

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

BUFFALO BILLS, LLC,

Plaintiff,

vs.

AMERICAN GUARANTEE AND  
LIABILITY INSURANCE COMPANY,

Defendant.

COMPLAINT AND JURY  
DEMAND

Index No. \_\_\_\_\_

Plaintiff, Buffalo Bills, LLC (hereafter “Plaintiff” or “Insured”), files this Complaint for damages and declaratory judgment against Defendant, American Guarantee and Liability Insurance Company (“American Guarantee”), alleging the following:

### I. INTRODUCTION

1. This action for breach of contract and declaratory judgment arises out of American Guarantee’s failure to comply with its contractual obligations and provide coverage for Plaintiff’s claim under “all risks” insurance policies, Policy Numbers ERP0281411-02 and ERP0281411-03, sold by American Guarantee to Plaintiff (the “Policies”).

2. Plaintiff conducts business at a football stadium known during the 2020-21 season as “Bills Stadium” (hereinafter “the Stadium”) and ADPRO Sports Training Center (“Training Facility”). Based just outside of Buffalo, New York, the Stadium seats over 70,000 spectators and was designed and built to host world-class sporting and entertainment events, including National Football League (“NFL”) games for the Buffalo Bills, concerts, shows, tours, and other events. It also contains The Bills Store, a retail store selling Buffalo Bills apparel and merchandise.

Moreover, the Stadium offers a variety of unique spaces that people can use for both public and private events, including, without limitation, corporate events, seminars, parties, and weddings.

3. Further, the Buffalo Bills NFL football team trains, studies, and practices at the Training Facility for their NFL games. The Training Facility also hosts athletic practices and events, shows, and other activities.

4. The Stadium's and the Training Facility's existences, however, have been threatened by SARS-CoV-2, sometimes called "Coronavirus" or by one of the names of the disease that it causes and that spreads it: "COVID-19." SARS-CoV-2 is referred to as COVID-19 herein.

5. Due to COVID-19, Plaintiff's Covered Property<sup>1</sup> has suffered "direct physical loss or damage"—under the plain and ordinary meaning of that term.

6. Once able to freely welcome visitors from all over the world and pack fans into the Stadium to enjoy sporting events, entertainment events, and private events, Plaintiff was forced to close the stadium entirely to the public for approximately ten (10) months. The Billy Joel Concert, the Stadium Tour (featuring Def Leppard, Mötley Crüe, with Poison and Joan Jett & The Blackhearts), parties, tours, and other events previously scheduled at the Stadium and the Training Facility were cancelled or postponed due to COVID-19—however, even the events that have merely been *postponed* and not *cancelled* were not rescheduled for any time during 2020. And instead of the Buffalo Bills NFL team being able to study, work out, train, practice for football games, Plaintiff was forced to close the Training Facility for a considerable period of time. No fans or spectators were allowed inside the Stadium and the Training Facility during that time.

7. Upon reopening the Stadium and the Training Facility, Plaintiff drastically reduced its business operations and strictly limited the number of people permitted to enter the Stadium

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<sup>1</sup> "Covered Property" includes the Stadium and the Training Facility both in the Policies and in this Complaint.

and the Training Facility due to COVID-19. Any staff member or employee entering the Covered Property were required to wear a mask, remain six feet apart from others, and follow other mitigation and prevention measures. Fans were not allowed in the Covered Property for over ten (10) months.

8. Among other things, Plaintiff was forced to cancel highly anticipated events, make significant structural alterations, changes and/or repairs to the Covered Property, and completely restrict fans from entering the stadium due to COVID-19 and resultant closure orders. To do anything else would lead to the emergence or reemergence of COVID-19 at the Stadium and the Training Facility.

9. These losses are “direct.” Plaintiff is not asking its insurer to reimburse it after someone obtained a judgment against Plaintiff for getting them sick. That might be an indirect loss. Rather, Plaintiff directly lost the functionality of its Covered Property for business purposes due to COVID-19 because of the outbreak and presence of the virus and is asking the insurer to pay for its loss of business income occasioned directly by being unable to use its Covered Property. Moreover, the losses are “direct” because COVID-19 was at the Covered Property and close to it in proximity. In common, plain language it is understood that COVID-19 constitutes the cause of Plaintiff’s losses. COVID-19 was not only a substantial cause of Plaintiff’s losses, it was the predominant or immediate cause of those losses.

10. These losses are “physical.” Plaintiff has been and is unable to use the Stadium and the Training Facility in the manner in which they had previously used them.<sup>2</sup> The Covered Property

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<sup>2</sup> Note, however, that Plaintiff is not seeking recovery for its loss of use. Rather, Plaintiff is seeking coverage for its loss of business income. As an example that drives home the difference, some law firms have been unable to use their office space because of COVID-19, but nevertheless the law firms’ business income has increased and they thus have faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a “loss of use” claim. But the law firm would have no loss of *business income* claim. Here, Plaintiff’s businesses have stalled because of the impairment of its business

has lost at least part of its functionality, and most of its ability to generate revenue. The probability of illness prevents the use of the spaces in their normal way in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable. Moreover, the SARS-CoV-2 virus that causes COVID-19 is physical—it can be seen, counted, measured, and destroyed; it replicates itself and destroys other cells and organisms. Importantly, it can exist in the air and on surfaces for indeterminate periods of time and be transferred from the air and surfaces into human bodies. The presence of the virus in a facility is a *physical* presence, and it is a damaging one.

