

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

**I. (a) PLAINTIFF(S)**  
HILCO, INC.

**DEFENDANT(S)**  
HARTFORD FIRE INSURANCE COMPANY

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** Fulton County, GA  
(EXCEPT IN U.S. PLAINTIFF CASES)

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS** (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)  
  
Mathis L. Wilkens  
Weener Nathan Phillips, LLP  
5887 Glenridge Drive, N.E., Suite 275  
Atlanta, GA 30328  
(770) 392-9004  
mwilkens@wnplp.com

**ATTORNEYS** (IF KNOWN)  
  
Elizabeth J. Bondurant, John G. Perry  
Womble Bond Dickinson (US) LLP  
271 17th Street, N.W., Suite 2400  
Atlanta, GA 30363  
(404) 879-2441  
Elizabeth.Bondurant@wbd-us.com John.Perry@wbd-us.com

**II. BASIS OF JURISDICTION**  
(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
- 2 U.S. GOVERNMENT DEFENDANT
- 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**  
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
(FOR DIVERSITY CASES ONLY)

- |                                       |                            |                            |                                       |
|---------------------------------------|----------------------------|----------------------------|---------------------------------------|
| PLF                                   | DEF                        | PLF                        | DEF                                   |
| <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |
- CITIZEN OF THIS STATE  
CITIZEN OF ANOTHER STATE  
CITIZEN OR SUBJECT OF A FOREIGN COUNTRY  
INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE  
INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE  
FOREIGN NATION

**IV. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
- 2 REMOVED FROM STATE COURT
- 3 REMANDED FROM APPELLATE COURT
- 4 REINSTATED OR REOPENED
- 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- 6 MULTIDISTRICT LITIGATION - TRANSFER
- 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
- 8 MULTIDISTRICT LITIGATION - DIRECT FILE

**V. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. § 1332(a); breach of contract

**(IF COMPLEX, CHECK REASON BELOW)**

- 1. Unusually large number of parties.
- 2. Unusually large number of claims or defenses.
- 3. Factual issues are exceptionally complex.
- 4. Greater than normal volume of evidence.
- 5. Extended discovery period is needed.
- 6. Problems locating or preserving evidence.
- 7. Pending parallel investigations or actions by government.
- 8. Multiple use of experts.
- 9. Need for discovery outside United States boundaries.
- 10. Existence of highly technical issues and proof.

**CONTINUED ON REVERSE**

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ MAG. JUDGE (IFP) \_\_\_\_\_  
 JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_ (Referral) NATURE OF SUIT \_\_\_\_\_ CAUSE OF ACTION \_\_\_\_\_

**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK
- 880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 485 TELEPHONE CONSUMER PROTECTION ACT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT 899
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

- CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_
- JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

**CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)**

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ John G. Perry

November 4, 2020

SIGNATURE OF ATTORNEY OF RECORD

DATE

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

HILCO, INC.,	)	
	)	
Plaintiff,	)	
	)	Civil Action File No.:
v.	)	
	)	
HARTFORD FIRE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**DEFENDANT HARTFORD FIRE INSURANCE COMPANY’S  
NOTICE OF REMOVAL**

Defendant HARTFORD FIRE INSURANCE COMPANY (“Hartford Fire”), by and through its undersigned counsel, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this statement on the grounds for removing this cause of action to the United States District Court for the Northern District of Georgia, together with a copy of all process, pleadings and orders served upon Hartford Fire in the state court case. In support of removal, Hartford Fire states the following:<sup>1</sup>

---

<sup>1</sup> Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Hartford Fire’s rights to assert any defense, including, but not limited to those defenses available under Rule 12 of the Federal Rules of Civil Procedure or otherwise.

1. On September 30, 2020, Plaintiff Hilco, Inc. (“Hilco”) sued Hartford Fire for breach of contract arising out of the policy of insurance between Hartford Fire and Plaintiff (the “Policy”). Plaintiff’s lawsuit stems from Hartford Fire’s denial of Plaintiff’s claims for coverage for loss of business income and extra expense resulting from the “spread of COVID-19, and the corresponding orders and mandates from civil authorities throughout the country requiring the suspension of businesses like Hilco’s . . .” Compl. ¶ 44.

