

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

BOWLERO CORPORATION,

Plaintiff,

v.

AIG SPECIALTY LINES INSURANCE
COMPANY; EVEREST INDEMNITY
INSURANCE COMPANY; LANDMARK
AMERICAN INSURANCE COMPANY; and
STARR SURPLUS LINES INSURANCE
COMPANY,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Bowlero Corporation (“Bowlero”), as and for its complaint against AIG Specialty Lines Insurance Company (“AIG”), Everest Indemnity Insurance Company (“Everest”), Landmark American Insurance Company (“RSU”), and Starr Surplus Lines Insurance Company (“Starr”) (collectively, the “Insurers”), alleges as follows:

PRELIMINARY STATEMENT

1. Bowlero is the world’s largest owner and operator of bowling entertainment centers, delivering a unique experience to over 28 million guests annually at more than 300 locations. In addition to its state-of-the-art bowling facilities, Bowlero is known for its inventive dining, sports, entertainment, and recreational games that are fun for the entire family. Bowlero prides itself on ensuring there is truly something for everyone to enjoy. In other words, “Bowling is just the beginning.”

2. Starting in March 2020, Bowlero was forced to suspend its business activities, and had the use and functionality of its property substantially impaired, due to SARS-CoV-2,

COVID-19, the orders of civil authorities, and the need to mitigate its losses and damage.

Specifically, starting in mid-March 2020, Bowlero was forced to close all of its locations and wholly or partly suspend its operation of numerous on-site restaurants, bars, and other amenities.

As a result of these closures and suspensions, Bowlero suffered, and continues to suffer, substantial financial losses totaling hundreds of millions of dollars.

3. Given its nationwide operations, Bowlero purchased \$50 million in commercial property and business interruption insurance from the Insurers. Bowlero's insurance program provides broad "all-risk" coverage for, among other things, property damage and business interruption losses, extra expenses, and time element losses. As the name suggests, "all-risk" commercial property policies cover all risks of any kind or description, unless specifically excluded.

4. Bowlero's insurance program, even beyond the broad coverage described above, has some unique aspects that further broaden the coverage and which expressly respond to the pandemic. Indeed, not only does Bowlero's insurance program insure against "direct physical loss, damage or destruction" to Bowlero's locations, it also includes coverage for Bowlero's lost business income as a result of an **Interruption by Civil or Military Authority** taken in response to "*imminent loss*" ("Civil Authority Coverage"). Moreover, the insurance program includes a **Special Time Element – Cancellation Coverage** provision ("Special Time Element Coverage") which, among other things, protects Bowlero from "the cancellation of, and/or inability to accept bookings or reservations for accommodation, receive admissions, and/or interference with the business at any insured location all as a direct result of . . . *contagious or infectious disease (including decontamination and clean-up costs).*" The same provision also extends coverage as a direct result of the "closing of the whole or part of the premises of the

Insured either by the Insured or by Order of a Public Authority consequent of the existence or threat of hazardous conditions either actual or suspected at an insured location.” The Special Time Element Coverage expressly does not “conflict or reduce coverage provided elsewhere” in the policies, “most notably [Contingent Time Element, Civil Authority Coverage] or Loss of Ingress or Egress.”

5. Although a standard-form “**Exclusion Of Loss Due To Virus Or Bacteria**” has been utilized by the insurance industry for nearly 15 years, and various forms of pandemic exclusions exist, the Insurers elected *not* to include any of these exclusions in the policies they sold to Bowlero, meaning Bowlero’s losses are not “clearly and unmistakably” excluded from coverage as would be required to avoid the Insurers’ coverage obligations under New York law.

6. Given the breadth of its coverage and the express promises the Insurers made in the policies, Bowlero turned to the Insurers for the insurance the Insurers promised to provide and that Bowlero reasonably expected to receive in exchange for the premiums it paid for this coverage. Indeed, because the vast majority of Bowlero’s insurers recognized that the claims are covered under their respective policies, and there is no dispute, those insurers are not parties to this action.

7. Instead of honoring their obligations, the Insurers refused to pay for Bowlero’s losses, thereby depriving Bowlero of the coverage to which it is entitled under its policies. Put simply, there is no merit to the Insurers’ refusal to honor their contractual promises to Bowlero. In selling “all-risk” insurance to Bowlero with Special Time Element Coverage and Civil Authority Coverage extending to “imminent loss,” the Insurers promised to provide broad coverage for financial losses unless an exclusion clearly and unmistakably applied as a bar to coverage. Pursuant to governing principles of New York insurance law, as well as authority

from other states throughout the country, the presence of SARS-CoV-2 (the virus that causes COVID-19) in a building's airspace and on or around property results in direct physical loss, damage, and/or destruction to property because it causes a distinct, demonstrable, physical alteration to property, and poses an imminent and severe risk to human health. Thus, Bowlero's financial losses attributable to the presence of SARS-CoV-2, and the civil authority orders issued in response to the imminent loss caused by the virus fall squarely within the coverage afforded by the insurance program.

8. Bowlero is informed and believes, and on that basis alleges, that the Insurers have taken, and are taking, a similar position with other insureds, having adopted corporate-wide positions that deprive Bowlero and thousands of other insureds of hundreds of millions of dollars of promised insurance. Bowlero is informed and believes, and on that basis alleges, that the Insurers have done so, and are doing so, to protect their financial interests at the expense of their insureds' interests and with conscious disregard and disdain for the rights, interests, and reasonable expectations of their insureds, including Bowlero.

9. The Insurers' conduct constitutes a breach of the insurance policies and violates the implied covenant of good faith and fair dealing. By this lawsuit, Bowlero seeks recovery for the damages, including consequential damages, that it suffered and continues to suffer. Bowlero also seeks declaratory relief confirming that the Insurers must honor the terms of their policies.

THE PARTIES

10. Bowlero is a Delaware corporation with its principal place of business in New York, New York.

A. AIG

11. AIG Specialty Lines Insurance Company is an Illinois corporation, with its principal place of business in New York, New York. AIG is a member of the American International Group, Inc. (“AIG Group”).

12. AIG Group makes various representations on behalf of its member companies on its website. Specifically, AIG Group offers the following “Claims Promise”:

AIG helps clients reduce and manage risks through the use of global claims data, fraud trend analysis, market leading insights, and a dedicated professional network of specialist adjusters.

A proactive partnership with the customer is key to resolving claims quickly, understanding potential risks, and learning ways to avoid a loss.¹

13. Regarding Property claims capabilities, AIG Group represents the following to the public:

Through advanced data and analytics, innovative technology, and a keen focus on helping our clients maintain business continuity AIG’s Property Claims Promise has been an industry standard when it comes to handling some of the largest, most complex property claims.

Id.

14. Moreover:

AIG brings you global property insurance solutions, deep industry knowledge, and local expertise. We’ll help you keep your business running after natural disasters, equipment failures, acts of terror, and more. Our experienced team of underwriters, risk engineers, and claims adjusters provide expert consultation to help empower you to keep moving forward – whatever the circumstances.²

¹ <https://www.aig.com/business/business-claims/claims-capabilities>

² <https://www.aig.com/business/insurance/property>.

