

21-121
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
RXR PARTNERS, LLC,)
))
Plaintiff,)
))
-against-)
))
CONTINENTAL CASUALTY COMPANY,)
INTERSTATE FIRE AND CASUALTY)
COMPANY, ENDURANCE AMERICAN)
SPECIALTY INSURANCE COMPANY,)
LIBERTY MUTUAL FIRE INSURANCE)
COMPANY, QBE SPECIALTY INSURANCE)
COMPANY, STARR SURPLUS LINES)
INSURANCE COMPANY, and)
ZURICH AMERICAN INSURANCE COMPANY,)
))
Defendants.)
-----X

Index No.

SUMMONS

Plaintiff designates New York
County as the place of trial

The basis of venue is CPLR 503(a)

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer this Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiffs' Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
August 3, 2022

WEG AND MYERS, P.C.
Attorneys for Plaintiff
800 Westchester Avenue
Suite N-513
Rye Brook, New York 10573
(212) 227-4210

Defendants' Addresses:

CONTINENTAL CASUALTY COMPANY
151 N. Franklin Street
Chicago, Illinois 60606

INTERSTATE FIRE AND CASUALTY COMPANY
225 West Washington Street
Chicago, Illinois 60606

ENDURANCE AMERICAN SPECIALITY INSURANCE COMPANY
750 3rd Avenue
New York, New York 10017

LIBERTY MUTUAL FIRE INSURANCE COMPANY
175 Berkeley Street
Boston, Massachusetts 02116

QBE SPECIALITY INSURANCE COMPANY
One General Drive
Sun Prairie, Wisconsin 53596

STARR SURPLUS LINES INSURANCE COMPANY
3353 Peachtree Road, NE, Suite 1000
Atlanta, Georgia 30326

ZURICH AMERICAN INSURANCE COMPANY
1299 Zurich Way
Schaumburg, Illinois 60196

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**COMPLAINT WITH
JURY DEMAND**

Plaintiff RXR PARTNERS, LLC (“RXR”), by its attorneys WEG AND MYERS, P.C., as and for its Complaint against Defendants CONTINENTAL CASUALTY COMPANY, INTERSTATE FIRE AND CASUALTY COMPANY, ENDURANCE AMERICAN SPECIALITY INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY, QBE SPECIALITY INSURANCE COMPANY, STARR SURPLUS LINES INSURANCE COMPANY, and ZURICH AMERICAN INSURANCE COMPANY (hereinafter, collectively “Defendants”), respectfully alleges as follows:

NATURE OF THE ACTION

1. Plaintiff owns and manages a large portfolio of real estate properties situated in the states of New York and Connecticut.
2. Like most property owners, in order to protect itself from unforeseen losses, Plaintiff procured insurance in order to protect its assets against fortuitous losses.

3. Specifically, Plaintiff procured various “all-risk” policies issued by Defendants comprising a program of insurance affording coverage for all fortuitous losses not otherwise excluded (hereinafter, Plaintiff’s “Insurance Program”).

4. Taken together, the policies at issue in this litigation comprising Plaintiff’s Insurance Program provide Plaintiff with insurance coverage for losses up to \$250,000,000.¹

5. Each of the policies in the Insurance Program, as detailed furtherer herein, share indistinguishable policy language with respect to coverage for the losses at issue in this Complaint. The policies are functionally identical except for the portion of liability that each carrier assumes for covered losses.

6. Plaintiff’s Insurance Program carried effective dates from the period of July 28, 2019 until July 28, 2020, and was in full force and effect when the COVID-19 pandemic began to sweep through the nation.

7. Plaintiff’s Insurance Program contains a “Special Perils Business Interruption” endorsement which provides coverage for, *inter alia*, “interruption or interference with the business of the Insured as a consequence of: 1) Infectious or contagious disease manifested by any person while on the premises of the Insured.”

8. The “Special Perils Business Interruption” endorsement also provides coverage for “actual loss sustained and the extra expense incurred by the insured . . . as a result of compliance with a Declared Public health emergency.”