11. These losses are “losses.” Plaintiff has lost the use and function of physical spaces for the purpose of generating business income. The losses include the diminishment of the physical space in the building. What once could hold tens of thousands of raucous and energetic fans can now hold few fans, and what once could hold professional athletes training to perfect their skills now hold limited training athletes in the same space at the same time.

12. These losses constitute “damage.” The SARS-CoV-2 virus, a physical object, has been present in and around Plaintiff’s Covered Property, impairing its function for their ordinary and intended uses, forcing its closure, requiring steps to be taken to physically restore the Covered Property to a usable state, and altering the structure of ambient air and Covered Property’s surfaces:

- a. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is a betacoronavirus that is genetically related to several other zoonotic coronaviruses, including SARS-CoV-1, the etiological agent of SARS. SARS-CoV-2 causes coronavirus disease 2019 (COVID-19) in humans.

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space, and Plaintiff is seeking the loss of business income under the business interruption coverage of its property insurance Policies.

SARS-CoV-2 has glycoprotein “spikes” that are able to bind to human angiotensin converting enzyme 2 (ACE-2) receptors, which is present on human respiratory epithelial cells. After binding to ACE-2, the virus is able to enter the cells and make copies of itself, which are then released. These released infectious viral particles are then expelled in respiratory secretions as respiratory droplets into a multiphase, turbulent gas cloud during breathing, coughing, sneezing, talking, and singing. There are large and small respiratory droplets within the cloud. Large respiratory droplets can infect other people either directly, through direct contact with respiratory mucosal surfaces, or indirectly, by contaminating surfaces which are then touched by another person who subsequently touches her or his mouth, nose, or eyes. The small droplets remain in the air as an aerosol, which can remain suspended in the air for hours, travel prolonged distances indoors along air currents induced by the HVAC system, and travel from room to room, infecting people directly through contact with, and inhalation of, the aerosol. Particles from the aerosol can also contaminate surfaces.

- b. Because SARS-Co-V-2 spread is logarithmic, a key purpose of government closure orders is to prevent the spread of SARS-CoV-2. In the absence of closure, there will be people infected with SARS-CoV-2 present on a premise, causing contamination of air and physical surfaces with infectious SARS-CoV-2 particles, leading to virus transmission and additional cases of COVID-19.

- c. The virus is indirectly transmitted when a person touches an infested object or surface that is infested with the SAR-CoV-2 virus (i.e., fomite transmission). The virus can survive on hard and soft surfaces for a period of time ranging from a few hours to a few days.
- d. Aerosol transmission, particularly during aerosol generating procedures, such as fans talking and cheering, is believed to be a common mode of transmission in public settings. If a person is infected with SARS-CoV-2, whether symptomatic or asymptomatic, and goes to a game or concert, infectious viral particles can be aerosolized into the air. Infection clusters suggest that aerosol, droplet and fomite transmission explain SARS-CoV-2 transmission amongst humans.
- e. Nonetheless, the virus, while imperceptible to the human eye without enhancement, is undeniably present in the air, and on objects and surfaces where infected humans congregate. The objects and surface and space are, essentially, rendered useless, in that they should not be utilized while virus is present.
- f. The virus cannot be observed by the human eye without enhancement. No one can see the virus in the air, on one's hands, or on a surface. This, of course, makes it difficult to eliminate the virus, or eradicate its transmission, from air or surfaces. The presence of the virus is only observed through the infection rate.
- g. Merely cleaning surfaces may reduce but does not altogether eliminate the risk of transmission. There may be surfaces with residual infectious virus,

and aerosolized infectious particles. In other words, disinfection may temporarily eliminate a virus that was present prior to disinfection; however, a space may remain contaminated if an aerosol is present, and immediately become contaminated thereafter if another infected person is present in the area.

- h. The presence of the virus, whether circulating or stagnant, has changed the object, surface or premises, in that it has become dangerous to handle and/or enter, and cannot be used. Its use can only be restored with remedial action and sufficient time for the contaminated air to be evacuated, as suggested by the CDC and other infectious disease experts.
- i. The virus, observable only through microscopy and reflected by the public transmission rates, does physically exist and will survive in the air and on hard and soft surfaces. The virus can remain viable and infectious in aerosols for hours and on surfaces up to days. The virus may be inhaled from aerosols or spread to hands from a contaminated surface and then to the nose or mouth, causing infection. Notably, clearance of aerosols or disinfection of a contaminated surface is temporary and will easily become contaminated again when the virus is reintroduced by another infected person, and this contamination will provide a constant modality for infection to people.
- j. The virus' presence in a community, evidenced by infection rates, means that live virus has been transferred in the air and to objects and surfaces. When aerosolized or an object or surface contains live virus, the virus is

physically present in the air and on surfaces and objects, but imperceptible to the human eye. Nevertheless, the air, objects and surfaces should not be used. The transmission of the virus can occur through breathing, aerosol generating procedures, or touching surfaces or objects contaminated with virus from an infected person.