2. The lawsuit is pending in the Superior Court of Gwinnett County, Georgia under Case No. 20-A-06570-7 (the “State Action”).

3. On October 6, 2020, Hartford Fire was served with a Summons and copy of the Complaint in connection with the State Action.

4. Hartford Fire timely files this Notice of Removal within 30 days of service in accordance with 8 U.S.C. § 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), requiring a copy of all process, pleadings, and orders served upon Defendant to be included with a notice of removal, the Complaint and Summons, and attachments thereto (Pl. Compl. Exs. “A,” “B,” and “C”), are attached hereto as **Exhibit “1”**. No other documents have been served on Hartford Fire.

6. Venue is proper in this Division in accordance with 28 U.S.C. § 1441(a).

7. This case is properly removable to federal court because it involves a controversy between citizens of different states and an amount in controversy that exceeds the sum or value of \$75,000, exclusive of interest and costs. *See* U.S.C. §§ 1332, 1441, and 1446.

8. Plaintiff, Hilco, Inc., is a Georgia corporation with a principal place of business in Georgia.<sup>2</sup> Compl. ¶ 1. Plaintiff is a citizen of Georgia for diversity purposes. *See* 28 U.S.C. § 1332(c).

9. Hartford Fire is incorporated in Connecticut with a principal place of business in Connecticut.<sup>3</sup> Hartford Fire is a citizen of Connecticut, not Georgia, for diversity purposes. *See* 28 U.S.C. § 1332(c).

10. The parties are therefore diverse.

11. The Complaint alleges that Hartford Fire “is obligated to pay Hilco for the full amount of the **Business Income** and **Extra Expense** losses **incurred and to be incurred** in connection with the period interruption, suspension, and

---

<sup>2</sup> *See also* Georgia Secretary of State, HILCO, INC., available at <http://https://ecorp.sos.ga.gov/BusinessSearch> (last visited October 30, 2020).

<sup>3</sup> *See* <https://www.thehartford.com/legal-notice> (last visited October 30, 2020).

restoration of its business stemming from the COVID-19 pandemic.” Compl. ¶ 68 (emphasis added).

12. The Complaint does not allege any specific amount of damages regarding Business Income Coverage under the Policy. Nonetheless, the Policy provides varying coverage amounts at values greater than the \$75,000 minimum threshold required for removal. *See* Pl. Ex. “A”.

13. In addition, the Complaint alleges that the Policy’s Extra Expense Coverage provides coverage “capped at \$50,000.” Compl. ¶ 18.

14. The Complaint further alleges that Plaintiff is seeking punitive damages, costs, and attorneys’ fees pursuant to O.C.G.A. § 13-6-11. *Id.* “Count V”.

15. The amount in controversy in this action exceeds the \$75,000 threshold required by 28 U.S.C. § 1332(a). Where, as here, a complaint does not seek a specific amount of damages, a defendant’s notice of removal “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Op. Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). If that amount is challenged, a court must determine whether the jurisdictional threshold is satisfied based on a preponderance of the evidence. *Id.* at 88. “In actions seeking declaratory or injunctive relief, it is well established that the

amount in controversy is measured by the value of the object of the litigation.”

*Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333 (1977).

16. In addition, requests for punitive damages and attorneys’ fees are both relevant to determining whether the value of the litigation exceeds the \$75,000 threshold. *See Holley Equip. Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir. 1987) (considering punitive damages in calculation of amount in controversy); *Byars v. Hartford Cas. Ins. Co.*, No. 4:09-CV-81 (CDL), 2009 WL 3077128, at \*1 (M.D. Ga. Sept. 23, 2009) (counting plaintiff’s claim for attorneys’ fees in calculating the amount in controversy). Indeed, because Plaintiff is seeking attorneys’ fees pursuant to O.C.G.A. § 13-6-11, there is direct legal authority for including attorneys’ fees permitted by the statute in the amount in controversy calculation. *See Byars*, at \*1; *Federated Mut. Ins. Co. v. McKinnon Motors, LLC*, 329 F.3d 805, 808 n. 4 (11th Cir. 2003).

