

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

TRT HOLDINGS, INC. and)	
OMNI HOTELS MANAGEMENT)	
CORPORATION)	
Plaintiffs,)	
)	CIVIL ACTION
v.)	
)	FILE NO. _____
RSUI INDEMNITY COMPANY,)	
)	JURY TRIAL DEMANDED
Defendant.)	
_____)	

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

COMES NOW TRT HOLDINGS, INC. (“TRT”) and OMNI HOTELS MANAGEMENT CORPORATION (“OHMC”). TRT and OMNI are referred herein collectively as “Omni” or “Plaintiffs” in the above-styled action, and file this Complaint for Damages against Defendant RSUI INDEMNITY COMPANY (“RSUI”) and show this Court as follows:

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff TRT HOLDINGS, INC. is a corporation organized under the laws of the State of Texas with its principal place of business at 4001 Maple Avenue, Dallas, Texas 75219. TRT HOLDINGS, INC. TRT is the ultimate parent company of the entities that own and operate Omni Hotels and Resorts.¹.

1.2 Plaintiff OMNI HOTELS MANAGEMENT CORPORATION is a corporation organized under the laws of the State of Texas with its principal place of business at 4001 Maple Avenue, Dallas, Texas 75219. OHMC is an ultimate subsidiary of TRT. OHMC operates the Omni

¹ Omni Hotels and Resorts is a trade name and not a separate entity.

Hotels and Resorts chain. Omni Hotels and Resorts is comprised of fifty or so hotel and resort properties across America, including two in Georgia. The hotel and resort properties themselves are owned by several other ultimate subsidiaries of TRT as individual assets.

1.3 RSUI INDEMNITY COMPANY is licensed to do business in Georgia, with its principal place of business located at 945 E. Paces Ferry Rd, Atlanta GA 30326-1160. Defendant's registered agent for service of process is Ron Hardeman who may be served with process at 945 E. Paces Ferry Road, Suite 1800, Atlanta GA 30326. When said agent is served with copies of the Summons and Complaint in this matter, Defendant will be subject to the jurisdiction and venue of this Court.

1.4 Venue is proper under O.C.G.A. § 33-4-1 because RSUI's principal place of business is located in Fulton County, Georgia.

1.5 Jurisdiction is proper because the amount in controversy exceeds the minimum limits of this court.

II. SUMMARY OF THE CLAIM

2.1 This claim arises from RSUI's wrongful failure to investigate and timely pay Plaintiffs' insurance claim. Defendant RSUI sold and issued to Plaintiffs policy Number NHA085960 effective 4/1/2019 through 4/1/2020, attached at **EXHIBIT 1**², "RSUI Policy." RSUI breached its contract with Plaintiffs. RSUI's breach is discussed in more detail below. Additionally, RSUI is liable to Plaintiffs for violations of the Georgia Insurance Code, including, but not limited to O.C.G.A. § 33-4-6 which mandates that insurers are liable for damages and attorneys' fees when they refuse to pay an insurance claim in bad faith. Finally, RSUI is liable to

² Plaintiffs have applied Bates numbers to all exhibits to their Original Complaint for further identification to cited materials.

Plaintiffs under the theory of civil conspiracy because RSUI, along with other insurance companies and the insurance industry organization at large, engaged in an agreement and practice to deny COVID-19 business interruption claims without properly investigating the claims and an agreed predetermination to deny COVID-19 business interruption claims.

2.2 Defendant RSUI is in the business of selling excess insurance coverage to insureds, such as Plaintiffs. RSUI sold an excess insurance policy to Plaintiffs. The RSUI Policy generally followed the terms of the primary policy Chubb sold to Plaintiffs. (Hereinafter referred to as “the Underlying Policy” or the “Chubb Policy.”) The Underlying Policy was effective 4/1/2019 through 4/1/2020 and is attached at **EXHIBIT 2**.

2.3 Plaintiffs paid premiums to RSUI in exchange for RSUI’s agreement to pay for all risks not specifically excluded by the Underlying Policy. COVID-19 is not excluded by the Underlying Policy. When Plaintiffs submitted their claim to RSUI and other insurers, RSUI, along with the other insurers, failed to investigate Plaintiffs’ claims and wrongfully failed to timely pay Plaintiffs’ claims. RSUI, in concert with other insurers, adopted the practice of summarily denying COVID-19 business interruption claims without adequate investigation. This failure to investigate and timely pay constitutes a united meeting of the minds to engage in practices of bad faith and stubborn litigiousness under Georgia law.