9. Plaintiff suffered an interruption of business as a result of the manifestation of COVID-19 by persons at properties insured under the Insurance Program. A detailed appendix of

¹ Plaintiff’s Insurance Program includes other policies which provide additional layers of coverage totaling \$2.3 billion. Plaintiff’s losses, as detailed herein, do not exceed the \$250 million layer of coverage and therefore the additional excess policies are not implicated by Plaintiff’s claim.

the specific known instances of the manifestation of COVID-19 at insured properties is attached to this Complaint as Exhibit "A."²

10. Plaintiff incurred loss and extra expense including additional cleaning costs and the purchase and use of personal protective measures, temperature screening stations, sanitation stations, protective barriers, etc., as a result of the manifestation of COVID-19 at its properties and in order to comply with the ensuing Declared Public Health emergencies impacting those properties.

11. In July 2020, Plaintiff timely submitted its insurance claim for aforesaid losses to Defendants.

12. Plaintiff fully expected that, in light of the all-encompassing all-risk Insurance Program purchased from Defendant, Defendant would be responsive to its insurance claim.

13. Notwithstanding the Insurance Program's explicit grant of coverage for losses resulting from infectious disease, by letter dated August 20, 2020, Defendants denied all liability and to date have issued no payment to Plaintiff whatsoever.

14. The instant lawsuit results from Defendants' breach of their contractual obligations to indemnify Plaintiff under the Insurance Program with respect to aforesaid business interruption, loss and extra expense.

15. This Court has venue over this action as Defendants' breach of contract relates to losses sustained at properties within New York County, New York and as such venue is proper under CPLR §503(a).

² Exhibit "A" is non-exhaustive and is based upon information currently available. Given the prolific spread of COVID-19 in the spring of 2020, Plaintiff avers that full discovery in this matter will disclose additional instances at each and every insured property.

PARTIES

16. At all times hereinafter mentioned, Plaintiff, RXR PARTNERS, LLC, is a limited liability company comprised of the following members:

- a. Scott Rechler, a citizen of the State of New York;
- b. Michael Maturo, a citizen of the State of New York;
- c. Jason Barnett, a citizen of the State of New York;
- d. Todd Rechler, a citizen of the State of New Jersey;
- e. The Barnett Trust, the trustees of which are Susan Barnett, a citizen of the State of New York, and Else Kent, a citizen of the State of New Jersey; and
- f. The Maturo Trust, the trustees of which are Paula Maturo and Scott Rechler.

17. At all times hereinafter mentioned, Defendant CONTINENTAL CASUALTY COMPANY was and is a corporation existing under and by virtue of the laws of the State of Illinois, having its principal place of business at 151 N. Franklin St., Chicago, IL 60606.

18. At all times hereinafter mentioned, Defendant INTERSTATE FIRE AND CASUALTY COMPANY was and is a foreign corporation existing under and by virtue of the laws of the State of Illinois, having its principal place of business at 225 West Washington Street, Chicago, Illinois 60606.

19. At all times hereinafter mentioned, Defendant LIBERTY MUTUAL FIRE INSURANCE COMPANY was and is a corporation existing under and by virtue of the laws of the State of Wisconsin, having its principal place of business at 175 Berkeley Street, Boston, Massachusetts 02116.

20. At all times hereinafter mentioned, Defendant ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY was and is a foreign corporation existing under and by

virtue of the laws of the State of Delaware, having its principal place of business at 750 3rd Avenue, New York, New York 10017.

21. At all times hereinafter mentioned, Defendant QBE SPECIALITY INSURANCE COMPANY was and is a foreign corporation existing under and by virtue of the laws of the State of Pennsylvania, having its principal place of business at One General Drive, Sun Prairie, Wisconsin 53596.

22. At all times hereinafter mentioned, Defendant STARR SURPLUS LINES INSURANCE COMPANY was and is a limited liability company having its principal place of business at 3353 Peachtree Road, NE, Suite 1000, Atlanta, Georgia 30326.

23. At all times hereinafter mentioned, Defendant ZURICH AMERICAN INSURANCE COMPANY was and is a corporation existing under and by virtue of the laws of the State of New York, having its principal place of business at 1299 Zurich Way, Schaumburg, Illinois 60196.

THE NOVEL CORONAVIRUS AND ITS EFFECTS

24. It is beyond cavil that beginning in the early spring of 2020, the United States began experiencing the effects of the global pandemic from a disease caused by a novel coronavirus (specifically, SARS-CoV-2) and commonly referred to as COVID-19.

