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ICONA OPPORTUNITY PARTNERS 1, LLC,
individually and on behalf of all
others similarly situated

Plaintiff,

v.

CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON SUBSCRIBING TO
POLICIES B1263EW0025419,
B1263EW0080819, and VPC-CN-0001842-01,
WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, HDI GLOBAL
INSURANCE COMPANY, INDEPENDENT
SPECIALTY INSURANCE COMPANY,
INTERSTATE FIRE & CASUALTY
COMPANY, ALLIED WORLD ASSURANCE
CO., COLONY INSURANCE COMPANY,
BRIT GLOBAL SPECIALTY USA,
LANDMARK AMERICAN INSURANCE
COMPANY, and ARCH SPECIALTY
INSURANCE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAPE MAY COUNTY
Docket No.

Civil Action

**COMPLAINT and
DEMAND FOR JURY TRIAL**

Plaintiff, Icona Opportunity Partners 1, LLC (“Icona” or “Plaintiff”), files this Complaint against Defendants Certain Underwriters at Lloyd’s, London (“Lloyds”), Westchester Surplus Lines Insurance Company (“Westchester”), HDI Global Insurance Company (“HDI”), Independent Specialty Insurance Company (“Independent”), Interstate Fire & Casualty Company (“Interstate Fire”), Allied World Assurance Co. (“Allied”), Colony Insurance Company

(“Colony”), Brit Global Specialty USA (“Brit”), Landmark American Insurance Company (“Landmark”), and Arch Specialty Insurance (“Arch”) (collectively “Defendants”), and says:

INTRODUCTION

1. Icona is a member of the Hospitality Risk Management Association (“HRMA”), an association of affiliated hospitality companies or corporations. Icona owns, operates and/or has an interest in a portfolio of hotels, including:

- a. Icona Diamond Beach Hotel – 9701 Atlantic Ave., Wildwood Crest, NJ;
- b. Icona Avalon Hotel - 7849 Dune Dr., Avalon, NJ; and
- c. Icona Cape May Hotel - 1101 Beach Ave., Cape May, NJ.

2. To protect its members’ business operations and interests at hotel properties throughout the country, HRMA purchased a program of commercial property insurance coverage collectively issued by the Defendants. As part of this program of insurance, all Defendants agreed to indemnify HRMA and its associated members, including Icona, for business losses on a proportional basis subject to common terms and conditions set forth in a master policy form issued separately, but identically, by each Defendant. These terms and conditions applicable to all Defendants’ coverage obligations are set forth in Lloyd’s Policy No. B1263EW0025419, a true and correct copy of which is attached as **Exhibit A**. For ease of reference, Icona will refer to the Defendants’ common insuring obligations under these identical terms and conditions as arising under the “Policy.”

3. Under the Policy, Defendants are responsible for receiving and managing claims and loss notices, responding to questions about insurance and coverage and paying claims for covered losses.

4. The Policy is a bilateral contract: Icona agreed to pay premiums to Defendants in exchange for Defendants' promises of coverage for all risks of loss except those specifically and unambiguously excluded.

5. Icona reasonably expected that claims for loss of business income arising from any necessary suspension of operations would be paid unless specifically and unambiguously excluded.

6. Along with this business income coverage, Icona also had in effect "Extra Expense" coverage under which Defendants promised to pay for necessary expenses Icona incurred in order to continue as nearly as practicable the normal operation of its businesses.

7. Additionally, the Policy provides "Civil Authority" coverage under which Defendants promised to pay for loss of business income sustained when the action of a civil authority prohibits or limits access or use of insured premises.

8. The Policy also provides "Ingress/Egress" coverage under which Defendants promised to pay for loss of business income sustained when ingress to or egress from real or personal property is impaired.

9. Indeed, the Policy even provides "Contagious Disease" coverage under which Defendants promised to pay for loss of business income sustained associated with the actual or suspected presence of a communicable disease.

10. Finally, the Policy too affords Icona "Attraction Properties" coverage, which is coverage for losses incurred as the result of the loss of third party property in the vicinity of Icona's insured premises, which draws or attracts customers to Icona's operations.

11. Under the Policy, Defendants promised to cover these losses, and are obligated to pay for them. But in blatant breach of their contractual obligations, Defendants have failed to pay for these losses.

12. At all times material hereto, Icona duly complied with its obligations under the Policy, and timely paid its requisite premiums.

THE PARTIES

13. On personal knowledge, Icona Opportunity Partners 1, LLC is a limited liability company organized under the laws of, and existing in, the State of Delaware, with its principal places of business located in Cape May County, New Jersey.

14. Defendant Lloyd's is a group of insurance syndicates each subscribing to the Policy and located at One Lime Street, London EC3M 7HA.

15. Defendant Westchester Surplus Lines Insurance Company is a corporation organized under the laws of, and existing in, the State of Georgia, with its principal place of business located at 500 Colonial Center Parkway, Suite 200, Roswell, Georgia.

16. Defendant HDI Global Insurance Company is a corporation organized under the laws of, and existing in, the State of Illinois, with a principal place of business located at 161 North Clark Street, 48th Floor, Chicago, Illinois 60601.

17. Defendant Independent Specialty Insurance Company is a corporation organized under the laws of, and existing in, the State of Delaware, with a principal place of business located at 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

18. Defendant Interstate Fire & Casualty Company is a corporation organized under the laws of, and existing in, the State of Illinois, with a principal place of business located at 33 West Monroe Street, Chicago, Illinois 60603.

19. Defendant Allied World Assurance Company is a corporation organized under the laws of, and existing in, the Commonwealth of Delaware, with a principal place of business located at 199 Water Street, New York, New York 10038.

20. Defendant Colony Insurance Company is a corporation organized under the laws of, and existing in, the Commonwealth of Virginia, with a principal place of business at 8720 Stony Point Parkway Suite 400, Richmond, Virginia 23235.

21. Defendant Brit Global Specialty USA is a corporation organized under the laws of, and existing in, the State of Illinois, with a principal place of business at 161 North Clark Street, Suite 3200, Chicago, Illinois 60601.

22. Defendant Landmark American Insurance Company is a corporation organized under the laws of, and existing in, the State of Oklahoma, with a principal place of business located at 945 E Paces Ferry Road NE, Suite 1800, Atlanta, Georgia 30326.

