

JUN - 4 2020

COURT CLERKS OFFICE  
SUQUAMISH TRIBAL COURT

1 IN THE SUQUAMISH TRIBAL COURT

2 PORT MADISON INDIAN RESERVATION

4 THE SUQUAMISH TRIBE, a federally- ) Case No. 200401-C5 recognized Indian Tribe, and PORT )  
5 MADISON ENTERPRISES, a wholly-owned )  
5 arm of the Suquamish Tribe )

6 Plaintiffs, )

7 vs. )

8 LEXINGTON INSURANCE COMPANY; )  
9 CERTAIN UNDERWRITERS AT LLOYD'S )  
- Syndicates ASC1414, XLC 2003, TAL 1183,)  
10 MSP 318, ATL1861, KLN 510, and AGR )  
3268 subscribing to Policy with number )  
PJ193647; CERTAIN UNDERWRITERS AT )  
LLOYD'S - Syndicate CNP 4444 subscribing )  
to Policy with number PJ1900131; CERTAIN )  
12 UNDERWRITERS AT LLOYD'S - Aspen )  
Specialty Insurance Company subscribing to )  
13 Policy with number PX006CP19; CERTAIN )  
UNDERWRITERS AT LLOYD'S - )  
14 Syndicates KLN 0510, ATL 1861, ASC 1414, )  
QBE 1886, MSP 0318, APL 1969, CHN 2015,)  
15 and XLC 2003 subscribing to Policy with )  
number PJ1933021; CERTAIN )  
16 UNDERWRITERS AT LLOYD'S - Syndicate )  
BRT 2987 (excluding B&M) subscribing to )  
17 Policy with number PD-10363-05; )  
HOMELAND INSURANCE COMPANY OF )  
18 NY (ONE BEACON); HALLMARK )  
SPECIALTY INSURANCE COMPANY; and )  
19 ENDURANCE WORLDWIDE INSURANCE )  
LTD T/AS SOMPO INTERNATIONAL, )

20 Defendants. )

**CIVIL SUMMONS**

21 TO: THE ABOVE-NAMED DEFENDANTS:

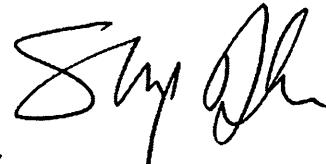
22 A lawsuit has been started against you in the Suquamish Tribal Court by the Plaintiffs the  
23 Suquamish Tribe and Port Madison Enterprises. The Plaintiffs' claim is stated in their written  
24 Complaint, a true and correct copy of which is served upon you with this Summons.  
25

1       In order to defend against this lawsuit, you must respond to the Complaint by filing with  
2 the Court, and serving a copy upon the Plaintiffs' undersigned attorneys, an Answer within 20  
3 days after the service of this Summons, excluding the day of service. Alternatively, you may  
4 notify the Court within said 20 days that you request a hearing be set by the court (and to be held  
5 at least 20 but nor more than 40 days after the date of service) to hear your response.  
6

7       If you fail to file an Answer or request a hearing in the required time, a default judgment  
8 may be entered against you without further notice. This Summons is issued pursuant to Chapter  
9 4.2 of the Suquamish Tribal Code.  
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2 Dated: June 4, 2020  
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DORSEY & WHITNEY LLP



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JUN - 4 2020

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COURT CLERKS OFFICE  
SUQUAMISH TRIBAL COURT

**SUQUAMISH TRIBAL COURT  
PORT MADISON INDIAN RESERVATION  
SUQUAMISH, WASHINGTON**

THE SUQUAMISH TRIBE, a federally-  
recognized Indian Tribe, and PORT  
MADISON ENTERPRISES, a wholly-  
owned arm of the Suquamish Tribe,

Plaintiffs,

File No. 200401-C

**COMPLAINT**

vs.

