwise provided under any Special Coverage, and subject to any Time Limit provided in 2.03.09., is as follows:

4.03.01.01. For building and equipment: The period starting from the time of physical loss or damage of the type insured against and ending when with due diligence and dispatch the building and equipment could be repaired or replaced, and made ready for operations under the same or equivalent physical and operating conditions that existed prior to the damage. The expiration of this Policy will not limit the Period of Liability.

34. The Policy provides certain “Civil or Military Authority” coverage as follows:

5.02.03. CIVIL OR MILITARY AUTHORITY

The Company will pay 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. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time the order remains in effect, but not to exceed the number of consecutive days following such order as stated in the Declarations up to the limit applying to this Coverage.

35. The Policy provides certain “Contingent Time Element” coverage as follows:



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5.02.05. CONTINGENT TIME ELEMENT

This Policy covers 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 in the following . . .

\* \* \*

36. The Policy provides certain “Ingress/Egress” coverage as follows:

5.02.15. INGRESS/EGRESS

The Company will pay 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. The Company will pay for the actual Time Element loss sustained, subject to the deductible provisions that would have applied had the physical loss or damage occurred at the Insured Location, during the time ingress or egress remains prevented by physical obstruction but not to exceed the number of consecutive days as stated in the Declarations following such obstruction up to the limit applying to this Coverage.

37. The Policy’s manuscript form contains the following exclusions:

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3.03 Exclusions

The following exclusions apply unless specifically stated elsewhere in this Policy.

\* \* \*

3.03.01.01. **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, except as provided by the Radioactive Contamination Coverage of this Policy.

\* \* \*

3.03.01.03. Loss 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.

3.03.2. This Policy excludes:

3.03.02.01. Loss or damage arising from delay, loss of market, or loss of use.

\* \* \*

38. Contamination is defined as:

7.09. **Contamination(Contaminated)** - Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, Fungus, mold or mildew.

39. The Communicable Disease endorsement (LMA5393) provides as follows:

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**COMMUNICABLE DISEASE ENDORSEMENT**

(For use on property policies)

1. Except with respect to Extension of Coverage 5.02.28 Tenants Prohibited Access, and subject to all applicable terms, conditions and exclusions, this Policy covers losses attributable to direct physical loss or physical damage occurring during the period of insurance. Consequently and notwithstanding any other provision of this policy to the contrary, this policy does not insure any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this endorsement, loss, damage, claim, cost, expense or other sum, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test:
  - 2.1. for a Communicable Disease, or
  - 2.2. any property insured hereunder that is affected by such Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 3.3. the disease, substance or agent can cause or threaten damage to human health or human welfare or can

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cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder.

4. This endorsement applies to all coverage extensions, additional coverages, exceptions to any exclusion and other coverage grant(s).

40. The Microorganism Exclusion (Absolute) endorsement (LMA5018) provides as follows:

\* \* \*

**Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is understood and agreed the following applies to this Policy:**

**MICROORGANISM EXCLUSION (ABSOLUTE)**

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

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

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

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

\* \* \*

1 41. The Seepage and/or Pollution and/or Contamination Exclusion in the  
2 Policy’s Additional Limitations and Conditions endorsement (NMA2415) provides as  
3 follows:

4 \* \* \*

5 **SEEPAGE AND/OR POLLUTION AND/OR**  
6 **CONTAMINATION EXCLUSION**

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

- 11 1. any loss, damage, cost or expense; or
- 12 2. any increase in insured loss, damage, cost or expense; or
- 13 3. any loss, damage, cost, expense, fine, penalty or other sum  
14 which is incurred, sustained or imposed by, or by the  
15 threat of, any judgment, order, direction, instruction or  
16 request of, or any agreement with, any court, government  
agency, any public, civil or military authority or any other  
person (and whether or not as a result of public or private  
litigation);

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

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

- 25 1. seepage of, or pollution and/or contamination by,  
26 anything, including but not limited to ... any substance  
27 designated or defined as toxic, dangerous, hazardous or  
deleterious to persons or the environment under any other  
28 Federal, State, Provincial, Municipal or other law,  
ordinance or regulation; and

1 2. the presence, existence, or release of anything which  
2 endangers or threatens to endanger the health, safety or  
3 welfare of persons or the environment.