23. Defendant Arch Specialty Insurance is a corporation organized under the laws of, and existing in, the State of Missouri, with a principal place of business at Harborside 3, 210 Hudson Street, Suite 300, Jersey City, New Jersey 07311.

24. Defendants, jointly and severally, issued and subscribed to the Policy insuring Icona under the terms and conditions described, *infra*.

25. At all times relevant, the Defendants were acting in the course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge, acquiescence, and ratification of each other.

JURISDICTION AND VENUE

26. This Court has long arm jurisdiction over Defendants pursuant to, N.J. R. 4:4-4(b)(1) because, Defendants regularly conduct, engage in, and/or carry on business in New Jersey.

Defendants also purposefully availed themselves of the opportunity of conducting activities in the State of New Jersey by marketing their insurance policies and services within New Jersey, and intentionally developing relationships with brokers, agents, and customers within New Jersey to insure property within New Jersey. Further, by subscribing to the Policy, the Defendants each agreed to provide insurance services for companies operating, and properties located in, the State of New Jersey.

27. On information and belief, Defendants have systematically transacted and conducted business in the State of New Jersey, and contracted to supply insurance services within the State of New Jersey, and these causes of action arise, in part, from the same.

28. On information and belief, at all relevant times, Defendants expected or should have expected that their acts would have consequences within the United States of America and the State of New Jersey.

29. On information and belief, at all relevant times, Defendants derived and continue to derive substantial revenue from providing insurance used in the State of New Jersey.

30. On information and belief, at all relevant times, Defendants committed tortious acts within the State of New Jersey causing injury within the State of New Jersey, out of which act(s) these causes of action arise.

31. Requiring Defendants to litigate these claims in New Jersey does not offend traditional notions of fair play and substantial justice and is permitted by the United States Constitution.

32. Moreover, Defendants systematically availed themselves of the State of New Jersey by conducting regular and sustained business and engaging in substantial commerce and business activity in New Jersey.

33. Defendants expected or should have expected that their acts would have consequences within the United States, specifically, in the State of New Jersey.

34. Venue is proper in this Court pursuant to Rule 4:3-2 because venue is deemed proper in the Superior Court in the county in which cause of action arose, or where any party to the action resides. Icona's insured properties are all located in Cape May County, and its principal places of business are likewise located in Cape May County.

35. According to the Missouri Secretary of State, Defendant Arch Specialty Insurance's "principal office address" is located at Harborside 3, 210 Hudson Street, Suite 300, Jersey City, New Jersey 07311. Arch is therefore a resident of New Jersey for purposes of determining jurisdiction.

36. The instant Complaint does not confer diversity jurisdiction upon the federal courts as a result of 28 U.S.C. § 1441(b)(2). Further, 28 U.S.C. § 1332(d) does not confer jurisdiction upon the federal courts because Plaintiff specifically alleges that the proposed class includes less than 100 potential class members. Likewise, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked by the instant Complaint, as it sets forth herein exclusively state law claims against the Defendants. Nowhere does Plaintiff plead, expressly or implicitly, any cause of action or request any remedy that arises under or is founded upon federal law, and any alleged federal rights or remedies are expressly disavowed. The issues presented by Plaintiff do not implicate substantial federal questions, do not turn on the necessary interpretation of federal law, and do not affect the federal system as a whole. The assertion of federal jurisdiction over claims made herein would improperly disturb the congressionally approved balance of federal and state responsibilities.

FACTUAL BACKGROUND

The Policy

37. The Policy has an effective period of June 30, 2019, to June 30, 2020.

38. The Policy affords Icona with \$350 million in total insurance coverage for, among other things, business interruption and extra expense losses, of which each Defendant is responsible for its proportional, sequential shares of liability.

39. The “insured” is broadly defined by the Policy to include:

Hospitality Risk Management Association and all owned controlled, subsidiary, affiliated and associated companies or corporations as now or may hereafter be constituted.

40. Under this definition, Policy coverage extends to, among other things, HRMA’s members, including Icona.

41. The Policy provides coverage on an “all risk” rather than specified peril basis. In an all-risk insurance policy, all risks of loss are covered unless they are specifically excluded.

42. More specifically, pursuant to Section 10, the Policy provides coverage for loss due to the necessary interruption of business conducted by Icona:

10. Business Interruption – This policy shall cover the loss resulting from the complete or partial interruption of business conducted by the Insured including all interdependent loss of earnings between or among companies owned or operated by the Insured caused by loss, damage, or destruction by any of the perils covered herein during the term of this policy to real and personal property as covered herein.

43. Section 10 of the Policy further states that Icona’s loss will be adjusted on the basis of actual loss sustained:

In the event of such loss, damage or destruction this Company shall be liable for the ACTUAL LOSS SUSTAINED by the insured resulting directly from such interruption of business, but not exceeding the reduction in gross earnings less charges and expenses which do not necessarily continue during the interruption of business. Due consideration shall be given to the continuation of normal charges

and expenses including payroll expense, to the extent necessary to resume operations of the Insured with the same quality of service which existed immediately before the loss.

44. For the purposes of ascertaining the full value of its insured claim, the Policy provides that Icona may properly point to its past business experiences and likely future performance in calculating the amount of net profits, charges and expenses to be indemnified:

In determining the amount of gross earnings, charges, and expenses covered hereunder for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

45. In addition to business interruption losses, the Policy affords coverage for the additional or extraordinary expenses Icona incurs in order to mitigate or offset any suspensions of its operations:

11. Extra Expense - This policy shall cover the reasonable and necessary extra expense, as hereinafter defined, incurred by the Insured caused by loss, damage, or destruction by any of the perils covered herein during the term of this policy to real and personal property as covered herein.
 - a) The term "Extra Expense" wherever used in this Policy, is defined as the excess (if any) of the total cost(s) incurred during the period of restoration, chargeable to the operation of the Insured's business, over and above the total cost(s) that would have normally have been incurred to conduct the business during the same period had no loss or damage occurred.

46. As a complement to this business interruption and extra expense coverage, the Policy also entitles Icona to indemnification of contingent business interruption and extra expense losses – that is, losses to Icona’s business caused by the unavailability of third party property, goods or services.