15. AIG Group proclaims the following on its website with respect to COVID-19:

As the COVID-19 pandemic continues to evolve, AIG remains focused on protecting the health and safety of our colleagues and those around us, as well as continuing to serve clients, policyholders, business partners and other stakeholders.

The company has activated its Business Continuity Plans and colleagues across our General Insurance and Life & Retirement businesses remain available to help meet the needs of clients and other business partners

Helping individuals, businesses and communities prepare for times of uncertainty is at the heart of what we do.³

16. Indeed, AIG Group's Business Continuity Plans include an Infectious Disease Preparedness plan to address planning and response for potential pandemics. "AIG can invoke these procedures based on pandemic warnings from the World Health Organization, the U.S. Centers for Disease Control and Prevention, and/or other official local governance bodies."⁴

17. AIG Group echoed its purported concern for its insureds in an April 2020 news release:

Brian Duperreault, AIG's Chief Executive Officer, said: "In the face of COVID-19, an unprecedented global catastrophe, our colleagues have shown great resilience and remain focused on what we do, which is helping our clients manage risk, especially in difficult times. It has been heartbreaking to watch this humanitarian crisis unfold over the last few months."⁵

18. Bowlero is informed and believes, and on that basis alleges, that despite these promises and assurances, AIG Group never intended to honor its contractual obligations with respect to the losses associated with the pandemic. On a first-quarter earnings call in May 2020, Peter Zaffino, the president and global chief operating officer of AIG and CEO of its general

³ <https://www.aig.com/about-us/coronavirus-updates>

⁴ <https://www.aig.com/business-resilience-disclosure>.

⁵ <https://aig.gcs-web.com/node/45206/pdf>.

insurance division reportedly said that “AIG is not expecting to pay business interruption on most of its property policies.”⁶

19. According to Mr. Zaffino:

The “overwhelming majority” of AIG’s business interruption policies contain a virus exclusion “and otherwise require a showing that the virus caused direct physical loss or damage that was the cause of the business interruption.”⁷

B. Everest

20. Everest is a Delaware corporation, with its principal place in Liberty Corner, New Jersey.

21. With respect to property insurance, Everest proclaims:

Deep market expertise that ensures strong property coverage. The property team at Everest Insurance® offers retail, wholesale, and inland marine products to companies around the world. Our professionals provide a proactive and thoughtful approach while underwriting challenging and unique risks.⁸

C. RSUI

22. RSUI is a New Hampshire corporation, with its principal place of business in Atlanta, Georgia. RSUI is a member of the Alleghany Corporation.

23. On its website, RSUI advertises:

Working with our wholesale brokers, we have the ability to offer meaningful capacity and creative solutions on complex and high-hazard risks. Our unique approach to accepting risk offers our brokers consistency and unmatched expertise for distressed, catastrophic, and hard to place business.⁹

⁶ <https://www.businessinsurance.com/article/20200505/NEWS06/912334409/AIG-expects-wide-industry-COVID-losses-cuts-insurtech-unit-American-Internation>

⁷ *Id.*

⁸ <https://www.everestre.com/en/Insurance/Products/Property>.

⁹ <https://www.rsui.com/Products/Pages/property.aspx>

24. According to a November 6, 2020 RSUI Investor presentation, RSUI's "Property" business line has a preference for business that can be "underwritten from the desk" such as institutional, public entity, real estate, habitational, hospitality, and natural catastrophe risks.¹⁰

25. On the COVID-19 Loss Update slide in the presentation, in connection with projected property losses RSUI informed investors that it "[a]pproximately 70 Property Department claims received on policies without RSUI's Pathogen Exclusion or where the prospect of some intentional grant of coverage exists."¹¹

D. Starr

26. Starr is a Texas corporation, with its principal place of business in New York, New York.

27. On its website, Starr advertises that:

Starr's broad appetite allows our underwriters to provide creative solutions globally in shared or layered programs. We write primary, buffers, middle, and capacity excess layers depending on each individual client's needs. The ability to consider catastrophe exposed businesses or being a sole insurer on accounts provides clients with alternative options, without sacrificing the attention to service. From quoting to policy issuance to loss control, Starr is a dependable market.¹²

JURISDICTION AND VENUE

28. This Court has jurisdiction over this action under Judiciary Law § 140-b.

¹⁰ https://s24.q4cdn.com/857140222/files/doc_presentations/2020/11.6.2020-RSUI-Investor-Event_Final.pdf

¹¹ *Id.*

¹² <https://starrcompanies.com/Insurance/Property/General-Property>

29. The Court has jurisdiction over the Insurers pursuant to CPLR § 301, because the Insurers were, at all relevant times, authorized to transact business in the State of New York and/or conducted continuous and substantial business in the State of New York.

30. The Court also has jurisdiction over the Insurers pursuant to CPLR § 302, because the Insurers transacted business in the State of New York and/or contracted to provide services within the State of New York and this action arises from such transactions and/or contracts.

31. Venue is proper in this county pursuant to CPLR § 503 because it is where a substantial part of the events or omissions giving rise to the claim occurred, and Bowlero's principal office is located in New York, New York.

THE INSURERS' KNOWLEDGE OF THE RISK OF PANDEMICS

32. The Insurers were repeatedly warned over the years of the potential impact of pandemics. In fact, there were many publicly available reports about the risks of pandemics and what insurers should do—in the months and years before the outbreak of the COVID-19 pandemic.

33. For example, well before AIG sold its policy to Bowlero, AIG Group knew of the possibility of a pandemic and the potential losses that could be associated with a pandemic. In fact, AIG has long known that if there were a pandemic, it could be obligated to pay substantial amounts under all risk policies such as the policy it sold to Bowlero. For years, including for the fiscal year ended December 31, 2019, AIG Group stated as follows in its Form 10-K filed with the United States Securities and Exchange Commission:

Our consolidated results of operations, liquidity, financial condition and ratings are subject to the effects of natural and man-made catastrophic events. Events such as hurricanes, windstorms, flooding, earthquakes, wildfires, . . . pandemic and other highly contagious diseases, mass torts and other catastrophes have

adversely affected our business in the past and could do so in the future.

34. AIG Group further stated in its Form 10-K that, “Catastrophic events, and any relevant regulations, could expose us to . . . widespread claim costs associated with property [and] business interruption” claims. *Id.* Indeed, in the same 10-K, AIG Group notes concern about its losses and its ability to mitigate its exposure “if the frequency and severity of catastrophic events such as pandemics...continue to increase.”

35. Further in that 10-K, AIG Group presciently concedes that:

[O]ur current business continuity and disaster recovery plans may not be sufficient to reduce the impact of pandemics and other natural or man-made catastrophic events that are beyond our anticipated thresholds or impact tolerances. If our risk management policies and procedures are ineffective, we may suffer unexpected losses and could be materially adversely affected.

36. In that 10-K, AIG Group discusses its modeling for risk exposure due to a pandemic. Under “Risk Measurement, Monitoring and Limits,” in their words:

We use a number of approaches to measure our insurance risk exposure, including: ...