- k. Aerosol, droplet, and fomite transmission are the basis for masking, eye protection, use of gowns and gloves in the healthcare setting, social distancing, hand-washing, stay-at-home orders, home-shelter orders, distance learning, reduced capacity and/or occupancy limits, and other measures implemented in various executive orders. The virus is physically present in the community, including in the air and on objects and surfaces. Aerosol and fomite transmission are real, and due to constant reinfestation of air and surface areas, it is simply impossible to entirely eradicate the virus from indoor and enclosed spaces and such surfaces if there continue to be unmasked people in the area.
- l. Reducing capacity in public settings is one way to reduce the presence of virus on objects and surfaces and, therefore, reduce the risk of transmission, especially during times of rising infection rates. Wearing masks reduces, but does not eliminate, the likelihood of virus being aerosolized and transferred to objects and hard surfaces.
- m. Even with cleaning and disinfecting, the presence of virus on objects and surfaces, though reduced, cannot be reliably eliminated because these surfaces will continue to become contaminated as people spread the virus.

The only way to ensure the total absence of virus on objects and surfaces is to prevent access to an environment, especially an indoor or enclosed environment with full capacity.

13. Despite the fact that Plaintiff entered into an insurance contract with American Guarantee to cover it from “all risks,” including that of business interruption and related losses due to physical loss of or damage to property, American Guarantee has reneged on its obligations. American Guarantee has relied on inapplicable exclusions and its own internal scheme to limit or altogether deny Plaintiff from the recovery to which it is entitled under the Policies. Plaintiff has paid its premium in full and has relied on the Policies as a shield against unforeseen loss or damage and resulting loss of business income. Yet instead of following through on its end of the bargain, American Guarantee has failed to honor its duties under the Policies.

## II. THE PARTIES

14. Plaintiff Buffalo Bills, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1 Bills Drive, Orchard Park, New York 14127.

15. Defendant American Guarantee and Liability Insurance Company is incorporated under the laws of New York, with its principal place of business at 1299 Zurich Way, Schaumburg, Illinois 60196. It is authorized to write, sell, and issue insurance policies providing property and business income coverage nationwide. At all times material hereto, American Guarantee conducted and transacted business through the selling and issuing of insurance policies nationwide, including, but not limited to, selling and issuing property and business coverage to Plaintiff.

### III. JURISDICTION AND VENUE

16. This court has territorial jurisdiction pursuant to the provisions of New York C.P.L.R. § 301.

17. This matter is subject to the jurisdiction of this Court, as Plaintiff and Defendant are residents of the State of New York, Defendant does business in the State of New York, and the value of the Plaintiff's claims exceed the jurisdictional requirement.

18. Venue is proper in this county under New York C.P.L.R. § 503, because a substantial portion of the events or omissions giving rise to the claim occurred within this county, and because the Plaintiff was, at all relevant times, a business resident of Erie County, in the State of New York.

### IV. FACTUAL BACKGROUND

19. The Stadium and the Training Facility are world-class sports and entertainment facilities.

20. Due to COVID-19, Plaintiff was forced to cancel all previously scheduled events and close the Training Facility for a considerable period of time. After mid-March 2020, no fans or spectators were allowed inside the Stadium for games, concerts, or events for the rest of that year. And only twice so far in 2021 were fans allowed inside the Stadium, but only in a very limited capacity, for the playoffs. No fans or spectators were allowed at the Training Facility from March 2020 to approximately March 2021, and thereafter still on an extremely limited and temporary basis.

21. Further, because they were unable to host fans throughout the entire regular season, the Buffalo Bills had fewer sponsorships, and have lost income related to those sponsorships and lack of activations.

22. Plaintiff acquired “all-risk” property coverage to protect itself in the event that the Stadium and/or the Training Facility suddenly had to suspend operations for reasons outside of its control or if Plaintiff had to act in order to prevent further property damage.

23. American Guarantee is an insurance company that sold the “all-risk” insurance policies, under Policy Numbers ERP0281411-02 and ERP0281411-03, to Plaintiff providing coverage to Plaintiff against “direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property.” See Policy No. ERP0281411-02, attached hereto as Exhibit A at BILLS00012; Policy No. ERP0281411-03, attached hereto as Exhibit B at BILLS20-21\_00022.

24. American Guarantee drafted the Policies.

25. “Covered Cause of Loss” is defined as “[a]ll risks of direct physical loss of or damage from any cause unless excluded.” Ex. A at BILLS00056; Ex. B at BILLS20-21\_00056.

26. American Guarantee did not exclude or limit coverage for losses from the spread of virus in the Policies. Indeed, the Policies do not include, and are not subject to, any exclusion for losses caused by the spread of viruses or communicable diseases. Thus, losses due to COVID-19 are a “Covered Cause of Loss” under the Policies.

27. The policy with a policy period of May 1, 2019 through May 1, 2020, covers the Stadium and the Training Facility, both located at 1 Bills Drive, Orchard Park, New York 14127, and provides up to \$90,562,151 in coverage for property damage, which includes Time Element losses. The policy with a period of May 1, 2020 through May 1, 2021 also covers Bill Stadium and the Training Facility, and provides up to \$90,562,151 in coverage for property damage, and also includes Time Element losses.

28. Specifically, the Policies provide coverage to Plaintiff for Time Element losses (or business interruption losses) occurring as a result of physical loss or damage of the type insured under the Policies. Ex. A at BILLS00022; Ex. B at BILLS20-21\_00022.

29. The Policies also provide coverage for business interruption losses incurred due to the necessary suspension of Plaintiff's business if the suspension results from direct physical loss of or damage caused by a Covered Cause of Loss to the Covered Property of Plaintiff's direct or indirect customer, supplier, contract manufacturer or contract service provider ("Contingent Time Element Locations"). Ex. A at BILLS00029 and BILLS00057-58; Ex. B at BILLS20-21\_00029 and BILLS20-21\_00058.