17. Here, the Complaint alleges five causes of action, seeking declaratory relief, breaches of contract, punitive damages, and attorney’s fees. The Complaint does not demand a specific amount of damages. Nevertheless, Plaintiff’s allegations demonstrate that the amount in controversy exceeds \$75,000, exclusive of interests and costs. Plaintiff alleges that its property headquartered in Fulton County, Georgia “employs multiple personnel in varying positions related to the

business.” Compl. ¶ 11. Plaintiff further alleges that, on April 2, 2020, Georgia Governor Brian Kemp issued an order that “residents and visitors of the State of Georgia are required to shelter in place within their homes or places of residence . . .” Id. ¶ 31. Plaintiff alleges Governor Kemp and other government officials “decided to prohibit access to Hilco’s premises, thus suspending their normal business activities,” and as a result, “Hilco lost Business Income and incurred Extra Expense.” Id. ¶¶ 46-47.

18. In addition, Plaintiff alleges “Hilco has sustained substantial damages” (id. ¶¶ 75, 80) and “Hartford is obligated to pay Hilco for the full amount of the Business Income and Extra Expense losses incurred and to be incurred in connection with the periods interruption, suspension, and restoration of its business.” Id. ¶ 68(iii). Plaintiff filed its Complaint on September 30, 2020. As of that time, the conditions that allegedly triggered Plaintiff’s business income losses appeared to be ongoing.

19. As of the time of removal, therefore, Plaintiff has allegedly already incurred a “substantial” loss of business income and may claim additional amounts in the future. In addition, Plaintiff seeks punitive damages and attorneys’ fees as part of this action against Hartford Fire. This evidence supports a plausible allegation that the amount in controversy exceeds \$75,000.



20. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as a district or division embracing the place where the State Action is pending. The time within which Hartford Fire is required to file this Notice of Removal in order to remove this cause to the Court has not yet expired.

21. Attached as **Exhibit “2”** is a copy of the Certification of Notice of Removal, which will be filed by Hartford Fire in the pending State Action.

22. Attached as **Exhibit “3”** is a copy of the Notice of Removal to Opposing Counsel, which will be filed by Hartford Fire in the pending State Action.

WHEREFORE, Defendant HARTFORD FIRE INSURANCE COMPANY respectfully requests that this Honorable Court exercise jurisdiction over this matter.

Respectfully submitted his 4<sup>th</sup> day of November, 2020.

WOMBLE BOND DICKINSON (US), LLP

s/ John G. Perry  
Elizabeth J. Bondurant  
Georgia Bar No. 066690  
John G. Perry  
Georgia Bar No. 141609  
271 17<sup>th</sup> Street, NW,  
Suite 2400  
Atlanta, GA 30363-1017  
(404) 872-7000 (telephone)  
[lisa.bondurant@wbd-us.com](mailto:lisa.bondurant@wbd-us.com)

[john.perry@wbd-us.com](mailto:john.perry@wbd-us.com)

Sarah D. Gordon  
Will Drake  
Yvonne Malino  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Phone: 202-429-8005  
Email: [sgordon@steptoe.com](mailto:sgordon@steptoe.com)  
*Pro Hac Vice Applications*  
*Forthcoming*

*Attorneys for Defendant Hartford*  
*Fire Insurance Company*

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing **DEFENDANT HARTFORD FIRE INSURANCE COMPANY'S NOTICE OF REMOVAL** on the following parties by electronic mail and depositing same in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon as follows:

Mathis L. Wilkens, Esq.  
Weener Nathan Phillips, LLP  
5887 Glenridge Drive, N.E.  
Suite 275  
Atlanta, GA 30328  
[mwilkens@wnpllp.com](mailto:mwilkens@wnpllp.com)