LEXINGTON INSURANCE COMPANY;  
CERTAIN UNDERWRITERS AT  
LLOYD'S - Syndicates ASC1414, XLC  
2003, TAL 1183, MSP 318, ATL1861, KLN  
510, and AGR 3268 subscribing to Policy  
with number PJ193647; CERTAIN  
UNDERWRITERS AT LLOYD'S -  
Syndicate CNP 4444 subscribing to Policy  
with number PJ1900131; CERTAIN  
UNDERWRITERS AT LLOYD'S - Aspen  
Specialty Insurance Company subscribing to  
Policy with number PX006CP19;  
CERTAIN UNDERWRITERS AT  
LLOYD'S - Syndicates KLN 0510, ATL  
1861, ASC 1414, QBE 1886, MSP 0318,  
APL 1969, CHN 2015, and XLC 2003  
subscribing to Policy with number  
PJ1933021; CERTAIN UNDERWRITERS  
AT LLOYD'S - Syndicate BRT 2987  
(excluding B&M) subscribing to Policy with  
number PD-10363-05; HOMELAND  
INSURANCE COMPANY OF NY (ONE  
BEACON); HALLMARK SPECIALTY  
INSURANCE COMPANY; and  
ENDURANCE WORLDWIDE  
INSURANCE LTD T/AS SOMPO  
INTERNATIONAL,

Defendants.

1. The Suquamish Tribe (“the Tribe”) and Port Madison Enterprises (“PME”), the wholly-owned economic development arm of the Tribe, own and operate a number of successful businesses on the Tribe’s reservation. Business income and tax revenues derived from these businesses are used to support the Tribe’s governmental operations and to provide essential services to the Tribe’s members and others present on the Tribe’s reservation.

2. In March 2020, the Tribe and PME were forced to suspend or restrict operations for a number of their businesses because of the COVID-19 pandemic. COVID-19 is an infectious disease caused by the SARS CoV-2 virus. For purposes of this Complaint, the SARS CoV-2 virus will herein be referred to as “the Virus” and the COVID-19 disease will be referred to as “COVID-19” or “the Disease.”

3. Western Washington State was an early hotspot in the United States for COVID-19. Persons tested positive with COVID-19 as early as March 8 in Kitsap County, and as early as March 15 in North Kitsap County. Parts of Kitsap County, and all of North Kitsap County, are within a ten-mile radius of the businesses owned and operated by the Tribe and PME (“the Tribal Businesses”) that are the subject of this lawsuit. However, as was the case throughout the country, testing of individuals was and continues to be limited. But based upon the rapid spread of the Virus, the highly infectious nature of the Disease, and the fact that many individuals infected with COVID-19 are asymptomatic, the Virus was likely present within a ten-mile radius of the Tribal Businesses as early as March 1, 2020, and was likely present on the premises of the Tribal Businesses themselves.

4. The presence of the Virus in the Tribal Businesses resulted in physical loss of those businesses. The presence of the Virus within a ten-mile radius of the Tribal Businesses also prevented ingress into those businesses, and resulted in Tribal, local, state, and national authorities issuing declarations because of the dangers caused by the presence of COVID-19 in the vicinity of the Tribal Businesses. The suspension and restriction of operations of the Tribal Businesses was necessary to prevent further physical damage to the properties, protect tribal employees and guests alike from risk of injury or death from COVID-19, and to prevent the continued dissemination and spread of the Virus and COVID-19 on the Reservation.

5. The suspension of business operations by the Tribe and PME has undoubtedly saved lives and prevented even more illnesses and hospitalizations. But it has cost the Tribe and PME millions of dollars in lost business and tax revenue and other expenses. These losses continue to accrue to this day.

6. The Tribe and PME purchased “All Risk” property insurance intended to protect them from losses such as those they have experienced, and continue to experience, as a result of the Virus and COVID-19. In exchange for hundreds of thousands of dollars in insurance premiums paid by the Tribe and PME, the Defendant Insurers issued property insurance policies to the Tribe and to PME. The Defendant Insurers represented to the Tribe and PME in these policies that they would provide millions of dollars in insurance coverage in the event of a loss of business income and an interruption in tax revenue. Despite accepting the payment of significant premiums over the years, the Defendant Insurers now refuse to affirm coverage for the catastrophic losses suffered by the Tribe and PME; Lexington Insurance Company, the lead insurer

among the Defendant Insurers, has stated that there may be no insurance coverage for these losses. The Tribe and PME therefore have filed this suit against the Defendants.