30. The Policies also provide coverage for the reasonable and necessary Extra Expenses Plaintiff incurs to resume and continue its business as nearly normal as practicable. Ex. A at BILLS00024; Ex. B at BILLS20-21\_00024.

31. The Policies further provide Civil Authority coverage for business interruption loss resulting from the prohibition of access to the insured premises. Ex. A at BILLS00028-29; Ex. B at BILLS20-21\_00028-29.

32. The Policies also provide coverage for business interruption losses incurred due to the necessary suspension of the Plaintiff's business activities due to ingress or egress from the insured premises being prevented. Ex. A at BILLS00033; Ex. B at BILLS20-21\_00033.

33. The Policies provide coverage for "reasonable and necessary costs" that Plaintiff incurs to "temporarily protect or preserve" the insured property. Ex. A at BILLS00037; Ex. B at BILLS20-21\_00037.

34. In exchange for American Guarantee's agreement to take on Plaintiff's risk of loss, Plaintiff paid \$182,749.38 in premium for the 2019-2020 Policy and \$201,867 for the 2020-2021 Policy. Plaintiff has paid or tendered all consideration required under the Policies.

35. Due to the actual presence of COVID-19, the Stadium and the Training Facility suffered direct physical loss or damage. Due to COVID-19, the Stadium and the Training Facility were deemed unsafe for their intended purposes as they were prior to COVID-19 and suffered physical loss or damage. The business functions of the Stadium and the Training Facility were impaired as a result. If Plaintiff continued to simply conduct business as it normally would have in the past prior to COVID-19, the virus would manifest, and guests, employees, and other visitors to the Stadium and the Training Facility would risk infection and serious illness or death. This is not a non-physical or remote loss such as one occasioned by a breach of contract, loss of a market, or the imposition of a governmental penalty. Instead, it is a direct physical loss because of the changed physical environment. In their current conditions, the Stadium and the Training Facility have not been functional for their normal and usual business purposes as they were used prior to COVID-19.

36. Moreover, the presence of virus constitutes physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called "virus" exclusions to be placed in some policies, but not others, the insurance industry drafting arm, The Insurance Services Office ("ISO"), circulated a statement to state insurance regulators that included the following:

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. Although building and personal property

could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

37. The presence of virus or disease has resulted in physical damage to the Stadium and the Training Facility, including structural alteration of the ambient air and the surfaces of the Covered Property, along with a loss of functionality and the diminishment of functional space.

38. Losses caused by COVID-19 and the related orders issued by civil authorities triggered the Time Element, Contingent Time Element, Extra Expense, Civil Authority, Ingress/Egress, and Preservation of Property provisions of the Policies. Plaintiff also reasonably and necessarily incurred expenses to reduce its Time Element losses.

39. By purchasing the Policies, Plaintiff expected the Policies would provide coverage for: 1) Time Element, 2) Contingent Time Element, 3) Civil Authority, 4) Ingress/Egress, 5) Extra Expense, and 6) Preservation of Property, among others, in the event Plaintiff's businesses were interrupted and Plaintiff sustained damages and additional expenses as a result. Plaintiff reasonably expected to be insured against such losses, like the type of losses Plaintiff sustained and the expenses Plaintiff incurred due to COVID-19.

40. Further, Plaintiff had expectation that the Policies would provide coverage for Time Element/Business Income losses and Extra Expense incurred in the event a civil authority prohibited access to Plaintiff's Covered Property, which occurred when various local, state, provincial or national jurisdictions throughout the United States and the world issued closure mandates due to COVID-19 that affected the premises at and surrounding the Covered Property.

**A. COVID-19 Is A Highly Contagious and Deadly Communicable Disease**

41. COVID-19, a disease resulting from the SARS-CoV-2 novel coronavirus, is a deadly communicable disease that has already infected over 31 million people in the United States and killed more than 559,00 Americans.<sup>3</sup>

42. As discussed in great detail in paragraph 12, *supra*, and incorporated herein by reference, COVID-19 is a highly contagious and deadly communicable disease.

43. “The virus that causes COVID-19 most commonly spreads between people who are in close contact with one another (within about 6 feet, or 2 arm lengths). It spreads through respiratory droplets or small particles, such as those in aerosols, produced when an infected person coughs, sneezes, sings, talks, or breathes. These particles can be inhaled into the nose, mouth, airways, and lungs and cause infection. This is thought to be the main way the virus spreads.”<sup>4</sup>

44. “Droplets can also land on surfaces and objects and be transferred by touch. A person may get COVID-19 by touching the surface or object that has the virus on it and then touching their own mouth, nose, or eyes.”<sup>5</sup> A scientific study investigating the stability of COVID-19 in different environmental conditions found that, following COVID-19 contamination, the virus could be detected hours later for tissues and paper, days later for wood, cloth and glass.<sup>6</sup> COVID-19 also remains active on plastic and stainless steel surfaces for up to three days, on cardboard for 24 hours, on copper for four hours, and is detectable in aerosols for up to three hours.<sup>7</sup>

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<sup>3</sup> See <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last viewed April 12, 2021).

<sup>4</sup> *Coronavirus Disease 2019 (COVID-19), Spread*, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread> (last viewed January 19, 2021).

<sup>5</sup> *Coronavirus Disease 2019 (COVID-19), Spread*, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread> (last viewed January 19, 2021).