Scenario analysis. Scenario or deterministic analysis is used to measure and monitor risks such as terrorism and pandemic or to estimate losses due to man-made catastrophic scenarios.

37. In the “General Insurance Companies’ Key Risks” section of that 10-K, where AIG is identified as a “General Insurance Company,” AIG Group notes that, “Other risks, such as man-made catastrophes or pandemic disease, could also adversely affect our business and operating results to the extent they are covered by our insurance products.”

38. Since February 2013, the Alleghany Corporation, RSUI’s parent company, has included a warning regarding pandemic disease in its Form 10-K:

Other risks, such as an outbreak of a pandemic disease, a major terrorist event, the bankruptcy of a major company, or a marine or an aviation disaster, could also have a material adverse effect on our business and operating results.

39. For the fiscal year that ended December 31, 2019, the Alleghany Corporation, stated as follows in its Form 10-K filed with the United States Securities and Exchange Commission on February 19, 2020:

Finally, other catastrophes, such as an outbreak of a pandemic disease. . . could also have a materially adverse effect on our business and operating results.

40. The Alleghany Corporation further stated in its Form 10-K that:

A natural or man-made disaster could cause significant business interruption for certain of our subsidiaries that may adversely affect their results of operations, financial condition and cash flows. The operations of certain of our subsidiaries, and those of their suppliers and customers, **may potentially suffer significant business interruptions due to the effects of natural disasters (such as earthquakes, tsunamis, severe storms or hurricanes, typhoons, floods, outbreaks of pandemic or contagious diseases including the COVID-19)**

(emphasis added).

41. Thus, Bowlero is informed and believes, and on that basis alleges, that the Insurers knew that their policies, such as the Policies, would cover losses associated with pandemics. In fact, these disclosures show, instead of warning its insureds, including Bowlero, that their policies would not cover pandemic-associated losses, the Insurers warned the public and their shareholders that the amounts they might have to pay for such losses could affect their financial condition.

42. There were many other publicly available reports about the risk of pandemics and what insurers should do – in the months and years before the Insurers sold their policies to Bowlero in 2019.¹³

43. One insurance industry repository shows the proverbial “tip of the iceberg” about how much information was available to the Insurers regarding the risk of pandemics. The Insurance Library Association of Boston, founded in 1887, describes itself as “the leading resource for and provider of literature, information services, and quality professional education for the insurance industry and related interests.”¹⁴ The Association states on its website:

The past 20 years [have] seen the rise of a number of pandemics. Slate recently published an article on what has been learned about treating them in that time. We thought it might be apt for us to take a look back and see what the insurance industry has learned as well.¹⁵

44. The Association lists more than 20 articles, reports, and white papers available to insurers from early 2007 through 2018. One white paper warned in 2009 of a pandemic’s consequences to the insurance industry:

It is highly unlikely that the insurance industry would have the financial reserves to meet the worldwide claims arising out of a pandemic of this size.¹⁶

45. Indeed, in March 2018, 18 months before the Insurers sold Bowlero the policies at issue, one article stated:

¹³ See, e.g., “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” *AIR* (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/> (“Even with today’s technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.”).

¹⁴ <https://insurancelibrary.org/about/>.

¹⁵ <http://insurancelibrary.org/pandemics-and-insurance/>.

¹⁶ Allan Manning, White Paper on Infectious Disease Cover (updated 2009).

Even with today's technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.¹⁷

46. The Insurers also have known, or should have known, for decades that their policies could be held to insure losses from the presence of a hazardous substance, such as a virus inside a building or in its airspace, or because a building could not be used for its intended purposes or function because of a virus. As the Insurers have known, or should have known, for decades many courts have held that the presence of a hazardous substance in property, including the airspace, surfaces and personal property inside buildings, constitutes property damage and that there may be "physical loss" to property even if the property is not tangibly damaged. As the Insurers have known, or should have known, the many decisions include the following:

- *Pepsico, Inc. v. Winterthur International America Insurance Co.*, 24 A.D.3d 743, 744, 806 N.Y.S.2d 709 (N.Y. App. Div. 2005): rejecting insurer's contention that products altered because of faulty ingredients were not physically damaged under an all-risk property policy.
- *Wakefern Food Corp. v. Liberty Mutual Fire Insurance Co.*, 968 A.2d 724, 734-5 (N.J. App. Div. 2009): holding that the electrical grid was 'physically damaged' when it was "incapable of performing [its] essential function of providing electricity", further noting that "the undefined term 'physical damage' was ambiguous" and that "[s]ince 'physical' can mean more than material alteration or

¹⁷ "What the 1918 Flu Pandemic Can Teach Today's Insurers," *AIR* (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

damage, it was incumbent on the insurer to clearly and specifically rule out coverage in the circumstances where it was not to be provided.”

- *Arbeiter v. Cambridge Mutual Fire Insurance Co.*, 1996 WL 1250616, at *2 (Mass. Super. Ct. Mar. 15, 1996): presence of oil fumes in building constituted “physical loss” to building.
- *Essex Insurance Co. v. BloomSouth Flooring Corp.*, 562 F.2d 399, 406 (1st Cir. 2009): odor from carpet and adhesive “can constitute physical injury to property.”
- *Farmers Insurance Co. v. Trutanich*, 123 Or. App. 6, 9-11 (1993): “the odor produced by the methamphetamine lab had infiltrated the house. The cost of removing the odor is a direct physical loss.”
- *Gregory Packaging, Inc. v. Travelers Property Casualty Co.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014): closure of facility because of accidentally released ammonia; while “structural alteration provides the most obvious sign of physical damage, . . . property can sustain physical loss or damage without experiencing structural alteration.”
- *Hughes v. Potomac Ins. Co.*, 199 Cal. App. 2d 239, 248-49 (1962): the insurer “would deny that any loss or damage had occurred unless some tangible injury to the physical structure itself could be detected. Common sense requires that a policy should not be so interpreted in the absence of a provision specifically limiting coverage in this manner.”

- *Matzner v. Seacoast Insurance Co.*, 1998 WL 566658 (Mass. Super. Ct. Aug. 12, 1998): building with unsafe levels of carbon monoxide sustained direct physical loss.
- *Mellin v. North Security Insurance Co.*, 167 N.H. 544, 550-51 (2015): cat urine odor inside condominium constitutes direct physical loss; “physical loss may include not only tangible changes to the insured property, but also changes that are perceived by a sense of smell and that exist in the absence of structural damage.”
- *Oregon Shakespeare Festival Ass’n v. Great American Insurance Co.*, 2016 WL 3267247, at *9 (D. Ore. June 7, 2016): “smoke infiltration in theatre caused direct property loss or damage by causing the property to be uninhabitable and unusable for its intended purpose.”
- *Port Authority of New York & New Jersey v. Affiliated FM Insurance Co.*, 311 F.3d 226, 236 (3d Cir. 2002): property sustained a direct physical loss because it was rendered uninhabitable by the presence of asbestos fibers.
- *Western Fire Insurance Co. v. First Presbyterian Church*, 165 Colo. 34, 39-40 (1968): direct physical loss when gasoline permeated church building making it dangerous to use.