*Counsel for the Plaintiff*

This 4th day of November, 2020.

s/ John G. Perry  
John G. Perry  
Georgia Bar No. 141609

# **EXHIBIT “1”**

IN THE SUPERIOR COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

*Richard T. Alexander, Jr.*  
CLERK OF SUPERIOR COURT

HILCO, INC., )

Plaintiff, )

v. )

✓ HARTFORD FIRE INSURANCE )  
COMPANY, )

Defendant. )

CIVIL ACTION FILE NO.:  
20-A-06570-7

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file electronically with the Clerk of said court at <https://efilega.tylerhost.net/ofswb> and serve upon Plaintiffs' attorney, whose name and address is:

Mathis L. Wilkens, Esq.  
WEENER NATHAN PHILLIPS, LLP  
5887 Glenridge Drive, NE, Suite 275  
Atlanta, Georgia 30328  
Telephone: (770) 392-9004; Fax: (770) 522-9004

An answer to the complaint, which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service; unless proof of service of this complaint is not filed within five (5) business days of such service. Then time to answer shall not commence until such proof of service has been filed. **IF YOU FAIL TO DO SO, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

This 30 day of SEPTEMBER, 2020.

Richard T. Alexander, Jr.  
Clerk of Superior Court

By: *Richard T. Alexander, Jr.*  
Deputy Clerk

E-FILED IN OFFICE - NV  
CLERK OF SUPERIOR COURT  
GWINNETT COUNTY, GEORGIA  
20-A-06570-7  
9/30/2020 2:50 PM

General Civil and Domestic Relations Case Filing Information Form

Superior or  State Court of Gwinnett County

*John S. Alumbaugh*  
CLERK OF SUPERIOR COURT

<b>For Clerk Use Only</b>	<b>20-A-06570-7</b>
Date Filed _____	Case Number _____
MM-DD-YYYY	

**Plaintiff(s)**

HILCO, INC.

Last	First	Middle I.	Suffix	Prefix

**Defendant(s)**

HARTFORD FIRE INSURANCE COMPANY

Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney Mathis L. Wilkens Bar Number 930847 Self-Represented

Check One Case Type in One Box

- General Civil Cases**
- Automobile Tort
  - Civil Appeal
  - Contempt/Modification/Other
  - Post-Judgment
  - Contract
  - Garnishment
  - General Tort
  - Habeas Corpus
  - Injunction/Mandamus/Other Writ
  - Landlord/Tenant
  - Medical Malpractice Tort
  - Product Liability Tort
  - Real Property
  - Restraining Petition
  - Other General Civil

- Domestic Relations Cases**
- Adoption
  - Contempt
    - Non-Payment of child support, medical support, or alimony
  - Dissolution/Divorce/Separate Maintenance/Alimony
  - Family Violence Petition
  - Modification
    - Custody/Parenting Time/Visitation
  - Paternity/Legitimation
  - Support - IV-D
  - Support - Private (non-IV-D)
  - Other Domestic Relations

Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

\_\_\_\_\_ Case Number \_\_\_\_\_ Case Number

I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

Is a foreign language or sign-language interpreter needed in this case? If so, provide the language(s) required.

\_\_\_\_\_ Language(s) Required

Do you or your client need any disability accommodations? If so, please describe the accommodation request.

IN THE SUPERIOR COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

*Robert J. Alumbaugh*  
CLERK OF SUPERIOR COURT

HILCO, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
HARTFORD FIRE INSURANCE )  
COMPANY, )  
)  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION FILE NO.:  
20-A-06570-7