III. GENERAL ALLEGATIONS

3.1 All allegations previously pled are incorporated as if set forth in full here.

3.2 OHMC operates fifty or so Omni hotel and resort properties across the United States, from New Hampshire to California, and also in Canada and Mexico. TRT is the ultimate parent company of OHMC and the entities that own the hotels and resorts comprising Omni Hotels and Resorts. The Covered Properties are identified in the Underlying Policy. *See* **EXHIBIT 2**, the

Underlying Policy at OMNI_0000017. The definition of entities covered under the Underlying policy was defined as follows:

1. **INSURED:** TRT Holdings, Inc. and TRT Development Company doing business as Omni Hotels Corporation, Omni Hotels Management Corporation and any subsidiary, affiliated Corporation, Trust, Joint Venture, Firm and other entity which is owned by TRT Development Company doing business as Omni Hotels, including TRT Hotel Company, LLC, SC Beverage Company and RFP St. Louis Hotel, LP.; and its interests, entities, divisions, or other interests, including joint ventures, partnerships, investments and other interests of the Named Insured but solely as respect the interests of the Named Insured; and affiliated subsidiaries and related entities; GGI Holdings, LLC; RBR Real Estate Holdings, LLC; Cresta Development Company; Cresta Construction Company; Cresta Investments, LLC; Tana Exploration Company LLC; TRT Ranch Corporation; OHO Corporation HT Master Association; Tower Condominium Association, Omni Rhode Island, LLC, and any subsidiary, affiliated corporation, trust, joint venture, firm and other entity which is owned by any of the above.

Id. The entities insured includes each individual asset operating as an Omni Hotel.

3.3 To protect Plaintiffs' businesses in the event that Plaintiffs suddenly had to suspend operations for reasons outside of Plaintiffs' control and to protect Plaintiffs from property loss or damage, Plaintiffs purchased insurance coverage from Defendant RSUI. *See EXHIBIT 1*, the RSUI Policy, generally.

3.4 The RSUI Policy generally follows the Underlying Policy, which discusses coverage in greater detail. The RSUI Policy and the Underlying Policy are properly read together. *See EXHIBIT 1*, the RSUI Policy; *see also EXHIBIT 2*, the Underlying Policy. Like the RSUI Policy, the Underlying Policy does not include, and is not subject to, any exclusion for losses caused by viruses or contagious or infectious diseases.

3.5 In addition, the Underlying Policy includes numerous applicable property coverage Extensions and Extension of Time Element coverages.

A. The RSUI Excess Policy

3.6 RSUI agreed to provide excess insurance to Plaintiffs. Plaintiffs paid a premium for this agreement. Insurance companies, such as RSUI, take on risks in exchange for premiums. That is, Plaintiffs paid RSUI to cover all risks, known or unknown unless specifically excluded.

By virtue of this purchase the terms of the contract and the insurance code, RSUI was legally obligated to thoroughly investigate Plaintiffs' losses, communicate with Plaintiffs and pay for covered losses. *See* O.C.G.A. § 33-6-34.

3.7 The RSUI Policy is an excess policy following behind the primary policy issued by Chubb, the "Underlying Insurance." *See* **EXHIBIT 2**, the Underlying Policy. The fact that the RSUI Policy was an "excess" policy in no way relieves RSUI from the duty of acting in accordance with agreed-upon terms and the law.

3.8 The terms of RSUI's coverage generally follow the terms of the underlying Chubb Policy and RSUI is responsible for coverage for all elements covered under the Chubb Policy not specifically excluded by the Chubb Policy, except to the extent that RSUI negotiated additional exclusions with Plaintiffs.

3.9 RSUI added additional exclusions, including an Absolute Asbestos Exclusion and a War Liability Exclusion, among others. Importantly, RSUI did not negotiate an exclusion for virus or contagious disease outbreak coverage even though this exclusion was standard and widely used in the insurance industry during 2019. *See* **EXHIBIT 1**, the RSUI Policy, generally. *See also* **EXHIBIT 3**, ISO Amendatory Endorsement – Exclusion of Loss Due to Virus or Bacteria at OMNI_0000101.

3.10 In addition to the premium to the Underlying Policy holder, Plaintiffs paid RSUI a premium of \$25,500 for one year of coverage. Because RSUI failed to honor its agreement under the policy after COVID-19 caused actual physical damage to the locations, the policy was worthless.

1) The Underlying Policy Issued through Ace American Insurance Company

3.11 The Underlying Insurance policy was issued by Ace American Insurance Company, a Chubb Company. See EXHIBIT 2, the Underlying Policy generally. The Underlying Policy was an “All-Risks” policy. That is, Plaintiffs purchased insurance against all risks that were not specifically excluded. See EXHIBIT 2, the Underlying Policy at OMNI_0000017 excerpted below).