### **The Parties**

7. The Suquamish Tribe is a federally recognized Indian tribal government, and a signatory to the 1855 Treaty of Point Elliot. The Tribe is headquartered in Suquamish, Washington, which is situated on tribal trust lands within the exterior boundaries of the Port Madison Indian Reservation (“Reservation”). The Reservation was established by the Point Elliott Treaty of January 22, 1855 for the Suquamish Tribe, and was enlarged by an executive order issued on October 21, 1864. Among other things, the Tribe owns and operates the Suquamish Museum, which includes a gift shop, and Suquamish Seafood Enterprise (“SSE”), a fully-chartered business entity of the Suquamish Tribe. The Suquamish Museum is located on tribal trust lands within the exterior boundaries of the Reservation. Located on the Kitsap Peninsula, SSE’s business is to develop seafood markets for tribal fishermen and, among other things, to market the geoduck clams that populate the Tribe’s surrounding waters.

8. Port Madison Enterprises is an agency of the Suquamish Tribe. PME is headquartered in Suquamish, Washington, which is situated on tribal trust lands within the exterior boundaries of the Reservation. PME’s operations are aimed at developing community resources while promoting the economic and social welfare of the Suquamish Tribe through commercial activities. PME operates a number of tribally-owned businesses, including:

- a) The Suquamish Clearwater Casino and Resort, a Las Vegas-style casino and hotel located on tribal trust lands within the exterior

boundaries of the Reservation. The Casino and Resort employs approximately 750 persons, including 32 tribal members, and typically serves over 150,000 unique guests on an annual basis.

- b) Kiana Lodge, a waterfront wedding and event venue located on tribal trust lands within the exterior boundaries of the Reservation. Kiana Lodge provides year-round meeting space, banquet facilities and catering services for private parties, corporate events, weddings, holiday parties, and other celebrations.
- c) Longhouse Texaco, a mini-mart and gas station, located on tribal trust lands within the exterior boundaries of the Reservation.
- d) White Horse Golf Club, an 18-hole golf course, with a clubhouse that includes banquet space, a pro shop, and the Cedar Ridge Grill, located on tribal trust lands within the exterior boundaries of the Reservation.
- e) Masi Shop, a gas station and convenience store that includes a smoke shop, coffee shop, and sales of Tribal seafoods, liquor, and tribal artwork, located on tribal trust lands within the exterior boundaries of the Reservation.
- f) Suquamish Village Chevron, a gas station and convenience store with quick-service restaurant facilities, located on tribal trust lands within the exterior boundaries of the Reservation.
- g) Commercial and residential property development and management, including Agate Pass Business Park and North

Kitsap Business Park, and various residential properties, all located within the exterior boundaries of the Reservation.

9. Lexington Insurance Company is an insurance company engaged in the business of selling insurance contracts to, among others, tribal governmental and commercial entities such as the Plaintiffs. Upon information and belief, Lexington Insurance Company is organized and existing under the laws of Delaware with its principal place of business in Boston, Massachusetts. It insures both the Tribe and PME.

10. Upon information and belief, Lloyd's, London is an exchange or market where entities, either individuals or companies, come together to bid on the right to insure a given risk under a particular policy. These entities typically are referred to as "members" or "underwriters."

11. Upon information and belief, Certain Underwriters at Lloyd's - Syndicates ASC1414, XLC 2003, TAL 1183, MSP 318, ATL1861, KLN 510, and AGR 3268, subscribing to a policy with number PJ193647, are syndicates of individual underwriters that share several liability through a respective underwriter engaged in the business of selling insurance contracts to tribal entities such as the Plaintiffs. Upon information and belief, Certain Underwriters at Lloyd's - Syndicates ASC1414, XLC 2003, TAL 1183, MSP 318, ATL1861, KLN 510, and AGR 3268, subscribing to a policy with number PJ193647, are companies with their principal places of business and their headquarters in the United Kingdom. These syndicates insure both the Tribe and PME.

