**IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND**

TAPESTRY, INC.
2405 York Road
Suite 201
Lutherville-Timonium, MD 21093

Plaintiff,

v.

FACTORY MUTUAL INSURANCE COMPANY
270 Central Avenue
P.O. Box 7500
Johnston, RI 02919

Defendant.

SERVE ON:
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

C-03-CV-21-002002

**Civil Action No. _____**

**DEMAND FOR JURY TRIAL**

## COMPLAINT

Plaintiff Tapestry, Inc. ("Tapestry" or "Plaintiff") files this Complaint against Defendant Factory Mutual Insurance Company ("FM" or "Defendant") and alleges as follows:

## NATURE OF THE ACTION AND RELIEF SOUGHT

1. This action arises out of FM's refusal to provide coverage and denial of coverage for Tapestry's losses arising from the SARS-CoV-2 virus (the "Coronavirus") and the disease that it causes, Coronavirus Disease 2019 ("COVID-19"), and the physical loss or damage to property and business interruption they caused under the "all-risk" commercial property insurance policies FM sold to Tapestry for the policy periods April 4, 2019 to April 4, 2020 (the "2019/2020 Policy") (attached hereto as Exhibit 1) and April 4, 2020 to April 4, 2021 (the "2020/2021 Policy") (attached hereto as Exhibit 2) (each a "Policy" and, collectively, the

"Policies") (the April 4, 2019 to April 4, 2020 period, and April 4, 2020 to April 4, 2021 period shall be referred to collectively herein as the "Policy Periods").

2. This coverage dispute is centered in Maryland. Tapestry, a Maryland corporation with an office in Baltimore County, is the owner of modern luxury accessory and lifestyle brands, including Coach, kate spade new york and Stuart Weitzman, and is the operator of over 1,500 stores in the U.S. and internationally, including 15 stores in Maryland.

3. Tapestry seeks a declaration as to the scope and breadth of the parties' rights and obligations under the Policies in connection with Tapestry's ongoing losses and FM's refusal to honor its promises to protect Tapestry in the face of devastating occurrences like the presence of the Coronavirus and COVID-19 at Tapestry's stores, and at nearby businesses within one mile of each Tapestry store that attract customers to Tapestry's stores (referred to as "ATTRACTION PROPERTY" in the Policies). ATTRACTION PROPERTY includes, among other things, shopping malls, restaurants, and metropolitan areas.

4. FM, the sole insurer for Tapestry's stores in the U.S., has breached the 2019/2020 Policy by dragging its feet and refusing to issue a coverage determination to Tapestry to this day almost 15 months after receiving Tapestry's April 2, 2020 notice of its staggering physical loss or damage to property and the resultant economic losses arising from the Coronavirus and COVID-19. FM has also breached the 2020/2021 Policy by disclaiming coverage under all coverages other than those for Communicable Disease. Accordingly, Tapestry was forced to turn to this Court for relief.

5. Tapestry suffered significant losses in excess of hundreds of millions of dollars in damages arising from the physical loss or damage caused by the Coronavirus and COVID-19.

6. Tapestry seeks a declaratory judgment requiring FM to satisfy its obligations to

Tapestry under the Policies, which includes providing coverage under multiple coverages in the Policies. Tapestry also seeks damages for breach of contract stemming from FM's failure to pay its covered losses.

7. Tapestry seeks a declaratory judgment to determine the scope of the parties' rights and obligations under the Policies. Particularly, Tapestry seeks an order forcing FM to provide coverage to Tapestry under multiple coverages in the Policies. Once the parties' rights are determined, Tapestry also seeks damages for breach of contract for FM's failure to pay its covered losses.

8. The "all-risk" Policies were drafted and issued by FM (on a FM Global Advantage® Time Element Select ™ form), which underwrote 100% of the Policies' $2 billion in limits ($1 billion for each Policy) (as well as collected 100% of the premium) and covers "ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded[.]"

9. When introduced in 2016, the FM Global Advantage® coverage form was marketed as offering Business Interruption coverage "wherever you operate, or however indirect your connection to the loss."[1] FM also described its Business Interruption coverage as offering "unmatched coverage flexibility."[2]

10. The Policies provide sweeping coverage. Indeed, an "all-risk" policy is the broadest type of commercial property policy sold, providing coverage for all risks of physical loss or damage except as excluded in the policy. In contrast, the much narrower "named perils" type of property policy solely provides coverage for those perils specifically defined in the

[1] *The FM Global Advantage® All-Risk Policy: Our Advantage is YOUR Advantage*, FM GLOBAL, https://www.fmglobal.com/products-and-services/products/the-fm-global-advantage-all-risk-policy (last visited June 3, 2021).

[2] *Business Interruption Coverage: Flexible Coverage When It Matters Most*, FM GLOBAL, https://www.fmglobal.com/products-and-services/products/business-interruption-coverage (last visited June 3, 2021)

policy. FM could have, but not did, issue a named perils policy to Tapestry. Rather, it chose to market and sell the sweeping "all-risk" policies to Tapestry and collect a substantial premium commensurate with the broad scope of the Policies' coverage – over $10 million for the Policy Periods. Now, faced with a large claim, FM seeks to add limitations to the Policies' sweeping coverage that simply do not exist in the language of the Policies it drafted, sold, and issued to Tapestry.

11. The phrase "physical loss or damage" is not defined or limited in the Policies. In plain English, "physical loss or damage" to property denotes at least the following meanings: (1) physical damage to that property; (2) the structural alteration of that property; (3) the interaction of an external physical substance or force with that property, including its presence in the air or attachment to the surface of that property, rendering the property unfit, unsafe or uninhabitable for normal use or otherwise negatively affecting the property's usability; or (4) the loss of use or the loss of functional use, whether in whole or in part, of that property.

12. Central to the Policies' sweeping coverage is its Time Element loss coverage, known commonly as business interruption – a coverage that is subject to each Policy's full $1 billion in limits. In the Policies, FM specifically agreed to cover such Time Element loss "directly resulting from physical loss or damage ***of the type insured***" under the Policies. (Emphasis added).

13. Neither virus, pandemics, communicable disease, COVID-19, nor the Coronavirus are excluded causes of loss under the Policies. Moreover, **communicable disease**, as defined in the Policies, is a covered cause of loss.

14. Physical loss or damage caused by **communicable disease**, including the Coronavirus and COVID-19, therefore, is "physical loss or damage of the type insured" under

the Policies.

15. Accordingly, Tapestry's Time Element loss (its business interruption loss) arising from or related to the Coronavirus and COVID-19 is subject to each Policy's full $1 billion in limits – meaning that Tapestry's Time Element losses are subject to the $2 billion in limits provided by the Policies.

16. The toll of the Coronavirus and COVID-19 on lives, property, and businesses in the U.S. and around the world has been calamitous and is among the worst public health and economic catastrophes of the last 100 years. Indeed, as of June 2, 2021, COVID-19 had killed over 3.6 million people worldwide, 592,232 people in the US, 1.7 million throughout the Americas, 1.1 million throughout Europe, 415,264 in South-East Asia, 203,662 in the Eastern Mediterranean,[3] and is now the third-leading cause of death in this country, surpassed only by heart disease and cancer.[4]

17. The Coronavirus and COVID-19 have ravaged countries and states all over the world where Tapestry maintains, through its subsidiaries under its three brands, its retail stores, boutiques, and outlet stores (the "Stores," "Tapestry Stores" or "Tapestry's Stores"). For example, in the eight countries with the largest numbers of Tapestry Stores, at least 848,764 lives have been lost to COVID-19:

| **Country** | **COVID-19 Deaths** |
|---|---|
| U.S. | 592,232 |
| United Kingdom | 127,782 |

[3] *COVID Data Tracker*, CDC (updated June 2, 2021), https://covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited June 3, 2021); *WHO Coronavirus (COVID-19) Dashboard*, WHO (updated June 2, 2021), https://covid19.who.int/ (last visited June 3, 2021).

[4] Gary Stix & Youyou Zhou, *COVID-19 Is Now the Third Leading Cause of Death in the U.S.*, SCI. AM. (Oct. 8, 2020), https://www.scientificamerican.com/article/covid-19-is-now-the-third-leading-cause-of-death-in-the-u-s1/ (last visited June 3, 2021).

| | |
|---|---|
| Spain | 79,983 |
| Canada | 25,566 |
| Japan | 13,245 |
| China | 4,995 |
| Malaysia | 2,993 |
| South Korea | 1,968 |
| Total | 848,764[5] |

18. Within the U.S., at least 239,441 people have died from COVID-19 in Maryland and the five states with the largest number of Tapestry Stores:

| **State** | **COVID-19 Deaths** |
|---|---|
| Maryland | 9,658 |
| California | 62,479 |
| Texas | 50,690 |
| Florida | 37,161 |
| New York | 53,159 |
| New Jersey | 26,294 |
| Total | 239,441[6] |

19. Indeed, as of June 8, 2021, COVID-19 has killed 9,658 Marylanders.[7] At its peak, over 4,000 Americans were perishing per day from COVID-19.[8] A substantial number of Americans are still dying daily.[9]

[5] *COVID Data Tracker*, CDC (updated June 2, 2021), https://covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited June 3, 2021); *WHO Coronavirus Disease (COVID-19) Dashboard*, WHO (updated June 2, 2021), https://covid19.who.int/ (last visited June 3, 2021).

[6] *COVID Data Tracker*, *United States COVID-19 Cases and Deaths by State*, CDC (updated June 8, 2021), https://covid.cdc.gov/covid-data-tracker/#cases_totaldeaths (last visited June 9, 2021).

[7] *Id.*

[8] Eugene Garcia, Lisa Marie Pane & Thalia Beaty, *U.S. tops 4,000 daily deaths from coronavirus for 1st time*, AP NEWS (Jan. 8, 2021), https://apnews.com/article/us-coronavirus-death-4000-daily-16c1f136921c7e98ec83289942322ee4 (last visited June 3, 2021).

[9] *COVID Data Tracker, Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, CDC (updated June 2, 2021), https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendsdeaths (last visited June 3, 2021); Lisa Maragakis, *Coronavirus Second Wave? Why Cases Increase*, JOHN HOPKINS MED. (updated Nov. 17, 2020), https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus (last visited June 3, 2021).

20. The fashion industry has been severely impacted by the economic devastation caused by the physical loss or damage to property from the Coronavirus and COVID-19. Indeed, due to the pervasiveness of the Coronavirus, retail stores and boutiques that the fashion industry relies upon to sell their products have sustained devastating physical loss or damage to their property.

21. Due to the prevalence (ratio of infected persons in a population) and incidence (ratio of new cases) of COVID-19 infections in the U.S. and globally, the Tapestry Stores were at consistently high risk for the presence of the airborne Coronavirus from infected patrons and employees, some of whom would have been asymptomatic and unknowing spreaders of the Coronavirus. The Coronavirus can be released into the air when infected persons breathe, talk, cough, sneeze, or sing, and such releases can infiltrate ventilation systems, as well as myriad surfaces (*i.e.*, fomites), such as dermal contact surfaces (*e.g.*, fixtures, counters, point of sale areas, dressing rooms, door handles and on the clothing and other merchandise (footwear, accessories, handbags, fragrance and beauty products, watches, and jewelry, *etc.*). The Coronavirus has deposited, and continues to deposit, and therefore elevate contagion risks on, myriad dermal contact surfaces, which are transformed into disease-spreading fomites. These fomites can pose transmission risks for persons contacting those surfaces.

22. It is undisputed that air within a property laden with asbestos fibers is unsafe for people. It is no different for a property that has the Coronavirus physically invading and physically altering its air – the building has been damaged because the virus invades and physically transforms the air and makes it unsafe for breathing.

23. The introduction of the Coronavirus into the indoor air at the Tapestry Stores directly and physically changes, alters, and transforms the composition of the air – such that it

now contains a concentration of potentially deadly SARS-CoV-2 infectious particles and virions (whereas before it did not). The presence of the Coronavirus in the air of the Tapestry Stores physically alters and transforms indoor air on the property into a transmission vector for COVID-19.

24. As with asbestos in the air, the presence of an unsafe agent, such as the Coronavirus, in the air of the premises alone results in risk. In fact, the risk of death due to exposure to the Coronavirus is orders of magnitude higher than the risk of death due to exposure to asbestos. Indeed, recent estimates indicate that approximately 2,600 Americans die from asbestos exposure (mesothelioma) per year, compared with almost 600,000 deaths due to Coronavirus exposure in the last year alone.[10] It is undisputed that the air within a property filled with asbestos fibers is unsafe for people. It is no different for a property that has the Coronavirus – an external force – physically invading and physically altering its air space; in fact, the Coronavirus is exponentially more deadly than exposure to asbestos fiber.

25. It is similarly undisputed, and indeed is the law all across this country, that drinking water and the water table that contain a virus or any other impurity that is an agent of illness or death are, as a matter of law, considered damaged because the virus/impurities make the water unsafe for drinking. The same rule must apply to the Coronavirus in the air of a building – the building has been damaged because the virus invades and physically transforms the air and makes it unsafe for breathing.

26. Contrary to the false pronouncements advanced by the insurance industry, the presence of the Coronavirus is not the same as – and could not be more different from – the

[10] Rengyi Xu et al., *Association between mesothelioma and non-occupational asbestos exposure: systematic review and meta-analysis*. 17 ENV'T HEALTH 1, 90 (Dec. 19, 2018), https://ehjournal.biomedcentral.com/articles/10.1186/s12940-018-0431-9 (last visited June 3, 2021).

presence of dust. The presence of dust does not require the closure and/or restriction of public spaces to make those spaces habitable/fit for normal use/safe and prevent mass illness and death – the presence of the Coronavirus does. Moreover, the presence of dust is an everyday occurrence.

27. By contrast, the presence of the Coronavirus in Tapestry's Stores in the air and on surfaces was neither expected nor ordinary. Unlike dust, the Coronavirus cannot be removed easily from surfaces, *e.g.*, simply by routine cleaning of the surfaces. Attempting to remove the Coronavirus from surfaces requires specific protocols. These specific protocols require harsh and abrasive chemicals that are not routinely used and that themselves cause additional physical loss or damage to property at the Tapestry Stores.

28. Even assuming surface cleaning was 100% effective every time – it is not – surface cleaning does not eliminate the Coronavirus from the air, which is the number one transmission vector.

29. In the wake of the economic havoc wrought by the Coronavirus and COVID-19, iconic fashion groups, brands, and stores such as Neiman Marcus, Brooks Brothers, J.C. Penney, Century 21 department store ("Century 21"), J. Crew, Stein Mart, Tailored Brands (owner of Men's Warehouse and JoS A. Bank), True Religion, Lucky Brand, G-Star Raw Retail Inc., and Ascena Retail (owner of Ann Taylor and Lane Bryant) have all been forced into bankruptcy.[11]

30. In February 2020, experts predicted $43 billion in economic losses within the luxury fashion segment due to the Coronavirus and COVID-19.[12] Just a month later, the United

[11] Layla Ilchi, *All the Major Fashion Brands and Retailers Severely Impacted by the COVID-19 Pandemic*, WOMEN'S WEAR DAILY (Dec. 24, 2020), https://wwd.com/fashion-news/fashion-scoops/coronavirus-impact-fashion-retail-bankruptcies-1203693347/ (last visited June 3, 2021).

[12] Zoe Suen, *Luxury Braces for $43 Billion in Losses as Coronavirus Panic Goes Global*, BUS. FASHION (Feb. 24, 2020), https://www.businessoffashion.com/articles/global-markets/luxury-braces-for-43-billion-in-losses-as-

Nations predicted COVID-19-related losses within the fashion industry would reach $50 billion, with Europe experiencing a $15.6 billion loss, a $5.8 billion loss in the U.S., and a $5.2 billion loss in Japan.[13]

31. While losses have yet to be fully quantified, by December 2020, the global fashion industry was expected to experience a 93% drop in economic profit for 2020 as compared to 2019.[14] Indeed, through November 2020, retail sales in clothing and fashion accessory stores declined 28.5 percent year-over-year from the prior year.[15]

32. The physical loss or damage to property and the economic devastation wrought by the Coronavirus and COVID-19 on Tapestry and the whole world are unprecedented. The Coronavirus and COVID-19 could result in net losses starting at $3.2 trillion and reaching as much as $4.8 trillion in U.S. real gross domestic product over the course of two years.[16]

33. As of June 8, 2021, Maryland had reported at least 460,863 COVID-19 cases, including 9,658 deaths.[17]

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coronavirus-panic-goes-global (last visited June 3, 2021).

[13] *The UN quantifies the impact of the coronavirus on the fashion industry: 1.5 billion dollars*, MDS: GLOB. FASHION BUS. J. (Mar. 5, 2020), https://www.themds.com/markets/the-un-quantifies-the-impact-of-the-coronavirus-on-the-fashion-industry-15-billion-dollars.html (last visited June 3, 2021).

[14] Imran Amed et al., *The State of Fashion 2021*, MCKINSEY & CO., at 71, 112 (Dec. 1, 2020), https://www.mckinsey.com/~/media/McKinsey/Industries/Retail/Our%20Insights/State%20of%20fashion/2021/The-State-of-Fashion-2021-vF.pdf (last visited June 17, 2021).

[15] Pamela N. Danziger, *2020 Was The Year Fashion Almost Died. Here's How To Bring It Back to Life in 2021*, FORBES (Dec. 27, 2020), https://www.forbes.com/sites/pamdanziger/2021/12/27/2020-was-the-year-fashion-almost-died-heres-how-to-bring-it-back-to-life-in-2021/?sh=10696c4cfe29 (last visited June 17, 2021).

[16] Emily Gersema, *Business closures and partial reopenings due to COVID-19 could cost the U.S. trillions*, USC NEWS (Nov. 30, 2020), https://news.usc.edu/178979/business-closures-covid-19-pandemic-united-states-gdp-losses/#:~:text=The%20COVID%2D19%20pandemic%20could,years%2C%20a%20USC%20study%20finds (last visited June 3, 2021).

[17] *COVID Data Tracker*, *United States COVID-19 Cases and Deaths by State*, CDC (updated June 8, 2021), https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days (last visited June 9, 2021); *COVID Data Tracker*, *United States COVID-19 Cases and Deaths by State*, CDC (updated June 8, 2021), https://covid.cdc.gov/covid-data-tracker/#cases_totaldeaths (last visited June 9, 2021).