ACE American Insurance Company 136 Walnut Street Philadelphia PA 19106		POLICY NO: RLO D37416678 006		
DECLARATIONS				
Insured: TRT Holdings, Inc. Address: 4001 Maple Avenue Dallas TX 75219		Commission: 0.00% Service Office: CGU Agency No: 142581 Agent/Broker: Marsh Wortham a division of Marsh USA Inc. Address: 2727 ALLEN PARKWAY HOUSTON TX 77019-2189		
Policy Period: From April 01, 2019 at 12:01 A.M., to April 01, 2020 at 12:01 A.M. Standard Time at the location of property insured. <small>to the extent that coverage in this policy replaces coverage in other policies terminating at noon standard time on the inception date of this policy, coverage under this policy shall not become effective until such other coverage has terminated. The insurance afforded is only with respect to the specific part and coverages therein, the full title of which is set forth below the caption "Form."</small>				
PERILS INSURED	COVERAGE PROVIDED	FORM	LIMITS OF INSURANCE	PREMIUM
All Risk	Property Damage/Time Element	AS PER MANUSCRIPT WORDINGS ATTACHED	\$12,500,000 part of \$25,000,000 excess of various deductibles	\$890,773
AGENT/BROKER: MARSH USA INC			TOTAL	\$890,773

3.12 Specifically, the Underlying Policy and thus the RSUI Policy promised coverage in the event of the total or partial loss of business to real or personal property. See EXHIBIT 2, the Underlying Policy at OMNI_0000027 excerpted below).

B. Business Interruption — Gross Earnings

(1) Loss resulting from necessary interruption of business conducted by the **Insured**, whether total or partial, and caused by loss, damage, or destruction covered herein during the term of this policy to real and personal property as described in **Clause 7.A.**;

3.13 The Underlying Policy and RSUI Policy also promised to provide coverage in the event there was an interruption by Civil or Military Authority and coverage in the event that access

to or egress from real or personal property was prohibited “*irrespective of whether the premises or property of the insured shall have been damaged*”. See **EXHIBIT 2**, the Underlying Policy at OMNI_0000012 excerpted below (*emphasis added*).

- (d) 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;
- (e) 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 irrespective of whether the premises or property of the Insured shall have been damaged;

3.14 Notably, the Underlying Policy specifically provides that neither the underlying insurance carrier, Chubb in this case, nor the excess carrier, RSUI, is relieved from liability for coverage by virtue of the relationship between the underlying insurance and the excess insurance. See **EXHIBIT 2**, the Underlying Policy at OMNI_0000043 excerpted below.

28. EXCESS INSURANCE

Excess insurance is insurance over the limit of liability set forth in this policy. The existence of such excess insurance shall not prejudice the coverage provided under this policy nor will it reduce any liability hereunder.

29. UNDERLYING INSURANCE

- A. Underlying insurance is insurance on all or any part of the deductible and against all or any of the causes of loss covered by this policy including declarations of value to the carrier for hire. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this policy. Any loss recovery/payments received from underlying insurance shall not reduce loss recovery/payments under this policy.

3.15 The COVID-19 pandemic spread across America, and physically altered and damaged each of Plaintiffs’ Covered Properties. This physical loss and damage was a covered loss under the RSUI Policy and the Underlying Policy. Accordingly, Defendant RSUI is fully liable for

its obligations under the RSUI Policy and the Underlying Policy, including, but not limited to the \$12,500,000 dollars in coverage and statutory penalties for failing to timely pay under the policy.

B. The COVID-19 Pandemic is a Covered Cause of Loss

3.16 COVID-19 is a deadly communicable disease that has already infected over 82,000,000 people in the United States, resulting in almost 1 million deaths to date.³ The World Health Organization (“WHO”) has declared the COVID-19 outbreak a pandemic, and former President Donald Trump declared a national emergency due to the public health crisis caused by the COVID-19 outbreak in the United States.

3.17 According to the CDC, “COVID-19 is caused by a coronavirus called SARS- CoV-2. Coronaviruses are a large family of viruses that are common in people and [many] different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people.”⁴

3.18 COVID-19 can be transmitted in several ways, including human-to-human contact, airborne viral particles in ambient air, and touching contaminated surfaces or objects. For example, when an uninfected person touches a damaged surface containing the coronavirus, the uninfected person may transmit the coronavirus to another person, either by touching and damaging a second surface, which is subsequently touched by that other person or by transmitting the coronavirus to another person. The coronavirus spreads easily from person to person and person to surface or object, primarily through small, physical droplets expelled from the nose or mouth when an infected person speaks, yells, sings, coughs, or sneezes. According to research published in the

³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed January 27, 2021).