12. Upon information and belief, Certain Underwriters at Lloyd's - Syndicate CNP 4444, subscribing to a policy with number PJ1900131, is a syndicate of individual underwriters that share several liability through a respective underwriter engaged in the business of selling insurance contracts to tribal entities such as the Plaintiffs. Upon information and belief, Certain Underwriters at Lloyd's - Syndicate CNP 4444, subscribing to a policy with number PJ1900131, is a company that is headquartered and with its principal place of business in the United Kingdom. This syndicate insures both the Tribe and PME.

13. Upon information and belief, Certain Underwriters at Lloyd's - Aspen Specialty Insurance Company, subscribing to a policy with number PX006CP19, is a syndicate of individual underwriters that share several liability through a respective underwriter engaged in the business of selling insurance contracts to tribal entities such as the Plaintiffs. Upon information and belief, Certain Underwriters at Lloyd's - Aspen Specialty Insurance Company, subscribing to a policy with number PX006CP19, is organized under the laws of North Dakota with its principal place of business in Connecticut. This entity insures both the Tribe and PME.

14. Upon information and belief, Certain Underwriters at Lloyd's - Syndicates KLN 0510, ATL 1861, ASC 1414, QBE 1886, MSP 0318, APL 1969, CHN 2015, and XLC 2003, subscribing to a policy with number PJ1933021, are syndicates of individual underwriters that share several liability through a respective underwriter engaged in the business of selling insurance contracts to tribal entities such as the Plaintiffs. Upon information and belief, Certain Underwriters at Lloyd's - Syndicates KLN 0510, ATL 1861, ASC 1414, QBE 1886, MSP 0318, APL 1969, CHN 2015, and

XLC 2003, subscribing to a policy with number PJ1933021, are companies with their principal places of business and their headquarters in the United Kingdom. These syndicates insure both the Tribe and PME.

15. Upon information and belief, Certain Underwriters at Lloyd's - Syndicate BRT 2987, subscribing to a policy with number PD-10363-05, is a syndicate of individual underwriters that share several liability through a respective underwriter engaged in the business of selling insurance contracts to tribal entities such as the Plaintiffs. Upon information and belief, Certain Underwriters at Lloyd's - Syndicate BRT 2987, subscribing to a policy with number PD-10363-05, is a company that is headquartered and with its principal place of business in the United Kingdom. This syndicate insures both the Tribe and PME.

16. Homeland Insurance Company of New York (One Beacon) is an insurance company engaged in the business of selling insurance contracts to tribal entities such as the Plaintiffs. Upon information and belief, Homeland Insurance Company of New York (One Beacon) is a New York corporation with its principal place of business in Massachusetts. This entity insures both the Tribe and PME.

17. Hallmark Specialty Insurance Company is an insurance company engaged in the business of selling insurance contracts to tribal entities such as the Plaintiffs. Upon information and belief, Hallmark Specialty Insurance Company is organized under the laws of Texas and has its principal place of business in Texas. This entity insures both the Tribe and PME.

18. Endurance Worldwide Insurance Ltd. t/as Sompo International is an insurance company engaged in the business of selling insurance contracts to tribal

entities such as the Plaintiffs. Upon information and belief, Endurance Worldwide Insurance Ltd t/as Sompo International is domiciled in the United Kingdom. This entity insures both the Tribe and PME.

19. Throughout this Complaint, the above-named defendants shall be referred to collectively as “Defendants,” “Defendant Insurers,” or “Insurers.”

#### **Jurisdiction**

20. Pursuant to Suquamish Tribal Code Chapter 3 Sections 2.1, 2.2(a), and 2.4, jurisdiction is proper because the Defendants have entered into insurance contracts with the Plaintiffs, who own and operate the Tribal Businesses that are located on the Reservation. Moreover, the Tribal Court has jurisdiction over each of the Defendants because each of the Defendants entered into consensual agreements, i.e., the insurance contracts, with the Tribe and with PME, and otherwise subjected themselves to Tribal jurisdiction. *See Montana v. United States*, 450 U.S. 544, 565-66 (1981); *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011). In addition, the Tribal Court has jurisdiction over the Defendants because each of the Defendants expressly agreed to “submit to the jurisdiction” of any court of competent jurisdiction in the United States.