25. From as early as December 2019, COVID-19 began spreading, first in China and then, because the disease is highly contagious, rapidly around the globe.

26. On January 30, 2020, the World Health Organization (“WHO”) declared that the COVID-19 outbreak constituted a public health emergency of international concern.

27. The WHO stated that COVID-19 “spreads between people through direct, indirect (through contaminated objects or surfaces), or close contact with infected people . . . [p]eople with

the virus in their noses and throats may leave infected droplets on objects and surfaces (called fomites) when they sneeze, cough on, or touch surfaces, such as tables, doorknobs and handrails. Other people may become infected by touching these objects or surfaces, then touching their eyes, noses or mouths before cleaning their hands.”³

28. In addition, studies have verified that many individuals remain asymptomatic despite infection by COVID-19.⁴ COVID-19 also includes a pre-symptomatic incubation period of up to 14 days, during which time infected people can transmit COVID-19 to people, into the air and onto surfaces without having experienced symptoms and without realizing that they are infected.⁵ COVID-19 is not only highly contagious, but also deadly. In April 2020, 3 people staying at a Hotel in midtown Manhattan died of COVID-19. The Hotel is located less than a mile from numerous of Plaintiff’s insured properties claiming losses in the instant action.

29. Consequently, while during this time period it was possible to identify certain individuals who were suffering from obvious symptoms of the coronavirus, given a lack of significant medical testing at the time, it was impossible to distinguish between infected and non-infected members of the general public. Additionally, the existence and/or presence of the Coronavirus and COVID-19 is not simply reflected in reported cases or individuals’ positive test results. The Centers for Disease Control and Prevention (“CDC”) estimates that the number of people in the U.S. who have been infected with COVID-19 is likely to be 10 times higher than the number of reported cases.⁶

³ *Q&A on coronaviruses (COVID-19)*, World Health Organization, <https://www.who.int/vietnam/news/detail/14-07-2020-q-a-how-is-COVID-19-transmitted> (last visited May 5, 2022).

⁴ See CDC, Jing Cai, Wenjie Sun, Jianping Huang, Michelle Gamber, Jing Wu, Guiqing He, *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 Mar. 20, 2021).

⁵ *Id.*

⁶ Lena H. Sun and 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 Mar. 31, 2021).

30. Civil authority orders began to be issued by states and municipalities throughout March 2020.

31. These orders were all predicated, in part, on the effect of the presence of COVID-19 within enclosed, highly trafficked locations.

32. For example, New York City Emergency Executive Order No. 100, issued March 16, 2020 stated that the order was issued “because the virus physically is causing property loss and damage.”⁷

COVID-19 IS AN INFECTIOUS OR CONTAGIOUS DISEASE

33. Given the nature of Plaintiff’s business, the spread of the COVID-19 virus led to significant economic damages.

34. These damages resulted from the manifestation of COVID-19 by persons while on Plaintiff’s insured properties.

35. SARS-CoV-2 is a physical substance and a human pathogen which can be present outside the body and is more likely to be transmitted indoors.

36. As a result, when people infected with COVID-19 cough, sneeze, talk or breath, they produce respiratory droplets, or “fomites” carrying SARS-CoV-2.

37. Not only is SARS-CoV-2 transmitted human-to-human, but the WHO and scientific studies have confirmed that the virus can remain infectious on objects and surfaces.

38. SARS-CoV-2 and resultant COVID-19 is an “infectious or contagious disease” within the ordinary meaning of those words.

39. As noted above, COVID-19 spreads both through aerosols which linger for an extended period of time in the air of the space that an infected person has entered or passed through.

⁷ See The City of New York, Office of the Mayor, Emergency Executive Order No. 100, March 16, 2020.

40. COVID-19 also spreads through physical droplets which land on surfaces rendering those surfaces damaged by converting those surfaces into a vehicle for further infection to other customers, employees or any other person who subsequently comes in contact with those physical droplets.

41. Like many other threats to human health and life (for example, formaldehyde, radioactivity, carbon monoxide, and legionella) SARS-CoV-2 presents a threat to human life and health through the risk of contact with the virus on surfaces.