34. The physical loss or damage to property due to the Coronavirus and COVID-19 and its economic impact on Maryland is equally devastating, as demonstrated by employment figures. From February 2020 through April 2021, there was a net loss of 147,000 jobs in Maryland – an overall loss of 5.3% of jobs across all industries.[18]

35. As businesses suffered from the ripple effects of the Coronavirus and COVID-19, unemployment rates in Maryland rose. Maryland's Department of Labor reported that unemployment spiked from 3.5% in February 2020 to 9.3% by May 2020.[19]

36. On March 5, 2020, Governor Larry Hogan announced the first three positive cases of COVID-19 in the state.[20] The same day, Maryland declared a "State of Emergency" based on the "immediate danger to public safety[.]"[21] On March 18, Governor Hogan announced the first death in Maryland.[22] By mid-March 2020, the Coronavirus and COVID-19 were spreading rapidly throughout the area, with numerous new infections and deaths reported daily, and caused the closure of businesses and cancellation of events.[23] By March 26, 2020, Maryland had 580 cases, and more than 42,000 unemployment claims were filed in a single week.[24]

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[18] Michael Ettlinger & Jordan Hensley, *COVID-19 Economic Crisis: By State*, UNIV. N.H. CARSEY SCH. PUB. POL'Y (updated June 4, 2021), https://carsey.unh.edu/COVID-19-Economic-Impact-By-State (last visited June 9, 2021).

[19] *Employment Situation – April 2021 – Workforce Information and Performance*, MARYLAND DEPARTMENT OF LABOR (April 2021), https://www.dllr.state.md.us/lmi/employmentsituation/ (historical data must be downloaded) (last visited June 9, 2021).

[20] *A Timeline of the Covid-19 Cases in Maryland* (Mar. 15, 2020), https://www.fredericknewspost.com/news/continuing_coverage/coronavirus/a-timeline-of-the-covid-19-cases-in-maryland/article_4b37ff99-5375-55b3-9864-acda52bfe5b1.html (last visited June 9, 2021).

[21] Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19, (Mar. 5, 2020), https://governor.maryland.gov/wp-content/uploads/2020/03/Proclamation-COVID-19.pdf (last visited June 9, 2021).

[22] McKenna Oxenden, *Maryland's first coronavirus death is Prince George's man in his 60s,* THE BALTIMORE SUN (Mar. 18, 2020), https://www.baltimoresun.com/coronavirus/bs-md-first-coronavirus-death-20200319-dzuuz7mt5vchlm7no4k2oyrngi-story.html (last visited June 9, 2021).

[23] *TIMELINE: Coronavirus in Maryland, Tracing the Spread in 2020*, CBS BALTIMORE, https://baltimore.cbslocal.com/timeline-how-the-coronavirus-spread-in-maryland/ (last visited June 9, 2021).

[24] *Id.*

37. The Coronavirus and COVID-19 caused widespread physical loss or damage to property and shredded the fabric of the economy in Maryland in mere months. Paying the price are businesses and their employees across Maryland, including Tapestry.

38. Tapestry's business is one of the many victims of COVID-19. On June 29, 2019, at the end of its last fiscal year before the emergence of the Coronavirus and COVID-19, Tapestry maintained over 1,540 Tapestry Stores throughout the world in 20 countries – including 15 stores in Maryland. At that time, Tapestry's products were also sold in stores in at least an additional 47 countries across the globe – for a total presence in at least 67 countries. In June 2019, Tapestry's business was flourishing, generating over $6.027 billion in annual revenues, $4.053.7 billion in gross profit, $814.1 in operating income and $643.3 million in net income. In December 2019, shortly before the emergence of the Coronavirus and COVID-19, Tapestry employed over 16,139 people in the U.S., including approximately 330 in Maryland. And then, the Coronavirus and COVID-19 struck.

39. The Coronavirus and COVID-19 have decimated lives and businesses and have caused widespread physical loss or damage to property in Maryland. And the Coronavirus and COVID-19 have significantly impacted Tapestry's property and business in Maryland and throughout the world by causing physical loss or damage to Tapestry's property and surrounding ATTRACTION PROPERTIES.

40. Tapestry experienced physical loss or damage to its property in at least four ways:

(1) at least 1,261 Tapestry employees (including 17 in Maryland – more than the number of Tapestry Stores in Maryland) tested positive for COVID-19, demonstrating both the certain or virtually certain presence of COVID-19 and/or the Coronavirus in Tapestry Stores, in the air or on surfaces (whether in droplet nuclei, aerosols, droplets or

otherwise);

(2) through state, local, and agency governmental orders, that drastically limited Tapestry's use of its property, and at various points shut down or drastically limited the operations of Tapestry's properties causing Tapestry to lose the normal use and function of its property (in either total or in part);

(3) through the need to modify physical behaviors through the use of social distancing, avoiding confined indoor spaces, and avoiding congregating in the same physical area as others, in order to reduce or minimize the potential for viral transmission; and

(4) through the need to mitigate the threat or actual physical presence of the Coronavirus on door handles, clothing, clothing racks, miscellaneous surfaces, in heating and air conditioning systems and in or on any of the multitude of other places the Coronavirus has been or could be found.

41. The incidence and prevalence (ratio of new vs. existing COVID-19 disease cases) in the U.S., as well as other countries where Tapestry has stores and boutiques is unprecedented. In less than 4 months, COVID-19 spread worldwide and by June 2020, 10 million infections were reported, causing, or contributing to the mortality of a million people.[25]

42. Indeed, occupancy of indoor spaces is reported to be a major risk factor for transmission of the Coronavirus. Investigation of over 7,000 COVID-19 cases found that all outbreaks involving three or more people occurred indoors.[26] The airborne Coronavirus viral RNA has been detected inside indoor spaces at distances over 50 meters from its source and in

[25] Hua Qian et al., *Indoor transmission of SARS-CoV-2*, 31 INDOOR AIR 3, 639-45 (Nov. 20, 2020), https://pubmed.ncbi.nlm.nih.gov/33131151/ (last visited June 3, 2021).

[26] *Id.*

outdoor air in crowded areas outside of buildings.[27]

43. The prevalence and incidence of COVID-19 disease worldwide and in the regions and localities where Tapestry's Stores are located (and considering the over 1,261 cases of COVID-19 infections reported by Tapestry's employees (including 17 in Maryland)) demonstrates that it is certain or virtually certain that the Coronavirus was in the air and on surfaces at Tapestry's Stores as do biostatistical analyses.

44. Unlike surface cleaning of visible substances like dust or debris, where the degree of "clean" can be visually confirmed to a reasonable degree of certainty, that is not the case for the cleaning and disinfection of the Coronavirus because:

- the Coronavirus is not visible to the naked eye;
- the degree and magnitude of the Coronavirus is undetectable, so the effectiveness of disinfection cannot be determined; and
- viral inactivation through disinfection is different for different substrates and surfaces (*i.e.,* cardboard, plastic, stainless steel, or copper) and varies for porous vs. non-porous surfaces.

45. As compared to the cleaning of visible soiling, dirt, and debris, which typically does not require "disinfection" of surfaces as required for viral contamination, the uncertainty involved in the effectiveness of disinfection of surfaces for something invisible (*i.e.*, the Coronavirus) makes cleaning a much more complicated and less effective process. There is no degree of certainty as to the "cleanliness" or more importantly the degree of disinfection that would be required by Tapestry employees to effectively remove all of the Coronavirus. Nor is

[27] Yuan Liu et al., *Aerodynamic analysis of SARS-CoV-2 in two Wuhan hospitals*, 582 NATURE 7813, 557-60 (June 2020), https://pubmed.ncbi.nlm.nih.gov/32340022/ (last visited June 3, 2021).

there any method or technique to confirm the disinfection of the invisible Coronavirus from the surfaces in Tapestry's Stores.

46. The presence of the Coronavirus in the air and on surfaces has caused physical loss or damage to property and made Tapestry's Stores (and indeed the fashion industry's businesses) uninhabitable, unsafe, and unfit for their intended uses – just as if asbestos, ammonia, radon gas, cat urine, fumes, sulfuric gases emitted from Chinese drywall, carbon monoxide, a mold infestation, or a salmonella outbreak were in the air or on surfaces of the premises. Nor could the Coronavirus or the risk of Coronavirus transmission be completely removed with routine surface cleaning.

47. Moreover, no amount of routine – or any – surface cleaning could remove the aerosolized Coronavirus suspended in the air in Tapestry's Stores, making that air and Tapestry's Stores dangerous and potentially lethal, thus rendering them uninhabitable, unsafe, and unfit for their intended uses.

48. No amount of cleaning could prevent the reintroduction of the Coronavirus into the Stores from the entry of persons infectious with the Coronavirus. As a result, Tapestry's Stores had to operate at a limited capacity or close entirely.

49. As a result, Tapestry's and the overall fashion industry's stores and boutiques have had to close or operate at limited capacity, and throngs of their customers are unwilling to risk traveling to their shops. Simply put, the physical loss or damage to Tapestry's and the fashion industry's stores and boutiques has negatively impacted sales and shuttered one storied fashion brand after another.

50. During all relevant times, Tapestry personnel and agents (such as, for example, security, repair and maintenance crews and employees) introduced and reintroduced the

Coronavirus into the air and surfaces in the Stores causing physical loss or damage to the air, surfaces and inventory of the Stores.

51. The demonstration of even the likely presence of the Coronavirus at the physical site is sufficient to render the property unfit, unsafe, or uninhabitable for normal use and to negatively affect the property's usability.

52. In addition, the presence of the Coronavirus directly results in the loss of use or the loss of functional use, whether in whole or in part, of that property.

53. In response to the Coronavirus and COVID-19, Tapestry implemented a safety and health plan and incurred significant related expenses, covered as Extra Expense under the Policies, to help minimize Coronavirus exposure risks and make Tapestry's Stores as safe as possible, to protect its employees and customers, to resume and continue operating as close to normal as possible (meaning, the way Tapestry ran and performed prior to the emergence of the Coronavirus and COVID-19), and to ameliorate, as much as possible, the physical loss or damage to Tapestry's Stores caused by the Coronavirus and COVID-19.

54. Tapestry's safety and health plan included implementation of safety and health protocols for its employees and the implementation of safety measures as well as the investment of significant funds for enhanced housekeeping, procurement of PPE, hand sanitizer, cleaning products, physical barriers and signage so Tapestry could continue to mitigate its losses and operate with certain limitations, and to lessen the risk of continued physical loss or damage to its property.

55. Despite concerted safety processes, Tapestry personnel have not escaped the risks of exposure to and infection from the Coronavirus. Since March 2020, at least 1,261 Tapestry employees (including 17 in Maryland) have reported that they contracted COVID-19.

56. The diagnosis of at least 1,261 Tapestry employees (including 17 in Maryland) with COVID-19 is direct proof that the Coronavirus and COVID-19 have been present at Tapestry's Stores and caused Tapestry to sustain physical loss or damage to its property.

57. The Coronavirus and COVID-19 significantly impacted Tapestry's business in Maryland, across the U.S. and throughout the world. Indeed, by December 2020, the number of Tapestry's active employees in the U.S. had decreased to approximately 9,754, down from 16,139 active employees just a year before. Similarly, by December 31, 2020, the number of Tapestry's active employees in Maryland had sunk to approximately 213, down from 262 active employees on March 1, 2020.

58. To cushion the impact of the Coronavirus and COVID-19, Tapestry turned to its property insurer, FM, to whom Tapestry paid over $10 million in premiums in exchange for $2 billion in property damage and Time Element (also known as business interruption) coverage during the Policy Periods. FM, however, declined to fulfill its obligations to Tapestry under the Policies. FM's disregard for its own insured has forced Tapestry to turn to this Court for relief.

59. The insurance industry has repeatedly and falsely warned courts and the media that COVID-19-related claims will bankrupt insurers and force them to raise premiums and restrict coverages – but they have reaped enormous profits by denying covered claims and have continued to raise premiums despite refusing to uphold their coverage obligations. For example, FM Global, FM's parent company, reported an increase of almost $500 million in net premium for 2020 compared with 2019, and net income of over $1.7 billion.[28]

60. FM's current coverage position, in which it has asserted that there is no coverage

[28] FM Global Annual Report 2020, at 40, https://fmglobalpublic.hartehanks.com/AssetDisplay?acc=11FM&itemCode=W186258 (last visited June 3, 2021).

for COVID-19 claims because property was not structurally altered, is particularly egregious because, in 2019 FM told a federal court in New Mexico (the "New Mexico Action") that "physical loss or damage" means loss of use and there is no structural alteration requirement.

61. Particularly, in a motion *in limine* it filed in the New Mexico Action, FM stated that a mold infestation in a pharmaceutical manufacturing plant's "clean room" that "destroyed the aseptic environment" of the clean room – which had caused no structural alteration – rendered it "unfit for its intended use" and therefore constituted "physical loss or property damage."[29]

62. In its motion *in limine*, FM cited with approval the very same cases cited by policyholder attorneys across this nation in COVID-19 insurance recovery actions for the proposition that there is no structural alteration requirement to physical loss or damage and that the loss of use or loss of functional use of property is sufficient to trigger coverage – propositions that FM now strongly contests in COVID-19 cases.

63. FM stated in its public court filing in the New Mexico Action:

> It is undisputed that the mold infestation destroyed the aseptic environment and rendered Room 152 unfit for its intended use –manufacturing injectable pharmaceutical products. Numerous courts have concluded that loss of functionality or reliability under similar circumstances constitutes physical loss or damage. *See, e.g.*, *Western Fire Insurance Co. v. First Presbyterian Church*, 437 P.2d 52 (Colo. 1968) (church building sustained physical loss or damage when it was rendered uninhabitable and dangerous due to gasoline under the building); *Gregory Packaging, Inc. v. Travelers Property and Casualty Company of America*, Civ. No. 2:12-cv-04418 2014 U.S. Dist. LEXIS 165232, 2014 WL 6675934 (D. N.J. 2014) (unsafe levels of ammonia in the air inflicted "direct physical loss of or damage to" the juice packing facility "because the ammonia physically rendered the facility unusable for a period of time."); *Port Authority of N.Y. and N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226, 236 (3d Cir. 2002) (asbestos fibers); *Essex v. BloomSouth Flooring Corp.*, 562 F.3d 399, 406 (1st Cir. 2009) (unpleasant odor in

[29] Plaintiff Factory Mutual Insurance Company's Motion *In Limine* No. 5 Re Physical Loss or Damage, *Factory Mutual Ins. Co., et al. v. Federal Ins. Co.*, Case No.: 1:17-cv-00760-GJF-LF (D. \N.M. Nov. 19, 2019), attached hereto as Exhibit 3.

home); *TRAVCO Ins. Co. v. Ward*, 715 F.Supp.2d 699, 709 (E.D. Va. 2010), aff'd, 504 F. App'x. 251 (4th Cir. 2013) ("toxic gases" released by defective drywall).

Loss of functionality and/or reliability is especially significant where, as here, the property covered involves a product to be consumed by humans. Courts have concluded that the product is damaged where its "function and value have been seriously impaired, such that the product cannot be sold." *Pepsico, Inc. v. Winterthur International America Insurance Co*., 806 N.Y.S.2d 709, 744 (App. Div. 2005), citing *General Mills, Inc. v. Gold Medal Insurance Co*., 622 N.W.2d 147 (Minn. Ct. App. 2001); *Pillsbury Co. v. Underwriters at Lloyd's, London*, 705 F Supp 1396 (D. Minn. 1989); *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Terra Indus*., 216 F Supp 2d 899 (N.D. Iowa 2002), *aff'd* 346 F3d 1160 (8th Cir. 2003), cert denied 541 US 939 (2004); *Shade Foods, Inc. v. Innovative Prods. Sales & Mktg., Inc*., 93 Cal Rptr. 2d 364 (Cal. App. 2000); *Zurich Am. Ins. Co. v. Cutrale Citrus Juices USA, Inc*., 2002 WL 1433728, 2002 US Dist LEXIS 26829 (M.D. Fla. 2002). These courts' rationale regarding food products applies equally, if not more so, to the injectable pharmaceuticals OSO manufactured which were exposed to mold and no longer met industry safety standard. *See*, *General Mills v. Gold Medal Insurance*, 622 N.W.2d at 152 (food product which no longer met FDA safety standard sustained property damage.); *Motorists Mutual Ins. Co. v. Hardinger*, 131 F. Appx. 823 (3d Cir. 2005) (E coli in water well was physical loss or damage to insured's home.)

*See* Exhibit 3.

64. FM's motion *in limine* in the New Mexico Action also stated that the "period of time as well as the costs required to bring [the Insured's property] to the level of cleanliness following the mold infestation required by [the Insured's] customers is also physical loss or damage" as the failure to meet the required level of cleanliness itself constituted damage and rendered the property "unusable as the result of a covered loss." *Id.*

65. Additionally, FM admitted that "***[a]t best for [the opposing insurer] 'physical loss or damage,' which is undefined, is susceptible of more than one reasonable interpretation and is therefore ambiguous and must be construed against [the opposing insurer and in favor of coverage]***." *Id.* (emphasis added).

66. FM's admissions in the New Mexico Action were legally correct: (a) the actual presence of the Coronavirus and COVID-19 at Tapestry's Stores constitutes "physical loss or damage" within the meaning of the Policies; and (b) "at best" "physical loss or damage" is

ambiguous and must be construed against the drafter – FM.

67. Tapestry seeks a judgment declaring the scope of the FM's obligation to pay Tapestry's losses under the Policies.

68. Should the Court determine that FM's coverage positions are wrong, Tapestry also seeks damages for breach of contract against FM for its failure to honor its obligations to Tapestry under the Policies.

**THE PARTIES**

69. Tapestry is a corporation formed under the laws of Maryland with its principal place of business in New York.

70. Tapestry is informed and believes, and based thereon alleges, that Defendant FM is a Rhode Island corporation with its principal place of business in Rhode Island.

**JURISDICTION AND VENUE**

71. This Court has personal jurisdiction over FM pursuant to Md. Code, Cts. & Jud. Proc. § 6-103 because this action arises from FM's transaction of business in the State of Maryland and because FM contracted, through the Policies, to insure property and/or risk located within the State of Maryland at the time of contracting.

72. This Court has subject matter jurisdiction pursuant to Md. Code, Cts. & Jud. Proc. § 3-403 as Tapestry seeks a declaratory judgment in this action.

73. Venue is proper in this Court under Md. Code, Cts. & Jud. Proc. § 6-201 because FM, on its own and through its authorized agents, carries on regular business in Baltimore County.

74. Venue is also proper in this Court under Md. Code, Cts. & Jud. Proc. § 6-202(3) because Tapestry resides in this county and FM has no principal place of business in Maryland.

## FACTUAL BACKGROUND

### A. Tapestry

75. Tapestry is a global fashion luxury group, consisting of three iconic brands that are industry leaders in design, style, and craftsmanship: (1) Coach; (2) kate spade new york ("Kate Spade"); and (3) Stuart Weitzman. Tapestry's brands cover the full spectrum of fashion luxury categories including women's and men's accessories, footwear and ready-to-wear, as well as wearable technology, luggage, watches, jewelry, eyewear, and a full line of fragrance products.