**VERIFIED PETITION FOR DECLARATORY JUDGMENT, COMPLAINT FOR DAMAGES, AND DEMAND FOR TRIAL BY JURY**

COMES NOW HILCO, INC, a Georgia corporation (“Hilco”), Plaintiff in the above styled civil action, and for its Verified Petition for Declaratory Judgment, Complaint for Damages, and Demand for Trial by Jury (the “Complaint”) avers the following:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Hilco, Inc., is a Georgia corporation with a principal place of business at 5170 Roswell Road, Sandy Springs, Georgia 30342.
2. Defendant Hartford Fire Insurance Company (“The Hartford”) is a Connecticut for-profit insurance company with its principal place of business located at One Hartford Plaza, Hartford, Connecticut. It may be served through its Registered Agent CT Corporation System at 289 South Culver Street, Lawrenceville, Gwinnett County, Georgia 30046.
3. Plaintiff files this lawsuit against Defendant seeking a judgment declaring the scope of The Hartford’s obligation to pay Hilco’s losses related to the novel coronavirus under a Business Insurance Policy owned by Hilco, and damages for Breach of Contract.
4. This Court has subject matter jurisdiction over this lawsuit pursuant to the Georgia

Declaratory Judgment Act (the “DJA”), O.C.G.A. §§ 9-4-1, et seq.

5. Plaintiff is an interested party pursuant to O.C.G.A. §§ 9-4-2 and 9-4-4.

6. Venue is proper in this Court as The Hartford’s registered agent resides in Gwinnett County.

**GENERAL ALLEGATIONS**

7. Hilco represents manufacturers in the field of industrial and process automation control products.

8. The Hartford sells a variety of insurance products, serving insurance needs for more than one million small businesses.

9. As a part of insurance lines that The Hartford offers, business insurance is marketed and sold to help “protect business owners from unexpected losses.”

10. Included within its standard business insurance line of products, The Hartford offers Business Income Insurance (“BII”), also known as business interruption coverage, which is intended to cover costs if a business is forced to move, close, or rebuild in the event of a disaster.

11. Hilco has its headquarters in Fulton County and employs multiple personnel in varying positions related to the business.

12. Given that certain events outside of Hilco’s control could lead to an interruption of business and lost revenue, Hilco, Inc. purchased a Special Multi-Flex Business Insurance Policy from The Hartford (the “Policy”), with a Policy Period from July 15, 2019 through July 15, 2020, which included “Property Choice” and “Commercial General Liability” coverage.<sup>1</sup>

13. The “Property Choice” insurance includes coverage for “Business Income,” and

---

<sup>1</sup> See Hilco’s Special Multi-Flex Insurance Policy incorporated herein and attached hereto as Exhibit A p. 4.



“Extra Expense Coverage”

14. Coverage under The Hartford’s Policy includes “Property Choice – Specialized Property Insurance Coverages.”<sup>2</sup>

15. The Policy also has a “Property Choice Coverage Form,” which sets forth the terms of coverage for Business Income and Extra Expense Coverage.

16. The “Property Choice – Covered Causes of Loss and Exclusions Form” states that “Covered Causes of Loss means direct physical loss or direct physical damage that occurs during the Policy Period and in the Coverage Territory unless the loss or damage is excluded or limited in this policy.”

17. Additionally, the Policy also provides “Extra Expense and Expediting Expenses (Other Than Equipment Breakdown Expediting Expenses” coverage, in which The Hartford promises to pay for expenses incurred to restore a business to normal services.

18. The Extra Expense Coverage clause explains that, “In the event of a Covered Cause of Loss to Covered Property at a ‘Scheduled Premises’ [Hilco] may extend the insurance provided by this coverage form to apply to the actual, necessary and reasonable ... Extra expenses [Hilco] incur[s] to continue as nearly as possible [Hilco’s] normal business operations immediately following the covered loss or damage” capped at \$50,000.<sup>3</sup>

### **COVID-19 PANDEMIC**

19. In 2019, a new and significant outbreak of a severe respiratory disease (COVID-19), caused by a novel coronavirus (SARS-Cov-2), originated in Wuhan China and quickly began to spread across the globe.

---

<sup>2</sup> See Exhibit A, p. 22.

<sup>3</sup> See Exhibit A, p. 26.