47. Thus, the Insurers have known, or should have known, for decades that their policies would be called upon to pay substantial amounts, including to Bowlero, for losses associated with viruses, the diseases they cause, and pandemics.

48. Given the potential liability that insurers faced under their policies for losses from pandemics, shortly after the outbreak of SARS in 2003, the insurance industry undertook to draft

exclusions applicable to losses from viruses and bacteria. In 2006, the Insurance Services Office (“ISO”), the insurance industry’s drafting organization, considered the need to draft an exclusion that would bar coverage for certain losses caused by a virus.¹⁸

49. On July 6, 2006, ISO prepared a circular that included a standard “**Exclusion Of Loss Due To Virus Or Bacteria**” as part of its filing with state insurance regulators.¹⁹ ISO explicitly recognized that viruses could cause property damage and business interruption:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.²⁰

50. ISO introduced the insurance industry’s standard-form endorsement that it entitled “**Exclusion Of Loss Due To Virus Or Bacteria**” endorsement (form CP 01 40 07 06 and, in New York and certain other jurisdictions, form CP 01 75 07 06). A true and correct copy of this endorsement is attached hereto as Exhibit A and incorporated herein by reference.

51. Thus, the Insurers had the “**Exclusion Of Loss Due To Virus Or Bacteria**” endorsement approved for use and available to them throughout the United States for 13 years before they sold the insurance policies at issue here to Bowlero.

¹⁸ “ISO is a non-profit trade association that provides rating, statistical, and actuarial policy forms and related drafting services to approximately 3,000 nationwide property or casualty insurers. Policy forms developed by ISO are approved by its constituent insurance carriers and then submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the starting point for their general liability policies.” *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645, 671 n.13 (1995).

¹⁹ See ISO Circular, “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

²⁰ *Id.*

52. However, even though the Insurers knew they could be liable for losses from viruses and pandemics if they did not include the “**Exclusion Of Loss Due To Virus Or Bacteria**” endorsement in their policies, the Insurers sold the policies here to Bowlero without such an exclusion. Therefore, the Insurers did not intend to (and did not) exclude such coverage and should have anticipated that they would be liable once Bowlero asked the Insurers to pay for its losses.

THE PROPERTY INSURANCE POLICIES

53. For the period of September 18, 2019, to September 18, 2020, Bowlero purchased a multi-layered property insurance program with total policy limits of \$50,000,000 per occurrence (the “Insurance Program”).

54. The Insurance Program is centered around a policy form titled “Global Property Insurance Policy” (the “Common Policy Form”). Each of the Insurers sold policies to Bowlero that included the Common Policy Form, and several of the Insurers also employed one or more policy endorsements that added to or otherwise modified the Common Policy Form. Each of the Insurers’ policies (collectively, the “Policies”) cover a portion of the total limits available under Bowlero’s overall Insurance Program.

55. In advance of selling the Policies to Bowlero, each Insurer engaged in, or had reasonable opportunities to engage in, extensive underwriting investigation, and became familiar and knowledgeable regarding the nature and scope of Bowlero’s business and the nature of the risks against which it was insuring.

A. The Common Policy Form

56. As noted above, the Common Policy Form is included in each of the Policies issued by the Insurers. Although certain of the Insurers issued policy endorsements modifying

certain terms and conditions in the Common Policy Form, the Common Policy Form defines the basic scope of coverage afforded under the Policies and provides the majority of the terms and conditions of coverage relevant to this insurance coverage dispute.

57. The Common Policy Form provides that:

This policy insures against all risks of direct physical loss, damage or destruction occurring during the term of this policy to the type of property insured hereunder . . . except as hereinafter excluded

See e.g., RSUI Policy, Declarations.

58. Like most commercial property insurance policies, the Policies insure not only against physical loss, damage, and destruction to covered property, but also for resulting economic and financial losses—including the Policies’ Business Interruption coverage, Extra Expense coverage, and Time Element coverage “extensions.” These Time Elements coverage exclusions include the Policies’ Civil Authority Coverage and Special Time Element Coverage.

Business Income, Gross Earnings

59. The Business Interruption coverage provided pursuant to the Common Policy Form is designed, understood, stated, and intended to cover Bowlero for economic losses, including losses from the necessary interruption or reduction of business operations, caused by “direct physical loss, damage or destruction” of property. *Id.*, Section V.A.1.

Extra Expense

60. The Common Policy Form also provides coverage for “Extra Expense” incurred resulting from direct physical loss, damage or destruction” to covered property. *See, e.g.*, RSUI Policy, Section V.C.

Time Element Extensions

61. The Common Policy Form also includes various Extensions of Time Element Coverage, as outlined below.

62. **Expenses to Reduce Loss Coverage** provides that:

This Policy insures expenses necessarily incurred for the purpose of reducing any “Time Element” loss, even though such expenses may exceed the amount by which such “Time Element” loss is reduced.

Id., Section V.H.2.a.

63. **Contingent “Time Element” Coverage** provides that:

Subject to all TIME ELEMENT provisions including Interruption by Civil or Military Authority, Loss of Ingress or Egress and Service Interruption as defined below, this Policy insures the “Time Element” loss resulting from direct physical loss, damage or destruction, by a peril insured by this Policy, of:

i. Property of the type insured by this Policy of a direct or indirect supplier or a direct or indirect receiver of the Insured, which prevents the rendering or acceptance of goods and/or services to or from the Insured and shall include airlines, airports, railroads, railway stations, cruise ships, ports and other means of transportation involved in the transport of patrons, equipment or other goods to the Insured’s “location(s)”.

ii. Property of others of the type insured by this Policy in the vicinity of a “location” of the Insured that attracts customers to the Insured’s “location.”

Contingent “Time Element” coverage does not apply to any loss or damage insured under Service Interruption as defined below.

Id., Section V.H.2.b.

64. **Civil Authority Coverage** obligates the Insurers to:

insure the “Time Element” loss sustained during the period of time when, as a result of direct physical loss, damage or destruction or ***imminent loss*** by a peril insured by this Policy within ten (10) miles of an insured “location,” normal business operations are interrupted or reduced because access to that “location” is prevented or impaired by order of civil or military authority.

Id., Section V.H.2.d. (emphasis added). This provision is only modified by endorsement in the

AIG policy, and only to reduce the geographic scope from ten miles to five. AIG Policy,

Endt. 19. The period of recovery applicable to Civil Authority Coverage is 90 consecutive days, except under the Everest Policy which limits it to 60 consecutive days. Everest Policy, Endt. 11.

65. The Policies also provide coverage for **Loss of Ingress or Egress** as follows:

This Policy insures the “Time Element” loss sustained during the period of time when, as a result of direct physical loss, damage or destruction by a peril insured by this Policy within ten (10) miles of an insured “location,” normal business operations are interrupted or reduced because ingress to or egress from that “location” is prevented or impaired.

Id., Section V.H.2.e. This provision is only modified by endorsement in the AIG policy, and only to reduce the geographic scope from ten miles to five. AIG Policy, Endt. 19.