#### **The Spread of the Pandemic and its Impact on the Policyholders**

21. In or around 2002, the SARS virus spread across the world causing thousands of people to fall seriously ill and die. In the wake of the SARS virus, a number of insurance companies added communicable disease or virus exclusions to their property insurance and other policies, including those sold to certain tribal governmental and enterprise policyholders. The Defendants elected not to include any

communicable disease or virus exclusion in the insurance policies they sold to the Tribe and PME.

22. In early 2020, or perhaps earlier, the Virus began spreading across the world, infecting millions of people and causing hundreds of thousands to fall seriously ill and die. The World Health Organization classified COVID-19 as a pandemic on March 11, 2020.

23. The first places to face the effects of the Virus were in China. SSE's operation's major customers for geoduck clams and other seafood are located in China. Due to the physical loss and damage to property as well as restrictions of operations in China as a result of the Virus and COVID-19, SSE lost the ability to sell its products to its customers in China.

24. The Virus began to spread significantly in the United States in the first several months of 2020, and Washington State was one of the first COVID-19 hot spots in the United States. As early as March 8, 2020, a person in Kitsap County tested positive for COVID-19. Experts now believe that the Virus was likely present in Kitsap County at least several weeks before March 8. Recognizing the rapidly developing public health crisis, on March 9, 2020, the Suquamish Tribal Council (the governing body of the Tribe) adopted Resolution No. 2020-048, declaring a Public Health emergency and activating comprehensive emergency management within the Tribal Government. On March 13, 2020, President Donald J. Trump issued a proclamation declaring the outbreak of COVID-19 a "national emergency [. . . ] beginning March 1, 2020."

25. On March 15, 2020, a person in North Kitsap County tested positive for COVID-19. Again, experts believe that it is likely that the Virus was present in North Kitsap County for at least several weeks before March 15. North Kitsap County is within a ten-mile radius of the Tribal Businesses.

26. On March 16, 2020, Governor Jay Inslee issued an emergency proclamation restricting access to food service facilities and requiring the closures of restaurants, bars, and entertainment and recreational facilities.

27. By March 16, 2020, at least one case of COVID-19 was confirmed, through testing, on Bainbridge Island, Washington, which lies within one mile of the largest of the Tribal Businesses. However, testing at that point remained severely limited. But in light of the rampant spread of the Virus and the resulting COVID-19 infections in the area immediately surrounding the Tribe's reservation, upon information and belief, the Virus likely was present at each of the Tribal Businesses, and was most certainly present in buildings and properties within a ten-mile radius of those businesses.

28. On March 17, 2020, as a result of the spread of the Virus and COVID-19, operations at the Suquamish Clearwater Casino Resort were suspended due to the presence of the Virus and to prevent further damage to the properties and further spread of the Virus on the Reservation and in and around those Tribal Businesses, and to safeguard the Tribal public, including guests, customers, employees and vendors of those businesses.

29. On March 23, 2020, Governor Jay Inslee issued a full "stay at home" order directing all Washington residents to stay at home except for essential purposes.

30. On March 27, 2020, the Tribal Council extended the suspension of operations at the Clearwater Casino Resort and also suspended operations of the Kiana Lodge, White Horse Golf Club, and Longhouse Texaco outlets, with those prohibitions all scheduled to end at 12:00 A.M. on April 8, 2020. The Tribe extended these suspensions of operations multiple times. The suspension of Longhouse Texaco operations ended on April 8, 2020. The suspension of White Horse Golf Club operations ended on April 30, 2020. The suspension of Suquamish Clearwater Casino Resort operations ended on May 18, 2020. All of these outlets are subject to a phased reopening plan that limits the scope of their operations. Kiana Lodge remains closed.