42. “Fomites” are physical objects or materials that carry, and are capable of transmitting infectious agents, altering these objects to become vectors of disease. Fomite transmission has been demonstrated for SARS-CoV-2, both from object-to-hand and from hand-to-mouth.⁸

43. At all relevant times, human beings have spread COVID-19 through the simple act of breathing in air that contains viral droplets. The New York Times has reported that “[a]n infected person talking for five minutes in poorly ventilated space can also produce as many viral droplets as one infectious cough.”⁹

44. Fomites physically alter the surface of property into a potentially deadly Coronavirus transmission device. A study published in the Journal of Epidemiology and Infection demonstrated that after lockdown in the United Kingdom, Coronavirus transmission via fomites may have contributed to as many as 25% of deaths in that region.¹⁰

⁸ See n.2 *supra*.

⁹ Yuliya Parshina-Kottas, Bedel Saget, Karthik Patanjali, Or Fleisher and Gabriel Gianordoli, *This 3-D Simulation Shows Why Social Distancing Is So Important*, New York Times (Apr. 14, 2020) <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html>.

¹⁰ A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 2020), <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-ofCOVID19-transmission-including-indirect-transmission-mechanisms-amathematicalanalysis/A134C5182FD44BEC9E2BA6581EF805D3> (last visited Mar. 20, 2021).

45. According to a metaanalysis of studies reported in The Royal Society, “aluminum surfaces allowed coronavirus to stay alive for 2-8 [hours],” other results indicated that “steel, stainless steel, glass, silicone rubber, PVC, ceramic and Teflon all allowed coronavirus to stay active for 5 days.”¹¹ According to a study documented in The New England Journal of Medicine, COVID-19 was detectable in aerosols for up to 3 hours, up to 4 hours on copper, up to 24 hours on cardboard, and up to 3 days on plastic and stainless steel.¹²

46. Indeed, scientific studies suggest that during the relevant time period set forth herein, individuals could contract COVID-19 through indirect contact with surfaces or objects used by an infected person, regardless of whether the infected person was symptomatic.

47. Accordingly, at all relevant times, the presence of the Coronavirus in and on property, including in indoor air, on surfaces, and on objects, caused direct physical loss of or damage to property by causing harm to and altering property and otherwise making it incapable of being used for its intended purpose.

48. During the relevant time periods, removing COVID was difficult as well. A number of early studies found that the Coronavirus was much more resilient to cleaning than other respiratory viruses so tested.

49. Furthermore, during the relevant subject period, because COVID-19 physically affected surfaces of property and the air and could be transferred to individuals that come into contact with the surface or the air of the property, causing additional infections, effective response

¹¹ M. Aydogdu, E. Altun, E. Chung, G. Ren, S. Homer-Vanniasinkam, B. Chen and M. Edirsinghe, *Surface interactions and viability of coronaviruses*, Journal of the Royal Society (Jan. 6, 2021), <https://doi.org/10.1098/rsif.2020.0798> (last visited May 5, 2022).

¹² Neeltje van Foremalen, Trenton Bushmaker, Dylan H. Morris, Myndi G Holbrook, Amandine Gamble, Brandi N. Williamson, Azaibi Tamin, Jennifer L. Harcourt, Natalie J. Thornburg, Susan I. Gerber, James O. Lloyd-Smith, Emmie de Wit, and Vincent J. Munster, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, The New England Journal of Medicine (Mar. 17, 2020), <https://www.nejm.org/doi/full/10.1056/nejmc2004973>.

to the COVID-19 pandemic required measures designed to reduce human to human contact along with surface to human contact.

50. Additionally, the CDC recognized the importance of heating, ventilation and air conditioning (“HVAC”) improvements prior to reoccupying buildings. According to the CDC, “[p]rotective ventilation practices and interventions can reduce the airborne concentrations and reduce the overall viral dose to occupants.” For that reason, the CDC recommended that building owners and operators make various physical modifications to their HVAC systems to reduce exposure to the virus on their properties and the spread of COVID-19.¹³

51. Like many other threats to human health and life (for example, formaldehyde, radioactivity, or carbon monoxide) at all relevant times, SARS-CoV-2 presented a threat to human life and health through the risk of contact with the virus on surfaces.

