

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

MARS, INCORPORATED,

Plaintiff,

v.

FACTORY MUTUAL INSURANCE
COMPANY, d/b/a FM GLOBAL,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff Mars, Incorporated (“Mars”) alleges the following against defendant Factory Mutual Insurance Company (“FM”):

NATURE OF THE ACTION

1. Mars seeks rulings on factual questions, scientific issues, and questions of insurance contract interpretation from the Court so that it can obtain bargained-for insurance recoveries under an all-risks commercial property insurance policy issued to Mars by FM (the “Policy”) for losses suffered due to physical loss and damage to property in 2020. The Policy was issued for the January 1, 2020 to January 1, 2021 policy period, and is attached as Exhibit 1. FM disputes the factual and legal predicates necessary for Mars to obtain the recoveries to which it is owed. Actual controversies therefore exist between the parties, making declaratory relief necessary to resolve their disputes.

2. Mars is a global manufacturer of confectionery, pet foods, and other food products, and is also a leading provider of animal care services. Mars has some of the best-known (and loved) brands in the world: M&M’s, Snickers, Twix, Milky Way, Skittles, and Ben’s Original. Mars is not just synonymous with food; it has brought its science-powered business to pet care,

creating products and services that pets, too, love: brands like Pedigree, Royal Canin, and Whiskas, and pet-health services through Banfield Pet Hospital and VCA, Inc., among others. It employs more than 130,000 people in more than thirty countries.

3. Mars' operations suffered substantial losses in 2020 following site closures resulting from the COVID-19 pandemic. Multiple employees reported that they were working at a Mars location covered by the Policy when infected with COVID-19.

4. In addition to confirmed actual cases of COVID-19 on Mars' premises, and the high percentage of asymptomatic cases of COVID-19, it is statistically certain that the actual number of individuals present at Mars' insured locations, and at applicable third-party property, who contracted COVID-19 was substantially greater than the number of individuals that reported COVID-19 to the company.

5. In addition to confirmed actual cases of COVID-19 on Mars' premises, general statistical modeling confirms to a high degree of certainty that COVID-19 was present in or around commercial and industrial properties generally.¹ It is statistically and scientifically certain that COVID-19 was being continuously introduced, dispersed, and reintroduced into and altering the air and on surfaces of property in or around Mars' locations, including at businesses and amenities

¹ See, e.g., Expert Report of Joseph Lewnard as filed in *Treasure Island, LLC v. Affiliated FM Insurance Co.* ("Treasure Island"), No. 20-00965, ECF No. 205-3 at 126-128 (D. N.V.), attached as Exhibit 2; *COVID-19 Event Risk Assessment Planning Tool*, Georgia Institute of Technology, <https://covid19risk.biosci.gatech.edu>; *Covid-19 Projections*, IHME <https://covid19.healthdata.org/united-states-of-america?view=total-deaths&tab=trend>; *Covid-19 Risk Mapping*, Columbia University, <https://columbia.maps.arcgis.com/apps/webappviewer/index.html?id=ade6ba85450c4325a12a5b9c09ba796c>; *Covid-19 Modeling*, NORTHEASTERN UNIVERSITY, <https://covid19.gleamproject.org>; *LANL Covid-19 Cases and Deaths Forecasts*, LOS ALAMOS NATIONAL LABORATORY, <https://covid-19.bsvgateway.org>.

in the vicinity of Mars' locations. It is also statistically and scientifically certain that COVID-19 altered the air and surfaces at and around Mars' locations.

6. As a result of physical loss or damage to its property and risks of physical loss or damage to its property, Mars suffered loss of earnings and business income and incurred covered "extra expense" including without limitation the cost of personal protective equipment (*e.g.*, masks, shields, gloves), physical modifications to stores and other locations (*e.g.*, the installation of shields, printed collateral, window clings, and social distancing items), the costs of disinfectants, extra cleaning services and sanitation products, logistics extra costs to address the disruption of the normal movement of goods and materials (including such things as the purchase of additional back stock bins and stations to hold quarantined product) and additional security costs.

7. Mars purchased the Policy to obtain broad multi-risk protection for the risk of loss it might incur due to various causes of loss or damage to property.

8. The FM "all-risk" policies are among the "best-in-class" of the "all-risk" property coverage available on the commercial insurance market. They contain, for example, affirmative grants of coverage for communicable disease. They do not contain what other insurers call a "virus" exclusion, but instead contain only a "contamination" exclusion that excludes coverage for "contamination, and any cost due to contamination." Among other things, Mars does not seek recovery from FM for "contamination" or "any cost due to contamination." The communicable disease of COVID-19 is not a "contaminant" as the term is defined in the Policy. And, as noted above, communicable disease is expressly covered as "physical loss or damage" under the Policy. This differentiates the Policy from the insurance policies involved in most insurance coverage litigation matters concerning COVID-19.

9. FM disputes that the Policy covers Mars' claims for losses resulting from physical loss or damage. It contends in coverage litigation throughout the United States that COVID-19 lost income coverage is limited to small "sub-limits", that the presence of SARS-CoV-2 or COVID-19 is not "physical loss or damage" to property, and that coverage is otherwise barred by the "contamination" and loss of use or loss of market exclusions. Actual controversies exist between the parties concerning the extent to which Mars is entitled to recover under the Policy for its COVID-19 losses.

THE PARTIES

10. Mars is a Delaware corporation with a principal place of business in McLean, Virginia.

11. FM is a Rhode Island corporation with a principal place of business in Johnston, Rhode Island.

JURISDICTION AND VENUE

12. Jurisdiction over FM is based on diversity of citizenship under 28 U.S.C. § 1332(a)(1) in that the matter in controversy exceeds the sum of \$75,000 and the matter is between "citizens of different States."

13. Personal jurisdiction over FM exists because it has sufficient minimum contacts with Virginia. FM currently conducts business in this judicial district and has done so for many years.

14. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2) as events giving rise to Mars' claim took place in this district where Mars has its principal place of business.

15. Actual controversies exist between the parties as to the predicate facts necessary for Mars to obtain what it believes to be the full amount of coverage owed under the Policy for its COVID-19-related losses.

THE FM POLICY

16. FM is a large international property insurer. It expends substantial resources on analyzing risks, including those that may in the future cause loss to its policyholders and deciding which risks it intends to cover or avoid. FM has issued property insurance coverage to Mars for decades. It is extremely knowledgeable about the nature and scope of Mars' business and the nature of the risks against which it was insuring.

17. FM is part of the FM Global group of insurance companies. FM Global says its approach to claims is different from other insuring organizations: “[y]ou’ll discover that our approach to claims is different, too. We work closely with you *before, during and after* a loss—no matter where in the world that loss occurs. And we ground our recommendations in world-class scientific research and on-the-ground engineering services.”²

18. FM introduced its standard property policy form long ago. As shown in its various regulatory filings with state insurance departments, FM modified its standard form from time to time, typically with enhancements to coverage, but sometimes simply to clarify the coverage. The modifications over time have not restricted coverage.

The Broad Coverage the Policy Grants for All Risks of Physical Loss or Damage to Property

19. The Policy is fundamentally different than most commercial property insurance policies because it expressly covers physical loss or damage by a communicable disease, putting to rest FM's position that a communicable disease is not a risk, cause, or type of physical loss or

² <https://www.fmglobal.com/about-us/why-fm-global> (emphasis original).

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