66. The Common Policy Form also includes an extension entitled **Special Time Element – Cancellation Coverage** which, in relevant part, provides as follows:

Notwithstanding that Time Element loss insured under this Policy must be caused by or result from loss, damage or destruction not otherwise excluded, this Policy is extended to insure the actual loss sustained by the Insured resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodation, receive admissions, and/or interference with the business at any insured location all as a direct result of the “Occurrence” of:

ii. contagious or infectious disease (including decontamination and clean-up costs);

iv. any of the following that occur within a radius of ten (10) miles of an insured location, to the extent such Time Element loss is not otherwise insured elsewhere in this policy;

(a) outbreak of a contagious and/or infectious disease

v. closing of the whole or part of the premises of the Insured either by the Insured or by order of a Public Authority consequent upon the existence or threat of hazardous conditions either actual or suspected at an insured location;

The length of time for which loss may be claimed shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss occurred and shall include the time required to make the premises conform to the order of a competent public authority, beginning with the interruption or interference with the business.

Coverage provided under Special Time Element – Cancellation Coverage shall not conflict or reduce coverage provided elsewhere in this policy, most notably Contingent Time Element, Interruption by Civil or Military Authority, or Loss of Ingress or Egress.

Id., Section V.H.2.j. This provision is only modified by endorsement in the AIG Policy, and only to reduce the geographic scope from ten miles to one. AIG Policy, Endt. 19.

67. Unlike many commercial property and business interruption insurance policies, the Policies do not include, and are not subject to, any exclusions for losses caused by or resulting from the spread of viruses, communicable diseases, or pandemics. Specifically, the Policies do not include the “**Exclusion Of Loss Due To Virus Or Bacteria**” endorsement, nor was that exclusion added by endorsement in any of the Policies sold to Bowlero by the Insurers. Because losses caused by or resulting from viruses, communicable diseases, and pandemics are not expressly excluded under any of the Policies, these all constitute covered causes of loss under the Policies.

68. In the absence of the “**Exclusion Of Loss Due to Virus Or Bacteria**” endorsement, the Insurers have sought to transform the exclusion for “Pollution, Contamination” (the “Polluter’s Exclusion”), into the “**Exclusion Of Loss Due to Virus or Bacteria.**” As the insurers knew or should have known, under New York law, courts take note of an insurer’s failure to use common language that could have been used to draft an unambiguous exclusion. *Vigilant Ins. Co. v. V.I. Techs., Inc.*, 253 A.D.2d 401, 403 (1st Dep’t 1998).

B. The AIG Policy

69. AIG sold Bowlero a commercial property policy number 018257094, for the period September 18, 2019, to September 18, 2020 (the “AIG Policy”). A true and correct copy of the AIG Policy is attached hereto as Exhibit B and incorporated herein by reference. The AIG Policy provides up to \$7,500,000 in coverage.

70. The AIG Policy contains the same provisions as the Common Policy Form, cited above, unless otherwise noted.

71. Endorsement 11 of the AIG Policy, for example, amends Section V.H.2.b **Contingent “Time Element” Coverage**, so that subclause i. is deleted and replaced by:

- i. Property of the type insured by this Policy of a direct supplier or a direct receiver of the Insured, which prevents the rendering or acceptance of goods and/or services to or from the Insured and shall include airlines, airports, railroads, railway stations, cruise ships, ports and other means of transportation involved in the transport of patrons, equipment or other goods to the Insured’s “location(s)”.

Id., Endorsement 11.

72. Endorsement 19 of the Policy also amends Declarations, Clause D, Limits of Liability to so that the sublimit for Special Time Element is \$5,000,000. *Id.*, Endt. 19.

C. The Everest Policy

73. Everest sold Bowlero a commercial property policy, number RP5CF00175-181, for the period September 18, 2019, to September 18, 2020 (the “Everest Policy”). A true and correct copy of the Everest Policy is attached hereto as Exhibit C and incorporated herein by reference. The Everest Policy provides up to \$9,987,500 in coverage in excess of the \$7,500,000 primary layer.

74. The Everest Policy contains the same provisions as the Common Policy Form, cited above, unless otherwise noted.

75. Endorsement 11 of the Everest Policy, for example, amends the Declarations, D. Limits of Liability, Schedule of 100% Program Sub-Limits, so that there is a 100% Program-sublimit of \$5,000,000 per Occurrence for **Special Time Element – Cancellation Coverage**.

Additionally:

The following sub-limits are added to the Schedule of 100% Program Sub-Limits

- i. Contingent “Time Element” – USD 10,000,000 per Occurrence
- ii. Contingent “Time Element” Attraction Properties – USD 10,000,000 per Occurrence

Id., Endt. 11.

D. The RSUI Policy

76. RSUI sold Bowlero a commercial property policy, number LHD905503, for the period September 18, 2019, to September 18, 2020 (the “RSUI Policy”). A true and correct copy of the RSUI Policy is attached hereto as Exhibit D and incorporated herein by reference. The RSUI Policy provides up to \$2,800,000 in coverage in excess of the \$7,500,000 primary layer.

77. The RSUI Policy contains the same provisions as the Common Policy Form, cited above, unless otherwise noted.

78. The RSUI Policy also contains an Exclusion of Pathogenic or Poisonous Biological or Chemical Materials.

E. The Starr Policy

79. Starr sold Bowlero a commercial property policy, number SLSTPTY11223019, for the period of September 18, 2019, to September 18, 2020 (the “Starr Policy”). A true and correct copy of the Starr Policy is attached hereto as Exhibit E and incorporated herein by

reference. The Starr Policy provides up to \$600,000 in coverage within the \$7,500,000 primary layer and an additional \$3,150,000 in coverage in excess of primary layer.

80. The Starr Policy contains the same provisions as the Common Policy Form, cited above, unless otherwise noted.

81. Endorsement 11 of the Starr Policy amends the Declarations, D. Limits of Liability Schedule of 100% Program Sub-Limits, so that under the Special “Time Element” “Excluded” is listed under the Renewal Limit.

THE COVID-19 PANDEMIC AND SUBSEQUENT CIVIL AUTHORITY ORDERS

82. In December 2019, SARS-CoV-2 and COVID-19 broke out in Wuhan, China. Since then, SARS-CoV-2 and COVID-19 have spread throughout the world, prompting the World Health Organization to declare a global pandemic.

83. According to the World Health Organization,

COVID-19 is caused by the SARS-CoV-2 virus, which spreads between people, mainly when an infected person is in close contact with another person.

The virus can spread from an infected person’s mouth or nose in small liquid particles when they cough, sneeze, speak, sing or breathe heavily. These liquid particles are different sizes, ranging from larger ‘respiratory droplets’ to smaller ‘aerosols’.

Other people can catch COVID-19 when the virus gets into their mouth, nose or eyes, which is more likely to happen when people are in direct or close contact (less than 1 metre apart) with an infected person.

Current evidence suggests that the main way the virus spreads is by respiratory droplets among people who are in close contact with each other.