76. The Coach brand, by far the largest of Tapestry's brands representing 70.9% of Tapestry's total net sales in the 2019 fiscal year, has long been recognized as one of the world's leading international fashion design houses of modern luxury accessories and lifestyle collections. Coach was founded in 1941 as a family-run workshop with six artisans making wallets and billfolds by hand in New York City. Over the following decades, Coach became a pioneer in the leather goods and accessories, establishing itself as the Original American House of Leather before diversifying into other luxury product categories. Today, Tapestry has over 960 directly operated Coach Stores and 13,700 employees globally.

77. The Kate Spade brand was founded over 20 years ago in 1993 with a collection of six essential handbags, and it has grown into a global lifestyle brand delivering seasonal collections of handbags, ready-to-wear, jewelry, footwear, home décor, and other luxury products. Tapestry has 275 directly operated Kate Spade Stores and 4,800 employees globally.

78. The Stuart Weitzman brand, founded in 1986, is a leading footwear and accessories brand. Tapestry has approximately 80 directly operated Stuart Weitzman Stores and over 700 employees globally.

79. Prior to the outset of the emergence of the Coronavirus and COVID-19, Tapestry

was a leader in the fashion world, earning $6.0271 billion in annual revenue and maintaining approximately 1,540 Tapestry Stores worldwide, including 675 in North America (391 Coach Stores; 213 Kate Spade Stores; 71 Stuart Weitzman Stores) and 865 internationally (595 Coach Stores; 194 Kate Spade Stores; and 76 Stuart Weitzman Stores) as of June 29, 2019.

80. Indeed, prior to the outset of the emergence of the Coronavirus and COVID-19, Tapestry had Tapestry Stores in at least 20 countries around the globe, including: Australia, Belgium, Canada, China (Mainland, Hong Kong SAR, Macau SAR, and Taiwan), Ireland, France, Germany, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Philippines, Portugal, Singapore, South Korea, Spain, Switzerland, United Kingdom, and the U.S. Moreover, at that time, Tapestry's products were also sold in stores in at least an additional 47 countries across the globe – for a total presence in at least 67 countries.

81. As of April 3, 2019, approximately 414 of Tapestry's Stores were located in the U.S., in 45 of 50 states. And as of December 2019, Tapestry employed approximately 16,139 people in the U.S., including 330 employees at 15 Tapestry Stores located in Maryland, providing income and benefits for thousands of families. Similarly, by March 1, 2020, just before the Coronavirus and COVID-19 struck Maryland in force, Tapestry had 262 active Maryland employees.

82. As a part of its prudent business practices, and in recognition of its responsibilities to its employees and customers, Tapestry maintains insurance coverage.

83. Tapestry specifically maintains "all risk" commercial property coverage with FM, covering not only more commonly occurring risks like fire, but also entirely unanticipated and novel risks that may arise. As described below in greater detail, the Policies provide coverage for all "*loss* or damage" to Tapestry's property unless specifically excluded. (emphasis added).

## B. The Coronavirus and COVID-19

84. COVID-19 is a severe **communicable disease** caused by the Coronavirus. The Coronavirus can cause serious systemic illness and death.[30]

85. The existence and presence of the Coronavirus and COVID-19 are not completely reflected in the reported cases or individuals' positive test results, as only a portion of the population has been tested. For example, in June 2020, the Centers for Disease Control and Prevention ("CDC") estimated that the number of people in the U.S. who have been infected with COVID-19 was ten times higher than the number of reported cases.[31] Additionally, at least 40% of people infected with COVID-19 are asymptomatic.[32] COVID-19 also includes a pre-symptomatic incubation period of up to 14 days, during which time infected people can transmit COVID-19 to other people, given that they release infectious droplets and aerosols into the air and onto surfaces without having experienced symptoms and without realizing that they are contagious or infected.[33]

86. Studies have demonstrated that pre-symptomatic individuals have an even greater ability to transmit COVID-19 than other infected people because they carry high levels of "viral load" during a period when they have no symptoms and therefore are unaware that they are

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[30] Tianna Hicklin, *Immune cells for common cold may recognize SARS-COV-2*, NAT. INST. HEALTH (Aug. 18, 2020), https://www.nih.gov/news-events/nih-research-matters/immune-cells-common-cold-may-recognize-sars-cov-2 (last visited June 3, 2021).

[31] Lena H. Sun & Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher than reported,* WASH. POST (June 25, 2020), https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/ (last visited June 3, 2021).

[32] Ellen Cranley, *40% of people infected with covid-19 are asymptomatic, a new CDC estimate says,* BUS. INSIDER (July 12, 2020), https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7 (last visited June 3, 2021).

[33] *See Coronavirus disease 2019 (COVID-19) Situation Report – 73*, WHO (Apr. 2, 2020), https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y (last visited June 3, 2021); Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL CARE MED. 3 (Feb. 1, 2021), https://www.atsjournals.org/doi/10.1164/rccm.202006-2136LE (last visited June 3, 2021).

infectious.[34] The National Academy of Sciences has concluded that "the majority of transmission is attributable to people who are not exhibiting symptoms, either because they are still in the pre-symptomatic stage or the infection is asymptomatic."[35]

87. As early as February 26, 2020, the CDC advised that COVID-19 was spreading freely without the ability to document the source of new infections, also known as community transmission or community spread.

88. COVID-19 is highly contagious, uniquely resilient, and potentially deadly. The degree to which an infectious disease is contagious is measured by $R_0$, a term that defines the average number of other people who are likely to become infected by one person with that disease. The $R_0$ is a measure of the transmissibility of a pathogen and is determined by estimating the susceptibility of individuals in the population to disease, the transmissibility of the pathogen and importantly, the likelihood and duration of contact between individuals in a population, a parameter that is directly determined by the physical properties of the environment in which contact occurs.[36] Studies have concluded that one person with COVID-19 could infect as many as 5.7 others ($R_0 \approx 5.7$), which is much higher than seasonal influenza for example, where on average, one person will infect only 1.3 others ($R_0 \approx 1.3$).[37]

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[34] *See, e.g.*, Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19,* 26 NATURE MED. 672-75, 674 (Apr. 15, 2020), https://www.nature.com/articles/s41591-020-0869-5 (last visited June 3, 2021); Lirong Zou *et al., SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients,* NEW ENG. J. MED. 382, 1177-79 (Mar. 19, 2020), https://www.nejm.org/doi/full/10.1056/NEJMc2001737 (last visited June 3, 2021).

[35] Seyed M. Moghadas et al., *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS 30, 17513-15 (July 28, 2020), https://www.pnas.org/content/117/30/17513 (last visited June 3, 2021).

[36] Anthony R. Ives & Claudio Bozzuto, *Estimating and explaining the spread of COVID-19 at the county level in the USA*, 4 COMMC'NS BIOLOGY 60 (Jan. 5, 2021), https://www.nature.com/articles/s42003-020-01609-6 (last visited June 3, 2021).

[37] M. Cevik, C.C.G. Bamford & A. Ho, *COVID-19 pandemic-a focused review for clinicians*, 26 CLINICAL MICROBIOLOGY & INFECTION 7, 842-47 (July 1, 2020), https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(20)30231-7/fulltext (last visited June 3, 2021).

89. The Coronavirus can remain infectious for "much longer time periods than generally considered possible."[38] In the Journal of Virology, researchers demonstrated that the Coronavirus can survive up to 28 days at room temperature (68ºF) on a variety of surfaces including glass, steel, vinyl, plastic, and paper.[39] A CDC report from March 27, 2020, stated that the Coronavirus was identified on surfaces of the cabins on the Diamond Princess cruise ship 17 days after the cabins were vacated but before they were disinfected.[40]

90. Numerous other scientific studies and articles have identified the persistence of the Coronavirus on doorknobs, toilets, faucets, and other high-touch points, as well as on commonly overlooked surfaces such as floors.[41]

91. While the detection of viral RNA on surfaces or in the air does not necessarily mean that the Coronavirus is currently present and infectious, it demonstrates that the Coronavirus was in fact present. Studies have demonstrated the transmission of laboratory-confirmed Coronavirus infection via surfaces.[42]

92. The World Health Organization ("WHO") states that "[t]he disease spreads primarily from person to person through small droplets from the nose or mouth, which are

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[38] Shane Riddell et al., *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 VIROLOGY J. 145 (Oct. 7, 2020), https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7 (last visited June 3, 2021).

[39] *Id*.

[40] Leah F. Moriarty et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020*, 69 MMWR 12, 347-52 (Mar. 27, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm (last visited June 3, 2021).

[41] Zhen-Dong Guo et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020,* 26 EMERGING INFECTIOUS DISEASES 7, 1583-91 (July 2020), https://pubmed.ncbi.nlm.nih.gov/32275497/ (last visited June 3, 2021).

[42] Nancy HL Leung, *Transmissibility and transmission of respiratory viruses*, NATURE REVS. MICROBIOLOGY 1-18 (Mar. 22, 2021), https://pubmed.ncbi.nlm.nih.gov/33753932/ (last visited June 3, 2021); G. Kampf et al., *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, 104 J. HOSP. INFECTIONS 3, 246-51 (Mar. 2020), https://pubmed.ncbi.nlm.nih.gov/32035997/ (last visited June 3, 2021).

expelled when a person with COVID-19 coughs, sneezes, or speaks . . . . People can catch COVID-19 if they breathe in these droplets from a person infected with the virus . . . . These droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth."[43]

93. People infected with the Coronavirus spread the virus not only from small droplets but also from aerosols expelled from their nose and mouth when they cough, sneeze, or speak. People become infected with the Coronavirus and resultant COVID-19 disease if they breathe in these droplets or aerosols expelled by an infected person. Droplets and aerosols can be expelled in close proximity (1-2 meters) or can be carried on air currents tens of meters.[44]

**C. The Coronavirus and COVID-19 Cause Physical Loss or Damage to Property**

94. The omnipresence of the Coronavirus and COVID-19 is enabled by multiple modes of viral transmission, including respiratory droplet, airborne/aerosolized and fomite transmission (*i.e.*, transmission from surfaces and objects).[45] These transmission methods demonstrate that the Coronavirus and/or COVID-19 cause physical loss or damage to property.

95. Respiratory transmission of COVID-19 occurs through exposure to an infected person's respiratory particles, such as from saliva or mucus.[46] Respiratory transmission of the

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[43] *Q&A on coronaviruses (COVID-19)*, WHO (updated Apr. 17, 2020), https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses (last visited June 3, 2021).

[44] Lidia Morawska & Donald K. Milton, *It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-19)*, 71 CLINICAL INFECTIOUS DISEASES 9, 2311-13 (Dec. 3, 2020), https://pubmed.ncbi.nlm.nih.gov/32628269/ (last visited June 3, 2021).

[45] *See, e.g.*, *Scientific Brief: Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (July 9, 2020), https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions (last visited June 3, 2021).

[46] *Id.*

Coronavirus is commonly divided into droplet (larger particles that have a transmission range of about six feet) and airborne (smaller particles that can remain suspended in the air for prolonged periods of time) modes of transmission. Though convenient, this binary division is an oversimplification that underscores transmission risk.[47] Humans produce a wide range of particle sizes when coughing, sneezing, talking, singing, or otherwise dispersing droplets, with virions predominating in the smallest particles.[48] Respiratory particles produced by the average person can travel almost 20 feet by sneezing.[49] An M.I.T. researcher has found that virus-laden "clouds" containing clusters of droplets can travel 23 to 27 feet.[50] A recent review article on viral, host and environmental factors reported on the "abundant evidence" that proximity is a significant factor in measuring Coronavirus transmission risks.[51]

96. Airborne transmission involves the spread of the infectious agent caused by the dissemination of droplet nuclei (aerosols) from, for example, exhaled breath, that remain infectious when suspended in the air over long distances and time.[52] These tiny particles can

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[47] Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext (last visited June 3, 2021).

[48] *Id.*

[49] *Id.*

[50] Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for Reducing Transmission of COVID-19*, 323 JAMA 18, 1837-38 (Mar. 26, 2020), https://jamanetwork.com/journals/jama/fullarticle/2763852 (last visited June 3, 2021).

[51] Eric A. Meyerowitz et al., *Transmission of SARS-CoV-2: A Review of Viral, Host, and Environmental Factors*, ANNALS INTERNAL MED. (Jan. 2021), https://www.acpjournals.org/doi/10.7326/M20-5008 (last visited June 3, 2021).

[52] Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for Reducing Transmission of COVID-19*, 323 JAMA 18, 1837-38 (Mar. 26, 2020), https://jamanetwork.com/journals/jama/fullarticle/2763852 (last visited June 3, 2021); *see also* Jose-Luis Jimenez, *COVID-19 Is Transmitted Through Aerosols. We Have Enough Evidence, Now It Is Time to Act*, TIME (Aug. 25, 2020), https://time.com/5883081/covid-19-transmitted-aerosols/ (last visited June 3, 2021); Ramon Padilla & Javier Zarracina, *WHO agrees with more than 200 medical experts that COVID-19 may spread via the air*, USA TODAY (updated Sept. 21, 2020), www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/ (last visited June 3, 2021); Wenzhao Chen et al., *Short-range airborne*

remain suspended "for indefinite periods unless removed by air currents or dilution ventilation."[53] As a result, the risk of disease transmission increases substantially in enclosed environments, compared to outdoor settings.[54]

97. The WHO and the scientific community have studied the spread of the Coronavirus through aerosols in indoor settings via air circulation systems. For example, the CDC published a research letter concluding that a restaurant's air conditioning system triggered the transmission of the Coronavirus, spreading it to people who sat at separate tables downstream of the restaurant's airflow.[55] Moreover, a study detected the Coronavirus inside HVAC systems transmitted over 180 feet from its source.[56]

98. A recently published (February 2021) systematic review of airborne transmission of the Coronavirus corroborated the CDC's concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and reduce the Coronavirus' spread.[57]

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*route dominates exposure of respiratory infection during close contact*, 176 BLDG. & ENV'T (June 2020), https://www.sciencedirect.com/science/article/pii/S0360132320302183 (last visited June 3, 2021).

[53] Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext (last visited June 3, 2021).

[54] Muge Cevik, Julia L Marcus, Caroline Buckee, & Tara C Smith, *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Transmission Dynamics Should Inform Policy*, CLINICAL INFECTIOUS DISEASES (Sept. 23, 2020), https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315 (last visited June 3, 2021).

[55] Jianyun Lu et al., *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China*, 2020, 26 EMERGING INFECTIOUS DISEASES 7 (July 2020), https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article (last visited June 3, 2021); *see also* Keun-Sang Kwon et al., *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 J. KOREAN MED. SCI. 46, e415 (Nov. 30, 2020), https://jkms.org/DOIx.php?id=10.3346/jkms.2020.35.e415 (last visited June 3, 2021).

[56] Karolina Nissen et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, SCI. REPS. 10, 19589 (Nov. 11, 2020), https://www.nature.com/articles/s41598-020-76442-2 (last visited June 9, 2021).

[57] Zahra Noorimotlagh et al., *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 ENV'T RSCH. 110612, 1-6 (Feb. 2021), https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all (last visited May 3, 2021).

99. Additionally, on May 7, 2021 the CDC issued a scientific brief warning of the risks of airborne indoor transmission of the Coronavirus from aerosols at distances greater than six feet from the source, stating that "transmission of SARS-CoV-2 from inhalation of virus in the air farther than six feet from an infectious source can occur" and that:

> With increasing distance from the source, the role of inhalation likewise increases. Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, the phenomenon has been repeatedly documented under certain preventable circumstances. These transmission events have involved the presence of an infectious person exhaling virus indoors for an extended time (more than 15 minutes and in some cases hours) leading to virus concentrations in the air space sufficient to transmit infections to people more than 6 feet away, and in some cases to people who have passed through that space soon after the infectious person left. Per published reports, factors that increase the risk of SARS-CoV-2 infection under these circumstances include:
>
> - **Enclosed spaces with inadequate ventilation or air handling** within which the concentration of exhaled respiratory fluids, especially very fine droplets and aerosol particles, can build-up in the air space.
> - **Increased exhalation** of respiratory fluids if the infectious person is engaged in physical exertion or raises their voice (e.g., exercising, shouting, singing).
> - **Prolonged exposure** to these conditions, typically more than 15 minutes.[58] (emphasis in original)

100. The CDC has recommended "ventilation interventions" to help reduce exposure to the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such as with high-efficiency particulate air ("HEPA") fan/filtration systems).[59] These and other remedial measures must be implemented, at high cost and extra expense, to reduce the amount of the Coronavirus present in the space and to make property safe for its intended use. These

[58] *Scientific Brief: SARS-CoV-2 Transmission*, CDC (updated May 7, 2021), https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fscience%2Fscience-briefs%2Fscientific-brief-sars-cov-2.html (last visited June 3, 2021).

[59] *Ventilation in Buildings*, CDC (updated June 2, 2021), https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%2DCoV%2D2 (last visited June 3, 2021).

extreme measures demonstrate that the Coronavirus and COVID-19 cause direct physical loss or damage to interior spaces. Even then, those interventions cannot be guaranteed to eliminate the aerosolized Coronavirus in an indoor space. Nor do they eliminate it immediately.

101. COVID-19 may also be transmitted to people from physical objects, materials, or surfaces. "Fomites" are physical objects or materials that carry, and are capable of transmitting infectious agents, altering these objects to become vectors of disease.[60] Fomite transmission has been demonstrated as highly efficient for viruses, both from object-to-hand and from hand-to-mouth.[61]

102. In addition, while fomite transmission may not be the primary route of transmission for COVID-19, fomite transmission is important and has been estimated to be responsible for up to 25% of all deaths due to COVID-19 since lockdowns were imposed.[62]

103. The WHO has described fomite transmission as follows:

> Respiratory secretions or droplets expelled by infected individuals can contaminate surfaces and objects, creating fomites (contaminated surfaces). **Viable SARS-CoV-2 virus and/or RNA detected by RT-PCR can be found on those surfaces for periods ranging from hours to days**, depending on the ambient environment (including temperature and humidity) and the type of surface, in particular at high concentration in health care facilities where COVID-19 patients were being treated. Therefore, transmission may also occur indirectly through touching surfaces in the immediate environment or objects contaminated with virus from an infected person . . . .[63] (Emphasis added).

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[60] *Fomite*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/fomite (last visited June 3, 2021).

[61] P. Rusin, S. Maxwell, & C. Gerba, *Comparative surface-to-hand and fingertip-to-mouth transfer efficiency of gram-positive bacteria, gram-negative bacteria, and phage*, 93 J. APPLIED MICROBIOLOGY, 4, 585-92 (Sept. 18, 2002), https://pubmed.ncbi.nlm.nih.gov/12234341/ (last visited June 3, 2021).

[62] A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 23, 2020), https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3 (last visited June 3, 2021).