<sup>6</sup> See Alex W.H. Chin, et al., *Stability of SARS-CoV-2 in different environmental conditions*, *The Lancet Microbe* (April 2, 2020), [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3).

<sup>7</sup> See <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

45. All of these materials are used by Plaintiff and otherwise present in the Stadium and the Training Facility.

46. Research has also indicated that the coronavirus can spread through the air. For example, airborne viral particles are known to have spread into a facility's heating and ventilation ("HVAC") system, leading to transmission of the coronavirus from person to person. One study found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of COVID-19 patients. This study detected SARS-CoV-2 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from the patients' rooms.<sup>8</sup>

47. The Environmental Protection Agency ("EPA") has compiled several studies reflecting "epidemiological evidence suggestive of [coronavirus] transmission through aerosol."<sup>9</sup> Based on these and other studies, the EPA has recommended that facilities make improvements to their ventilation and HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.<sup>10</sup>

48. Accordingly, COVID-19 causes physical loss and damage by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property, including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous and unsafe. While mitigation efforts have been undertaken and remain ongoing, COVID-19 has caused such physical loss and damage to Plaintiff's Covered Property, as described further below.

49. First, respiratory droplets (*i.e.*, droplets larger than 5-10  $\mu\text{m}$ ) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change

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<sup>8</sup> See <https://www.researchsquare.com/article/rs-34643/v1>.

<sup>9</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-and-publications>.

<sup>10</sup> See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

the property and its surface by becoming a part of that surface. This structural alteration makes physical contact with those previously safe, inert surfaces (*e.g.*, walls, handrails, furniture) unsafe.

50. Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5  $\mu\text{m}$ ) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the structural properties of air in buildings from safe and breathable to unsafe and dangerous.

51. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are not theoretical, intangible, or incorporeal, but rather are dangerous physical substances that have a material, tangible existence.

52. In a study by the U.S. National Institutes of Health, researchers found that the coronavirus was detectable for up to three hours in aerosols, four hours on copper, up to 24 hours on cardboard, and up to three days on stainless steel and plastic surfaces.<sup>11</sup>

53. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials, they become a part of those surfaces and materials, converting the surfaces and materials to fomites.<sup>12</sup> This represents a physical change in the affected surface or material, which constitutes physical loss and damage.

54. The presence of COVID-19 within a facility causes physical loss and damage by necessitating remedial measures that include without limitation extensive cleaning and disinfecting, repairing or replacing air filtration systems, remodeling and reconfiguring physical spaces, and other measures to reduce or eliminate the presence of cases of COVID-19 and the coronavirus on-site.

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<sup>11</sup> See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hourssurfaces>.

<sup>12</sup> See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

55. The presence of cases of COVID-19 within a facility causes physical loss and damage by transforming the facility from property that is usable and safe for humans into a property that is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

56. In addition, the presence of COVID-19 on property creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the facility by touching a doorknob or gripping the arms of a dental chair, will carry those droplets on their hands and deposit them elsewhere in the facility, causing additional damage and loss.

**B. Civil Authorities Issue Civil Authority Orders Because of COVID-19**

57. On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak as a pandemic.<sup>13</sup> On March 13, 2020, former President Donald Trump declared a national emergency due to the outbreak in the United States.<sup>14</sup>

58. The threat and presence of COVID-19 causes direct physical loss or damage to property. In response to the direct physical loss or damage to property due to COVID-19, civil authorities across the United States issued orders requiring the closure of numerous business and/or suspending or restricting business activities at a wide range of establishments (“Closure Orders”), including civil authorities with jurisdiction over business activities at the Stadium and the Training Facility.

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<sup>13</sup> See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>14</sup> See <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

59. Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing Closure Orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)<sup>15</sup> (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); N.Y.C. Emergency Exec. Order No. 103 at 1 (March 25, 2020)<sup>16</sup> (“actions taken to prevent the spread of COVID-19 “have led to property loss and damage”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)<sup>17</sup> (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)<sup>18</sup> (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)<sup>19</sup> (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)<sup>20</sup> (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)<sup>21</sup> (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27,

<sup>15</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf>.

<sup>16</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-103.pdf>.

<sup>17</sup> [https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order\\_Harris-County.pdf](https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf).

<sup>18</sup> <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

<sup>19</sup> [https://www.cityofkeywest-fl.gov/egov/documents/1584822002\\_20507.pdf](https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf).

<sup>20</sup> <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>.

<sup>21</sup> <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>.

2020)<sup>22</sup> (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)<sup>23</sup> (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)<sup>24</sup> (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)<sup>25</sup> (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

60. Specifically, in New York, Governor Andrew M. Cuomo declared a Disaster Emergency in the State of New York due to COVID-19 on March 7, 2020.<sup>26</sup>

61. On March 16, 2020, Governor Cuomo issued an executive order banning gatherings of more than 500 people at any location in New York, and ceasing the operations of numerous business, including all restaurants and bars for on-site services, casinos, gyms, fitness centers, and movie theaters.<sup>27</sup>

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<sup>22</sup>[https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/safe\\_rathomeorder.pdf](https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/safe_rathomeorder.pdf).

<sup>23</sup> <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>.

<sup>24</sup> [https://sfgov.org/sunshine/sites/default/files/sotf\\_061020\\_item3.pdf](https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf).

<sup>25</sup>[https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20\\_FINAL](https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL).

<sup>26</sup> See <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>.