20. The first known case of COVID-19 was reported in the state of Washington in January of 2020.

21. SARS-CoV-2 is spread through respiratory droplets in the air and on surfaces.

22. The virus can survive in the air and on surfaces for an extended period of time.

23. The virus has an incubation period of two to twelve days, and during that time it can be transmitted to others before symptoms develop.

24. Symptoms include, but are not limited to, fever, cough, shortness of breath, and even pneumonia.

25. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic.

26. In efforts to curb the spread of the virus and in response to the rapidly spreading pandemic, federal, state, and local governments implemented temporary travel restrictions and guidelines advising against essential travel.

27. The Centers for Disease Control and Prevention (“CDC”) identified the potential public health threat posed by COVID-19 in the United States, and advised that COVID-19 was spreading quickly via direct and indirect contact with infected persons and surfaces.

28. On March 13, 2020, President Donald Trump declared the outbreak of COVID-19 a national emergency beginning March 1, 2020.

29. In response, many state and local governments enacted measures to combat the spread of the virus by declaring public health emergencies and issuing stay at home orders.

30. On March 14, 2020, Georgia Governor Brian Kemp declared a Public Health State of Emergency.

31. On April 2, 2020, Governor Kemp issued an Executive Order, ordering that “all

residents and visitors of the State of Georgia are required to shelter in place within their homes or places of residence ... taking every possible precaution to limit social interaction to prevent the spread or infection of COVID-19 to themselves or any other person....”

32. According to the Georgia Department of Public Health, there have been over 312,000 confirmed COVID-19 cases in Georgia, and over 6,900 individuals perished from COVID-19 in Georgia alone.

33. In Fulton County, Georgia, where the Plaintiff’s “scheduled premises” is located, there have been over 27,000 confirmed COVID-19 cases and over 575 deaths.

34. Upon information and belief, The Hartford has, on a wide-scale and uniform basis, refused to pay its insureds under its Business Income and Extra Expense coverages for losses suffered due to the spread of COVID-19.

35. Due to the spread of COVID-19, governmental shelter-in-place orders, and other governmental recommendations and restrictions, Hilco has suffered significant losses of Business Income and has expended significant.

36. In return for the payment of a premium, The Hartford issued Policy No. 37 UUN PO8559 K3 to Hilco Inc., Vernon A Hill Jr., and Julie K Hill for a policy period beginning of July 15, 2019 to July 15, 2020, including “Property Choice” insurance coverage and “Commercial General Liability” insurance coverage.<sup>4</sup>

37. Hilco, Inc., Vernon A Hill Jr., and Julie K. Hill have performed all of their obligations under The Hartford Policy, including payment of all premiums and submission of a claim.

---

<sup>4</sup> See Exhibit A

38. Among other coverages, the Policy covers loss of Business Income and Extra Expense due to the shutdown and physical and economic impacts caused by COVID-19.

39. The Policy is an all-risk policy. This type of policy covers all risks of loss except for those expressly and specifically excluded.

40. Under the Policy, The Hartford's Property Choice Coverage Form provides The Hartford will "pay for direct physical loss of or physical damage to ... Covered Property caused by or resulting from a Covered Cause of Loss."

41. "Covered Causes of Loss" are defined in the insurance contract as "direct physical loss or direct physical damage" subject to various exclusions and limitations.

42. Losses due to COVID-19 are not excluded and therefore are a "Covered Causes of Loss" under the Policy.

43. The Hartford also agreed to pay necessary "Extra Expense" incurred by its insureds.

44. The spread of COVID-19, and the corresponding orders and mandates from civil authorities throughout the country requiring the suspension of businesses like Hilco's constitute physical damage to the premises and a loss that is covered under the Policy.

45. The presence of COVID-19 is the cause of "direct physical loss" and "physical damage" to those premises covered under Plaintiff's policy by denying use of and damage to the "covered premises" and by the involuntary suspension of all non-emergent business operations.

46. In response to COVID-19, the federal government, the World Health Organization, the Centers for Disease Control and Prevention, the Georgia Department of Public Health, and Governor Kemp all decided to prohibit access to Hilco's premises, thus suspending their normal business activities.