21. Extensions of Time Element Coverage - This policy, subject to all its provisions and without increasing the amount of said policy, insures against ACTUAL LOSS SUSTAINED by the Insured resulting from direct physical loss or damage from the perils insured against, to:

- b) property of a type not excluded that directly prevents a direct supplier of goods and/or services to the Insured from rendering their goods and/or services, or property of a type not excluded that prevents a direct receiver of goods and/or services from receiving the Insured's goods and/or services; such supplier or receiver shall not be an Insured under this policy. Coverage includes direct physical loss or damage of the type insured to real and personal property of a type not excluded located at Attraction properties, defined as properties not operated by the Insured, which attract potential customers to the vicinity of the Insured's locations.

47. Under the Policy, the Defendants also promised to pay for Icona's losses incurred due to the actions of civil authorities if Icona's access to its property is impaired by order or action of civil or military authority:

- 21. Extensions of Time Element Coverage - This policy, subject to all its provisions and without increasing the amount of said policy, insures against ACTUAL LOSS SUSTAINED by the Insured resulting from direct physical loss or damage from the perils insured against, to:

- d) the actual loss sustained for a period not to exceed 90 consecutive days when, following direct physical damage caused by a peril insured against, access to real or personal property within 3 miles of the Insured's premises is prevented by order of civil or military authority irrespective of whether the property of the Insured shall have been damaged.

48. Similarly, the Policy entitles Icona to "Ingress/Egress" coverage whenever it incurs losses because its access to and from insured premises is restricted or limited:

- 21. Extensions of Time Element Coverage - This policy, subject to all its provisions and without increasing the amount of said policy, insures against ACTUAL LOSS SUSTAINED by the Insured resulting from direct physical loss or damage from the perils insured against, to:

- e) the actual loss sustained for a period not to exceed 90 consecutive days when, following direct physical damage caused by a peril insured against, ingress to or egress from real or personal property within 3 miles of the Insured's premises is thereby prevented irrespective of whether the property of the Insured shall have been damaged.

49. The Policy also contains an extension of coverage specific to “contagious diseases” wherein Defendants promised to pay Icona for losses incurred due to the actual or suspected presence of, among other things, a virus, which results in a partial or total closure of its insured premises at the direction of a public authority:

12. Loss of Attraction - Subject to the Sublimit stated, this policy shall extend to insure the Business Interruption actual loss sustained as a direct consequence of the closing of the entire or part of the premises of the Insured by order of a competent public authority based upon the threat or existence of the following hazardous conditions:

i) Infectious or contagious disease manifested by any person while on the premises of the insured;

50. Inclusion of this coverage means the Policy expressly acknowledges that contagious disease causes “injured physical loss or damage,” and such physical loss requires cleanup, removal and disposal.

51. Inclusion of this coverage means the Policy expressly acknowledges that communicable disease causes “injured physical loss or damage,” and such physical loss requires “cleanup, removal and disposal.”

52. The Policy also provide coverage for “Decontamination Expense,” which covers “the increased cost of decontamination...of such property” if “insured property... is contaminated as a direct result of physical damage insured against by this policy there is in force any law or ordinance regulating contamination.”

53. A communicable disease is a physical loss or damage of the type insured under the Policy. The actual presence of individuals infected with COVID at Icona properties is a “physical damage not excluded.”

54. Finally, the Policy obligates Defendants to pay Icona for loss incurred due to the loss of third-party property that attracts business to Icona’s insured premises:

21. Extensions of Time Element Coverage - This policy, subject to all its provisions and without increasing the amount of said policy, insures against ACTUAL LOSS SUSTAINED by the Insured resulting from direct physical loss or damage from the perils insured against, to:

b) Coverage includes direct physical loss or damage of the type insured to real and personal property of a type not excluded located at Attraction properties, defined as properties not operated by the Insured, which attract potential customers to the vicinity of the Insured's locations.

55. The Business Income, Extra Expense, Extensions of Time Element Coverages and Communicable Disease coverages are separate, independent and not mutually exclusive of one another. As a result, Icona and the proposed Class could theoretically recover under any one of these coverages or all of these coverages at the same time.

56. The Policy covers the “risk of” direct physical “loss” or “damage” to Plaintiff and the proposed class members’ respective properties.

57. As used in the Policy, the term “physical loss” is separate, distinct, and has an independent meaning from the term “damage.”

58. The Policy does not define “physical.”

59. The Policy does not define “loss.”

60. The Policy does not define “physical loss.”

61. The Policy does not define “damage.”

62. The Policy does not define the phrase “physical loss of or damage to”

63. The Policy does not define the terms “risks” or “risks of.”

64. The words “loss” and/or “damage” are not defined in the Policy, are used for different purposes within the Policy, and have more than one potential meaning.

65. “Loss” and/or “damage” are not synonymous.

66. In the Policy, “damage” is used with the disjunctive “or” when paired with “loss” and therefore must have a different meaning than “loss.”

67. The Policy’s use of the disjunctive “or” means coverage under the term “loss” provides different and/or additional coverage than coverage provided under “damage.”

68. The Policy does not limit coverage to physical damage.

69. The words “loss” and “damage” are ambiguous as used by Defendants.

70. The word “damage” should be interpreted to have its normal and ordinary meaning physical harm that impairs the value, usefulness or normal function of something.

71. The word “loss” should be interpreted to have its normal and ordinary meaning.

72. Loss has been defined as follows:

- a. The fact of no longer having something or having less of it than before.¹
- b. The disadvantage one suffers when a valuable and useful thing is taken away.²
- c. A decrease in amount, magnitude or degree.³
- d. The amount of an insured’s financial detriment by death or damage that the insurer is liable for.⁴

73. Plaintiff and the proposed class members suffered direct physical loss of or damage to their Covered Properties. The direct physical loss of or physical damage to the Covered Properties was the result of a Covered Cause of Loss.

¹ [https:// www.collinsdictionary.com/us/dictionary/english/loss](https://www.collinsdictionary.com/us/dictionary/english/loss).

² <https://www.collinsdictionary.com/us/dictionary/english/loss>.

³ [https:// www.merriam-webster.com/dictionary/loss](https://www.merriam-webster.com/dictionary/loss).

⁴ [https:// www.merriam-webster.com/dictionary/loss](https://www.merriam-webster.com/dictionary/loss).

74. The Policy’s disjunctive use of “or” when pairing “loss” or “damage” means coverage under physical loss does not require physical damage to the Covered Property for coverage to attach.

The Purported Mold, Mildew, & Fungus Clause and Microorganism Exclusion

75. In its denials of claim, Defendants asserted that Plaintiffs were not entitled to coverage under the Policy because Plaintiffs’ claims are precluded by a “Mold, Mildew & Fungus Clause and Microorganism Exclusion” provision of the Policy.