<sup>27</sup> See <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

62. Effective, March 19, 2020, all stores located within shopping malls and all places of public amusement, whether indoors or outdoors, including but not limited to, carnivals, aquariums, and zoos, were required to close.<sup>28</sup>

63. On March 20, 2020, Governor Cuomo issued an executive order requiring all non-essential businesses in New York to close and cancelling or postponing all non-essential gatherings of individuals of any size for any reason.<sup>29</sup> Neither the Stadium nor the Training Facility were deemed to be essential businesses.<sup>30</sup> As a result, the Stadium and the Training Facility initially had to remain completely closed and subsequently were opened on a restricted basis with a severely limited capacity.

64. On or about December 23, 2020, Governor Cuomo announced that the New York Department of Health would permit a limited number of 6,700 fans to attend two NFL playoff games at the Stadium on January 9, 2021 and January 16, 2021.<sup>31</sup>

**C. Plaintiff's Businesses Interrupted and Events Cancelled Due to the Actual Presence of COVID-19**

65. The actual presence of COVID-19 caused direct physical loss or damage to Plaintiff's Covered Property, by, among others, (i) causing direct physical loss or damage to the Stadium and the Training Facility; (ii) denying use of and damaging the Stadium and the Training Facility; (iii) requiring physical repair and/or alterations to the Stadium and the Training Facility; and (iv) by causing a necessary suspension of operations during a period of liability.

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<sup>28</sup> See <https://www.governor.ny.gov/news/no-2025-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

<sup>29</sup> See <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>

<sup>30</sup> See <https://esd.ny.gov/guidance-executive-order-2026>.

<sup>31</sup> See <https://www.nbcnewyork.com/news/coronavirus/can-you-reopen-with-rapid-testing-cuomo-floats-potential-game-changer-and-the-bills-want-to-play/2797466/>.

66. At the time of this filing, multiple employees have tested positive for COVID-19 and were physically present at the Stadium and/or the Training Facility.

67. Because of the spread and presence of COVID-19, the functional spaces in the Stadium and the Training Facility have been diminished. For example, the stadium seats, luxury suites, and concessions in the Stadium lost their normal functionality and the space could not be used since March 2020 for regular season Bills games, and were only opened in a very limited capacity in for the playoffs. Numerous events, including the Billy Joel Concert, the Stadium Tour (featuring Def Leppard, Mötley Crüe, with Poison and Joan Jett & The Blackhearts), school events, tours, training events, sporting events, and other public and private events have been cancelled or postponed.

68. Likewise, Plaintiff has also lost sponsorship opportunities and revenues since it was unable to have any fans at the Buffalo Bills games during the regular season and only very limited capacity during the playoffs.

69. From March 2020 through the end of the year, Plaintiff was unable to host sporting events, concerts, shows, and other entertainment events. Likewise, no fans or spectators entered the Stadium from March 2020 through the end of 2020.

70. Although the State of New York allowed the Stadium to open on January 9, 2021 and January 16, 2021, only up to 6,700 fans were permitted to enter the stadium and the functional uses of the football field and the stadium were at a limited, diminished capacity.

71. All business operations of Plaintiff, most of which involve large gatherings at the Covered Property, were initially cancelled, and some remain cancelled.

72. All of Plaintiffs' business operations have been and continue to be severely negatively impacted.

73. To date, Plaintiff's losses exceed tens of millions of dollars in business interruption losses and various costs to remediate the Stadium and the Training Facility and to ensure the health and safety of staff members, employees, NFL players, and coaches due to COVID-19 and related government Closure Orders, and these losses continue. These losses also include, but are not limited to, unsold or refunded tickets for Buffalo Bills NFL football games, lost revenue for NFL-related sponsorships, numerous concerts, shows, school events, tours, parties and other sporting and entertainments events, costs related to testing NFL players, coaches, and employees specifically for COVID-19, and increased costs for professional cleaning services.

74. Moreover, the presence of COVID-19 at Plaintiff's Covered Property has caused "direct physical loss of or damage" to Plaintiff's Covered Property and is further evidenced by the numerous recent structural alterations made to the Stadium and the Training Facility, including, but not limited to:

- a. Installation of plexiglass dividers between home team lockers and in officials' locker rooms;
- b. Installation of opaque dividers between visiting team lockers;
- c. Installation of plexiglass in the stadium event command center, scoreboard control room and broadcasting areas;
- d. Installation of taller dividers in bathroom areas;
- e. Removal of showerheads in the showers of the the Stadium and Training Facility to allow for social distancing;
- f. Installation of additional lockers in the Training Facility;
- g. Construction of a new restroom in the training center fieldhouse lobby;
- h. Extension of security access system to create additional entrance to Training Facility;
- i. Installation of new booths, including running electrical and fiber lines, at the new facility entrance for players and staff; and
- j. Physical modifications to electrical and fiber lines for training camp at the Training Facility.

75. Thus, there have been many obvious structural alterations, changes and/or repairs made to the Stadium and the Training Facility and the operations of Plaintiff to continue its

business after experiencing direct property damage, which was caused by COVID-19, and to avoid imminent threat of further property damage. When fans were permitted to enter the Stadium on an extremely limited basis during the post season, Plaintiff implemented additional operational changes and structural alterations, such as reconfiguring concession stands, eliminating stands for condiments for food, and erecting additional hand sanitizer stands throughout the stadium, and incurred increased costs and expenses.