47. As a result of the presence of COVID-19 and the orders of the governmental

authorities, Hilco lost Business Income and incurred Extra Expense.

48. Hilco made a claim in June of 2020 seeking coverage for Business Income Loss and Extra Expense coverage to recover for losses suffered as a result of the impacts COVID-19 had on the business.

49. The Hartford acknowledged receipt of the claim in a letter (the “Acknowledgement”) dated June 15, 2020.<sup>5</sup>

50. The Hartford summarily denied the claim in a letter (the “Denial Letter”) dated the same very same day, June 15, 2020.<sup>6</sup>

51. As a basis for denying coverage under the policy, The Hartford maintained “since COVID-19 did not cause property damage at your place of business or in the immediate area, this loss is not covered.”

52. The Hartford has, on a wide-scale basis with many if not all of its insureds, refused to provide coverage under the Policy for losses due to COVID-19.

53. The Hartford has dedicated a page on its website to the impacts of COVID-19 on business operations, asserting coverage is not designed to apply in the case of a virus.

54. The Hartford is effectively denying all claims for business interruption coverage related to COVID-19.

55. Given the rapid denial of such claims, The Hartford has failed to adequately investigate the factual occurrence of Hilco’s claim, instead issuing an automated blanket denial of all claims.

56. In issuing blanketed denials resulting from the spread of COVID-19, The Hartford

---

<sup>5</sup> See Acknowledgement of Claim Letter dated June 15, 2020 incorporated herein and attached hereto as **Exhibit B**.

<sup>6</sup> See Denial Letter dated June 15, 2020 incorporated herein and attached hereto as **Exhibit C**.

is breaching its contractual obligation with its insureds, who are entitled to the coverages afforded by the uniform language of the Business Owners Policies they have.

**COUNT I – DECLARATORY JUDGMENT**

57. Hilco expressly incorporates Paragraphs 1 through 56 of its Complaint as if fully set forth herein.

58. The Policy is a contract under which Hilco paid premiums to The Hartford in exchange for The Hartford's promise to pay Hilco losses for claims covered by the Policy.

59. Hilco has complied with all applicable provisions of the Policy.

60. The Hartford has denied claims related to COVID-19 on a uniform basis, without individual bases or investigations.

61. The Hartford denied Hilco's claim without an investigation on the exact same day it acknowledged the filing of the claim.

62. The DJA, which is to be liberally construed and administered, authorizes this Court to declare the rights and legal relations of the parties in this actual controversy.

63. The actual controversy of the coverage under the policy cannot be determined without the intervention of this Court.

64. An actual case or controversy exists regarding Hilco's rights and The Hartford's obligations under the Policy to reimburse Hilco for the full amount of Business Income losses, and Extra Expense losses in connection with the suspension of business stemming from the COVID-19 pandemic.

65. The ends of justice require that this Court issue a declaration that Defendant, The Hartford, is required to provide coverage to Hilco under the express terms of the Policy.

66. The ends of justice further require that this Court issue a declaration that Defendant,

The Hartford, is required to provide Business Income coverage to Hilco pursuant to the express terms of the Policy.

67. The ends of justice further require that this Court issue a declaration that Defendant, The Hartford, is required to provide Extra Expense coverage to Hilco pursuant to the express terms of the Policy.

68. Hilco is entitled, pursuant to the DJA, to have this Court declare and affirm that the losses related to the COVID-19 pandemic are covered losses under the Policy, and specifically that:

i. Business Income losses incurred in connection with the necessary interruption of business stemming from the COVID-19 pandemic, are insured losses under the Policy;

ii. Extra Expense losses incurred in connection with the necessary interruption of business stemming from the COVID-19 pandemic, are insured losses under their Policy; and

iii. The Hartford is obligated to pay Hilco for the full amount of the Business Income and Extra Expense losses incurred and to be incurred in connection with the periods interruption, suspension, and restoration of its business stemming from the COVID-19 pandemic.