31. The continued presence of the Virus has damaged the buildings housing the Tribal Businesses, and has forced the operations of the Tribal Businesses to remain suspended or restricted.

32. Even when the Tribal Businesses are allowed to reopen, the Plaintiffs will continue to experience extended business income loss and tax revenue interruption as a result of the continued effects resulting from the presence of the Virus.

33. In addition to the necessary suspension and restriction of operations at the Tribal Businesses, the Tribe and PME have incurred and will continue to incur extra expenses, including expenses to disinfect and sanitize their business premises, in order to protect the public and mitigate further damage to the properties caused by the Virus.

34. The presence of the Virus at the locations of the various direct suppliers and customers of the Tribal Businesses has caused, and continues to cause, additional business interruption losses for those businesses.

35. In addition to lost business income, the suspension and restriction of operations of Tribal Businesses as a result of the Virus has interrupted the Tribe's collection of sales and other tax revenues.

#### **The Plaintiffs' Insurance Coverage**

36. The Suquamish Tribe, on its own behalf and on behalf of SSE and other tribal entities, purchased an "All Risk" Property Insurance Policy (the "Tribal Policy"), providing hundreds of millions of dollars in insurance coverage. The Tribal Policy was issued by the Defendants, who held themselves out as "Tribal First Alliant Underwriting Solutions," through which they specifically marketed themselves to tribal governmental policyholders like the Suquamish Tribe. The Policy Number for the primary/lead Tribal Policy is 017471589/06 (DEC 37)9619. The Defendants participated in the first \$50,000,000 of "All Risk" property insurance coverage provided under the Tribal Policy.

37. PME, on its own behalf and for the benefit of the various tribal businesses it operates, purchased an "All Risk" Property Insurance Policy (the "PME Policy") providing hundreds of millions of dollars in coverage. The PME Policy was issued by the Defendants, who held themselves out as "Tribal First Alliant Underwriting Solutions," through which they specifically marketed themselves to tribal policyholders like PME. The Policy Number for the primary/lead PME Policy is 017471589/06(DEC 16)9261. The Defendants participated in the first \$50,000,000 of "All Risk" property insurance coverage provided under the PME Policy.

38. The Suquamish Policy and the PME Policy (collectively the “Policies”) are substantially similar in form and generally offer the same types of coverages. Both Policies are in effect from July 1, 2019 to July 1, 2020.

39. The same insurers – the Defendants in this case - subscribed to both Policies.

40. Defendants consensually entered into the Policies with the Tribe and PME, and the Policies insure tribal properties located within the exterior boundaries of the Reservation, including the Tribal Businesses.

41. The Policies are “All Risk” insurance policies that provide broad coverage for losses caused by any cause unless the cause is expressly excluded in the policy.

42. The Policies do not exclude losses from communicable diseases or viruses. Thus, the “All Risk” Policies purchased by the Tribe and PME cover losses caused by viruses, such as the virus that causes COVID-19.

43. The Policies specifically extend coverage for “all risk of direct physical loss or damage” to “property of every description both real and personal . . . of the Named Insured or property of others in the care, custody or control of the Named Insured, for which the Named Insured is liable or under obligation to insure.”

44. The Policies also specifically provide coverage for Business Interruption losses. This coverage section insures “[a]gainst loss resulting directly from interruption of business, services or rental value caused by direct physical loss or damage, as covered by this Policy to real and/or personal property insured by this Policy, occurring during the term of this Policy.”

45. The Policies also expressly cover “Interruption by Civil Authority” which covers “the actual loss sustained by the Named Insured, as covered hereunder during the length of time, not exceeding 30 days, when as a direct result of damage to or destruction of property by a covered peril(s) occurring at a property located within a 10 mile radius of covered property, access to the covered property is specifically prohibited by order of a civil authority.”

46. The Policies also provide “Contingent Time Element Coverage,” pursuant to which “Business interruption, rental income, and extra expense coverage provided by this Policy is extended to cover loss directly resulting from physical damage to property of the type not otherwise excluded by this Policy at direct supplier or direct customer locations that prevents a supplier of goods and/or services to the Named Insured from supplying such goods and/or services, or that prevents a recipient of goods and/or services from the Named Insured from accepting such goods and/or services.”