76. COVID-19 has rendered Plaintiff's Covered Property unfit for its intended business functions. In its current conditions, Plaintiff's Covered Property is not functional for its normal and intended business purposes because of the changed physical environment due to COVID-19. COVID-19 also presented an imminent threat of immediate damage or loss to the Covered Property, forcing Plaintiff to take costly action to prevent further damage or loss.

77. The Closure Orders prohibited access to Plaintiff's Covered Property, and the area immediately surrounding same, in response to dangerous physical conditions resulting from a Covered Cause of Loss causing damage to property other than the Covered Property.

78. As a result of the actual presence of COVID-19 and the Closure Orders, Plaintiff suffered Time Element losses and incurred Extra Expense.

**D. Plaintiff's "All Risks" Policies Cover Plaintiff's Claim**

79. As discussed in detail above, the Policies issued by American Guarantee cover property at the insured locations against all risks of direct physical loss of or damage from any cause unless excluded. *See* Exhibit A, at BILLS00012 and BILLS00056; Ex. B at BILLS20-21\_00022.

80. Plaintiff's insured locations under the Policies include the Stadium and the Training Facility, both located at 1 Bills Drive, Orchard Park, New York 14127.

## 1. COVID-19 Triggered Coverage Under the “All Risks” Policies

81. Coverage under the Policies is triggered due to the actual presence of COVID-19 at the Stadium and the Training Facility and the ongoing threat of immediately impending COVID-19, and resulting loss or damage.

82. Furthermore, the presence of COVID-19 on property at or within 1,000 feet of the Stadium and the Training Facility triggered coverage under the Policies.

83. COVID-19 has caused (and continues to cause) direct physical loss of and damage, as described above, to property, including Plaintiff’s Covered Property.

84. Additionally, COVID-19 has caused (and continues to cause) Plaintiff to experience covered business interruption and Time Element losses.

85. Due to the losses covered by the Policies, Plaintiff submitted a claim to American Guarantee on October 19, 2020. American Guarantee failed to acknowledge its responsibility to cover and pay Plaintiff’s claim.

## 2. Multiple Coverages Are Triggered Under the “All Risks” Policies

86. Plaintiff’s claim triggered not only the Policies’ “all risks” coverages, it also triggered numerous coverage “extensions” in the Policies. These include, but are not limited to, the following coverages:

### *a. American Guarantee Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policies’ Time Element/Business Interruption Coverage*

87. Under the Policies, Plaintiff is covered for Time Element/business interruption losses.

88. Due to the spread and actual presence of COVID-19 at the Stadium and the Training Facility, Plaintiff has suffered Time Element/business interruption losses as a direct result of physical loss and damage that is insured by the Policies as described above.

89. According to the Policies, Plaintiff is covered from the date of the loss until the Covered Property can be made ready for normal operations.

***b. American Guarantee Should Compensate Plaintiff for Its Reasonable and Necessary Costs Incurred to Temporarily Protect or Preserve Its Property Because COVID-19 Triggered the Policies' Protection and Preservation of Property Additional Coverage***

90. Due to the actual presence and spread of COVID-19 causing direct physical loss or damage, and the ongoing threat of immediately impending physical loss or damage (as described above) at the Stadium and the Training Facility, Plaintiff incurred costs to temporarily protect or preserve its insured property, including all costs associated with having to shut down the Stadium and the Training Facility and the costs to make the Covered Property safe. The Policies provide coverage for such costs to the extent they are reasonable and necessary.

91. Such costs were reasonably necessary because incurring the costs prevented further physical loss or damage to the Covered Property.

92. Accordingly, under the Policies, American Guarantee must compensate Plaintiff for those costs.

***c. American Guarantee Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policies' Civil Authority Coverage***

93. Due to the actual physical presence of COVID-19 at and nearby the Stadium and the Training Facility, New York's Governor issued orders which limited, restricted, and/or prohibited access to the Stadium and the Training Facility.

94. Because of this, Plaintiff has suffered actual losses and incurred extra expenses. The Policies afford coverage to Plaintiff due to the civil authority orders which have caused substantial losses and extra expenses to Plaintiff.

***d. American Guarantee Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policies' Ingress/Egress Coverage***

95. Due to COVID-19 and the physical loss and damage of COVID-19 at other nearby properties, Plaintiff's business has been interrupted because of the total or partial prevention of ingress or egress to and from the Stadium and the Training Facility.

96. The Time Element/business interruption losses caused by the prevention of ingress or egress to and from the Stadium and the Training Facility is covered under the Policies.

***e. American Guarantee Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policies' Extra Expense Coverage***

97. The actual physical presence and spread of COVID-19 at the Stadium and the Training Facility has caused Plaintiff to incur reasonable and necessary extra expenses in an effort to continue as nearly normal as practicable the conduct of Plaintiff's business. These expenses are in addition to what Plaintiff would have normally incurred in conducting their business without the presence of COVID-19.

98. The Policies cover such reasonable and necessary extra expenses.

***f. American Guarantee Should Compensate Plaintiff for Its Losses Because COVID-19 Triggered the Policies' Contingent Time Element Coverage***

99. The Policies also confer coverage for actual loss sustained and extra expense incurred directly resulting from physical loss or damage at Contingent Time Element Locations.

100. Plaintiff has suffered actual losses and incurred extra expenses directly resulting from physical loss or damage at Contingent Time Element Locations due to COVID-19.