PLAINTIFF’S INSURANCE POLICY AND CLAIM

52. The commencement of this lawsuit results from a breach of insurance contract arising from the failure of Defendants to provide payment to Plaintiff for losses resulting from the COVID-19 global pandemic beginning on or about March 20, 2020, resulting in an economic loss that was first realized by Plaintiff on or about April 1, 2020.

53. On or before July 28, 2019, Plaintiff, for good and valuable consideration, purchased multiple insurance policies comprising the Insurance Program to afford “all-risk” coverage its properties.

¹³ *CDC Guidance with respect to Ventilation in Buildings* (June 2, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html> (citing *Laurence J. Schoen, P.E., Guidance for Building Operations During the COVID-19 Pandemic*, American Society of Heating, Refrigerating and Air-Conditioning Engineers Journal (May 2020)).

54. The Insurance Program is comprised of the following policies, which are identical in all respects with regards to the policy language quoted in the instant Complaint, and which all bore effective dates of July 28, 2019 to July 28, 2020:

- a. CNA Insurance Policy No. 6073127880, containing a Limit of Liability for \$20,000,000 of up to \$250,000,000 Per Occurrence;
- b. Endurance American Specialty Insurance Company Policy No. GPR10009629303, containing a Limit of Liability for \$25,000,000 of up to \$250,000,000 Per Occurrence;
- c. Interstate Fire And Casualty Company Policy No., RTX20041719, containing a Limit of Liability for \$100,000,000 of up to \$1,000,000,000 Per Occurrence;
- d. QBE Specialty Insurance Company Policy no. CFE1333538, containing a Limit of Liability for \$100,000,000 of up to \$2,000,000,000 Per Occurrence;
- e. Liberty Mutual Fire Insurance Company Policy No. MJ2-L9L-466183-019, containing a Limit of Liability for \$200,000,000 of up to \$2,000,000,000 Per Occurrence;
- f. Starr Specialty Lines Insurance Agency, LLC Policy No. SLSTPTY11211619, containing a Limit of Liability for \$100,000,000 of up to \$1,000,000,000 Per Occurrence; and
- g. Zurich American Insurance Company Policy No. ERP01999906-03, containing a Limit of Liability for \$330,000,000 of up to \$1,500,000,000 Per Occurrence;

55. The Insurance Program was in full force and effect as of March 2020 and for the period of time immediately thereafter.

56. The insuring clause contained in each of the policies in the Insurance Program provides, in relevant part:

8. COVERAGE

A. Real and Personal Property

The interest of the Insured in all real and personal property including but not limited to property owned, used, leased or intended for use by the Insured, or hereafter constructed, erected, installed, or acquired, including while in course of construction, erection, installation, and assembly. In the event of direct physical loss or damage, this Company agrees to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or leases to the contrary.

* * *

10. PERILS INSURED AGAINST

This policy insures against all risk of direct physical loss of or damage to property described herein including general average, salvage and all other charges on shipments covered hereunder, except as hereinafter excluded occurring during the term of this policy.

57. The policies in the Insurance Program afford coverage with a total Program limit of liability of \$2,250,000,000.

58. The policies in the Insurance Program specifically afford coverage for the following: (1) USD 2,000,000,000 Extra Expense; (2) USD 100,000 Extra Expense "Goodwill"; (3) and USD 5,000,000 Special Perils Business Interruption.

59. The policies in the Insurance Program also afford coverage for the following: (1) 90 Days Civil or Military Authority, but in no event will the company pay more than USD

25,000,000; (2) 730 Days Extended Period of Indemnity; and (3) 90 Days Ingress/Egress, but in no event will the Company pay more than USD \$25,000,000.

60. The policies in the Insurance Program afford business interruption coverage as follows:

B. Business Interruption

- (1) Loss resulting from necessary interruption of business conducted by the Insured, whether total or partial, and caused by direct physical loss, damage, or destruction covered herein during the term of this policy to real and personal property as described in Clause 8.A.

By way of clarification, this policy shall also cover the loss of fee income to the insured as stipulated under a management and/or related services agreement between the Insured and another party which is not realizable due to loss, damage, or destruction covered herein during the term of this policy to locations managed by the Insured and covered under this Policy.