47. The Policies also provide Tax Revenue Interruption Coverage. This coverage provides that, “[e]xcept as hereinafter or heretofore excluded, this Policy insures against loss resulting directly from necessary interruption of sales, property or other tax revenue including, but not limited to Tribal Incremental Municipal Services Payments collected by or due the Named Insured caused by damage, or destruction by a peril not excluded from this Policy to property which is not operated by the Named Insured and which wholly or partially prevents the generation of revenue for the account of the Named Insured.”

48. The Policies provide several other insurance coverages, including for “Expediting Expenses,” “Protection and Preservation of Property,” “Architects and

Engineers Fees and Loss Adjustment Expenses,” “Extra Expense,” “Ingress / Egress,” “Extended Period of Indemnity,” and “Expense to Reduce Loss.”

49. The Tribe and PME promptly submitted claims for coverage under the Policies to the Defendants and their agents, and have cooperated with the Defendants’ inquiries with respect to these claims.

50. The Defendants have refused to affirm coverage for the losses suffered by the Tribe and PME, and the lead insurer among the Defendants, Lexington Insurance Company, has stated that there may be no coverage for the losses described in this Complaint.

#### **Count I—Declaratory Judgment**

51. Plaintiffs repeat the allegations above, and incorporate them as if fully related herein.

52. Plaintiffs have suffered losses covered by the Policies as a result of the Virus and to COVID-19. The Plaintiffs have demanded that the Insurers provide coverage for these losses.

53. During all relevant times, the Plaintiffs have paid all premiums due and owing under the Policies and have otherwise complied with their contractual obligations under the Policies, or such obligations have been waived.

54. Defendants have refused to affirm coverage for the Plaintiffs’ losses, and the lead insurer has stated there may be no coverage under the Policies for the losses described in this Complaint.

55. Plaintiffs seek a declaration from this Court as to the Plaintiffs’ rights and the Defendants’ obligations under the Policies to reimburse the Plaintiffs for the full

amount of losses incurred by the Plaintiffs because of the Virus and the necessary interruption of their business and tax revenues stemming from the COVID-19 pandemic.

56. Plaintiffs seek a declaration from the Court declaring the following:

- a. Plaintiffs' losses because of the Virus and the necessary interruption of their business income and tax revenues stemming from the COVID-19 pandemic are insured losses under the Policies;
- b. Defendants are obligated to pay Plaintiffs for the full amount of the losses that occurred, and continue to occur, because of the Virus and the necessary interruption of their business income and tax revenues stemming from the COVID-19 pandemic.

#### **Count II—Breach of Contract**

57. Plaintiffs repeat the allegations above and incorporate them as if fully related herein.

58. The Policies are insurance policies under which the Defendants were paid premiums in exchange for their promises to reimburse the Plaintiffs for losses covered by the Policies, including losses incurred because of the suspension or restriction of operations of the Tribal Businesses.

59. Plaintiffs have complied with all applicable provisions of the Policies, including payment of the premiums in exchange for coverage under the Policies, and yet the Defendants have abrogated the insurance coverage obligations they owe pursuant to the Policies' terms.

60. By refusing to affirm coverage for the Plaintiffs' losses, Defendants have breached their coverage obligations under the Policies.

61. As a result of Defendants' breaches of the Policies, Plaintiffs have sustained substantial damages for which the Defendants are liable, in an amount to be established at trial.

#### **Prayer for Relief**

WHEREFORE, the Tribe and PME pray that judgment be entered in their favor as follows:

1. Enter a declaratory judgment on Count 1 of the Complaint in favor of the Plaintiffs and against the Defendants that:

- a. Plaintiffs' losses because of the Virus and the necessary interruption of their business income and tax revenues stemming from the COVID-19 pandemic are insured losses under the Policies; and
- b. Defendants are obligated to pay Plaintiffs for the full amount of the losses that occurred, and continue to occur, because of the Virus and the necessary interruption of their business income and tax revenues stemming from the COVID-19 pandemic.