### 3. No Exclusion Applies Which Affects Coverage

101. The Policies contain no exclusion which limits or bars coverage for the spread or presence of COVID-19 at or near the Stadium and the Training Facility, the physical loss and damage to property at the Stadium and the Training Facility, and/or the Time Element losses which have resulted and will continue to result from the physical loss and damage to Plaintiff's property.

102. American Guarantee drafted a limited "Contamination" exclusion that originally defined "Contamination (Contaminated)" to include "virus," but that provision does not apply to contamination that results from direct physical loss or damage not excluded by the Policies. Moreover, "virus" was removed from the definition of "Contamination" by endorsement.

103. To the extent the Court finds that any exclusion(s) apply, they are unenforceable.

104. Plaintiff has fully complied all provisions of the Policies, including but not limited to its duty to respond to American Guarantee's questions during American Guarantee's so-called "investigation" period.

105. American Guarantee took nearly two months to approve a simple confidentiality agreement surrounding Plaintiff's responses to the request for information. American Guarantee then took three weeks to provide its coverage decision.

106. On April 9, 2021, American Guarantee denied Plaintiff's claim, declining to provide coverage for Plaintiff's losses.

107. To the extent that the Court or fact-finder interprets the Policies to require Plaintiff to complete any conditions precedent for coverage and performance under the Policies, American Guarantee's dilatory tactics during its "investigation" and failure to pay Plaintiff's claim constitute material breach, excusing any alleged failure (if any) by Plaintiff to complete conditions precedent.

108. Plaintiff has complied with the Duties in the Event of Loss or Damage provision in the Policies. To the extent the Court or fact-finder interprets the Policies to require additional compliance, American Guarantee's dilatory investigation and failure to pay its insured constitutes material breach, excusing any alleged failure (if any) by Plaintiff to comply with all requirements.

109. Plaintiff has attempted to mitigate its losses.

110. Due to the actual spread or presence of COVID-19, Plaintiff has suffered, is suffering, and continues to suffer substantial damages due to American Guarantee's breach of contract.

111. Plaintiff's damages include, but are not limited to, the reduction of revenue and income related to the cancellation and/or indefinite postponements of sporting games, concerts, private events, tours, and youth activities. Plaintiff's damages further include, but are not limited to, the reduction of revenue and income related to: the fact that the Buffalo Bills were required to have regular season home games with no fans and then severely limited capacity during the playoffs; the stadium retail store's and concession stands' limited sales due to the cancelled events and/or fan-free events or limited-fan events; the cancellation, reduction, or seasonal postponement of brand sponsorships due to the cancelled or limited-capacity or fan-free events and games; and increased costs for professional cleaning services. Plaintiff will continue to suffer damages if other scheduled events and games are cancelled or limited in the future due to COVID-19.

## V. CLAIMS ALLEGED

### COUNT I

#### Declaratory Judgment

112. Plaintiff incorporates by reference the allegations contained the preceding paragraphs as if set out in full herein.

113. Plaintiff seeks the Court's declaration of the parties' rights and duties under the Policies pursuant to New York C.P.L.R. § 3001. A justiciable controversy exists between Plaintiff

and American Guarantee regarding the availability of coverage under the Policies for Plaintiff's claim.

114. The controversy between Plaintiff and American Guarantee is ripe for judicial review.

115. Therefore, Plaintiff seeks a declaration from this Court that:

- a. The various coverage provisions under the Policies identified in this Complaint are triggered by Plaintiff's claim;
- b. The Policies cover Plaintiff's claim; and
- c. No Policy exclusion applies to prohibit or limit coverage for Plaintiff's claim.

## **COUNT II**

### **Breach of Contract**

116. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as if set out in full herein.

117. The Policies constitute valid and existing contracts of insurance requiring American Guarantee to properly compensate Plaintiff for its losses.

118. Plaintiff complied with all applicable provisions of its Policies and/or those provisions have been waived by American Guarantee or American Guarantee is estopped from asserting them.

119. Plaintiff sustained damages due to the actual physical presence of COVID-19, the existence and ongoing threat and spread of COVID-19, and the civil authority orders prohibiting large gatherings resulting from COVID-19, but American Guarantee has failed to comply with its obligation and has failed to compensate Plaintiff for its claim.

120. American Guarantee has breached the contracts herein by denying Plaintiff's claim and failing to pay Plaintiff for its business interruption/time element and related losses.

121. Plaintiff is entitled to actual damages as a result of American Guarantee's breach of contract.

122. Plaintiff has been required to retain the services of attorneys to commence this action and is further entitled to attorneys' fees and costs.

## **VI. REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in its favor and against American Guarantee as follows:

- 1) A declaration from this Court that:
  - a. The various coverage provisions identified in this Complaint are triggered by Plaintiff's claims;
  - b. No exclusion in the Policies apply to prohibit or limit coverage for Plaintiff's claims; and
  - c. The Policies cover Plaintiff's claims.
- 2) For actual, special, compensatory, and consequential damages against American Guarantee in an amount to be proved at trial in excess of the minimum jurisdictional limits of this Court;
- 3) Pre- and post-judgment interest as provided by law;
- 4) An award of attorneys' fees and cost of suit incurred; and
- 5) For such other and further relief as the Court deems proper.

## **VII. JURY TRIAL DEMANDED**

Plaintiff respectfully requests a trial by jury on all issues so triable.

Dated: April 16, 2021  
Buffalo, New York

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\*Applications for admission *pro hac vice* to be filed