Aerosol transmission can occur in specific settings, particularly in indoor, crowded and inadequately ventilated spaces, where infected person(s) spend long periods of time with others, such as restaurants, choir practices, fitness classes, nightclubs, offices

and/or places of worship. More studies are underway to better understand the conditions in which aerosol transmission is occurring outside of medical facilities where specific medical procedures, called aerosol generating procedures, are conducted.

The virus can also spread after infected people sneeze, cough on, or touch surfaces, or objects, such as tables, doorknobs and handrails. Other people may become infected by touching these contaminated surfaces, then touching their eyes, noses or mouths without having cleaned their hands first.²¹

84. Various publications report that aerosolized droplets exhaled by normal breathing can travel significant distances and stay suspended in air and infective for 16 hours, until gravity ultimately forces them to the nearest surface.²² Studies report that SARS-CoV-2 can remain on surfaces for at least 28 days.²³ These droplets thus physically alter the air and airspace in which they are present and the surfaces of both the real and personal property to which they attach. By doing so, despite taking the most reasonable of precautions and mitigation measures, they can render both real and personal property unusable for its intended purpose and function and may require steps to be taken to minimize their spread, such as physical distancing, regular disinfection, air filtration, and further physical alterations, such as installation of physical barriers restricting the movement of the aerosolized droplets.

85. Though microscopic, SARS-CoV-2—like all viruses—is a physical substance and it is highly contagious and mobile. Even with reasonable efforts to slow the spread, it spreads

²¹ See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted> (last visited Mar. 31, 2021).

²² See Leslie Tate, *Virus Survives In Air For Hours*, Tulanian (Fall 2020), <https://tulanian.tulane.edu/fall-2020/virus-survives-in-air-for-hours>.

²³ See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common surfaces, research says* (Oct. 12, 2020), <https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html>; Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles, & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 *Virology J.*, Art. No. 145 (2020), <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

from person to person primarily through fine aerosolized droplets containing the virus. These aerosolized droplets are expelled into the air when infected individuals breathe, talk, sing, cough, or sneeze. Their presence in the air and airspace constitutes a physical alteration to the air and airspace, constituting physical damage.

86. Transmission of the virus is particularly high in restaurants where “droplet transmission [is] prompted by air-conditioned ventilation.”²⁴ Studies show that “[a]llowing on-premises restaurant dining was associated with an increase in daily COVID-19 case growth rates 41–100 days after implementation and an increase in daily death growth rates 61–100 days after implementation.”²⁵ This is because “[w]hen a person with suspected or confirmed COVID-19 has been indoors, virus can remain suspended in the air for minutes to hours. The length of time virus remains suspended and is infectious depends on numerous factors, including viral load in respiratory droplets or in small particles, disturbance of air and surfaces, ventilation, temperature, and humidity.”²⁶

87. Scientists liken ubiquitous aerosolized droplets of the virus to smoke, present in the air long after the source of its dissemination has gone.²⁷

88. Indeed, while SARS-CoV-2 can technically be cleaned from surfaces, it is in this

²⁴ See COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020, https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article

²⁵ See Centers for Disease Control, Morbidity and Mortality Weekly Report: Association of State-Issued Mask Mandates and Allowing On-Premises Restaurant Dining with County-Level COVID-19 Case and Death Growth Rates (March 5, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7010e3.htm>

²⁶ See Centers for Disease Control, Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments (April 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>

²⁷ See “Airborne Transmission of SARS-CoV-2,” *Science* (Oct. 16, 2020), available at <https://science.sciencemag.org/content/370/6514/303.2>.

way no different from asbestos, mold, mud, odors, smoke, or water that are widely recognized as causing damage to property under property insurance policies.

89. Moreover, studies show that although cleaning “reduces the amount of soil (e.g., dirt, microbes and other organic agents, and chemicals) on surfaces, [] efficacy varies by the type of cleaner used, cleaning procedure, and how well the cleaning is performed. No reported studies have investigated the efficacy of surface cleaning . . . for reducing concentrations of SARS-CoV-2 on non-porous surfaces.”²⁸

90. Indeed, the potential danger of COVID-19 in indoor entertainment centers is significant. Bowlero serves over 28 million visitors each year. The operation of Bowlero’s locations involves large gatherings of people within enclosed spaces for prolonged periods, increasing the likelihood that SARS-CoV-2 or COVID-19 would be in the airspace and on surfaces, and that such insured properties would be potential sources of exposure.

91. Since January 1, 2020, and as of the date of the filing of this Complaint, there have been at least 159,949,065 confirmed cases of COVID-19 throughout the world, at least 3,322,439 of which have resulted in deaths.²⁹

92. There have been more than 2,075,757 confirmed COVID-19 cases in the State of New York alone, as an example, more than 52,291 of which have resulted in deaths.³⁰

²⁸ See Centers for Disease Control, Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments (April 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html>

²⁹ See <https://covid19.who.int/>.

³⁰ See <https://www.nytimes.com/interactive/2021/us/new-york-covid-cases.html>.

Moreover, due in part to the initial absence of available tests, it is believed that the true number of coronavirus cases is significantly higher than the reported numbers might suggest.³¹

93. Citywide, the percentage of tests with positive results increased from 27% the week of March 8, 2020 to a peak of 65% during the week of March 22, 2020. The growth of testing rates lagged behind the growth of percent positivity but increased steadily from 86 per 100,000 during the week of March 8, 2020 to 1,634 per 100,000 by the week of May 24, 2020.³²

94. In response to the outbreak of SARS-CoV-2 and COVID-19, civil authorities throughout the United States began issuing “stay-at-home” and “shelter in place” orders, quarantines, limits or bans on public gatherings, and other orders, including orders requiring the suspension of non-essential business operations.

95. Civil Authorities in Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, North Carolina, New Jersey, New York, Ohio, Oklahoma, Ontario, Oregon, Pennsylvania, Rhode Island, Puerto Rico, South Carolina, Texas, Virginia, Washington, Wisconsin, as well as related counties and municipalities all enacted orders (the “Civil Authority Orders”), which resulted in the shutdown of or curtailment of activities at Bowlero’s locations in those jurisdictions.

96. One of the first of such orders came from Governor Andrew Cuomo of New York. On March 7, 2020, Governor Cuomo issued Executive Order No. 202, declaring a state of emergency in New York. The Executive Order makes reference to the World Health Organization’s designation of “the novel coronavirus, COVID-19, outbreak” and that “both

³¹ See <https://www.nytimes.com/2020/07/21/health/coronavirus-infections-us.html>.

³² <https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a2.htm>.

travel-related cases and community contact transmission of COVID-19 have been documented in New York and more are expected to continue.”

97. In apparent recognition of these facts, Executive Order 202.6 was issued by Governor Cuomo on March 16, 2020, directing that all non-essential businesses to be closed, effective on March 20, 2020.

98. On March 16, 2020, New York City Mayor de Blasio issued Emergency Executive Order No. 100 in which he declared that “the virus physically is causing property loss and damage.” In that same Executive Order, the Mayor directed that “all entertainment venues, including those with seating capacity below 500, are hereby closed effective Monday, March 16, 2020 at 8:00 PM.” Subsequent Executive Orders continued to describe the physical property damage being sustained by New York businesses.