[63] *See, e.g.*, *Scientific Brief: Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (July 9, 2020), https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-

104. In addition to studies cited by the WHO,[64] numerous other studies and scientific articles have discussed fomite transmission as a mode of virus transmission, including, but not limited to:

a. A study of a COVID-19 outbreak published by the CDC identifying elevator buttons and restroom taps as possible causes of the "rapid spread of SARS-CoV-2" in a shopping mall in China.[65]

b. A National Institutes of Health study published in the New England Journal of Medicine finding that the Coronavirus survives up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel, and suggesting that people may acquire the virus through the air and after touching contaminated objects.[66]

c. An American Society for Microbiology article discussing fomite infection as involving both porous and non-porous surfaces, and occurring through a fomite's contact with bodily secretions, hands, aerosolized virus from talking, sneezing, coughing, etc., or other airborne viral particles that settle after a disturbance of a fomite (*e.g.*, shaking a contaminated textile such as clothing merchandise).[67] According to the researchers, "[o]nce a fomite is contaminated, the transfer of infectious virus may readily occur between inanimate and animate objects, or vice versa, and between two separate

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infection-prevention-precautions (last visited June 3, 2021).

[64] *Id.*

[65] Jing Cai et al., *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIONS DISEASES 6 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited June 3, 2021).

[66] *New coronavirus stable for hours on surfaces*, NAT'L INSTS. HEALTH (Mar. 17, 2020), https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces (last visited June 3, 2021).

[67] Stephanie A. Bone & Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral Disease*, 73 APPLIED & ENV'T MICROBIOLOGY 6, 1687-96 (Mar. 2007), https://aem.asm.org/content/73/6/1687 (last visited June 3, 2021).

fomites (if brought together)."[68] Generally, frequently touched surfaces can become highly transmissive fomites.[69]

d. A CDC research letter reporting that the Coronavirus can remain viable on polystyrene plastic, aluminum, and glass for 96 hours in indoor living spaces.[70]

e. A *Journal of Hospital Infection* article citing studies revealing that human coronaviruses can persist on inanimate surfaces like metal, glass, or plastic for up to nine days.[71]

105. Importantly, the Coronavirus has been detected on environmental objects and surfaces from symptomatic, pre-symptomatic and asymptomatic individuals.[72] Fomites are known to transform the surface of property into a potentially deadly Coronavirus transmission device.

106. Accordingly, the presence of the Coronavirus in and on property, including in indoor air, on surfaces, and on objects, causes physical loss or damage to property by causing physical harm to and altering property and otherwise making it incapable of being used for its intended purpose.

107. Among other things, the presence of the Coronavirus transforms everyday

[68] *Id.*

[69] *Id.*

[70] Boris Pastorino et al., *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 EMERGING INFECTIOUS DISEASES 9 (Sept. 2020), https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article (last visited June 3, 2021).

[71] G. Kampf et al., *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, J. HOSP. INFECTION 104, 246-51 (Feb. 6, 2020), https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3 (last visited June 3, 2021).

[72] Minghui Yang et al., *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 AM. J. RESPIRATORY & CRITICAL CARE MED. 3, 374-78 (Feb. 1, 2021), https://www.atsjournals.org/doi/pdf/10.1164/rccm.202006-2136LE (last visited June 3, 2021).

surfaces and objects into fomites, causing a tangible change of the property into a transmission vehicle for disease from one host to another. The WHO's description of fomite transmission of COVID-19 expressly recognizes this physical alteration of property, describing viral droplets as "**creating** fomites (contaminated surfaces)"[73] (emphasis added). "Creating" involves making or bringing into existence something new[74] – such as something that is in an altered state from what it was before the Coronavirus was present on, in and around the property.

108. The Coronavirus adheres to surfaces and objects, harming and physically changing and physically altering those objects by becoming a part of their surface and making physical contact with them unsafe for their ordinary and customary use. Once the Coronavirus is in, on, or near property, it is easily spread by the air, people, and objects, from one area to another, causing additional physical loss or damage.

109. Additionally, the presence of the dangerous and potentially fatal Coronavirus in and on property, including in indoor air, on surfaces, and on objects, renders the property lost, unsafe and unfit for its normal usage. Respiratory particles (including droplets and airborne aerosols) and fomites are physical substances that alter the physical properties of the interiors of buildings to make them unsafe, untenantable, uninhabitable, and unfit for normal use.

110. In addition to being found in air samples,[75] the Coronavirus remains stable in body secretions (respiratory, urine, feces), on surfaces, and in sewage, particularly at lower

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[73] *See, e.g.*, *Scientific Brief: Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO (July 9, 2020), https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions (last visited June 3, 2021).

[74] *See, e.g., Create*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/create (last visited June 3, 2021).

[75] Zhen-Dong Guo et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 7, 1583-91 (July 2020), https://pubmed.ncbi.nlm.nih.gov/32275497/ (last visited June 3, 2021).

temperatures.[76]

**D. The Coronavirus Cannot be Removed or Eliminated by Routine Cleaning**

111. The proposition advanced by the insurance industry that an indoor space containing the infectious Coronavirus can be made safe and fit for its functional and intended use because the Coronavirus can be removed by routine surface cleaning is false.

112. In fact, the CDC has recently released guidance stating that there is little evidence to suggest that routine use of disinfectants can prevent the transmission of the Coronavirus from fomites in community settings.[77] Indeed, the CDC concluded that according to a more quantitative microbial risk assessment study, "surface disinfection once- or twice-per-day had little impact on reducing estimated risks" of Coronavirus transmission.[78]

113. A number of studies have demonstrated that the Coronavirus is "much more resilient to cleaning than other respiratory viruses so tested."[79] The measures that must be taken to attempt to remove and disinfect the Coronavirus from property are significant and depend on the concentration of the Coronavirus, myriad surface characteristics (*e.g.*, type of surface, temperature, porosity) and extend far beyond ordinary or routine cleaning.

114. Efficacy of decontaminating agents for viruses is based on a number of factors, including the initial amount of virus present, surface porosity, contact time with the

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[76] Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170 (last visited June 3, 2021).

[77] *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html (last visited June 3, 2021).

[78] *Id.* (citing A. K. Pitol & T. R. Julian, *Community transmission of SARS-CoV-2 by fomites: Risks and risk reduction strategies*, ENV'T SCI. & TECH. LETTERS (2020)).

[79] Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170 (last visited June 3, 2021).

decontaminating agent, dilution, temperature, and pH, among many others. No reported studies have investigated the efficacy of surface cleaning (with soap or detergent not containing a registered disinfectant) for reducing concentrations of the Coronavirus on non-porous surfaces.[80] However, in one study, detergent surfactants were not recommended as single agents, but rather in conjunction with complex disinfectant solutions.[81]

115. Additionally, unlike cleaning a visible substance such as dust, the Coronavirus is invisible to the naked eye, making it challenging to accurately determine the efficacy of decontaminating agents and how "clean is clean" or if surface disinfection was even effective. Moreover, the toxicity of an agent may inhibit the growth of cells used to determine the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces.[82]

116. In order to be effective, cleaning and decontamination procedures require strict adherence to protocols not necessarily tested under "real life" conditions in the midst of a widespread wave of pervasive Coronavirus spread, where treated surfaces or objects may not undergo even exposure or adequate contact time.[83] Indeed, studies of coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70% alcohol.[84]

117. When considering disinfection and decontamination, the safety of products and

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[80] *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html (last visited June 3, 2021).

[81] Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. MED. VIROLOGY 11, 2498-510 (June 12, 2020), https://onlinelibrary.wiley.com/doi/10.1002/jmv.26170 (last visited June 3, 2021).

[82] *Id.*

[83] *Id.*

[84] Joon Young Song et al., *Viral Shedding* and *Environmental Cleaning in Middle East Respiratory Syndrome Coronavirus Infection*, 47 INFECTION & CHEMOTHERAPY 4, 252-55 (Dec. 2015), https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252 (last visited June 3, 2021).

procedures must be considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials, flammability, and potential for allergen exposure.[85]

118. With respect to textiles – one of the forms of merchandise sold at Tapestry's Stores – studies have demonstrated that virus can survive on fabrics and be transferred to skin and other surfaces, "suggesting it is biologically plausible that . . . infectious diseases can be transmitted directly through contact with contaminated textiles."[86] Coronavirus, which was dispersed onto and into the very fabric of Tapestry's merchandise therefore caused physical loss or damage to that merchandise, transforming it into hazardous material.

119. Given the inadequacy of conventional cleaning procedures and in response to the physical loss or damage at the Tapesty Stores caused by the presence of Coronavirus and COVID-19 on surfaces, disinfection and decontamination measures include, but are not limited to, the use of harsh chemicals to perform deep disinfection, the removal and disposal of porous materials like clothing, cloth and other fabrics.

120. Tapestry also, as a result of or in connection with the physical loss or damage to Tapestry's merchandise and property, removed repaired, rebuilt and reinstalled property and fixtures within its Stores and otherwise reconfigured and altered interior spaces to respond to and restore the physical loss or damage caused by the communicable disease COVID-19.

121. Similarly, property, such as interior spaces, walls, shelving and merchandising racks, had to be discarded, rebuilt and/or reconfigured to accommodate building, occupancy codes and other restrictions in place following the presence of the Coronavirus and COVID-19 at

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[85] *Id.*

[86] Lucy Owen & Katie Laird, *The role of textiles as fomites in the healthcare environment: a review of the infection control risk*, 8 PEER J. LIFE & ENV'T e9790, 1-35 (Aug. 25, 2020), https://peerj.com/articles/9790/ (last visited June 3, 2021).

the Tapestry Stores. These measures, among others, demonstrate that the Coronavirus and COVID-19 did and do cause physical loss or damage to property.

122. None of the above-referenced surface cleaning measures, however, remove the Coronavirus from the air. And, in fact, many actually exacerbate the damage to the air.

123. Many of the surfaces and materials discussed in the studies and articles cited above are used throughout Tapestry's Stores as part of their operations, including plastics, glass, metals, and cloth and fabrics. Similarly, these surfaces and materials are used in virtually all office buildings, stores, shopping centers, restaurants, movie theaters, and other businesses and amenities throughout the U.S. and the across the globe.

124. The aerosolized Coronavirus presents an inhalation exposure risk for people becoming exposed and infected with the Coronavirus and developing COVID-19. Indeed, the CDC, on April 5, 2021, concluded that:

- "[t]he principal mode by which people are infected with [the Coronavirus] … is through exposure to respiratory droplets carrying infectious virus"; and
- "when a person with suspected or confirmed COVID-19 has been indoors, virus can remain suspended in the air for minutes to hours."[87]

125. Aerosolized Coronavirus particles and virions cannot be eliminated by routine surface cleaning and in some cases cleaning contaminated surfaces (i.e., floors) could reasonably result in re-aerosolization of the Coronavirus. Cleaning the Coronavirus from surfaces in an indoor space will not remove aerosolized Coronavirus particles from the air any more than cleaning friable asbestos particles that have landed on a surface will remove the friable asbestos

[87] *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, CDC (updated Apr. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html (last visited June 3, 2021).

particles suspended in the air. In each case, people can inhale and become infected with the Coronavirus or develop asbestos-related diseases.

126. Moreover, given the ubiquity and pervasiveness of the Coronavirus, no amount of cleaning or ventilation intervention will prevent a person infected with the Coronavirus who is contagious from entering an indoor space and exhaling millions of additional Coronavirus droplets and infectious aerosols into the air, thereby further: (a) filling the air and physically altering it with aerosolized Coronavirus that can be inhaled; and (b) depositing infectious Coronavirus droplets on the surfaces, physically altering and transforming those surfaces into disease-transmitting fomites.

**E. The Certain or Virtually Certain Presence of the Coronavirus at Tapestry's Stores, its Attraction Property and its Contingent Time Element Locations**

127. Since March 2020, over 1,261 Tapestry employees (including 17 in Maryland) have confirmed that they contracted COVID-19. Given the high percentage of asymptomatic cases of COVID-19, it is certain that the actual number of Tapestry employees who had contracted COVID-19 was substantially greater than the at least 1,261 employees (including 17 in Maryland) known to have contracted COVID-19. This is proof of the actual, certain presence of the Coronavirus at Tapestry's Stores, *i.e.*, in, or around, the properties.

128. Additionally, given how highly contagious the Coronavirus is, the global pervasive status of COVID-19 and the heavily trafficked common areas in and around Tapestry's Stores, including its locations within Maryland, it is statically certain or near-certain that many other individuals at or in the vicinity of Tapestry's Stores contracted and carried the Coronavirus. Two examples of this are Tapestry's Stores located at the Clarksburg Premium Outlets shopping center in Clarksburg, Maryland in Montgomery County – particularly: (a) the Coach Outlet; and (b) the Kate Spade Outlet located in that shopping center.

129. Maryland experienced a COVID-19 outbreak in March 2020. By April 15, 2020, Maryland had over 10,000 reported cases with 349 recorded deaths.[88]

130. Moreover, the high number of COVID-19 deaths indicates a significantly higher number of cases than those confirmed by COVID-19 tests.[89] The infection fatality rate ("IFR") for COVID-19, defined as the proportion of individuals who die of the disease among all infected individuals, varies by age, as shown in the table below.[90]

**IFR TABLE FOR MONTGOMERY COUNTY, MARYLAND (TAPESTRY)**

| Age | Proportion of U.S. Population (2010)[91] | Proportion of Montgomery County (2019)[92] | IFR | Infections Per Death |
|---|---|---|---|---|
| 0-17 | 0.24 | 0.231 | 0.00002 | 50,000 |
| 18-49 | 0.44 | 0.409 | 0.0005 | 2,000 |
| 50-64 | 0.19 | 0.200 | 0.006 | 167 |
| 65+ | 0.13 | 0.161 | .09 | 11 |

131. In the U.S., the average IFR across all age demographics represented in the table above (taking into account each category's proportion to the population as a whole) is 0.013, meaning that there is approximately one death for every 77 infections. The death toll in the U.S.

[88] *TIMELINE: Coronavirus in Maryland, Tracing the Spread in 2020*, CBS BALTIMORE, https://baltimore.cbslocal.com/timeline-how-the-coronavirus-spread-in-maryland/ (last visited June 9, 2021).

[89] Andrew T. Levin et al. *Assessing the age specificity of infection fatality rates for COVID-19: systematic review, meta-analysis, and public policy implications,* 35 EUR. J. EPIDEMIOLOGY 12, 1123-38 (Dec. 8, 2020), https://pubmed.ncbi.nlm.nih.gov/33289900/ (last visited June 11, 2021).

[90] *COVID-19 Pandemic Planning Scenarios*, CDC (updated Mar. 19, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html (last visited June 11, 2021). Results reproduced from Table 1 (current best estimate).

[91] *Age and Sex Composition: 2010*, U.S. CENSUS BUREAU, at 2 tbl.1 (May 2011), https://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf (last visited June 11, 2021).

[92] *County Population by Characteristics: 2010-2019*, U.S. CENSUS BUREAU, at Maryland dataset link (updated June 11, 2021), https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-detail.html (last visited June 11, 2021).

attributable to the Coronavirus and COVID-19 stood at 554,929 through April 5, 2021.[93] That statistic, however, corresponds to 42,478,281 cases, which is significantly larger than the 30.7 million cases confirmed through testing as of that date.[94]

132. The IFR is a statistical quantity estimated from data using seroprevalence studies.[95] As more data becomes available, the accuracy of the estimation continues to improve. Current estimates of IFR used by the CDC comes from peer-reviewed statistical analyses using data from 27 studies and 34 locations,[96] and account for the range of uncertainty of IFR estimates according to best standards of statistical practice.

133. The IFR estimates can vary by county based on age demographics. Specifically, the COVID-19 IFR for Montgomery County, MD is estimated to be 0.0159 using the above table, which means that each death in Montgomery County corresponds to about 63.1 cases in the county. Accounting for uncertainty in IFR estimation gives a plausible range of variation in Montgomery County between 0.0119 (corresponding to 84.1 cases for each death) to 0.0198 (corresponding to 50.4 cases for each death). These numbers are based on uncertainty reported by a peer-reviewed multi-location, multi-study meta-analysis.[97] A meta-analysis is a quantitative statistical analysis of several separate but similar experiments or studies in order to test the

[93] *Coronavirus in the U.S.: Latest Map and Case Count*, NY TIMES (updated June 11, 2021), https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (last visited June 11, 2021).

[94] *Id.*

[95] Seroprevalence studies use blood tests to identify people in a population who have antibodies against the Coronavirus. *See Large-scale Geographic Seroprevalence Surveys*, CDC (updated Oct. 2, 2020), https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/geographic-seroprevalence-surveys.html (last visited June 11, 2021).

[96] Andrew T. Levin et al., *Assessing the age specificity of infection fatality rates for COVID-19: systematic review, meta-analysis, and public policy implications*, 35 EUR. J. EPIDEMIOLOGY 12, 1123-38 (Dec. 2020), https://pubmed.ncbi.nlm.nih.gov/33289900/ (last visited June 11, 2021).

[97] *Id.*

pooled data for statistical significance.[98]

134. Using deaths recorded in Montgomery County, Maryland with the IFR estimate for the county can be used to reliably demonstrate the proportion of persons in the Montgomery County population who were infectious with COVID-19 on a particular day in 2020. This metric, also known as "daily prevalence," varied over 2020, with maximum daily prevalence in Montgomery County reaching 0.67%, and a plausible range of from 0.53% to 0.89%. Simply put, the greater the daily prevalence of COVID-19, the more widespread the disease and the Coronavirus were among the population.

135. The high prevalence of infectious COVID-19 cases makes it statistically certain or near-certain that Coronavirus droplets and aerosols were frequently dispersed into the air and on property in, on and around the Tapestry Stores, rendering routine cleaning even less effective at removing the Coronavirus from surfaces at the Tapestry Stores and completely ineffective at removing aerosolized Coronavirus particles and virions from the air inside those Stores. This was also the case at a myriad of business and tourist destinations throughout the state, including at the Attraction Property.

136. Between March 1, 2020, and December 31, 2020, two Tapestry Stores located in Clarksburg, Maryland (the Coach Outlet and the Kate Spade Outlet) had a total of 96,818 and 53,053 customer visits, respectively. Correlating these visits to the prevalence of infectious cases in Montgomery County is telling: during this period, the Coach Outlet experienced an estimated 225.7 visits from customers infectious with COVID-19, with a plausible range of variation from 180.5 to 300.9, while the Kate Spade Outlet experienced an estimated 127.6 visits

[98] *Meta-analysis*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/meta-analysis (last visited June 11, 2021).

from customers infectious with COVID-19, with a plausible range of variation from 102.1 to 170.2.

137. In short, during each of the 219 days when the Coach Outlet was opened to customers between March 1, 2020 and December 31, 2020, that location experienced an average of 1.03 visits by customers infectious with COVID-19, with a plausible range of variation from 0.82 to 1.37 such visits per day.

138. Similarly, during each of the 207 days that the Kate Spade Outlet was opened to customers between March 1, 2020 and December 31, 2020, that location experienced an average of 0.62 visits by customers infectious with COVID-19, with a plausible range of variation from 0.49 to 0.82 such visits per day

139. Due to the high prevalence of infectious cases, the Coronavirus was statistically certain or near certain to be present at a myriad of office buildings, stores, shopping centers, restaurants, movie theaters, and other businesses and amenities throughout Maryland, the U.S. and the across the globe in locations where Tapestry operates the Tapestry Stores and where the ATTRACTION PROPERTY and Tapestry's **contingent time element locations** are located.