76. The exclusion states that the Policy “does not insure any loss, damage, claim, cost, expense, or other sum directly or indirectly arising out of or relating to: mold, mildew, fungus, spores, or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.”

77. It is Defendants’ burden to prove that the Plaintiffs’ claims are excluded from coverage under the Microorganism Exclusion, and that burden cannot be met here.

78. The Microorganism Exclusion was intended to exclude from coverage losses resulting from actual contamination by microorganisms not viruses.

79. The term “virus” is not defined in the Policy.

80. The word “virus” should be interpreted to have its normal and ordinary meaning which does not include a pandemic or microorganism.

81. The Policy’s Microorganism Exclusion does not exclude loss or damage as a result of a pandemic.

82. The decision not to provide a coverage exclusion for pandemic-related losses within the Microorganism Exclusion, was an integral part of the Policy—and part of the parties’ bargained-for exchange.

83. Plaintiffs have made no claim of any such contamination and are in fact unaware of the presence of COVID-19 or any other virus in their facilities.

84. Plaintiffs similarly did not lose any business income as the result of a viral contamination on their insured premises.

85. As a result, Plaintiffs' losses fall outside of the ambit of the Microorganism Exclusion, because they did not directly or indirectly arise out of the contamination of Plaintiffs' respective insured premises.

86. Indeed, if Plaintiffs' losses had been caused by contamination, Plaintiffs could have immediately taken measures to mitigate any loss caused by the contamination and resumed operations quickly. Instead, Plaintiffs were forced to shut down their businesses for several months, even though there was no virus or contamination on their insured premises, due to the requirements of the Civil Authority Orders.

The Coronavirus Pandemic

87. On December 31, 2019, the World Health Organization ("WHO") reported people in China were becoming sick due to a mysterious form of pneumonia.

88. On January 11, 2020, China reported its first death from the mysterious form of pneumonia.

89. On January 21, 2020, the first confirmed case of the mysterious form of pneumonia was reported in the United States.

90. On January 30, 2020, for only the sixth time in its history, the WHO declared the outbreak of the mysterious form of pneumonia a Public Health Emergency of International Concern.

91. On February 29, 2020, the first death caused by this pneumonia – now known as COVID-19 – was reported in the United States.

92. On March 13, 2020, President Donald Trump declared the outbreak of COVID-19 to be a national emergency.

93. As of March 17, 2020, COVID-19 was reported to be present in every state in the United States.

94. As of March 26, 2020, the United States had more confirmed cases of COVID-19 than any other country in the world.

95. COVID-19 is spread by a number of methods, including “community spread,” meaning that some people have been infected and it is not known how or where they became exposed. Public health authorities, including the CDC, have reported significant ongoing community spread of the virus including instances of community spread in all 50 states.

96. COVID-19 is also spread through droplets of different sizes, which can be deposited on surfaces or objects.

97. More specifically, the CDC has reported that a person can become infected with COVID-19 by touching a surface or object (like a table, floor, wall, furniture, desk, countertop, touch screen or chair) that has the virus on it, and then touching their own mouth, nose or eyes. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces.

98. The material dimensions of a property can be altered and damaged through microscopic changes caused by the COVID-19 virus. Such damage may produce deadly results to human beings. If a person infected with the COVID-19 virus enters a building, then (until disinfected) the building would be (1) physically altered by the direct physical presence of the

virus on surfaces or the air, and (2) thus physically damaged, and (3) may potentially be transformed into a superspreading viral incubator.

99. One of the best ways to mitigate the presence of COVID-19 in a building is to depopulate it by keeping COVID-19 virus carriers out or lowering the number of people allowed in at one time in combination with a vigorous cleaning routine and structural alterations, such as using plexiglass dividers.

100. Many COVID-19 viral carriers (people) can infect others even though these carriers are asymptomatic. These carriers can transmit the virus directly or indirectly. Since the virus travels in aerosols or remains active on surfaces after being emitted by the carriers when they speak, shout, or sing, viral aerosols often end up on surfaces, in the air, and air circulation equipment of buildings.

101. The incubation period for COVID-19 is anywhere from 2 to 14 days. Current evidence shows that the first death from COVID-19 occurred as early as February 6, 2020—weeks earlier than initially reported, suggesting that the virus had been circulated in the United States far longer than previously assumed.

102. In a March 4, 2020 research letter published by the Journal of the American Medical Association, scientists from the National Centre for Infectious Disease and the DSO National Laboratories, both in Singapore, found novel coronavirus in the majority of uncleaned hospital rooms that had previously been occupied by patients infected with COVID-19. The researchers concluded that the spread of “SARS-CoV-2 through respiratory droplets and fecal shedding suggests the environment as a potential medium of transmission and supports the need for strict adherence to environmental and hand hygiene.”

103. Similarly, a CDC posting from March 27, 2020, reported that SARS-CoV-2 was identified on surfaces of the cabins aboard the Diamond Princess cruise ship 17 days after the cabins were vacated, but before they were disinfected. Numerous other scientific studies and articles have identified the persistence of coronavirus on doorknobs, toilets, faucets and other high touch points.

104. In the April 16, 2020 edition of the New England Journal of Medicine, researchers from UCLA, Princeton University, the National Institute of Allergy and Infectious Diseases and the CDC reported a scientific study comparing the Aerosol and Surface Stability of SARS-CoV-2 to an earlier coronavirus, SARS-CoV-1. The study reported that the novel coronavirus also persisted up to 72 hours on plastic and stainless steel.

105. Another challenge posed by the novel coronavirus is that it is possible for a person to be asymptotically infected with COVID-19. As such, seemingly healthy people also unknowingly spread the virus via speaking, breathing, and touching objects.

106. In fact, a large percentage of persons who have tested positive for COVID-19 have showed no symptoms prior to testing. The director of the CDC, Dr. Robert Redfield, has stated that “we have pretty much confirmed that a significant number of individuals that are infected actually remain asymptomatic. That may be as many as 25%. That’s important, because now you have individuals that may not have any symptoms that can contribute to transmission, and we have learned that in fact they do contribute to transmission.”

107. While infected droplets and particles carrying COVID-19 may not be visible to the naked eye, they are physical objects which travel to other objects and cause harm. Habitable surfaces on which COVID-19 has been shown to survive, and therefore cause infection, include, but are not limited to, stainless steel, plastic, wood, paper, glass, ceramic, cardboard, and cloth.