**COUNT II - BREACH OF CONTRACT – BUSINESS INCOME COVERAGE**  
**(In the event this Court Declares Coverage for Business Income Loss)**

69. Hilco expressly incorporates Paragraphs 1 through 68 of its Complaint as if set forth fully herein.

70. The Policy is a contract under which Hilco paid premiums in exchange for The Hartford's promise to pay Business Income losses for claims covered by the Policy.

71. COVID-19 caused direct physical loss and damage to Hilco's Scheduled Premises, requiring suspension of business at their Scheduled Premises.

72. Losses caused by COVID-19 thus triggered the Business Income provision of the Policy.

73. Hilco has complied with all applicable provisions of the Policy.

74. By denying coverage for any Business Income losses incurred by Hilco in connection with the COVID-19 pandemic, The Hartford has breached its coverage obligations under the Policy.

75. As a result of The Hartford's breach of the Policy, Hilco has sustained substantial damages for which The Hartford is liable, in an amount to be established at trial.

**COUNT III - BREACH OF CONTRACT – EXTRA EXPENSE COVERAGE**  
**(In the event this Court Declares Coverage for Business Income Loss)**

76. Hilco expressly incorporates Paragraphs 1 through 75 of its Complaint as if fully set forth herein.

77. Under the Policy contract, The Hartford also agreed to pay necessary Extra Expense that Hilco incurred.

78. Due to COVID-19, Hilco incurred Extra Expense at scheduled premises.

79. By denying coverage for any business losses incurred by Hilco in connection with the COVID-19 pandemic, The Hartford has breached its coverage obligations under the Policy.

80. As a result of The Hartford's breach of the Policy, Hilco has sustained substantial damages for which The Hartford is liable, in an amount to be established at trial.

**COUNT IV - PUNITIVE DAMAGES**

81. Hilco expressly incorporates Paragraphs 1 through 80 of its Complaint as if set forth fully herein.

82. The Hartford has acted with willful misconduct, malice, fraud, wantonness, or the entire want of care that would raise the presumption of conscious indifference to consequences.

83. Hilco is entitled to recover punitive damages in an amount to be determined at trial



by the enlightened conscience of an impartial jury.

**COUNT V – EXPENSES OF LITIGATION AND ATTORNEYS’ FEES**  
**PURSUANT TO O.C.G.A. § 13-6-11**

84. Hilco restates Paragraphs 1 through 83 of its Complaint as if set forth fully herein.

85. The Hartford has conducted itself in bad faith and in a stubbornly litigious manner and caused the Hilco the unnecessary trouble and expense of bringing this action.

86. Hilco is entitled to an award for its attorneys’ fees, costs and expenses associated with this action in an amount to be determined at trial by the enlightened conscience of an impartial jury.

**WHEREFORE**, Plaintiff prays respectfully as follows:

- a. That process and summons issue in terms of law requiring Defendant to answer this Verified Petition for Declaratory Judgment, Complaint for Damages, and Demand for Trial by Jury;
- b. That this Court declare, pursuant to Count I, that Hilco’s COVID-19 related losses be covered under the Policy and that The Hartford be required to provide coverage for covered losses of Business Income and Extra Expense;
- c. Trial by jury for all issues for which trial by jury is available;
- d. Judgment against The Hartford on Counts II, III, IV, and V herein in an amount to be determined at trial by the enlightened conscience of an impartial jury; and
- e. Such other and further relief as this Court deems just and proper.

**This 30<sup>th</sup> day of September, 2020.**

*[Signature on Following Page]*

Respectfully submitted,

**WEENER NATHAN PHILLIPS LLP**

/s/ Mathis L. Wilkens

Mathis L. Wilkens

Ga. Bar No. 930847

*Attorney for Plaintiff*

5887 Glenridge Dr NE, Suite 275

Atlanta, GA 30328

Telephone: (770) 392-9004

Facsimile: (770) 522-9004

Emails: [mwilkens@wnpllp.com](mailto:mwilkens@wnpllp.com)