140. The CDC keeps track of known infections by county. Each of the U.S.'s over 3,142 county and county-equivalents has reported COVID-19 infections.

141. The presence of the Coronavirus at the Tapestry Stores, as well as at the ATTRACTION PROPERTY, was certain or virtually certain. This can be confirmed with certainty or near-certainty by statistical modeling based on the known incidences of infection, despite the lack of commercially available tests for air or surface presence of the Coronavirus, and despite the shortage of either rapid or laboratory COVID-19 tests and testing sites that could have otherwise resulted in testing being administered to every individual who was on-site at the

relevant times.[99]

142. Early in the course of the Coronavirus and COVID-19, testing was limited, and thus potentially thousands more people were infected than were reported.[100] National and local incidence and prevalence rates clearly demonstrated the high magnitude of COVID-19 infections (and deaths) and the pervasiveness of the Coronavirus throughout the states, countries and regions where the Tapestry Stores are located. Moreover, deaths recorded in these same states, countries, and regions point to a much higher prevalence of infectious cases that the number of positive COVID-19 tests actually reported in the area, and reliable statistical models have established with certainty or high probability that the Coronavirus was present at the Tapestry Stores.

143. Epidemiologists have explained that "the percent positive is a critical measure because it gives us an indication of how widespread infection is in the area where the testing is occurring[.]"[101] The percent positive is a crucial indicator to determine whether a business can safely remain open. As a threshold for the percent positive being "too high," the WHO stated that the percent positive should remain below 5% for at least two weeks before re-opening.[102]

144. As shown below, by way of example, many of the cities and states in which Tapestry maintains its U.S. Tapestry Stores were experiencing exceptionally high positivity

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[99] *See, e.g.,* Aroon Chandeet al., *Real-time, interactive website for US-county-level COVID-19 event risk assessment*, 4 NATURE HUM. BEHAV., 1313-19 (Nov. 9, 2020), https://www.nature.com/articles/s41562-020-01000-9 (last visited June 3, 2021).

[100] *See, e.g.,* Benedict Carey & James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far Earlier Than Americans Knew, Estimates Say*, N.Y. TIMES (updated July 6, 2020), https://nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html (last visited June 3, 2021).

[101] David Dowdy & Gypsyamber D'Souza, *COVID-19 Testing: Understanding the "Percent Positive"*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH (Aug. 10, 2020), https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html (last visited June 3, 2021).

[102] *Id.*

rates:

- **Maryland**: As of March 31, 2020, Maryland reported a 7-day positivity rate of 13.72% and a daily positivity rate of 16.76% - with those numbers both over 25% by April 17.[103]
- **New York City**: As of April 1, 2020, New York City's positivity rate reached 57.4%, which is over 11 times higher than the 5% positivity cap.[104]
- **New York**: Throughout March 2020, New York's positivity rate steadily skyrocketed, and approached a staggering 50% in early April, nearly 10 times higher than the 5% positivity limit.[105]
- **Connecticut**: As of March 31, 2020, the statewide 7-day rolling test positivity rate was 35% in Connecticut.[106]
- **New Jersey:** By March 27, 2020, New Jersey's positivity rate was 33.4%.[107]
- **Georgia:** As of April 4, 2020, Georgia had a 7-day moving average positivity rate of 31.0%.[108]
- **Chicago**: By the end of March 2020, the positivity rate in Chicago was over

[103] *Coronavirus Disease 2019 (COVID-19) Outbreak*, MARYLAND.GOV (updated June 3, 2021), https://coronavirus.maryland.gov/ (last visited June 3, 2021).

[104] *Percentage Positive Results By County Dashboard*, N.Y. FORWARD (updated June 15, 2021), https://forward.ny.gov/percentage-positive-results-county-dashboard (last visited June 16, 2021).

[105] *Id.*.

[106] *COVID-19 in Connecticut: Data Analysis*, DATAHAVEN (Nov. 11, 2020), https://www.ctdatahaven.org/reports/covid-19-connecticut-data-analysis (last visited June 3, 2021).

[107] Brent Johnson & Len Menlisurgo, *N.J. coronavirus cases spike to 8,825 with 108 deaths. Officials announce 1,982 new positive tests, marking another big 24-hour surge.*, NJ.COM (updated Mar. 28, 2020), https://www.nj.com/coronavirus/2020/03/nj-coronavirus-cases-spike-to-8825-with-108-deaths-officials-announce-1982-new-positive-tests-marking-another-big-24-hour-surge.html (last visited June 3, 2021).

[108] *Daily State-By-State Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/georgia (last visited June 3, 2021).

20%.[109]

- **Indiana**: As of April 7, 2020, Indiana had a 7-day moving positivity average rate of 19.9%.[110]
- **Illinois**: As of March 31, 2020, Illinois had a 7-day moving positivity average rate of 18.8%.[111]
- **Massachusetts**: As of April 1, 2020, Massachusetts had a daily positivity 7-day moving average of 18.2%.[112]
- **Colorado**: As of December 5, 2020, the Colorado Department of Public Health reported a modeling report that estimated 16.5% of the state's 5.8 million residents have been infected to date and that 1 in 40 Coloradans were infectious.[113]
- **Los Angeles**: As of April 18, 2020, the positivity rate in Los Angeles County was 14.4% with the positivity rate in Los Angeles City being 7.3%.[114]
- **Nevada**: As of April 1, 2020, Nevada had a daily positivity 7-day moving

[109] *CHICAGO COVID-19 UPDATE*, CHI. DEPT. PUB. HEALTH (July 30, 2020), https://www.chicago.gov/content/dam/city/sites/covid/reports/2020-07-30/Chicago_COVID-19_Update_V8_7.30.2020.pdf (last visited June 3, 2021).

[110] *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/indiana (last visited June 3, 2021).

[111] *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/illinois (last visited June 3, 2021).

[112] *Daily State-By-State-Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/massachusetts (last visited June 3, 2021).

[113] Noelle Phillips, *1 in 40 Coloradans are positive for COVID-19, state modeling report says*, DENVER POST (Dec. 5, 2020), https://www.denverpost.com/2020/12/05/colorado-covid-outbreak-rate-december-2020/ (last visited June 3, 2021).

[114] *Daily Los Angeles COVID-19 Data Summary*, OFF. MAYOR (July 29, 2020), https://corona-virus.la/sites/default/files/inline-files/Release_Daily%20Data%20Report%20Wednesday%207_29_F%20%281%29.pdf (last visited June 3, 2021).

average of 13.8%. Nevada's daily positive 7-day moving average as of August 3, 2020 was 15.8% and as December 13, 2020 was 19.5%.[115]

- **Pennsylvania**: As of March 31, 2020, the positivity rate in Philadelphia was over 12% with 4,843 positive cases and 63 deaths.[116]
- **California**: As of April 5, 2020, California reported a 7-day test positivity rate of 11.8%.[117]
- **Ohio:** As of April 1, 2020, Ohio had a daily positivity 7-day moving average of 11.4%, which continued to rise to 24.2%, as of April 21, 2020.[118]
- **Arizona:** As of April 17, 2020, Arizona had a daily positivity 7-day moving average of 11.0%. Arizona's daily positivity 7-day moving average subsequently rose to 19.2% as of July 6, 2020.[119]
- **Florida**: On March 29, 2020, the 7-day positivity rate for those taking COVID-19 tests in Florida was 10% with a daily rate of 13%.[120]
- **San Francisco**: From early March through late April 2020, San Francisco's

[115] *Daily State-By-State Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/nevada (last visited June 3, 2021).

[116] *See PA Coronavirus (COVID-19) Update Archive March 2020*, PA. DEPT. HEALTH (Mar. 31, 2020), https://www.health.pa.gov/topics/disease/coronavirus/Pages/March-Archive.aspx (last visited June 3, 2021).

[117] *Tracking COVID-19 in California*, COVID19.CA.GOV (updated June 3, 2021), https://covid19.ca.gov/state-dashboard/ (last visited June 3, 2021).

[118] *Daily State-By-State Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/ohio (last visited June 3, 2021).

[119] *Daily State-By-State Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/arizona (last visited June 3, 2021).

[120] *Florida Dept. of Health Updates New COVID-19 Cases, Announces Three New Deaths Related to COVID-19, Morning Update*, FLORIDAHEALTH.GOV (Mar. 30, 2020), http://www.floridahealth.gov/newsroom/2020/03/033020-1100-covid19.pr.html (last visited June 3, 2021).

positive test rate was over 10%.[121]

- **Wisconsin**: As of March 31, 2020, Wisconsin had a 7-day moving positivity average rate of 9.8%, as of October 25, 2020, the 7-day positivity average rate spiked to 16.85%.[122]
- **Virginia:** As of March 31, 2020, Virginia had a daily positivity 7-day moving average of 9.4%, which continued to rise to 19.4% as of April 23, 2020.[123]
- **Washington**: As of March 31, 2020, Washington had a 7-day moving positivity average rate of 9.3%.[124]
- **Texas:** As of April 1, 2020, Texas had a daily positivity 7-day moving average of 6.8%. Texas's daily positivity 7-day moving average as of August 7, 2020, was 20.1%.[125]

145. As shown below, by way of example, the foreign countries where Tapestry maintains a large number of its Tapestry Stores were also experiencing exceptionally high positivity rates of the Coronavirus once again demonstrating the certain or virtually certain presence of the Coronavirus at all of Tapestry's Stores at various points in time since the emergence of the Coronavirus and COVID-19:

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[121] Kellie Hwang, *S.F.'s coronavirus positive test rate is the lowest of all big U.S. cities. Can it stay that way?*, S.F. CHRON. (updated Oct. 30, 2020), https://www.sfchronicle.com/bayarea/article/S-F-s-coronavirus-positive-test-rate-is-the-15683356.php (last visited June 3, 2021).

[122] *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/wisconsin (last visited June 3, 2021).

[123] *Daily State-By-State Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/virginia (last visited June 3, 2021).

[124] *Daily State-By-State- Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/washington (last visited June 3, 2021).

[125] *Daily State-By-State Testing Trends*, JOHNS HOPKINS UNIV. MED. (updated June 3, 2021), https://coronavirus.jhu.edu/testing/individual-states/texas (last visited June 3, 2021).

- **Spain**: As of April 21, 2020, Spain had a daily positivity rate, given as a rolling 7-day average of 42.90%[126]
- **United Kingdom**: As of April 10, 2020, the United Kingdom had a daily positivity rate, given as a rolling 7-day average of 30.00%.[127]
- **Italy**: As of March 20, 2021, Italy had a daily positivity 7-day moving average of 26.8 %.[128]
- **Japan**: As of February 14, 2020, Japan had a daily positivity 7-day moving average of 20.4%.[129]
- **Canada**: As of April 11, 2020, Canada had a daily positivity rate, given as a rolling 7-day average of 11.20%.[130]

146. Maryland presents a powerful example of how the above-referenced statistical modeling confirms the presence of the Coronavirus at Tapestry's Stores (in addition to its certain presence as demonstrated by the large numbers of Tapestry employees who reported contracting COVID-19).

147. With respect to the testing that was then available, local positivity rates demonstrated the pervasiveness of the Coronavirus in Maryland by March 2020 and the certitude based on statistical modeling that Tapestry's 15 Maryland retail Stores and their nearby Attraction Properties suffered from the presence of the Coronavirus. As of March 31, 2020, Maryland reported a 7-day positivity rate of 13.72% and a daily positivity rate of 16.76%, with

[126] *Coronavirus (COVID-19) Testing*, OUR WORLD IN DATA (updated June 1, 2021), https://ourworldindata.org/coronavirus-testing (last visited June 3, 2021).

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] *Id.*

those numbers both over 25% by April 17 – indicating uncontrolled community spread of the Coronavirus and its certain or virtually certain presence in all of Tapestry's Maryland Stores.[131]

148. The other states and countries where Tapestry maintained its other Stores and operations experienced a similar spread of the Coronavirus and COVID-19 and those Stores experienced the same physical loss or damage to property as Tapestry experienced in Maryland.

## F. New and Even More Transmissible Variants of the Coronavirus Have Emerged During the 2020/2021 Policy Period

149. While the damage and destruction caused by the original variant of the Coronavirus (the Wild Type) is staggering, during the 2020/2021 Policy Period, completely new and distinct variants of the Coronavirus emerged that were even more transmissible than the original Wild Type variant of the Coronavirus.[132]

150. These new variants of the Coronavirus have caused yet more physical loss of or damage to Tapestry's Stores, its ATTRACTION PROPERTY and its **contingent time element locations**.

151. In December 2020, a new variant, called B.1.1.7 of the Coronavirus, thought to be 50% more transmissible and infectious, and up to 30% deadlier than the original Wild Type (and therefore even more apt than the Wild Type to cause physical loss or damage by rendering that property unfit, unsafe and uninhabitable), was identified in the U.K.[133] As of January 2021, the

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[131] *Coronavirus Disease 2019 (COVID-19) Outbreak*, MARYLAND.GOV (updated June 9, 2021), https://coronavirus.maryland.gov/ (last visited June 9, 2021).

[132] Takahisa Fujino et al., *Novel SARS-CoV-2 Variant in Travelers from Brazil to Japan*, 27 EMERGING INFECTIOUS DISEASES 4 (Apr. 2021), https://wwwnc.cdc.gov/eid/article/27/4/21-0138_article (last visited June 9, 2021); *SARS-CoV-2 Variants*, WHO (Dec. 31, 2020), https://www.who.int/csr/don/31-december-2020-sars-cov2-variants/en/ (last visited June 9, 2021).

[133] Julia Ries, *The Coronavirus is Mutating: What We Know About the New Variants*, HEALTHLINE (Jan. 22, 2021), https://www.healthline.com/health-news/the-coronavirus-is-mutating-what-we-know-about-the-new-variants (last visited June 9, 2021); *About Variants of the Virus that Causes COVID-19*, CDC (updated May 20, 2021), https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html (last visited June 9, 2021).

U.K. variant of the Coronavirus had been detected in 33 countries, including the U.S. (and in states such as California, Colorado, and Florida, where Tapestry maintains its Stores).[134] And as of April 8, 2021, the U.K. variant had been detected in all 50 U.S. states (including Maryland).[135]

152. In early October 2020, yet another new variant of the Coronavirus, known as B.1.351 was identified in South Africa, which is purportedly more contagious than the original strain as it has been associated with a higher viral load.[136] As of June 8, 2021, the B.1.351 variant had been detected in 45 of the 50 U.S. states, including Maryland.[137]

153. In early January 2021, another variant of the Coronavirus, known as P.1, was detected in travelers from Brazil.[138] As of June 8, 2021, the P.1 variant had been detected in all 50 U.S. states (including Maryland).[139]

154. In January 2021, studies identified a new variant of the Coronavirus in the U.S., identified as COH.20G/501Y, that did not come from the U.K. or South African branches of the virus.[140] Similar to the U.K. variant, the mutations in the new variant of the Coronavirus likely

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[134] Gabrielle Masson, *UK virus strain in 3 states; South Africa variant deemed 'even more of a problem': 5 things to know*, BECKER'S HOSP. REV. (Jan. 4, 2021), https://www.beckershospitalreview.com/public-health/uk-virus-strain-in-3-states-south-africa-variant-deemed-even-more-of-a-problem-5-things-to-know.html (last visited June 9, 2021).

[135] *US COVID-19 Cases Caused by Variants*, CDC (updated Apr. 10, 2021), https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html (last visited June 9, 2021).

[136] Julia Ries, *The Coronavirus is Mutating: What We Know About the New Variants*, HEALTHLINE (Jan. 22, 2021), https://www.healthline.com/health-news/the-coronavirus-is-mutating-what-we-know-about-the-new-variants (last visited June 9, 2021); *About Variants of the Virus that Causes COVID-19*, CDC (updated May 20, 2021), https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html (last visited June 9, 2021).

[137] *COVID Data Tracker, Variant Proportions*, CDC (updated June 8, 2021), https://covid.cdc.gov/covid-data-tracker/#variant-proportions (last visited June 9, 2021).

[138] *About Variants of the Virus that Causes COVID-19*, CDC (updated May 20, 2021), https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html (last visited June 9, 2021).

[139] *COVID Data Tracker, Variant Proportions*, CDC (updated June 8, 2021), https://covid.cdc.gov/covid-data-tracker/#variant-proportions (last visited June 9, 2021).

[140] *Researchers Discover New Variant of COVID-19 Virus in Columbus, Ohio*, OHIO STATE UNIV. (Jan. 13, 2021), https://wexnermedical.osu.edu/mediaroom/pressreleaselisting/new-sars-cov2-variant (last visited June 9, 2021).

make this variant more infectious (and therefore even more apt to cause physical loss of or damage to property) than the original Wild Type.[141] Another variant, identified as L452R, that originated in Denmark has "ripped" through Northern California and has been confirmed in more than a dozen other states.[142]

**G. Government Orders and the Closure of Tapestry's Stores**

155. On March 16, 2020, the CDC and the national Coronavirus Task Force issued guidance to the American public titled "30 Days to Slow the Spread" of COVID-19. The guidance called for restrictive social distancing measures, such as working from home, avoiding gatherings of more than 10 people and staying away from bars and restaurants.[143]

156. State and local governments across the nation and governments around the world recognized the unprecedented and mushrooming outbreaks of COVID-19 across the nation and the Coronavirus's catastrophic impact through the physical loss or damage to property and lives. As a consequence, many states issued "State of Emergency" Declarations in early March 2020. Within a short time, virtually every U.S. state where there was a Tapestry Store issued orders suspending or severely limiting business operations deemed to be "non-essential businesses" where people could potentially contract COVID-19 from others or from the property itself. This included fashion retail and outlet stores such as Tapestry's Stores.

157. Between March 17, 2020 and April 6, 2020, state or local authorities in every

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[141] *Id.*

[142] Fenit Nirappil, *Another coronavirus variant linked to growing share of cases, several large outbreaks, in California*, WASH. POST (Jan. 18, 2021), https://www.washingtonpost.com/health/2021/01/18/california-coronavirus-variant/ (last visited June 9, 2021).

[143] The President's Coronavirus Guidelines for America, 30 Days to Slow the Spread, WHITE HOUSE & CDC (Mar. 16, 2020), https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last visited June 3, 2021).

U.S. state where there was a Tapestry Store, save Nebraska and South Dakota, issued orders that required such Stores to close.

158. Similarly, between March 11 and March 27, 2020, virtually every country in Europe in which Tapestry maintained a Store issued orders resulting in the closure of all Stores in that country.[144] Every province in Canada in which Tapestry maintained a Store issued similar orders closing Tapestry's Stores during the same time.[145] On March 23, 2020, the Chief Minister of Australia ordered the temporary closure of non-essential business, including Tapestry's Stores.[146] Similar orders were issued in Asian countries where Tapestry maintained its Stores.[147]

159. These government orders, through their forced closure of Tapestry's Stores, prohibited access to the Tapestry Stores – all of which are insured "**locations**" under the Policies.