108. To reduce the spread of the disease, the CDC has recommended that businesses clean and disinfect all surfaces, prioritizing the most frequently touched surfaces.

109. To combat COVID-19, governmental authorities across the United States, issued orders forcing all businesses like Plaintiffs to limit or discontinue the physical access, occupancy and use of their business properties under penalty of law.

110. These government orders were designed to conserve public healthcare resources by physically preventing the gathering of people through forced closures and other restrictions on the access, occupancy and use of business properties. These government orders required Plaintiff to limit access to its business premises and limit access or use of the same by employees, vendors and customers alike. These restrictions on the physical access, occupancy and use of business properties were not voluntarily undertaken by businesses like Plaintiff's; they were imposed by the authority of state and local governments, and effectively dispossessed businesses like Plaintiff of the properties they needed to physically access, occupy and possess for a specific purpose to generate income.

111. The goal of the government orders was to mitigate actual or imminent harms caused by disease-causing agents, and to protect people and property.

112. The relevant government orders were issued pursuant to an executive's emergency powers. They were not the result of the legislative or deliberative body's process typical of laws and regulations.

113. Hotels like Icona are highly susceptible to being or becoming affected by the presence of individuals infected with the virus.

114. Individuals in and on Icona’s properties are also highly susceptible to being affected by the rapid transmission of the virus because of the nature of the property and its use as a highly social context in close proximity to the property.

The COVID-19 Shutdown Orders

115. On March 9, 2020, Governor Phil Murphy issued Executive Order No. 103, declaring a State of Emergency in New Jersey as a result of COVID-19. Governor Murphy declared: “It shall be the duty of every person or entity in this State or doing business in this State ... to cooperate fully with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency.”

116. On March 16, 2020, Governor Murphy issued Executive Order No. 104, declaring it “necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions.”

117. Effective March 21, 2020, Icona was forced to suspend business operations for all of its properties located in New Jersey by Executive Orders issued by the Governor of the State of New Jersey.⁵ The Governor’s Orders required all “New Jersey residents to stay at home except for necessary travel and order[ed] all non-essential businesses close until further notice.”

118. On May 6, 2020, Governor Murphy ordered that emergency measures the State had taken to address COVID-19 would continue, and the prior Executive Orders would remain in full force and effect. The order stated: “[T]he spread of COVID-19 in New Jersey constitutes an ongoing public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State, and it is necessary and

⁵ See **Exhibit B**, March 21, 2020 State of New Jersey Executive Orders.

appropriate to take action against this public health hazard to protect and maintain the health, safety, and welfare of New Jersey residents...”

119. On June 9, 2020, the Governor of the State of New Jersey issued Executive Order No. 152 which required that all businesses limit occupancy to 25% of the capacity of the room in which business takes place.

120. As a result of these government orders, and other, similar orders issued by various other state and local authorities, Icona suffered, and continues to suffer, significant and injurious losses and expenses directly related to the suspension of its businesses operations and inability to physically use the properties insured by the Policy.

Icona's Covered Loss

121. As a result of the COVID-19 pandemic, Icona's employees, customers, and/or vendors were instructed by civil authorities and/or their medical providers to self-isolate, quarantine, and/or suspend the physical use, occupancy and access or, as well as normal business operations at, the insured premises.

122. The presence of the coronavirus and COVID-19 further caused civil authorities throughout the country, including all of the states and territories where Icona operates and/or has an interest its insured locations, to issue orders requiring the suspension of business and/or use of commercial property.

123. These Civil Authority Orders include, but are not limited to, the following:

- a. March 21, 2020, Executive Order issued by the Governor of the State of New Jersey ordering all New Jersey residents to stay at home except for necessary travel and ordering all non-essential businesses close until further notice;

124. As a result of the foregoing, Icona has suffered a suspension of normal business operations and a cessation of all operations on its insured premises, sustained losses of business income, and incurred extra expenses.

125. These losses and expenses have continued through the date of filing of this action.

126. These losses and expenses are not excluded from coverage under the Policy, and because the Policy is an all-risk policy, Icona is entitled to payment for these losses and expenses.

127. The Policy obligated Defendants to provide coverage for, and to pay, business income losses and extra expense losses resulting from the necessary interruption of Icona's operations, including interruptions resulting from actions of civil authorities, the impairment of ingress and egress to Icona's properties, and the actual or suspected presence of a individuals with a contagious disease on insured premises. Accordingly, Icona provided each of the Defendants with Notice of Loss on or about March 19-20, 2020.⁶

128. In response, on August 27, 2020, September 30, 2020, October 29, 2020, April 21, 2021, and May 10, 2021, Defendants reneged on these obligations and wrongfully failed to fulfill its contractual obligation to provide coverage for, and pay, Icona's business income losses and extra expense losses resulting from the interruption of Icona's operations, including interruptions resulting from actions of civil authorities, the impairment of ingress and egress to Icona's properties, and the actual or suspected presence of a individuals with a contagious disease on insured premises. Defendants' actions in failing to accept Icona's claim were a blatant disregard for the contractual rights of Icona resulting in a material breach of Defendants' duties and obligation owed under the Policy, depriving Icona of the benefit of its bargain and causing it serious financial damages.

⁶ See **Exhibit C**, March 25, 2020 Notices of Loss.

CLASS ACTION ALLEGATIONS

129. The class claims all derive directly from a single course of conduct by Defendants: their systematic, uniform, capricious and arbitrary refusal to pay insureds for covered losses and the actions taken by civil authorities to suspend business operations.

130. Plaintiff brings this action pursuant to Rules 4:32-1(a), 4:32-1(b)(1), 4:32-1(b)(2), and/or 4:32-1(b)(3) of the New Jersey Rules of Court, individually and on behalf of all others similarly situated. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

131. Plaintiff seeks to represent a nationwide class as the Court may deem appropriate defined as:

- a) All named insureds to the Policy, including Hospitality Risk Management Association and all owned, controlled, subsidiary, affiliated, and associated companies or corporations.

132. Excluded from each defined proposed Classes are Defendants and any of their members, affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; governmental entities; Class Counsel and their employees; and the judicial officers and Court staff assigned to this case and their immediate family members.