2. Enter a judgment on Count II of the Complaint in favor of the Tribe and PME and against the Defendants, and award damages for breach of contract in an amount to be proven at trial;

3. Award Plaintiffs their attorneys' fees and related costs incurred for the prosecution of this coverage action, the amount to be established at the conclusion of this action;

4. Award to Plaintiffs and against the Defendants prejudgment interest, to be calculated according to law, to compensate Plaintiffs for the loss of use of funds

caused by Defendants' wrongful refusal to pay Plaintiffs for the full amount of the losses incurred in connection with the Virus and covered under the Policies; and

5. Award the Plaintiffs such other, further, and additional relief as this Court deems just and appropriate.

**JURY DEMAND**

The Tribe and PME hereby demand trial by jury on all issues so triable.

Dated: June 4, 2020

DORSEY & WHITNEY LLP



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*Attorneys for Plaintiffs Suquamish Tribe and  
Port Madison Enterprises*

TO: [ ] S.T.P. OR [ ] \_\_\_\_\_  
ATTACHED TO BE SERVED ON: \_\_\_\_\_  
LAST KNOWN ADDRESS: \_\_\_\_\_

This Form Prepared for Service on: \_\_\_\_\_  
PLEASE RETURN THIS FORM TO: [ ] COURT [ ] ERIN [ ] OTHER \_\_\_\_\_

IN THE SUQUAMISH TRIBAL COURT  
ON THE PORT MADISON RESERVATION  
SUQUAMISH, WASHINGTON

Plaintiff / Petitioner: \_\_\_\_\_

v.

Defendant / Respondent: \_\_\_\_\_

Cause No. \_\_\_\_\_

CERTIFICATE OF SERVICE FOR:

[ ] YINOC ORDER  
[ ] DV Protection Order-Use Pink Form  
[ ] Local Anti-Harassment Order  
[ ] Criminal Order from the Court  
[ ] Juvenile Order  
[ ] CIVIL  
[ ] Other \_\_\_\_\_

1. My name is \_\_\_\_\_ I am [ ] a peace officer or [ ] 18 years of age and not the Petitioner in the above named case.

2. [ ] Personal service was attempted on the following dates: \_\_\_\_\_

[ ] I was unable to make personal service on the Respondent [ ] Petitioner was notified of no service.

[ ] No service was attempted because \_\_\_\_\_

3. [ ] I served \_\_\_\_\_ with the following documents:  
(Name of Person Served)

PAPERWORK SERVED:

[ ] Temporary Order for Protection [ ] Temporary Anti-Harassment Order filed: \_\_\_\_\_  
[ ] DV Order for Protection filed: \_\_\_\_\_ [ ] Petition for Parenting Plan / Custody filed: \_\_\_\_\_  
[ ] Petition and Summons for Dissolution Hearing and Notice of Hearing date filed: \_\_\_\_\_  
[ ] Criminal Court Order filed: \_\_\_\_\_ [ ] YINOC Paperwork filed: \_\_\_\_\_  
[ ] Criminal Complaint and Summons filed: \_\_\_\_\_ [ ] Notice of Hearing for: \_\_\_\_\_  
[ ] Other: \_\_\_\_\_

4. I served the above marked documents on (Date) \_\_\_\_\_ (Time) \_\_\_\_\_

At (Address) \_\_\_\_\_

I certify under the penalty of perjury under the laws of the Suquamish Tribe that the foregoing is true and correct.

DATED: \_\_\_\_\_ at \_\_\_\_\_, Washington

SIGNATURE OF SERVICE AND BADGE NUMBER - IF APPLICABLE

PRINTED NAME OF SERVER

RETURN OF SERVICE

Suquamish Tribal Court

P.O Box 1209

18490 Suquamish Way NE, Suite 105  
Suquamish, Washington 98392  
Director: 360-394-8521 Clerk: 360-394-8518  
Clerk: 360-394-8520 Clerk: 360-394-8697