160. As a result of the Coronavirus and COVID-19, and the physical loss or damage to Tapestry's property, ATTRACTION PROPERTY and/or "**contingent time element locations**" caused by the Coronavirus and the government guidance and orders, Tapestry's Stores in all of its geographical operating areas were shuttered. Specifically:

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[144] *See, e.g.*, *Shutdowns Spread Across Europe as Spain and France Order Broad Restrictions*, N.Y. TIMES (Mar. 14, 2020), https://www.nytimes.com/2020/03/14/world/europe/france-coronavirus.html (last visited June 3, 2021).

[145] *See Closure of non-essential businesses in British Columbia, Alberta, Ontario and Québec*, DENTONS (updated Mar. 30, 2020), https://www.dentons.com/en/insights/alerts/2020/march/30/closure-of-non-essential-businesses-in-british-columbia-alberta-ontario-and-quebec#:~:text=While%20British%20Columbia%20has%20not%20yet%20ordered%20the,services%20businesses%20to%20be%20closed%20to%20the%20public. (last visited June 3, 2021).

[146] *See COVID-19: a chronology of state and territory government announcements (up until 30 June 2020)*, PARLIAMENT AUSTL. (Oct. 22, 2020), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Chronologies/COVID-19StateTerritoryGovernmentAnnouncements (last visited June 3, 2021).

[147] *See, e.g.*, Michael Penn, *How Some Asian Countries Beat Back COVID-19*, DUKE GLOBAL HEALTH INST. (Aug. 12, 2020), https://globalhealth.duke.edu/news/how-some-asian-countries-beat-back-covid-19 (last visited June 3, 2021).

- all Coach, Kate Spade and Stuart Weitzman stores in North America and Europe were closed beginning on March 18, 2020;[148]
- in Greater China, closures of Tapestry's Stores began on January 23, 2020 with closures peaking on February 8 and 9, 2020 with 273 Tapestry Stores (86% of the stores in Greater China at that time) closed; and
- in the Asia Pacific region all Tapestry Stores in Malaysia, Singapore, Australia, New Zealand, and some of Tapestry's Stores in Japan, were closed by the beginning of April 2020.[149]

161. Many of these and other government orders arising from the Coronavirus and COVID-19 expressly recognized that the Coronavirus damages property, not just people. The orders issued in Washington, home to 10 Tapestry Stores, are prime examples. On March 16, 2020, Governor Inslee issued an order closing fitness centers, theaters and indoor dining (and certain other business), in Washington.[150] Among other things, the March 16, 2020 order expressly stated, among its justifications, that the pervasiveness of COVID-19 was a "public disaster affecting . . . property;" that state government agencies were working with local health officials "in alleviating the impacts to . . . property;" and that among its objectives was to "help preserve and maintain . . . property[.]"[151]

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[148] *Tapestry, Inc.'s Response to COVID-19: Company to Temporarily Close all Coach, Kate Spade and Stuart Weitzman Stores in North America and Europe*, TAPESTRY (Mar. 17, 2020), https://tapestry.gcs-web.com/news-releases/news-release-details/tapestry-incs-response-covid-19# (last visited June 3, 2021).

[149] *Tapestry, Inc. Provides COVID-19 Operational Update*, TAPESTRY (Apr. 10, 2020), https://tapestry.gcs-web.com/news-releases/news-release-details/tapestry-inc-provides-covid-19-operational-update (last visited June 3, 2021).

[150] Wash. Proclamation No. 20-13, *Proclamation By the Governor Amending Proclamation 20-05*, OFF. GOVERNOR (Mar. 16, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-13%20Coronavirus%20Restaurants-Bars%20%28tmp%29.pdf (last visited June 3, 2021).

[151] *Id.*

162. On March 23, 2020, Governor Inslee issued a "Stay Home – Stay Healthy" order requiring every Washingtonian to stay home unless they needed to pursue an essential activity, banning all gatherings for social, spiritual, and recreational purposes, and closing all businesses except essential businesses.[152] Tapestry's Stores were considered non-essential businesses under the order. Among other things, the March 23, 2020 order expressly stated, among its justifications, that the pervasiveness of COVID-19 was a "public disaster affecting . . . property;" that state government agencies were working with local health officials "in alleviating the impacts to . . . property;" and that among its objectives was to "help preserve and maintain . . . property[.]"[153]

163. Moreover, many government orders explicitly cited the need to protect and preserve property as a motivation for such order. For example, almost every New York City order imposing COVID-19 related restrictions specifically cited the need to mitigate ongoing property damage. Consistent with this, a March 16, 2020 Order stated that it was issued "because of the propensity of the virus to spread person to person and also because **the virus physically is causing property loss and damage**." (Emphasis added).[154]

## H. The Government Orders Recognized that the Coronavirus Causes Physical Loss or Damage to Property and Required Measures to Stop Aerosol and Fomite Transmission

164. In state after state where Tapestry maintains its Tapestry Stores, the governmental orders arising from the Coronavirus and COVID-19 required measures to protect against aerosol

[152] Wash. Proclamation No. 20-25, *Proclamation By the Governor Amending Proclamation 20-05*, OFF. GOVERNOR (Mar. 23, 2020), https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronovirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf (last visited June 3, 2021).

[153] *Id*.

[154] N.Y.C. Emergency Exec. Order No. 100, OFF. MAYOR (Mar. 16, 2020), https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf (last visited June 3, 2021).

and fomite transmission and expressly addressed the Coronavirus' impacts upon property in numerous ways.

165. For example, Maryland, where Tapestry maintains 16 Stores, issued government orders to protect against aerosol and fomite transmission of Coronavirus.

166. On March 7, 2020, Governor Hogan declared a "disaster emergency" based on the "immediate danger to public safety[.]" [155]

167. Throughout March, Governor Hogan issued a series of increasingly restrictive orders limiting the number of individuals able to gather at any location and closing or restricting certain businesses. On March 23, 2020, and as amended on March 30, 2020, Governor Hogan ordered all non-essential businesses to close entirely, with specified exceptions including, in the case of retail establishments, remaining open to "sell retail products on a delivery basis."[156]

168. Because Tapestry's Maryland stores typically sell products to in-store customers, Governor Hogan's orders required the closure of Tapestry's 15 Maryland Stores entirely. However, due to the presence of the Coronavirus in Tapestry's Stores and the risks – indeed the certainty – of further presence of the Coronavirus in the air of those stores by remaining open, which rendered them unfit for their normal use given the raging viral outbreak and uncontrolled community spread of the Coronavirus, Tapestry had already closed all of its North American Stores beginning on March 18, 2020.

169. New York, where Tapestry maintains 33 Stores, also issued government orders to

[155] Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19, (Mar. 5, 2020), https://governor.maryland.gov/wp-content/uploads/2020/03/Proclamation-COVID-19.pdf (last visited June 9, 2021).

[156] Order of the Governor of the State of Maryland Number 20-03-23-01 (Mar. 23, 2020), https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-THIRD-AMENDED-3.23.20.pdf (last visited June 9, 2021); Order of the Governor of the State of Maryland Number 20-03-30-01 (Mar. 30, 2020), https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf (last visited June 9, 2021).

protect against aerosol and fomite transmission of Coronavirus.

170. On March 7, 2020, Governor Cuomo declared a "disaster emergency" in response to the transmission in New York and the threat that COVID-19 "poses to the health and welfare of its residents and visitors."[157]

171. On March 12, 2020, Governor Cuomo issued an executive order banning all events or gatherings of more than 500 people in the state and requiring businesses to operate at less than 50% of their maximum occupancy ("March 12, 2020 Order").[158]

172. On March 22, 2020, Governor Cuomo issued a "stay at home" order and directed all non-essential businesses to cease in person operations entirely by March 22, 2020, thus requiring the closure of Tapestry's 33 New York Stores as well as its corporate headquarters in Manhattan.[159]

173. New York reopened in phases depending on when particular regions met the metrics specified in Governor Cuomo's Orders, as well as applicable local orders, such as those issued by New York City. Retail businesses such as Tapestry's 33 New York Stores remained subject to extensive social distancing, PPE, and cleaning and disinfection requirements even after reopening.[160]

174. California, where Tapestry maintains 57 Stores, also issued government orders to

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[157] N.Y. Exec. Order No. 202: Declaring a Disaster Emergency in the State of New York, (Mar. 7, 2020), https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york (last visited June 8, 2021).

[158] N.Y. Executive Order No. 202.1: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (March 12, 2020), https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency (last visited June 8, 2021).

[159] *See* N.Y. Executive Order Nos. 202.6 (Mar. 18, 2020), 202.7 (Mar. 19, 2020), and 202.8 (Mar. 20, 2020), https://www.governor.ny.gov/executiveorders (last visited June 8, 2021).

[160] *Reopening New York Curbside and In-Store Pickup Retail Guidelines for Employers and Employees*, Office of the Governor, https://www.governor.ny.gov/sites/default/files/atoms/files/CurbsideIn-StorePickupRetailShortGuidelines.pdf (last visited June 8, 2021).

protect against aerosol and fomite transmission of Coronavirus.

175. On March 4, 2020, California Governor Newsom declared a state of emergency as the number of positive California cases rose and following the first official COVID-19 death in the state.[161]

176. Eight days later, on March 12, 2020, Governor Newsom issued an executive order banning all gatherings of more than 250 people in the state.[162]

177. On March 20, 2020, Los Angeles County Health Officer enacted a "Safer at Home" order requiring all "non-essential" commercial properties and business to close including but not limited to all retail establishments.[163] Immediately after Los Angeles County announced its Safer at Home Order, Governor Newsom issued Executive Order N-33-20, the "California Order" requiring all individuals living in California to "stay home or at their place of residence except as necessary to maintain continuity of operations of the federal critical infrastructure sectors."[164]

178. On May 25, 2020, the California Department of Public Health permitted the limited reopening of retail stores statewide.[165] The reopening required that retailers throughout

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[161] *Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19*, OFF. GOVERNOR (Mar. 4, 2020), https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/ (last visited June 3, 2021).

[162] *Governor Newsom Issues New Executive Order Further Enhancing State and Local Government's Ability to Respond to COVID-19 Pandemic*, OFF. GOVERNOR (Mar. 12, 2020), https://www.gov.ca.gov/2020/03/12/governor-newsom-issues-new-executive-order-further-enhancing-state-and-local-governments-ability-to-respond-to-covid-19-pandemic/ (last visited June 3, 2021).

[163] *Closed for Business? Los Angeles and California Issue Sweeping Orders to Combat COVID-19 Spread*, JD SUPRA (Mar. 23, 2020), https://www.jdsupra.com/legalnews/closed-for-business-los-angeles-and-75150/ (last visited June 3, 2021).

[164] Cal. Exec. Order N-33-20, OFF. GOVERNOR (Mar. 20, 2020), https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf (last visited June 3, 2021).

[165] *You Can Shop Anywhere in California. State Officials Relax Coronavirus Restrictions*, SACRAMENTO BEE (May 25, 2020), https://www.sacbee.com/news/politics-government/capitol-alert/article242984766.html (last visited June 3, 2021).

the state follow industry specific COVID-19 guidelines.[166] These guidelines were expressly issued, among other reasons, to protect against aerosol and fomite transmission of the Coronavirus, and explicitly addressed the Coronavirus' impacts upon property in numerous ways, including but not limited to requiring businesses to:

a) "[p]erform thorough cleaning in high traffic areas, such as break rooms, lunch areas and areas of ingress and egress including stairways, stairwells, escalators, handrails, and elevator controls";

b) "[f]requently disinfect commonly used surfaces, including shopping carts, baskets, conveyor belts, registers…";

c) "[c]lean touchable surfaces between shifts or between users";

d) "[c]lean and sanitize shared equipment";

e) "[c]onsider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other modifications to increase the quantity of outside air and ventilation in offices and other spaces."

179. Florida, where Tapestry maintains 32 Stores, also issued government orders to protect against aerosol and fomite transmission of the Coronavirus.

180. On March 1, 2020, Governor DeSantis issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency in response to the state's first two confirmed COVID-19 cases.[167] On March 9, 2020, Governor DeSantis officially declared a

[166] *COVID-19 Industry Guidance: Retail*, CAL. DEPT. PUB. HEALTH (Jul. 29, 2020), https://files.covid19.ca.gov/pdf/guidance-retail.pdf (last visited June 3, 2021).

[167] Fla. Exec. Order No. 20-51, OFF. GOVERNOR (Mar. 1, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf (last visited June 3, 2021).

State of Emergency.[168]

181. On March 20, 2020, Governor DeSantis issued Executive Order 20-83 "Emergency Management - COVID-19 - Protective Measures for Vulnerable Populations, Gatherings of Private Citizens and Density of the Workforce" advising against all social or recreational gatherings of 10 or more people and urging all who can work from home to do so.[169]

182. Florida counties also passed local regulations to protect public health. Miami-Dade County Mayor Cava declared a State of Emergency on March 19, 2020, ordering all "non-essential retail and commercial establishments" closed.[170] Broward County and Palm Beach County similarly implemented orders restricting public access to non-essential retail and commercial establishments.[171]

183. On April 29, 2020, Governor DeSantis issued Executive Order 20-112 "Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery" permitting the limited reopening of retail stores, provided they abide by social distancing measures and limit their indoor capacity to 25%.[172] Among other reasons, this order was expressly issued to protect against aerosol and fomite transmission of the Coronavirus, and explicitly addressed the Coronavirus' impacts upon property, including but not limited to requiring businesses to "maintain appropriate social

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[168] Fla. Exec. Order No. 20-52, OFF. GOVERNOR (Mar. 9, 2020), https://www.flgov.com/wp-content/uploads/2020/03/EO-20-52.pdf (last visited June 3, 2021).

[169] Fla. Exec. Order No. 20-83, *Emergency Management - COVID-19 - Protective Measures for Vulnerable Populations, Gatherings of Private Citizens and Density of the Workforce,* OFF. GOVERNOR (Mar. 20, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-83.pdf (last visited June 3, 2021).

[170] *Miami-Dade County Emergency Order 07-20*, OFF. MAYOR (Mar. 19, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91.pdf (last visited June 3, 2021).

[171] Fla. Exec. Order No. 20-89, *Emergency Management- COVID-19 - Miami-Dade County, Broward County, Palm Beach County, Monroe County Public Access Restrictions,* OFF. GOVERNOR (Mar. 30, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-89.pdf (last visited June 3, 2021).

[172] Fla. Exec. Order No. 20-112, *Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery,* OFF. GOVERNOR (Apr. 29, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-112.pdf (last visited June 3, 2021).

distancing and sanitation protocols."

184. Local counties provided guidelines for the reopening of retail establishments. Miami-Dade County provided a "General Checklist for Retail Businesses"[173] that expressly protected against aerosol and fomite transmission of the Coronavirus, and explicitly addressed the Coronavirus' impacts upon property in numerous ways, including but not limited to requiring businesses to:

- "[c]hange and/or upgrade HVAC filters as necessary to maximize fresh air";
- providing PPE to its employees such as facemasks, goggles, face shields and gloves;
- designing, engineering and installing barriers (such as point of sale locations) to hamper direct and droplet transmission of the Coronavirus and foster social distancing;
- making hand sanitizer, disinfecting wipes, soap and water readily available to customers;
- purchasing and placing readily visible signage to encourage safe practices among employees and customers;
- regularly and frequently cleaning any high-touch and frequently touched surfaces according to heightened CDC and state department of health guidelines;
- dramatically increasing cleaning frequency at its Tapestry Stores; and
- upgrading HVAC ventilation filters.

## I. Tapestry's Stores Reopened but Operate Under Severe Restrictions and with Safety

[173] *General Checklist for Retail Businesses*, MIAMI DADE CNTY. (May 18, 2020), http://web.archive.org/web/20201027130026/https://www.miamidade.gov/information/library/general-checklist-retail-employers.pdf (last visited June 3, 2021).

**Measures that Forced Tapestry to Incur Extra Expenses to Continue Operating and Prevent Further Physical Loss or Damage to its Property**

185. Beginning on May 29, 2020, Tapestry started re-opening the Tapestry Stores in the U.S. and Canada. By the end of June 2020, substantially all of the Tapestry Stores in the U.S. and Canada had re-opened (with intermittent closures for a few handfuls of Tapestry Stores from July 2020 to the present due to either local shut-downs or positive COVID-19 tests of Tapestry Store employees). By September 9, 2020, substantially all then-existing Tapestry Stores in the U.S. had reopened after the initial March 18, 2020 closure.

186. Tapestry re-opened substantially all of its 15 Maryland Stores between June 5, 2020 and June 29, 2020.

187. Beginning on April 27, 2020, Tapestry started reopening the Tapestry Stores in Europe and by July 31, 2020, substantially all had been reopened.

188. Beginning in February 2020, Tapestry started reopening the Tapestry Stores in China and by April 11, 2020, substantially all had been reopened.

189. Tapestry started reopening the Tapestry Stores in other Asian countries besides China, and by November 6, 2020, substantially all the Tapestry Stores in Asian countries besides China had been reopened.

190. In order to prevent further physical loss or damage to its property and to stay open and continue operating its Tapestry Stores in a safe and compliant manner, Tapestry has incurred significant costs and extra expenses and imposed restrictions on certain of its services. These costs/expenses/bans/restrictions include, but are not limited to:

- operating the Tapestry Stores at reduced hours of operation;
- providing PPE to its employees such as facemasks, face shields and gloves;
- reconfiguring store layouts and installing barriers in certain stores to hamper

direct and droplet transmission of the Coronavirus and foster social distancing;

- making hand sanitizer, disinfecting wipes, soap and water readily available to employees and customers;
- purchasing and placing readily visible signage to encourage safe practices among employees and customers;
- regularly and frequently cleaning any high-touch and frequently touched surfaces according to heightened CDC and state department of health guidelines; and
- dramatically increasing cleaning frequency at its Tapestry Stores.

191. The presence of the Coronavirus on Tapestry's property caused it to suffer physical loss or damage to its Tapestry Stores as previously alleged herein. Significant restrictions at Tapestry Stores, including reduced hours and reduced capacity, some imposed by government orders, have deprived Tapestry of the full use of its property, causing further physical loss or damage to Tapestry's property. Moreover, they have alienated some of Tapestry's current and prospective customers, causing Tapestry to sustain yet more losses.

192. Additionally, many of Tapestry's Stores had to re-close due to the physical loss or damage to Tapestry's property, ATTRACTION PROPERTY and other nearby properties caused by the Coronavirus.