133. Plaintiff reserves the right to modify, expand, or amend the definitions of the proposed Classes, as appropriate, during the course of this litigation.

134. This action has been brought and may properly be maintained on behalf of each Class proposed herein under the criteria of Rule 4:32-1 of the New Jersey Rules of Court.

Numerosity

135. This action satisfies the requirements of Rule 4:32-1(a)(1). The members of the proposed Class are so numerous that individual joinder of all Class members is impracticable.

Upon information and belief, there are less than 100 total members of the proposed Class, and these individuals and entities are spread out across the State and the United States.

136. The identity of Class members is ascertainable, as the names and addresses of all Class members can be identified in Defendants' or its agents' books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

Commonality and Predominance

137. This action satisfies the requirements of Rule 4:32-1(a)(2) and 4:32-1(b)(3) because this action involves common questions of law and fact that predominate over any questions affecting only individual Class members. Defendants issued an all-risk Policy to all the members of the proposed Class in exchange for payment of premiums by the Class members. The questions of law and fact affecting all Class members include, without limitation, the following:

- a) Whether Plaintiff and the Class members suffered a covered cause of loss under the Policy issued to members of the Class;
- b) Whether Defendants wrongfully, capriciously and arbitrarily denied all claims based on the facts set forth herein;
- c) Whether Defendants' Business Income coverage applies based on the facts set forth herein;
- d) Whether Defendants' Extra Expense coverage applies to efforts to avoid or minimize a loss caused by the suspension of business based on the facts set forth herein;
- e) Whether Defendants' Extensions of Time Element Coverage applies based on the facts set forth herein;

- f) Whether the Defendants' Loss of Attraction coverage applies based on the facts set forth herein;
- g) Whether Defendants have breached their contracts of insurance through a uniform and blanket denial of all claims for business losses based on the facts set forth herein;
- h) Whether the Defendants act in bad faith breach of contract and the duty of good faith and fair dealing through a uniform and blanket denial of all claims for business losses based on the facts set forth herein; and
- i) Whether Plaintiff and the Class members suffered damages as a result of Defendants' actions; and
- j) Whether Plaintiff and the Class members are entitled to an award of reasonable attorneys' fees, interest, and costs.

Typicality

138. This action satisfies the requirements of Rule 4:32-1(a)(3) because Plaintiff's claims are typical of the claims of the Class members and arise from the same course of conduct by Defendants. Plaintiff and the other Class members are all similarly affected by Defendants' refusal to pay under the HRMA Policy. Plaintiff's claims are based upon the same legal theories as those of the other Class members. Plaintiff and the other Class members sustained damages as a direct and proximate result of the same wrongful practices in which Defendants engaged. The relief Plaintiff seek is typical of the relief sought for the absent Class members.

Adequacy of Representation

139. This action satisfies the requirements of Rule 4:32-1(a)(4) because Plaintiff will fairly and adequately represent and protect the interests of Class members. Plaintiff has retained

counsel with substantial experience in prosecuting complex class action and insurance coverage litigation.

140. Plaintiff and their counsel are committed to vigorously prosecuting this action on behalf of the Class members and have the financial resources to do so. Neither Plaintiff nor their counsel has interests adverse to those of the Class members.

*Inconsistent or Varying Adjudications and the Risk of Impediments to Other
Class Members' Interests*

141. This action satisfies the requirements of Rule 4:32-1(b)(1). Plaintiff seeks class-wide adjudication as to the interpretation and scope of the policy under which all class members were insured. The prosecution of separate actions by individual members of the proposed Class would create an imminent risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

*Final Injunctive and/or Corresponding Declaratory Relief with respect to
the Class is Appropriate*

142. This action satisfies the requirements of Rule 4:32-1(b)(2) because Defendants acted or refused to act on grounds generally applicable to Plaintiff and the members of the Class, thereby making appropriate final injunctive and/or corresponding declaratory relief with respect to the Class members. The class claims all derive directly from Defendants' systematic, uniform, capricious and arbitrary refusal to pay insureds for losses suffered due to actions taken by civil authorities to suspend or interrupt business operations in response to the pandemic associated with the spread of COVID-19. Defendants' actions or refusal to act are grounded upon the same generally applicable legal theories.

Superiority

143. This action satisfies the requirements of Rule 4:32-1(b)(3) because a class action is superior to other available methods for the fair and efficient group-wide adjudication of this

controversy. The common questions of law and of fact regarding Defendants' conduct and the interpretation of the common language in their health club insurance policies predominate over any questions affecting only individual Class members.

144. Because the damages suffered by certain individual Class members may be relatively small, the expense and burden of individual litigation would make it very difficult for all individual Class members to redress the wrongs done to each of them individually, such that many Class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Rule 4:32-1(b)(3)(A).

145. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the Court, and the public of class treatment in this Court, making class adjudication superior to other alternatives, under Rule 4:32-1(b)(3)(D).

146. Plaintiff is not aware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 4:32 provides the Court with authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges.

COUNT I:
DECLARATORY JUDGMENT
(Business Interruption and Extra Expense Coverage)

147. Icona incorporates by reference and re-alleges paragraphs 1 through 148, as though fully set forth herein.

148. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

149. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for Icona's and class members' insured losses.

150. In the Policy, Defendants promised to pay for insureds losses of gross earnings and extra expenses incurred as a result of perils not excluded under the Policy. Specifically, Defendants promised to pay for losses of gross earnings sustained as a result of the "complete or partial interruption of business conducted by the insured ..."

151. Icona and class members suffered loss of its insured premises as described *supra*, resulting in interruptions or suspensions of business operations. These necessary suspensions and interruptions have caused Icona and class members to suffer losses of gross earnings and incur extra expenses.

152. These necessary suspensions and interruptions, and the losses resulting therefrom, triggered business interruption and extra expense coverage under the Policy.

153. Icona and class members have complied with all applicable provisions of the Policy, including the payment of premiums and notification of losses.

154. Defendants, without justification, have refused to indemnify Icona's and class members' losses of gross earnings and extra expenses.

155. Icona and class members seek a judicial declaration that its Policy provides coverage for the losses of gross earnings and extra expense incurred due to the “complete or partial interruption of business conducted by [HRMA members]” attributable to the facts described *supra*.