99. Similarly, on March 15, 2020, the Mayor of the City of Los Angeles, issued the “Public Order Under City of Los Angeles Emergency Authority,” which references the “COVID-19 virus” and concern regarding “person-to-person” spread. To protect “life and property,” the Mayor ordered, “All movie theatres, live performance venues, bowling alleys and arcades shall be closed to the public.” On April 1, 2020, April 10, 2020, April 27, 2020, May 4, 2020, and May 8, 2020, the Los Angeles Mayor issued additional updates to his prior orders, which explicitly recognized that SARS-CoV-2 can spread easily from person to person and “it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.”

100. The Civil Authority Orders continue to limit, restrict, and prohibit partial or total access to Bowlero’s locations as a result of the presence, actual or imminent threat of physical damage as insured against in the Policies issued by the Insurers.

101. The Civil Authority Orders required Bowlero to completely or partially suspend its business operations and prohibit access to its venues across the country.

102. Similarly, the Civil Authority Orders impaired access to hundreds of properties that attract customers, would-be customers, and other third-parties from accessing or visiting Bowlero's locations and/or accessing or making use of certain amenities at the locations.

103. Furthermore, as a result of SARS-CoV-2, COVID-19, and/or the Civil Authority Orders, ingress to and egress from certain of Bowlero's locations was significantly impaired. For instance, ingress to and egress from locations in shopping malls or other structures that were closed prevented or impaired access to Bowlero's locations.

104. Because SARS-CoV-2 causes a distinct, demonstrable, physical alteration to property and airspaces, it constitutes "physical loss, damage or destruction" to property as that phrase is used in the Policies.

105. Additionally, the presence or imminent threat of SARS-CoV-2 at, on, and in insured property prevents or impairs the use of the property, thus constituting "physical loss" or "imminent loss," even if it also did not constitute "damage or destruction" as that phrase is used in the Policies.

106. Bowlero has taken reasonable and necessary steps and incurred considerable expenses to remediate SARS-CoV-2 from its locations, prevent the virus from entering its locations, and otherwise mitigated losses – all as expressly required and covered in the Policies.

107. Bowlero therefore suffered, and continues to suffer, loss and damage covered by the Policies in an amount to be established at trial.

THE INSURERS' BREACHES AND WRONGFUL CONDUCT

108. Bowlero timely notified the Insurers of Bowlero's losses in or about March 2020.

109. Since then, the Insurers and their agents have sent Bowlero numerous letters reserving rights, requesting information, and denying coverage. The Insurers' denials focus on three grounds: (1) there was no "physical loss, damage or destruction" to Bowlero's property; (2) the Special Time Element Coverage does not apply to Bowlero's remaining losses; and (3) the Polluter's Exclusion bars coverage.

110. In response to these letters and many requests for information, Bowlero has corresponded with the Insurers and their agents in good faith for nearly a year, identifying their incorrect coverage positions, and giving the Insurers the opportunity to re-evaluate their wrongful denials. For example, Bowlero pointed to the Policies' unique Special Time Element and Civil Authority Coverages that clearly and unambiguously provide coverage for Bowlero's losses but that the Insurers' letters fail to consider. The Insurers' letters, for example, fail to reference a single case involving the unique language in those coverages—such as the reference to "contagious or infectious disease" under Special Time Element or "imminent loss" under Civil Authority. Rather, perhaps haphazardly borrowing language from form denial letters sent to other insureds, they responded with citations to cases involving completely different policy language and factual circumstances.

111. In May 2020, Bowlero provided the Insurers with detailed estimates of its losses—totaling \$80 million through April 2020— which exceed the Policies' limits. In addition, in response to requests, Bowlero has provided detailed spreadsheets of its losses per location, with substantial supporting documentation, as well as copies of Civil Authority Orders that impacted Bowlero's locations.

112. Despite Bowlero's laborious efforts to resolve this matter, the Insurers maintained their wrongful positions and caused Bowlero to incur significant internal and external expenses

to respond to Insurer information requests—thus diverting Bowlero from utilizing resources needed to weather the pandemic.

113. Contrary to the Insurers' wrongful denials, as a result of the actual and/or potential presence and imminent threat of SARS-CoV-2 on and in its properties and the mandated suspension of its business operations, Bowlero sustained "physical loss, damage or destruction" as those terms are used and reasonably understood in the Policies.

114. Contrary to the Insurers' wrongful denials, Bowlero is entitled to coverage for losses stemming from "the necessary interruption or reduction of business operations conducted" by Bowlero and caused by "direct physical loss, damage or destruction."

115. Given the manner in which SARS-CoV-2 lingers in the air and on surfaces, and its manner of transmission, and the government's desire to "flatten the curve," the insured locations were not capable of being used for their essential functions. Accordingly, the Civil Authority Orders substantially impaired the properties, constituting "physical loss, damage or destruction or imminent loss" to those properties. They also constitute Civil Authority Orders that prevent or impair access to the insured locations as required to trigger Civil Authority Coverage.

116. Moreover, as a result of "direct physical loss, damage, or destruction" caused by the virus, Bowlero's normal business operations were interrupted or reduced because ingress to or egress from the insured locations was prevented or impaired, thereby triggering the Ingress/Egress Coverage.

117. In addition, as a result of the Civil Authority Orders and the resulting restrictions and the lack of ingress/egress to transportation and properties that attract customers to Bowlero's locations, Bowlero is entitled to Contingent "Time Element" Coverage.

118. Furthermore, under the Special Time Element Coverage, Bowlero is entitled to coverage for its losses “resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodation, receive admissions, and/or interference with the business at any insured location all as a result of the “Occurrence” of ... (ii) contagious or infectious disease (including decontamination and clean-up costs).”

119. Bowlero is also entitled to Special Time Element Coverage for, among other perils: (v)...the “closing of the whole or part of the premises of the Insured either by the Insured or by order of a Public Authority consequent upon the existence or threat of hazardous conditions either actual or suspected at an insured location.”

120. Bowlero is also entitled to recover damages representing the reasonable and necessary expenses incurred to continue its operations to the extent possible under the Policies’ “Extra Expense” Coverage.

121. Additionally, the closures were necessary to prevent the spread of SARS-CoV-2. The costs and losses associated with the closures therefore constitute reasonable costs incurred for the “protection and preservation of property” as well as to reduce any “Time Element” loss. The Insurers are obligated to pay these amounts because the Bowlero’s actions, in addition to being required under the common law doctrine of mitigation, are covered under the Preservation of Property and Expenses to Reduce Loss coverages.

122. Although Bowlero sustained losses and damage falling squarely within multiple coverage grants in the Policies, the Insurers failed and refused to acknowledge coverage for those losses and refused to pay any portion of them, including the amounts Bowlero incurred, and is incurring, to mitigate its otherwise insured losses.

123. As pointed out above, Bowlero is informed and believes, and on that basis alleges, that the Insurers have known for decades that the presence of hazardous substances, including microscopic substances, on or in real and personal property have been deemed to constitute property damage.