193. For example, due to waves of re-closures, as of June 14, 2021, 9% of Tapestry's Stores in Asia (excluding Greater China) were closed, with 37 closures out of 403 total stores. The closed Tapestry Stores included: (a) all 32 Tapestry Stores in Malaysia; (b) 3 Tapestry Stores in Singapore; and (c) 2 Tapestry Stores in Australia and New Zealand.

## J. The Devastating Toll on Tapestry's Business from the Effects of the Coronavirus and COVID-19

194. Tapestry has suffered significant losses and continues to suffer losses from the

closures of its Tapestry Stores and related losses from the presence of the Coronavirus and COVID-19.

195. In particular, since the onset of the Coronavirus and COVID-19, Tapestry's revenues have declined, disrupting the business as well as the jobs and livelihoods of the over 16,139 people in the U.S. who were employed by Tapestry at the time of the emergence of the Coronavirus and COVID-19. The human toll this has caused is inestimable.

196. The financial toll on Tapestry, however, like many similar companies, is measurable and significant. For example, in Tapestry's annual report for fiscal year 2020, ended June 27, 2020, Tapestry reported: (1) a revenue decline of $1,065.7 billion compared to the prior year (down to $4,961.4 billion); (2) a net loss for the year of $652.1 million, compared to a net profit of $643.4 million during the prior year; and (3) an annual loss per share of $2.34. Tapestry publicly reported these results in its Form 10-K filing with the SEC for Tapestry's fiscal year 2020, ended June 27, 2020.[174]

197. Tapestry timely notified FM of these losses and has met all conditions and requirements for coverage under the Policies. As set forth herein, FM has constructively denied coverage by refusing to issue a final coverage position.

## K. The 2019/2020 and 2020/2021 FM Global Advantage® Time Element Select ™ "All Risk" Commercial Property Policies

198. In exchange for a substantial premium, FM sold Tapestry policy number 1050294, the 2019/2020 Policy.

199. Tapestry fully paid the premium for the 2019/2020 Policy.

200. FM drafted the 2019/2020 Policy, which includes the FM Global Advantage®

[174] Tapestry, Inc., Annual Report (Form 10-K) (Aug. 13, 2020).

Time Element Select ™ coverage form.

201. In exchange for a substantial premium, FM sold Tapestry policy number 1065667, the 2020/2021 Policy.

202. Tapestry fully paid the premium for the 2020/2021 Policy.

203. FM drafted the 2020/2021 Policy which includes the FM Global Advantage® Time Element Select ™ coverage form.

204. The Policies insure against "ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded," and provides coverage for property damage losses, business interruption losses ("Time Element" per the policy language), and other losses.

205. The Policy Limit for each Policy is $1,000,000,000 per **occurrence**.[175]

206. The Policies' full terms and conditions are set forth therein, but as relevant here, the Policies provide as follows:

***Time Element and Time Element Coverages***

207. The Policies cover "TIME ELEMENT loss, as provided in the TIME ELEMENT COVERAGES, directly resulting from physical loss or damage **of the type insured**." (Emphasis added).

208. As set forth above, the Coronavirus and COVID-19 caused physical loss or damage to property at Tapestry's insured **locations** – which include, but are not limited to, Tapestry's Stores. This triggered the Policies' TIME ELEMENT COVERAGES.

209. The Coronavirus and COVID-19 also rendered such property unfit and unsafe for its normal usages, depriving Tapestry of its property. This also triggered the Policies' TIME ELEMENT COVERAGES.

[175] Unless otherwise noted, capitalized and/or bolded terms herein are capitalized and bolded in the Policies.

210. **Communicable disease** is a cause of physical loss or damage covered under the Policies.

211. The Policies also cover loss resulting from the imminent risk of physical loss or damage caused by **communicable disease**.

212. Pursuant to the Policies various coverage provisions, physical loss or damage caused by, and/or the actual not suspected presence of, **communicable disease**, trigger coverage under the Policy up to the Policy's $1 billion limit of liability.

213. **Communicable disease** triggers the Policies TIME ELEMENT COVERAGES, subject to each Policy's full $1 billion limit of liability because **communicable disease** is physical loss or damage "of the type insured" under the Policies.

214. COVID-19 is a **communicable disease** as that term is defined in the Policies.

215. Tapestry's TIME ELEMENT losses arising from COVID-19 are subject to each Policy's full $1 billion limit of liability.

216. Neither the Coronavirus nor COVID-19 are excluded under the Policies.

217. Among the Policies' TIME ELEMENT COVERAGES is GROSS EARNINGS, covering "the Actual Loss Sustained by the Insured… during the PERIOD OF LIABILITY."

218. The Policies include an EXTENDED PERIOD OF LIABILITY that extends the GROSS EARNINGS coverage up to 180 days (and up to 365 days for Location No. W04, One Coach Way, Jacksonville, Florida) to cover "the reduction in sales resulting from: 1) the interruption of business as covered by GROSS EARNINGS; 2) for such additional 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 happened; and 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business

would terminate if this Extension had not been included in this Policy."

219. Pursuant to the terms of the Policies, the policyholder has the "option to make claim based on either a) GROSS EARNINGS and EXTENDED PERIOD OF LIABILITY; or b) GROSS PROFIT."

220. The Policies measure GROSS PROFIT as "the Actual Loss Sustained by the Insured of the following due to the necessary interruption of business during the PERIOD OF LIABILITY: a) Reduction in Sales and b) Ordinary Payroll and c) Increase in Cost of Doing Business."

221. The Policies define GROSS PROFIT as "The amount produced by adding to the Net Profit the amount of the Insured Fixed Charges, or if there be no Net Profit the amount of the Insured Fixed Charges less that proportion of any loss from business operations as the amount of the Insured Fixed Charges bears to all fixed charges."

222. The Policies define Net Profit as "The net operating profit (exclusive of all capital receipts and accruals and all outlay properly chargeable to capital) resulting from the business of the Insured at the insured **locations** after due provision has been made for all fixed charges and other expenses including depreciation but before the deduction of any taxes on profits."

223. The Policies define Insured Fixed Charges as "All fixed charges unless specifically excluded herein."

224. Tapestry derives a large proportion of its revenue from its Tapestry Stores, both in the U.S. and around the world. Many of these **locations** were closed during the Policy Periods. To the extent any of the **locations** were reopened, this was often at reduced capacity, reduced hours, and reduced levels of service. As such, Tapestry has sustained and is sustaining a substantial Time Element loss of its Gross Earnings and Gross Profit as insured under the

Policies.

225. The Policies provide EXTRA EXPENSE coverage, covering "the reasonable and necessary extra costs incurred by the Insured of the following during the PERIOD OF LIABILITY: 1) extra expenses to temporarily continue as nearly **normal** as practicable the conduct of the Insured's business; 2) extra costs of temporarily using property or facilities of the Insured or other[.]"

226. As set forth herein, Tapestry incurred Extra Expense to resume and continue as nearly as practicable its normal business activities that would otherwise be suspended due to physical loss or damage caused by the Coronavirus and COVID-19, costs associated with altering its property to protect it from physical loss or damage, as well as the safety of its occupants, such as erecting barriers, reconfiguring indoor spaces, disinfecting surfaces and materials, and providing PPE to employees.

227. The Policies provide coverage for LEASEHOLD INTEREST loss to cover the actual rent or portion of the rent payable by Tapestry "[i]f the lease agreement requires continuation of rent; and if the property is wholly [or partially] untenantable or unusable," or "[i]f the lease is cancelled by the lessor pursuant to the lease agreement or by the operation of law[.]"

228. Tapestry leases the premises for substantially all of its Stores. The presence of the Coronavirus made all or substantially all of its Stores wholly or partially untenantable or unusable and yet many of its landlords insisted that Tapestry's lease agreements required the continuation of rent. Set forth below are just a few examples of the many landlords for specific Tapestry Stores who contended that the leases for the Store required Tapestry to continue paying rent – despite the Stores' untenantability or unusability as a result of the Coronavirus and

COVID-19:

| **Landlord** | **Brand** | **Location of Store** |
|---|---|---|
| Pyramid Management Group, LLC | Coach | Walden Galleria, Buffalo, NY 10001 |
| Riverwalk Marketplace, LLC | Kate Spade | Outlet Collection at Riverwalk, New Orleans, LA 70130 |
| Arrowhead Towne Center LLC | Coach | Arrowhead Towne Center, Glendale, AZ 85308 |
| Vornado Realty Trust | Coach | 595 Madison Avenue, New York, NY 10022 |

229. Accordingly, Tapestry incurred LEASEHOLD INTEREST loss covered under the Policies.

230. The Policies provide RENTAL INSURANCE coverage for "the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY: 1) the fair rental value of any portion of the property occupied by the Insured; 2) the income reasonably expected from rentals of unoccupied or unrented portions of such property; and 3) the rental income from the rented portions of such property according to bona fide leases, contracts or agreements in force at the time of loss[.]"

231. As a result of the physical loss of or damage to property caused by the presence of the Coronavirus at property subleased by Tapestry to numerous subtenants, Tapestry lost rental income from many of these subtenants. Some examples of such lost rental income include:

| **Subtenant** | **Location of Subleased Premises** |
|---|---|
| R.M. Williams US NY LLC | 152 Spring Street, New York, NY 10012 |
| Marine Layer, Inc. | 205 Columbus Avenue, New York, NY 10023 |

232. Accordingly, the Policies' RENTAL INSURANCE COVERAGE has been triggered and Tapestry is entitled to coverage thereunder.

***Additional Coverages and Time Element Extensions***

233. The Policies include numerous Additional Coverages and Time Element Extensions that apply to Tapestry's losses from the Coronavirus and COVID-19. These include the following, among others:

234. The Policies provide COMMUNICABLE DISEASE RESPONSE coverage for "the reasonable and necessary costs incurred by the Insured… for the: 1) cleanup, removal and disposal of the actual not suspected presence of **communicable diseases** from insured property[.]" The coverage applies when "a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by: 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**."

235. The Policies also provide INTERRUPTION BY COMMUNICABLE DISEASE coverage for "the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY at such **location** with the actual not suspected presence of **communicable disease**." This coverage applies when "a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by: 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**."

236. The Policies define **communicable disease** as "disease which is: transmissible from human to human by direct or indirect contact with an affected individual or the individual's

discharges[.]"

237. COVID-19 is a **communicable disease** under the Policies.

238. The Policies do not exclude loss, cost, or damage caused by **communicable disease**.

239. The Policies do not exclude loss, cost, or damage caused by a virus that causes **communicable disease**.

240. By providing for the "cleanup, removal and disposal of … **communicable disease**," the Policies explicitly recognize that **communicable disease** physically damages property.

241. By excepting from its coverage for **communicable disease** "loss or damage directly or indirectly caused by . . . **terrorism**," the Policies expressly recognize the **communicable disease** causes physical loss or damage.

242. The Policies' express admission that **communicable disease** causes "loss or damage" is confirmed by FM Global's regulatory submissions concerning related policy forms and FM Global's addition of **communicable disease** as a covered peril.

243. Upon information and belief, prior to its inclusion in the Advantage – TE Select coverage form, FM Global and/or its parent and/or sister companies represented to state regulators and the public that the **communicable disease** coverage specifically applied to physical damage caused by **communicable disease**.

244. In another commercial property insurance policy form utilized by FM Global, the FMG7446 form, FM Global stated specifically with respect to the "Communicable Disease" coverage extension, that "**the presence of and the spread of communicable diseases will be considered direct physical damage** and the expenses listed above will be considered expenses

to repair such damage." (Emphasis added). A copy of excerpts from FM Global's regulatory filing regarding the FMG7446 form is attached as Exhibit 4.

245. On information and belief, the **communicable disease** coverage used in the FMG7446 form provides the basis for the **communicable disease** coverages included in the Policies.

246. Accordingly, as evidenced by the Policies' specific response to physical loss or damage caused by the insured peril of **communicable disease**, physical damage to property caused by **communicable disease** is "physical loss or damage of the type insured" under the Policies.

247. The Policies provide CIVIL OR MILITARY AUTHORITY coverage for "the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY if an order of civil or military authority limits, restricts or prohibits partial or total access to an insured **location** provided such order is the direct result of physical damage of the type insured at the insured **location** or within five statute miles/eight kilometers of it."

248. The Coronavirus and COVID-19 caused physical loss or damage throughout the cities, states, and countries where Tapestry's Stores are located, and caused the deprivation of use of such property, including property within five (5) miles of the Tapestry Stores, giving rise to the actions of civil authority in those cities, states, and countries, as set forth herein. These orders prohibited access to the Tapestry Stores. The damage giving rise to the civil authority orders is "of the type insured" by the Policies because the Policies provide coverage for **communicable disease**.

249. The Policies provide CONTINGENT TIME ELEMENT EXTENDED coverage for "the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the

PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured at **contingent time element locations**[.]"

250. The Policies define **contingent time element locations** as including: "A. any **location**: 1) of a direct customer, supplier, contract manufacturer or contract service provider to the Insured; 2) of any company under a royalty, licensing fee or commission agreement with the Insured;" and "B. any **location** of a company that is a direct or indirect customer, supplier, contract manufacturer or contract service provider to a **location** described in A1 above."

251. The CONTINGENT TIME ELEMENT EXTENDED coverage also states: "Time Element loss recoverable under this Extension is extended to include the following TIME ELEMENT COVERAGE EXTENSIONS:

CIVIL OR MILITARY AUTHORITY

CONTINGENT TIME ELEMENT EXTENDED

DATA SERVICE PROVIDER TIME ELEMENT

DELAY IN STARTUP

EXTENDED PERIOD OF LIABILITY

INGRESS/EGRESS

OFF PREMISES DATA SERVICES TIME ELEMENT

ON PREMISES SERVICES

SERVICE INTERRUPTION TIME ELEMENT"

252. In plain English, the Policies provide coverage for Tapestry's losses if the properties of Tapestry's direct and indirect customers or suppliers suffer physical loss or damage "of the type insured" by the Policies, or if such direct and indirect customers or suppliers experience loss of the type covered under the listed TIME ELEMENT EXTENSIONS. Here,

both are true: **communicable disease** is physical loss or damage "of the type insured" by the Policies, and Tapestry's direct and indirect customers and service providers, suffered physical loss or damage, "directly resulting" in losses to Tapestry.

253. Among other things, as set forth herein, the Coronavirus and COVID-19 caused physical loss or damage at **locations** of direct and indirect customers and service providers to Tapestry. Those direct and indirect customers and service providers also suffered loss of the type covered by CIVIL OR MILITARY AUTHORITY, CONTINGENT TIME ELEMENT, INGRESS/EGRESS, EXTENDED PERIOD OF LIABILITY, and other TIME ELEMENT EXTENSIONS due to the Coronavirus and COVID-19.

254. Additionally, as set forth herein, the Coronavirus and COVID-19 rendered such properties unfit and unsafe for their normal usages, resulting in the deprivation of use of such properties. As a result, many of Tapestry's direct and indirect customers, such as Tapestry's retail partners that sell Tapestry products at their own locations (for example, Macy's), were unable to sell Tapestry's products, leading to cancelled and diminished orders and insured losses for Tapestry. Similarly, many of Tapestry's service providers such as factories and other suppliers were unable to meet their obligations to Tapestry, and delayed or cancelled shipments to Tapestry, further diminishing Tapestry's ability to manufacture and/or sell its products, leading to insured losses.

255. The Policies provide ATTRACTION PROPERTY coverage, which covers "the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to an insured **location** and is within 1 statute mile/1.6 kilometers of the insured **location**."

256. In plain English, the Policies provide coverage for Tapestry's losses and EXTRA EXPENSE directly resulting therefrom, if certain types of nearby properties or the properties of Tapestry's direct customers or suppliers suffer physical loss or damage "of the type insured."

257. Among other things, as set forth herein, the Coronavirus and COVID-19 caused physical loss or damage at properties that attract customers to Tapestry's Stores, including the many business amenities and tourist attractions within a short distance of the Tapestry Stores.

258. The Policies provides INGRESS/EGRESS coverage for "the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY due to the necessary interruption of the Insured's business due to partial or total physical prevention of ingress to or egress from an insured **location**, whether or not the premises or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured to property of the type insured."

259. The Coronavirus and COVID-19 caused physical damage to property throughout the cities, states and countries where Tapestry's Stores are located, and caused the deprivation of use of such property. The areas surrounding the Tapestry Stores, like the rest of the cities where the Stores are located, were non-viable destinations in general, thus preventing access to the Tapestry Stores.

260. The Policies provide PROTECTION AND PRESERVATION OF PROPERTY and PROTECTION AND PRESERVATION OF PROPERTY TIME ELEMENT coverages, for "reasonable and necessary costs incurred for actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property" and "the Actual Loss Sustained by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after

the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending insured physical loss or damage to such insured property."

261. Tapestry undertook costly measures necessary to protect the Tapestry Stores from further loss or damage and to mitigate its damages. This included, among other things, altering its property to protect it from physical loss or damage, and taking measures to protect the safety of its employees and customers, including erecting barriers, reconfiguring indoor spaces, disinfecting surfaces and materials, and providing PPE to employees. Additionally, during times of low or no occupancy at or operation at the Tapestry Stores, to mitigate its losses and to protect its property, Tapestry incurred costs associated with security, utilities and maintenance.

262. Tapestry also expects that when the calculation of its losses is fully known, additional coverages under the Policies may be applicable and additional provisions may become relevant. The foregoing is not a comprehensive discussion of all potentially applicable policy coverages, terms, and conditions, which are fully set forth in the Policies.

263. No exclusions apply to Tapestry's claim arising from its losses from the Coronavirus or COVID-19 and from the government orders arising from or relating to the Coronavirus or COVID-19 (the "Tapestry Claim").

***The Policies' Contamination Exclusions Do Not Apply***

264. As detailed above, the Policies provide several coverages applicable to Tapestry's losses. Significantly, these coverages do not refer to "physical loss or damage" or "physical damage" in the abstract, but instead qualify this trigger language by adding the phrase "of the type insured" – meaning that the Policies' general coverage grants are expressly to be interpreted in a manner which provides coverage for types of risk that other provisions in the Policies

indicate are insured.

265. The Policies' Communicable Disease Response coverage provide coverage for, among other things, "the reasonable and necessary costs incurred . . . for the: 1) cleanup, removal and disposal of . . . **communicable disease** from insured property."

266. The Policies' Interruption by Communicable Disease Coverage provide coverage for, among other things, "the Actual Loss Sustained" when "a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease"** and as a result "access to such **location** is limited, restricted or prohibited by: 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease."**

267. As a result, it is clear that "cleanup, removal and disposal" of a **communicable disease**, and business interruption caused by the "actual not suspected presence of a **communicable disease**" is property damage "of the type insured" by the Policies, and this informs the interpretation of other coverages within the Policies that refer to property damage "of the type insured" by the Policies.

268. COVID-19 is a **communicable disease** transmissible from human to human.

269. COVID-19 therefore meets the definition of **communicable disease** under the Policies, and property damage attributable to COVID-19 is property damage "of the type insured" by the Policies.