156. An actual case or controversy exists between the class members including Icona, and Defendants regarding Defendants’ obligations to reimburse Icona and class members for the full amount of these lost gross earnings and extra expenses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Icona, both individually and on behalf of other Class members, requests that this Court enter judgment declaring that the Policy provides coverage for losses of gross earnings and extra expenses attributable the “complete or partial interruption of business conducted by the Insured” under the facts and circumstances alleged in this Complaint.

COUNT II:
BREACH OF CONTRACT
(Business Interruption and Extra Expense Coverage)

157. Icona incorporates by reference and re-alleges paragraphs 1 through 148, as though fully set forth herein.

158. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

159. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for Icona’s and class members’ insured losses.

160. In the Policy, Defendants promised to pay for the insureds’ losses of gross earnings and extra expenses incurred as a result of perils not excluded under the Policy. Specifically, Defendants promised to pay for losses of gross earnings sustained as a result of the “complete or partial interruption of business conducted by the insured”

161. Icona and class members suffered loss of their respective insured premises as described *supra*, resulting in interruptions or suspensions of business operations. These necessary suspensions and interruptions have caused Icona and class members to suffer losses of gross earnings and incur extra expenses.

162. These necessary suspensions and interruptions, and the losses resulting therefrom, triggered business interruption and extra expense coverage under the Policy.

163. Icona and class members have complied with all applicable provisions of the Policy, including the payment of premiums and notification of losses.

164. Defendants, without justification, have refused to indemnify Icona's or other class members' losses of gross earnings and extra expenses.

165. Defendants, without justification and in bad faith, have refused performance under the Policy by failing to pay for these losses and expenses. Accordingly, Defendants are in breach of the Policy.

166. As a result of Defendants' breaches of the Policy, Icona and class members has suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Icona, both individually and on behalf of other Class members, seeks compensatory damages for loss of gross earnings and extra expenses resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

COUNT III:
DECLARATORY JUDGMENT
(Extensions of Time Element Coverage – Contingent Business Interruption)

167. Icona incorporates by reference and re-alleges paragraphs 1 through 148, as though fully set forth herein.

168. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

169. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for Icona's and class members insured losses.

170. In the Policy, Defendants promised to pay for insureds contingent business interruption and extra expense losses. Specifically, Defendants promised to pay for losses to third-party property, including Attraction Properties, "that prevents customers (including customers of any tier) of goods and/or services from [Icona] from accepting [Icona's] goods and/or services."

171. Icona and class members suffered interruptions or suspensions of business operations at Icona's and class members' respective insured premises because of the unavailability of third-party property, goods or services as described *supra*. These suspensions and interruptions have caused Icona to suffer contingent business interruption and extra expense losses.

172. Icona and class members complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

173. Defendants, without justification, have refused to provide coverage for these losses.

174. Icona and class members seek a declaratory judgment that its Policy provides coverage for contingent business interruption and extra expense losses – that is, losses to Icona's and class members' respective businesses caused by the unavailability of third-party property, goods or services attributable to the facts set forth above.

175. An actual case or controversy exists between Icona, class members, and Defendants regarding Defendants' obligations to reimburse Icona and class members for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Icona, both individually and on behalf of other Class members, requests that this Court enter judgment declaring that the Policy provides coverage for contingent business interruption and extra expense losses under the facts and circumstances alleged in this Complaint.

COUNT IV:
BREACH OF CONTRACT
(Extensions of Time Element Coverage – Contingent Business Interruption)

176. Icona incorporates by reference and re-alleges each and every paragraph 1 through 148, as though fully set forth herein.

177. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

178. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for Icona’s and class members’ insured losses.

179. In the Policy, Defendants promised to pay for Icona’s and class members’ contingent business interruption and extra expense losses. Specifically, Defendants promised to pay for losses to third-party property, including Attraction Properties, “that prevents customers (including customers of any tier) of goods and/or services from [Icona] from accepting [Icona’s] goods and/or services.”

180. Icona and class members suffered interruptions or suspensions of business operations at Icona’s and class members respective insured premises because of the unavailability of third-party property, goods or services as described *supra*. These suspensions and interruptions have caused Icona and class members to suffer contingent business interruption and extra expense losses.

181. Icona and class members have complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

182. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these contingent losses and expenses. Accordingly, Defendants are in breach of the Policy.

183. As a result of Defendants' breaches of the Policy, Icona and class members has suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Icona, both individually and on behalf of other Class members, seeks compensatory damages for contingent business interruption and contingent extra expense resulting from Defendants' breaches of the Policy and seeks all other relief deemed appropriate by this Court.

COUNT V:
DECLARATORY JUDGMENT
(Extensions of Time Element Coverage – Ingress/Egress)

184. Icona incorporates by reference and re-alleges paragraphs 1 through 148, as though fully set forth herein.

185. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay Icona's and class members' losses for claims covered by the Policy.

186. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not otherwise excluded under the Policy, ingress to or egress from Icona's and class members' real or personal property is impaired.

187. Icona and class members suffered an actual loss due to the restriction and impairment of the ingress to and/or egress from their respective insured premises as a result of the facts and circumstances alleged *supra*, and said impairment(s) caused loss and damage to Icona's and class members' business operations under the Policy.

188. Icona and class members has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

189. Defendants, without justification, have refused to provide coverage for these losses.

190. Icona and class members seek a judicial declaration that the Policy provides coverage for the loss sustained during the period of time when, as a result of loss, damage or an event not otherwise excluded under the Policy, ingress to or egress from Icona's and class members' real or personal property was impaired under the facts and circumstances alleged *supra*.

191. An actual case or controversy exists between Icona, class members, and Defendants regarding Defendants' obligations to reimburse Icona and class members for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Plaintiff, Icona, both individually and on behalf of other Class members, request that this Court enter an order declaring that the Policy provides coverage for necessary business interruptions caused by the restriction and impairment of ingress to and/or egress from Icona's and class members' insured premises as alleged in this Complaint.

COUNT VI:
BREACH OF CONTRACT
(Extensions of Time Element Coverage – Ingress/Egress)

192. Icona incorporates by reference and re-alleges each and every paragraph 1 through 148, as though fully set forth herein.

193. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

194. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay Icona's and class members' losses for claims covered by the Policy.

195. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not otherwise excluded under the Policy, ingress to or egress from Icona's and class members' real or personal property is impaired.

196. Icona and class members suffered an actual loss due to the restriction and impairment of the ingress to and/or egress from their respective insured premises as a result of the facts and circumstances alleged *supra*, and said impairment(s) caused loss and damage to Icona's and class members' business operations under the Policy.