- (2) If such loss occurs during the term of this policy it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED by the Insured, consisting of the net profit which is thereby prevented from being earned and of all charges and expenses only to the extent that these must necessarily continue during the interruption of business including Ordinary payroll and only to the extent such charges and expenses would have been earned had no loss occurred . . .

- (6) Experience of the Business:

- (a) In determining the amount of net profit, charges and expenses covered hereunder for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the level of business operations that could reasonably have been achieved had no loss occurred before the date of direct physical loss or damage or destruction and to the probable experience thereafter had no loss occurred to real or personal property as described in Clause 8.A.

- (b) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the available experience of the business after completion of the construction, erection, installation, or assembly.

61. The policies in the Insurance Program afford coverage for Extra Expense as follows:

C. Extra Expense

- (1) Extra Expense incurred resulting from direct physical loss, damage, or destruction covered herein during the term of this policy or real or personal property as described in Clause 8.A.

“Extra Expense” means the excess of the total cost chargeable to the operation of the Insured’s business over and above the total cost that would normally have been incurred to conduct the business had no direct physical loss or damage occurred.

- (2) Goodwill Extra Expense: It is understood and agreed that if damage to Insured property occurs, this policy provides a sublimit of liability not to exceed \$100,000 per occurrence for loss sustained from evacuation of guests or tenants due to any necessary extra expense which includes goodwill and public relations expenditures incurred by the insured.

62. The policies in the Insurance program afford coverage for Rental Value loss as follows:

D. Rental Value

Rental Value loss sustained by the Insured resulting directly from direct physical loss, damage, or destruction covered herein during the term of this policy to real and personal property as described in Clause 8.A. but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue.

“Rental Value” is defined as the sum of:

- (a) The total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the Insured including taxes, rent based on percentage of sales, and other charges paid by tenants in respect of the leased premises; and
- (b) The amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Insured; and
- (c) The fair rental value of any portion of said property which is occupied by the insured.

Experience of the Business:

In determining the amount of rental value covered hereunder for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the rental experience before the date of direct physical loss or damage or destruction and to the probable experience thereafter had no loss occurred to real and personal property as described in Clause 8.A.

With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the available rental experience of the business after completion of the construction, erection, installation, or assembly. When the Insured is the lessee, this Policy insures the Actual Loss Sustained of the rent which the Insured is obligated to pay including ground rents, accrued charges, real estate taxes and interest if the Insured is liable for such, less charges and expenses that do not necessarily continue during the Period of Recovery.

63. The policies in the Insurance Program contain the following “Time Element Extensions” extending the period for which coverage for losses detailed above is available:

G. Time Element Extensions

This policy, subject to all provisions and without increasing the limits of this policy, also insured against all loss resulting from damage to or destruction by causes of loss insured against loss resulting from damage to or destruction by causes of loss insured against, to: . . .

(v) Interruption by Civil or Military Authority: This policy is extended to cover the loss sustained during the period of time when access to real or personal property is prohibited by order or action of civil or military authority issued in connection with or following a peril insured against within 10 statute miles of the insured . . .

(vi) Ingress/Egress: This policy is extended to cover the loss sustained during the period of time when, in connection with or following a peril insured against, access to or egress from real or personal property is prohibited within 10 statute miles of the insured.

64. Coverage afforded under the policies is modified by the “Special Perils Business Interruption” endorsement, that is contained in each of the policies in the Insurance Program. That endorsement provides as follows:

Special Perils Business Interruption

This policy is extended to insure loss as insured hereunder when there is an interruption or interference with the business of the Insured as a consequence of:

1. Infectious or contagious disease manifested by any person while on the premises of the Insured; . . .
3. Closing of the whole or part of the premises of the Insured by order of competent public authority consequent upon the existence of threat or hazardous conditions either actual or suspected at the premises of the Insured.
4. This policy is further extended to cover the actual loss sustained and the extra expense incurred by the insured due to the necessary interruption of the insured’s business as a result of compliance with a Declared Public Health Emergency
 - a. A Declared Public Health Emergency means a written declaration by a local, state or federal agency or official authorized by applicable public health law to declare such an emergency.