124. At a minimum, in light of the court decisions cited herein and many others, the Insurers knew that their policy language reasonably could be interpreted to cover losses associated with pandemics and viruses. Bowlero is informed and believes and, on that basis alleges, that rather than define “physical loss, damage or destruction or imminent loss,” the Insurers elected to leave the language as is, knowing that insureds could, and likely would, understand it to mean that virus- and pandemic-associated losses would be insured.

125. In denying coverage for Bowlero’s losses, the Insurers also purported to reserve rights on one or more exclusions that they contend do or may bar coverage for Bowlero’s losses. However, as noted above, none of the Policies include the insurance industry’s standard-form **“Exclusion Of Loss Due To Virus Or Bacteria.”** In fact, the Policies do not include any exclusions that conspicuously, plainly, clearly, unmistakably, and unambiguously bars coverage for losses attributable to viruses, communicable diseases, or pandemics.

126. The Insurers further compounded the misleading nature of the Policies by omitting the standard-form **“Exclusion Of Loss Due To Virus Or Bacteria”** that would have put Bowlero on notice that losses like those associated with the current pandemic might not be insured.

127. By taking the positions and acting as alleged above, the Insurers breached their contractual obligations as well as the duty of good faith and fair dealing. This wrongful conduct, as alleged herein, caused and will continue to cause significant damage to Bowlero.

128. To the extent not waived or otherwise excused, Bowlero complied with all terms and conditions in the Policies. Therefore, Bowlero is entitled to all benefits of the insurance provided by the Policies.

FIRST CAUSE OF ACTION

(Breach of Contract)

129. Bowlero realleges and incorporates by reference herein each allegation contained in paragraphs 1 through 128 above.

130. The Policies constitute valid contracts of insurance coverage between Bowlero and the Insurers, and their terms and conditions have been triggered to provide coverage to Bowlero.

131. Bowlero has complied with all conditions precedent to coverage and satisfied all obligations to the extent that they have not been waived or abrogated by the Insurers' conduct, omissions or actions.

132. The Insurers have breached their duties under the Policies by unreasonably stating that: (a) Bowlero sustained no "direct physical loss, damage or destruction;" (b) Bowlero is not entitled to any coverage for losses stemming from business interruption; (c) the losses caused by civil authority orders taken in response to the "imminent loss" caused by the virus do not fall within the coverage provided; (d) there was no "physical loss, damage or destruction" that prevented physical ingress or egress to the covered location; (e) Bowlero is not entitled to any time element, contingent time element or Special Time Element Coverages under the Policies; (f) Bowlero's claim is excluded based on the Polluter's Exclusion; and (g) the need to mitigate constitutes "physical loss" to property as that phrase is used in the Policies.

133. As a direct and proximate result of the Insurers' acts, Bowlero has been damaged and will continue to sustain damages in an amount to be determined at trial.

134. In addition, Bowlero has incurred and continues to incur consequential damages, including claim preparation fees, internal costs, ongoing extra expenses, and attorneys' fees, due to the Insurer's wrongful, unjustified and unreasonable failure to issue payment of amounts due, and improper treatment of the claim, all with the result of wrongfully diverting Bowlero from its recovery efforts.

135. The consequential damages resulting from the Insurers' conduct were within the contemplation of the parties at the time the Policies were sold, as the natural and probable result of a breach of the Policies.

136. Bowlero's consequential damages were foreseeable given the purpose and particular circumstances of the property damage and business interruption coverage sold by the Insurers under the Policies.

137. As a result of the Insurers' breach, Bowlero requests entry of judgment for breach of contract, awarding payment of damages in an amount equal to the amount owed under the Policies and consequential damages, each in amounts to be proven at trial.

SECOND CAUSE OF ACTION

(Declaratory Judgment)

138. Bowlero realleges and incorporates by reference herein each allegation contained in paragraphs 1 through 128 and 130 through 137 above.

139. Pursuant to the terms of the Policies, the Insurers are obligated to pay property damage, business income losses, and extra expenses that are not specifically, clearly, and unambiguously excluded.

140. Bowlero's losses are covered under multiple coverage grants in the Policies and are not excluded.

141. The Insurers dispute and deny that they have any further obligation to cover Bowlero's losses under the Policies.

142. An actual and justiciable controversy has arisen between Bowlero and the Insurers as to the Insurers' obligations to acknowledge Bowlero's covered loss and pay Bowlero under the Policies.

143. Bowlero and the Insurers dispute the meaning, scope and application of key terms and provisions in the Policies, including but without limitation to disputes concerning: (a) "direct physical loss, damage or destruction;" (b) coverage for Bowlero's time element losses stemming from business interruption; (c) coverage for losses caused by civil authority orders taken in response to the "imminent loss" caused by the virus; (d) that there was "physical loss, damage or destruction" that prevented physical ingress or egress to covered locations; (e) that Bowlero is entitled to contingent time element coverage under the Policies; (f) that Bowlero is entitled to Special Time Element Coverage under the Policies; (g) that Bowlero's claim is not excluded based on the Polluter's Exclusion or any other exclusion; and (h) that Bowlero is entitled to coverage for mitigation under the Policies.

144. Resolution of these controversies will establish Bowlero's right to recover payments under the Policies as a result of SARS-CoV-2 and COVID-19, and events therewith.

145. Bowlero seeks a judicial declaration by this Court in accord with their contentions, rejecting the Insurers' contentions, and stating that Bowlero's losses are insured under the Policies.

PRAYER FOR RELIEF

WHEREFORE, Bowlero prays for the following relief:

(a) On the First Cause of Action, Bowlero requests that the Court enter judgment in favor of Bowlero and against the Insurers in an amount to be determined by the Court, including compensatory damages, consequential damages, and pre- and post-judgment interest; and

(b) On the Second Cause of Action, Bowlero requests that the Court enter judgment in favor of Bowlero and against the Insurers, including a declaration that:

(1) SARS-CoV-2 and COVID-19, and the effects therewith, caused “direct physical loss, damage or destruction” to the insured locations;

(2) Bowlero is entitled to payment of its business income losses and extra expenses as a result of SARS-CoV-2 and COVID-19, and the effects therewith;

(3) Bowlero’s losses caused by civil authority orders taken in response to the “imminent loss” caused by the virus fall within the coverage provided;

(4) There was “physical loss, damage or destruction” that prevented physical ingress or egress to the covered location;

(5) Bowlero is entitled to contingent time element coverage under the Policies;

(6) Bowlero is entitled to Special Time Element Coverage under the Policies;

(7) Bowlero’s claim is not excluded based on the Polluter’s Exclusion or any other exclusion;

(8) Bowlero is entitled to mitigation under the Policies; and

(9) Resolving in favor of Bowlero any other disputes over terms and provisions of the Policies that arise in the course of this action.

(c) On all Causes of Action, Bowlero requests that the Court award Bowlero attorneys' fees, costs, and other relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Bowlero hereby demands a trial by jury on all issues so triable.

Dated: New York, New York
May 13, 2021

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