270. The Policies contain an exclusion that purports to preclude coverage for **contamination** (the "Contamination Exclusion").

271. The Policies define **contamination** as, among other things, a "virus."

272. The Policies cannot simultaneously provide coverage for **communicable disease**, yet purport to simultaneously exclude coverage for "contamination" arising from a virus.

273. Conflicting provisions within the Policies cannot be read to negate certain coverages or in ways that render some coverage provisions mere surplusage. The words of the Policies must be read in a manner that gives meaning to all language, and leaves no provision without force and effect. Otherwise, the coverage would be illusory and the provisions, when read together, would make no sense.

274. The Policies' Contamination Exclusion does not exclude coverage for loss caused by **Communicable Disease**.

275. The Policies' Contamination Exclusion does not exclude coverage for loss caused by COVID-19.

276. The Policies' Contamination Exclusion contains an exception for "radioactive contamination" but not one for **communicable disease**.

277. The Policies cannot, at the same time, preclude coverage for the Coronavirus or COVID-19 while providing it for **communicable disease**.

278. Furthermore, the Contamination Exclusion excludes only contamination and associated "direct" "costs," not "loss" or "damage," or even indirect "costs," such as time element loss and extra expenses.

279. Contamination exclusions like the one FM drafted here apply to traditional pollution, not to natural catastrophes such as the Coronavirus and/or COVID-19. To the extent the Coronavirus and COVID-19 is actually present or suspected of being present at Tapestry's Stores, its presence would be the result of a natural process, as opposed to an act of pollution or contamination. Tapestry reasonably expected and understood that a Contamination Exclusion

would apply to polluting activities, as opposed to natural catastrophes such as the Coronavirus and COVID-19.

280. The Policies' Contamination exclusion does not exclude coverage for Tapestry's claim.

281. In the alternative, the Policies' Contamination Exclusion is ambiguous and, as such, must be construed against the drafter, FM.

***The Policies' Communicable Disease Sublimits Do Not Cap Tapestry's Losses***

282. The Policies afford coverage to Tapestry for the actual presence of **communicable disease** at a Tapestry **location**. This **communicable disease** coverage is present under two sections of the Policies titled "Communicable Disease Response" and "Interruption by Communicable Disease" (together, the "On-Site Communicable Disease Coverages").

283. The Communicable Disease Response provision expressly provides that it is an "Additional Coverage."

284. The Interruption by Communicable Disease Response provision expressly provides that it is a coverage "Extension."

285. The On-Site Communicable Disease Coverages were added to the Policies as "enhancements" to what the base policy form already covered as **communicable disease**.

286. **Communicable disease** is a risk of physical loss or damage not excluded under the Policies.

287. Physical loss or damage caused by **communicable disease** is physical loss or damage of the type insured under the Policies.

288. The Policies contain no provision or wording that designates the On-Site Communicable Disease Coverages as the exclusive coverages applicable to physical loss or

damage caused by **communicable disease.**

289. The On-Site Communicable Disease Coverages do not operate to limit any other coverage under the Policies that may also apply to loss or damage resulting from or caused by **communicable disease**, including physical loss or damage resulting from or caused by **communicable disease** at or away from Tapestry **locations**.

290. Likewise, any sublimit applicable to the On-Site Communicable Disease Coverages does not apply to limit any other coverage under the Policies that may also apply to loss or damage resulting from or caused by **communicable disease**, including physical loss or damage resulting from or caused by **communicable disease** at or away from the Tapestry Stores.

291. The Policies' On-Site Communicable Disease Coverages are not limited by, and are not an "exception to" the Policies' Contamination Exclusion. Rather, that the Policies afford explicit coverage for loss and damage caused by **communicable disease**, while also excluding coverage for **contamination**, which is defined to include, among other things, "virus," clearly demonstrates FM's intent that the Policies' Contamination exclusion has no application to loss or damage caused by **communicable disease** or its causative agent.

292. Rather, coverage for physical loss and damage, and/or resulting business interruption loss, from or caused by **communicable disease**, including physical loss or damage resulting from or caused by **communicable disease** at or away from the Tapestry Stores, is subject to the Policies' limits associated with the coverage or coverages implicated.

293. In addition, the insurance industry has known the risks associated with pandemics for more than a century. These risks have been even more pronounced and evident to FM and insurers generally, in recent decades due to SARS, Ebola, MERS, H1N1, and Zika.

294. Because such risks are well-known to both FM and insurers generally, there are

exclusions in common usage in the insurance industry that could have unambiguously excluded losses caused by communicable diseases, viruses, and pandemics, without also covering such risks.

295. Upon information and belief, prior to the sale and issuance of the Policies, FM was aware of exclusions being used in the insurance industry that purported to expressly exclude loss from "communicable diseases," "viruses," and "pandemic" or "pandemics." ("Virus or Pandemic Exclusions").

296. Upon information and belief, FM was aware of the risk of an infectious viral pandemic such as Middle East respiratory syndrome ("MERS"), Severe acute respiratory syndrome ("SARS") and Avian influenza prior to selling and issuing the Policies.

297. FM did not include any Virus or Pandemic Exclusions in the Policies.

298. To the contrary, the Policies contain two express grants of coverage for **communicable disease**, such that losses from **communicable disease** are affirmatively covered and are of the type insured under the Policies.

299. Because the Policies affirmatively grants coverage for **communicable disease**, neither affirmative coverages can reasonably be understood to be an exception to any exclusion.

***The International Insurance Program***

300. Tapestry maintains insurance coverage covering its operations around the globe, including the Policies and insurance policies covering its operations in specific countries (referred to as "local policies" in the Policies).

301. Each Policy is "designated the Master Global Insuring Policy" and provides coverage in certain circumstances when "the coverage under [a] local policy issued by the Company, its **representative company** or any other insurance company has been exhausted."

The "Company" is defined as FM in the Policies' Declarations, and "**representative company**" is defined as "Factory Mutual Insurance Company, FM Insurance Company Limited or FM Insurance Europe S.A.; Affiliated FM Insurance Company; Appalachian Insurance Company or any other company issuing a local policy at the direction of the Company."

302. "Upon exhaustion of coverage under the local policy" the Policies cover:

A. the difference in definitions, perils, conditions or coverages between the local policy and [the] Policy; and

B. the difference between the limit(s) of liability stated in the local policy and [the] Policy, provided that:

1) the Coverage is provided under [the] Policy;
2) the limit(s) of liability have been exhausted under the local policy; and
3) the deductible(s) applicable to such claim for loss or damage under the local policy has been applied. If the deductible applied in the local policy is different from the deductible that would have been applied for such losses under [the] Policy, then [the] Policy will provide for such difference in deductible.

303. Tapestry also expects that when the calculation of its losses is fully known, additional coverages under the Policies may be applicable and additional provisions may become relevant. The foregoing is not a comprehensive discussion of all potentially applicable policy coverages, terms, and conditions, which are fully set forth in the Policies.

**L. FM's Bad Faith Conduct**

304. Aware that its Global Advantage® Time Element Select ™ policy form (the "Global Advantage Form") affords coverage for COVID-19 losses beyond the sublimited On-Site Communicable Disease Coverages, FM nevertheless specifically trained its claims adjusters to limit its insureds to only these limited coverages and, in bad faith, steer claims into those grants to the exclusion of other, larger coverages.

305. FM outlined its systematic practice in a set of "Talking Points on the 2019 Novel

Coronavirus (2019-nCoV)" (the "Talking Points") prepared for FM claims adjusters to use to ensure that they reach the conclusion that there is no coverage for COVID-19 related claims beyond the paltry On-Site Communicable Disease Coverages.[176]

306. FM drafted the Talking Points.

307. FM provided the Talking Points to its personnel for use when adjusting claims based on the Coronavirus and/or COVID-19.

308. The Talking Points outline only a few of the many different coverages contained in its Global Advantage Form – *i.e.*, the policy form on which the Policies issued to Tapestry are based.

309. The Talking Points outline certain specific "triggers" of coverage that the adjuster should look for when investigating any COVID-19 claim.

310. Notably, the only "triggers" identified in the Talking Points are those applicable to the On-Site Communicable Disease Coverages and the Talking Points entirely fail to mention all of the different "triggers" of coverage that may be implicated by COVID-19 claims.

311. By including only the On-Site Communicable Disease Coverages as coverages potentially applicable to a COVID-19 claim, the FM Talking Points steer adjusters to only seek information that pertains to the On-Site Communicable Disease Coverages.

312. In fact, the FM Talking Points expressly and unequivocally foreclose the availability of coverage under the Policies' Civil or Military Authority coverage provision, where the FM Talking Points state:

Q. Does coverage under Civil or Military Authority apply?

A. No

[176] A copy of FM's "Talking Points" is annexed hereto as Exhibit 5.

313. Upon information and belief, FM had no factual basis for the foregoing statement concerning Civil Authority coverage when it prepared that statement for use in the Talking Points.

314. The FM Talking Points make similar false statements with respect to the Policies' Contingent Time Element Extended coverage.

315. Upon information and belief, FM likewise lacked factual basis for its statement concerning Contingent Time Element Extended coverage and other coverages addressed in the Talking Points.

316. The FM Talking Points further instruct that "the presence of a **communicable disease** does not constitute physical damage and is not of the type insured against as a virus falls within the definition of **contamination**, which is excluded."

317. This foregoing instruction is false and misleading. Indeed, as alleged above, the Policies recognizes that the presence of **communicable disease** causes physical damage to property because, among other things, it provides coverage for the resulting "cleanup, removal and disposal of … **communicable disease**."

318. The Talking Points instruct FM's claim handlers to reach conclusions without evaluating the unique facts of a specific claim or applicable law.

319. The Talking Points push FM's claim handlers to steer its policyholders toward the On-Site Communicable Disease Coverages, which offer a sliver of that coverage otherwise provided by the Policies.

320. The Talking Points violate and are in derogation of accepted practices of good faith insurance claim handling.

321. FM's use of the Talking Points constitutes an unfair or deceptive act or practice in

the business or insurance.

322. FM's use of the Talking Points reflects a conscious disregard of its policyholders' rights under the Policies and of FM placing its own interests above that of its policyholders.

323. By directing its adjusters away from the other coverages in the Global Advantage Form that may (and here do) cover COVID-19-related losses, FM ensured that such coverages would not be considered, that a proper investigation would not be conducted, and that the wrong coverage determination would be reached.

324. Ironically, although improperly designed to steer its adjusters to only those coverages with paltry sublimits, the Talking Points concede that the actual presence of COVID-19 on insured property constitutes property "damage" as used in the Policies.

## M. FM Executes its Talking Points Playbook by Steering Tapestry's Claim Toward the Sublimited On-Site Communicable Disease Coverages, Effectively Denying Coverage Even Under Those Coverages and Denying Under the Other Coverages

325. On or about April 2, 2020, Tapestry provided notice to FM of the Tapestry Claim under the 2019/2020 Policy.

326. On April 14, 2020, FM's adjuster acknowledged receipt of the Tapestry Claim via letter and reserved FM's rights. The adjuster, however, immediately, began executing on FM's playbook from its Talking Points of steering the claim directly and exclusively toward the Policies' sublimited On-Site Communicable Disease Coverages. To that end, FM's letter:

- stated that "COVID-19 meets the definition of a communicable disease under the policy";
- set forth what the FM adjuster claimed were "[o]ther key conditions of" the On-Site Communicable Disease Coverages";
- quoted, at length, from the 2019/2020 Policy's Communicable Disease Response

and Interruption by Communicable Disease coverages; and

- asked a series of requests for information ("RFIs") designed to steer the Tapestry Claim toward solely the On-Site Communicable Disease Coverages.

327. FM's April 14, 2020 letter never mentioned the 2019/2020 Policy's TIME ELEMENT COVERAGE or its coverages for LEASEHOLD INTEREST, EXTRA EXPENSE, CIVIL OR MILITARY AUTHORITY, CONTINGENT TIME ELEMENT, INGRESS/EGRESS, PROTECTION AND PRESERVATION OF PROPERTY. Nor did FM ever request to visit or inspect any of Tapestry's Stores.

328. On May 13, 2020, Tapestry responded to FM's RFIs, sending an email with the requested information and including multiple attachments.

329. On May 26, 2020, FM issued another letter stating that it was establishing a single claim file and a single claim number and reserving FM's rights.

330. The May 26, 2020 letter continued FM's Talking Points strategy of steering the Tapestry Claim exclusively toward the On-Site Communicable Disease Coverage. Particularly, the letter:

- requested a few additional items of information relating to the closure of certain Tapestry Stores following positive COVID-19 tests of Tapestry Store employees; and
- never mentioned the 2019/2020 Policy's TIME ELEMENT COVERAGE or its coverages for LEASEHOLD INTEREST, EXTRA EXPENSE, CIVIL OR MILITARY AUTHORITY, CONTINGENT TIME ELEMENT, INGRESS/EGRESS, PROTECTION AND PRESERVATION OF PROPERTY.

331. As with its prior letter, FM's May 26, 2020 letter never requested to visit or

inspect any of Tapestry's Stores.

332. On September 29, 2020, FM issued another letter once again reserving its rights and serving amended RFIs to steer the Tapestry Claim exclusively toward the On-Site Communicable Disease Coverages. Once again, the FM letter never mentioned the 2019/2020 Policy's TIME ELEMENT COVERAGE or its coverages for LEASEHOLD INTEREST, EXTRA EXPENSE, CIVIL OR MILITARY AUTHORITY, CONTINGENT TIME ELEMENT, INGRESS/EGRESS, PROTECTION AND PRESERVATION OF PROPERTY.

333. On November 6, 2020, Tapestry provided information responsive to FM's September 29, 2020 amended RFIs. Tapestry also reminded FM that Tapestry's claim was far broader than merely the On-Site Communicable Disease Coverages and that FM's RFI's were "narrowly focused" on just those coverages. Specifically, Tapestry stated:

> As an initial matter, your letter implies that the only losses identified to date are losses caused by the actual presence of COVID-19 at insured locations. This is incorrect. Among other things, Tapestry has suffered and continues to suffer losses and incur extra expenses and preservation and protection of property costs, as well as mitigation and other costs to reduce losses, due to federal, state and local orders issued as a result of physical damage and the presence of individuals affected by COVID-19 within five (5) statute miles of multiple insured locations, physical restrictions preventing ingress and egress from insured locations, efforts undertaken to preserve and protect insured locations, and other covered costs under the Policy.
>
> We note that your requests are narrowly focused on the presence of COVID-19 at insured locations. But please be clear, as we assume you already are, that our losses are far greater and not so limited.

334. As of the filing of this Complaint, almost 15 months after Tapestry provided notice of the Tapestry Claim, FM has not agreed to provide the urgently needed coverage and has not provided any coverage determination under the 2019/2020 Policy.

335. On June 9, 2021, Tapestry provided notice to FM of the Tapestry Claim under the 2020/2021 Policy.

336. On June 22, 2021 – less than two weeks after notice of the Tapestry Claim under the 2020/2021 Policy – FM issued a letter to Tapestry denying coverage for the Tapestry Claim under the 2020/2021 Policy under all coverages with the sole exception of the On-Site Communicable Disease Coverages. In its letter, using language entirely consistent with its Talking Points, FM concluded that the 2020/2021 Policy's provisions other than the On-Site Communicable Disease Coverages "require physical loss or damage . . . as one of the conditions of coverage and the presence of COVID-19 does not cause physical loss or damage so that condition cannot be met." FM also contended that the 2020/2021 Policy's Contamination Exclusion applied to bar coverage, stating, "the Policy excludes coverage for contamination. The presence of a virus, pathogen, or disease causing or illness causing agent such as COVID-19 is a form of contamination as defined in our Policy, which is excluded."

337. Finally, in its June 22, 2021 letter, FM, again consistent with its Talking Points, asked a series of RFIs designed to steer the Tapestry Claim toward solely the On-Site Communicable Disease Coverages.

**FIRST CAUSE OF ACTION**
**(Declaratory Judgment)**

338. Tapestry incorporates the above Paragraphs by reference.

339. This is a cause of action for declaratory judgment pursuant to Maryland Uniform Declaratory Judgments Act, Section 3-401 *et seq.* of the Courts and Judicial Proceedings Article of the Maryland Code. An actual and justiciable controversy exists between Tapestry and FM concerning their respective rights and obligations under the Policies.

340. The issuance of a declaratory judgment by this Court is necessary to resolve the existing controversy among the parties.

341. As such, this Court has the authority to issue a declaratory judgment concerning

the respective rights and obligations of Tapestry and FM under the Policies.

342. Tapestry seeks a declaratory judgment declaring that the Policies cover the losses it has suffered.

343. Tapestry seeks a declaratory judgment declaring that FM is responsible for fully and timely paying the Tapestry Claim.

344. The burden of proof is upon FM to demonstrate that coverage is limited in any way under the Policies.

**SECOND CAUSE OF ACTION**
**(Breach of Contract)**

345. Tapestry incorporates Paragraphs 1-337 above by reference.

346. The Policies are valid and enforceable contracts.

347. Tapestry paid a substantial premium for the Policies and the promises of coverage contained therein, and otherwise performed all of its obligations owed under the Policies or was excused from performance.

348. FM has yet to issue a coverage determination regarding the Tapestry Claim under the 2019/2020 Policy and has refused to pay or otherwise honor its promises, effectively denying coverage to Tapestry. In effectively denying coverage for the Tapestry Claim as alleged above, FM breached its contract (that is, the 2019/2020 Policy).

349. FM has denied coverage for the Tapestry Claim under all coverages of the 2020/2021 Policy with the sole exception of its On-Site Communicable Disease Coverages. As such, FM breached its contract (that is, the 2020/2021 Policy).

350. As a result of FM's breaches of contract, Tapestry has suffered and continues to suffer damage in an amount to be proven at trial, but currently estimated to exceed hundreds of millions of dollars in damages.

351. By failing to investigate the Tapestry Claim, FM breached its duty of good faith and fair dealing to its insured. As a result, Tapestry is entitled to consequential damages for FM's breach of the Policies.

352. Consequential damages for breach of the Policies were reasonably contemplated by the parties when FM issued the Policies.

## PRAYER FOR RELIEF

Wherefore, Plaintiff Tapestry respectfully requests that the Court enter Judgment in its favor against Defendant FM as follows:

1. On the First Cause of Action, a declaratory judgment that the losses Tapestry has suffered are covered by the Policies and that Defendant is responsible for fully and timely paying Tapestry's losses;
2. On the Second Cause of Action, for an award of damages in favor of Tapestry in an amount to be proven at trial, plus pre- and post-judgment interest at the maximum legal rate, attorneys' fees, costs, and disbursements for this action; and
3. For such other relief as this Court deems equitable and proper.

## DEMAND FOR JURY TRIAL

Plaintiff Tapestry, Inc. demands a trial by jury for all issues so triable.

Deborah B. Baum

Dated: June 24, 2021

Respectfully submitted,

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