PROPERTIES AFFECTED

65. Plaintiff sustained losses as a result of the presence of SARS-CoV-2 and the manifestation of the infectious or contagious disease COVID-19 at each of the following properties insured under the Insurance Program:¹⁴

- a. 100 Crossways Park West, Woodbury, New York;
- b. 1000 Woodbury Road, Woodbury, New York;
- c. 101 Crossways Park West, Woodbury, New York;
- d. 111 Crossways Park West, Woodbury, New York;
- e. 1285 Avenue of the Americas, New York, New York;
- f. 1330 Avenue of the Americas, New York, New York;
- g. 177-199 Crossways Park Drive, Woodbury, New York;
- h. 180-210 Crossways Park Drive, Woodbury, New York;
- i. 20 Crossways Park North, Woodbury, New York;
- j. 220 Crossways Park West, Woodbury, New York;
- k. 230 Park Avenue, New York, New York;
- l. 230-240 Crossways Park Drive, Woodbury, New York;
- m. 237 Park Avenue, New York, New York;
- n. 32 Old Slip, New York, New York;
- o. 333 Earle Ovington Boulevard, Uniondale, New York;
- p. 340 Madison Avenue, New York, New York;

¹⁴ A detailed appendix of the specific known instances of the manifestation of COVID-19 at insured properties is attached to this Complaint as Exhibit "A." Plaintiff avers that this list is non-exhaustive and that discovery in this matter will disclose additional instances at each and every property.

- q. 357 Crossways Park Drive, Woodbury, New York;
- r. 587 Main Street, New Rochelle, New York;
- s. 395 N. Service Road, Melville, New York;
- t. 450 Lexington Avenue, New York, New York;
- u. 470 Vanderbilt Avenue, Brooklyn, New York;
- v. 810 Fulton Street, Brooklyn, New York;
- w. 48 South Service Road, Melville, New York;
- x. 5 Times Square, New York, New York;
- y. 50 Charles Lindbergh, Uniondale New York;
- z. 530 Fifth Avenue, New York, New York;
- aa. 55-14 Grand Avenue, Maspeth, New York;
- bb. 58 South Service Road, Melville, New York;
- cc. 61 Broadway, New York, New York;
- dd. 620 Avenue of the Americas, New York, New York;
- ee. 68 South Service Road, Melville, New York;
- ff. 75 Rockefeller Plaza, New York, New York;
- gg. 88 Froelich Farm , Woodbury, New York;
- hh. 355 Atlantic Street, Stamford, Connecticut;
- ii. Engineers Country Club (Glenwood Road, Roslyn, New York)
- jj. Garvies Point Master Development (including Phase I Blocks B, H, and I), Glen
Cove, New York;
- kk. One Media Crossways, Woodbury, New York;
- ll. Pier 57, New York, New York;

- mm. 420 Crossways Park Drive, Woodbury, New York;
- nn. RXR Plaza, Uniondale, New York;
- oo. 25 Warburton Avenue, Yonkers, New York;
- pp. 37-18 Northern Boulevard, Long Island City, New York;
- qq. 601 West 26th Street, New York, New York; and
- rr. 9-47 Hall Street, Brooklyn, New York.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS
(Breach of Contract)

66. Plaintiff repeats and realleges paragraphs “1” through “66”, with the same force and effect as if set forth at length herein.

67. The policies comprising the Insurance Program are binding contracts between Plaintiff and Defendants.

68. Plaintiff has an insurable interest in each of the properties set forth in paragraph “65”.

69. Plaintiff complied with all of its obligations under the Insurance Program, including providing Defendants with timely notification of the loss and submitting an insurance claim.

70. To date, Defendants have failed to compensate Plaintiff for any of the losses sustained, which now total \$61,176,315.

71. Defendants’ failure to compensate Plaintiff constitutes a breach of their respective contracts of insurance comprising the Insurance Program.

72. As a result of Defendants’ breach of the policies comprising the Insurance Program, Plaintiff has suffered damages in the amount of \$61,176,315, together with such additional and subsequent damages as may be incurred and proven at trial.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) On the First Cause of Action, a money judgment against Defendants in the amount of \$61,176,315, together with such additional and subsequent damages as may be proven at trial;
- (b) Reasonable fees and costs of this action; and
- (c) For such other and further relief as to which this Court deems just and proper.

Dated: New York, New York
August 3, 2022

Yours, etc.,

WEG AND MYERS, P.C.
Attorneys for Plaintiff

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