197. Icona and class members has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

198. Defendants, without justification, have refused to provide coverage for these losses.

199. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by refusing to provide coverage for these losses. Accordingly, Defendant are in breach of the Policy.

200. As a result of Defendants' breaches of the Policy, Icona and class members have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Icona, both individually and on behalf of other Class members, seeks compensatory damages for necessary business interruptions caused by the restriction and impairment of ingress to and/or egress from its insured premises resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

COUNT VII:
DECLARATORY JUDGMENT
(Extensions of Time Element Coverage – Civil Authority)

201. Icona incorporates by reference and re-alleges paragraphs 1 through 148, as though fully set forth herein.

202. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

203. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to Icona's and class members' losses for claims covered by the Policy.

204. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not excluded under the Policy, access to property is impaired by order or action of civil or military authority.

205. Icona and class members suffered an actual loss as result of the actions of civil authorities that restricted and impaired access to and use of Icona's and class members' respective insured premises, and said restrictions caused business interruption losses under the Policy.

206. Icona and class members complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

207. Defendants, without justification, have refused to provide coverage for these losses.

208. Icona and class members seek a judicial declaration that the Policy provides coverage for the losses it has sustained and extra expenses it has incurred as the result of the actions of civil authorities as described *supra*.

209. An actual case or controversy exists between Icona, class members, and Defendants' regarding Defendants' obligations under the Policy to reimburse Icona and class members for these losses and extra expenses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Icona, both individually and on behalf of other Class members, requests that this Court enter an order declaring that the Policy provides civil authority coverage for the losses and extra expenses incurred by Icona and class members.

COUNT VIII:
BREACH OF CONTRACT
(Extensions of Time Element Coverage – Civil Authority)

210. Icona incorporates by reference and re-alleges paragraphs 1 through 148, as though fully set forth herein.

211. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to Icona's and class members' losses for claims covered by the Policy.

212. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not excluded under the Policy, access to property is impaired by order or action of civil or military authority.

213. Icona and class members suffered an actual loss as result of the actions of civil authorities that restricted and impaired access to and use of Icona's and class members' respective insured premises, and said restrictions caused business interruption losses under the Policy.

214. Icona and class members complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

215. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these losses. Accordingly, Defendants are in breach of the Policy.

216. As a result of Defendants' breaches of the Policy, Icona and class members have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Icona, both individually and on behalf of other Class members, seeks damages for business interruption losses caused by the actions of civil authorities resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

COUNT IX:
DECLARATORY JUDGMENT
(Extensions of Time Element Coverage – Loss of Attraction)

217. Icona incorporates by reference and re-alleges paragraphs 1 through 148, as though fully set forth herein.

218. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

219. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay Icona's and class members' losses for claims covered by the Policy.

220. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the loss of third-party property that attracts business to Icona's and class members' respective insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained and extra expense incurred as a result of impairment to third-party property that attracts business to an insured premises.

221. Icona and class members suffered a loss to business income and extra expense caused by the impairment of third-party property that attracts business to Icona's and class members' respective insured premises, resulting in interruptions or suspensions of business operations at Icona's and class members' insured premises. These suspensions and interruptions have caused Icona and class members to suffer losses of business income and extra expense.

222. Icona and class members have complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

223. Defendants, without justification, have refused to provide coverage for these losses under the Policy.

224. Icona and class members sees a judicial declaration that the Policy provides coverage for the loss it sustained due to loss to third-party property that attracts business to Icona's and class members' respective insured premises.

225. An actual case or controversy exists between Icona, class members and Defendants regarding Defendants' obligations to reimburse Icona and class members for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Icona, both individually and on behalf of other class members requests that this Court enter an order declaring that the Policy provides attraction property coverage for the losses and extra expenses incurred by Icona and class members.

COUNT X:
BREACH OF CONTRACT
(Extensions of Time Element Coverage – Loss of Attraction)

226. Icona incorporates by reference and re-alleges each and every paragraph 1 through 148, as though fully set forth herein.

227. Icona bring this Count both individually and on behalf of the other members of the HRMA Class.

228. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay Icona's and class members' losses for claims covered by the Policy.

229. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the loss of third-party property that attracts business to Icona's and class members' respective insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained and extra expense incurred as a result of impairment to third-party property that attracts business to an insured premises.

230. Icona and class members suffered a loss to business income and extra expense caused by the impairment of third-party property that attracts business to Icona's and class members' respective insured premises, resulting in interruptions or suspensions of business operations at Icona's and class members' respective insured premises. These suspensions and interruptions have caused Icona and class members to suffer losses of business income and extra expense.

231. Icona and class members have complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

232. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these losses. Accordingly, Defendants are in breach of the Policy.

233. As a result of Defendants' breaches of the Policy, Icona and class members have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Icona, both individually and on behalf of other class members, seek damages for loss to business income and extra expense caused by the impairment of third-party property that attracts business to Icona's and class members' insured premises resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

WHEREFORE, Icona respectfully requests that this Honorable Court enter judgment in its favor and against Defendants, as follows:

- A. Entering an order certifying the proposed Class, designating Icona as Class representative, and appointing Icona's attorneys as Counsel for the Class;
- B. Entering declaratory judgments on Counts I, III, IV, VII, and IX in favor of Icona and the proposed Class as follows:

- i. That all Business Interruption and Extra Expense, Extension of Time Elements Coverage – Contingent Business Interruption and Extra Expense, Extension of Time Elements Coverage – Ingress/Egress, Extension of Time Elements Coverage – Civil Authority, Extension of Time Elements Coverage – Loss of Attraction and Communicable Disease losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above are insured and covered losses and expenses under the Policy; and
 - ii. Defendants are obligated to pay for the full amount of such losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above are insured and covered losses and expenses under the Policy;
- C. Entering judgments on counts II, IV, VI, VIII, and X, in favor of Icona and the proposed Class and awarding damages for breach of contract in an amount to be determined at trial;
- D. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- E. An order requiring Defendants to pay attorneys’ fees, costs of suit and adjustment expenses; and
- F. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

The undersigned hereby demands a trial by jury as to all issues so triable.

Dated: March 10, 2022

Respectfully Submitted,

/s/ James E. Cecchi

James E. Cecchi (NJ Bar No. 030861989)

Lindsey H. Taylor (NJ Bar No. 016781986)

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