4 \* \* \*

5 42. Beazley contends that one or more of the terms, conditions, and  
6 exclusions cited above applies to define, exclude, or limit coverage and thus applies to  
7 limit or preclude damages payable under the Policy in this matter.

8 43. Specifically, Beazley contends that Fitness International did not sustain  
9 direct physical loss of or damage to Covered Property caused by or resulting from a  
10 Covered Cause of Loss as required by the Policy. The limited Civil or Military  
11 Authority coverage must also arise from direct physical loss or damage to property.

12 44. Regardless, the Policy excludes any losses arising from communicable  
13 disease, contamination, loss of market, loss of use, microorganisms, or the threat of  
14 anything which endangers or threatens to endanger the health, safety, or welfare of  
15 persons, and Fitness International's losses can be linked to one or more of these  
16 exclusions from coverage.

17 **VII. CLAIM FOR DECLARATORY RELIEF**

18 45. Beazley hereby incorporates by reference the preceding paragraphs.

19 46. Pursuant to 28 U.S.C. § 2201, Beazley seeks a declaration including, but  
20 not limited to, the following:

21 a. Whether the claimed business income losses for COVID-19 constitute  
22 covered losses under the Policy;

23 b. Whether the Policy requires direct physical loss of or damage to property  
24 for business income losses, including coverage under the Civil and Military Authority  
25 coverage;

26 c. Whether Fitness has sustained direct physical loss of or damage to  
27 property from COVID-19 at any of its Properties;

1 d. Whether the Policy excludes coverage for the claimed business income  
2 losses;

3 e. Whether Fitness International has claimed an excluded loss arising from  
4 communicable disease;

5 f. Whether Fitness International has claimed an excluded loss arising from  
6 contamination;

7 g. Whether Fitness International has claimed an excluded loss arising from  
8 an ordinance or law regulating the use of its properties;

9 h. Whether Fitness International has claimed an excluded loss for loss of use  
10 and/or loss of market;

11 i. Whether Fitness International has claimed an excluded loss for arising out  
12 of or relating to a microorganism of any type, nature, or description, including but not  
13 limited to any substance whose presence poses an actual or potential threat to human  
14 health;

15 j. Whether Fitness International has claimed an excluded loss arising from  
16 the presence, existence, or release of anything which endangers or threatens to  
17 endanger the health, safety or welfare of persons;

18 k. Whether the loss was fortuitous;

19 l. Whether the claim is otherwise covered and not excluded or limited from  
20 coverage under the Policy;

21 m. Whether any payment is owed by Beazley to Fitness International under  
22 the Policy, and if a payment is owed, how much, pursuant to the Policy's limits and  
23 applicable sublimits, and Beazley's several share; and

24 n. Beazley reserves the right to assert additional Policy provisions as the  
25 case develops, as there may be other provisions that apply of which Beazley has no  
26 present knowledge. Therefore, Beazley requests that the Court make such other and  
27 further declarations as may be appropriate.

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**VIII. PRAYER**

Accordingly, Beazley prays that Fitness International be summoned to appear and answer herein, and that upon trial hereof, the Court declare whether Beazley must pay Fitness International for all covered damages owed for this loss; whether Beazley has any further duties in this matter; and that Beazley be awarded such other and further relief, at law or in equity, to which it may be justly entitled.

Dated: April 6, 2021

SELVIN WRAITH HALMAN LLP

By: /s/ James L. Wraith  
James L. Wraith  
Sara M. Parker  
Attorneys for Plaintiff  
BEAZLEY UNDERWRITING, LTD.

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