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics> (last viewed on August 20, 2020). *Id.*

Journal of the American Medical Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet.⁵

3.19 According to WHO, the incubation period for COVID-19 – i.e., the time between exposure to the coronavirus and symptom onset – can be up to 14 days. Other studies suggest that the period may be up to 21 days. Before infected individuals exhibit symptoms, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high and they may not know they have become carriers. In addition, studies from the CDC and others estimate that between 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic” carriers). Pre- and asymptomatic carriers are likely unaware that they are spreading the coronavirus by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that the source of most transmissions are people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic. These studies’ results further confirmed that individuals can become infected with COVID-19 through contact with surfaces or objects damaged and contaminated by an infected person, whether or not they were symptomatic.⁶

3.20 According to WHO, people can become infected with the coronavirus by touching such contaminated objects and surfaces, then touching their eyes, nose, or mouth. This mode of transmission – indirect transmission via objects and surfaces – is known as “fomite transmission.” As the WHO has noted, fomite transmission is “a likely mode of transmission of SARS-CoV-2” because studies have consistently confirmed the existence of virus-laden droplets on objects and

⁵ See <https://jamanetwork.com/journals/jama/fullarticle/2763852>.

⁶ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed August 13, 2020); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed August 13, 2020).

surfaces “in the vicinity of infected cases,” and because it is well known that other coronaviruses can be transmitted via fomite transmission.⁷ For example, physical droplets containing the coronavirus can land on objects and surfaces and after landing on objects and surfaces, the coronavirus can remain present and dangerous for periods ranging from hours to many days, physically damaging and rendering extremely dangerous those objects and surfaces.

3.21 A study of a COVID-19 outbreak published in the CDC’s Emerging Infectious Diseases journal identified indirect transmission via objects such as elevator buttons and restroom taps as an important possible cause of a “rapid spread” of the coronavirus in a shopping mall in Wenzhou, China.⁸

3.22 Research has indicated that the coronavirus can be detected on certain surfaces even weeks after infected persons are present at a given location. WHO has also confirmed that COVID-19 can exist on objects or surfaces and that the transmission of COVID-19 can occur by indirect contact with surfaces in the immediate environment or with objects that were touched by an infected person hours before.⁹

3.23 One study, for example, found that coronavirus remains active and dangerous on plastics for at least three days, while another reported that coronavirus remained stable and viable for seven days on a range of common surfaces, including plastic, stainless steel, glass, and wood.¹⁰

⁷ See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>; <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (providing that [I]t is possible that a person could get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes”); see also <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>; <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

⁸ See https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article.

⁹ See <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed on August 13 2020).

¹⁰ See <https://www.nejm.org/doi/full/10.1056/nejmc2004973>; <https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf>;

Another study detected viable coronavirus samples on glass, stainless steel, and money for approximately one month if left at or around room temperature. The coronavirus physically alters the surfaces it touches through fomites attached to objects and fixtures.

3.24 These damaging fomites were present at Plaintiffs' covered Omni Hotel locations during the coverage period.

3.25 Research has also indicated that COVID-19 can spread through the air and be transmitted from person to person through heating and ventilation (HVAC) systems.¹¹ For example, one study found the presence of COVID-19 within the HVAC system servicing hospital ward rooms of COVID-19 patients. This study detected COVID-19 RNA in ceiling vent openings, vent exhaust filters and central ducts that were located more than 50 meters from the patients' rooms.¹²

3.26 The Environmental Protection Agency ("EPA") has recommended that business owners make improvements to their premises' HVAC and ventilation systems based on several studies that show "epidemiological evidence suggestive of (coronavirus) transmission through aerosol."¹³

<https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>; <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed August 13, 2020); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed August 13, 2020) (showing that a study in The New England Journal of Medicine established that COVID-19 can remain present in aerosols for up to three hours, up to four hours on copper, up to 24-hour on cardboard, and up to three days on plastic and stainless steel).

¹¹ See https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article#r2 (last viewed Dec. 16, 2020);

¹² See <https://www.researchsquare.com/article/rs-34643/v1>.

¹³ See <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-andpublications> (last viewed Dec. 16, 2020); <https://www.epa.gov/coronavirus/indoor-air-and-covid-19> (last viewed Dec. 16, 2020) (suggesting facilities make improvements to their ventilation and HVAC systems by increasing ventilation with outdoor air and air filtration).

3.27 Accordingly, COVID-19 causes physical loss and damage by, among other things, destroying, distorting, corrupting, attaching to, and physically altering property including its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function, dangerous and unsafe. While mitigation efforts have been undertaken and remain ongoing, COVID-19 has caused such physical loss and damage to Plaintiffs' Covered Properties, as described below.

3.28 First, respiratory droplets (i.e., droplets larger than 5-10 μm) expelled from infected individuals land on, attach and adhere to surfaces and objects. In doing so, they structurally change the property and its surface by becoming a part of that surface. This structural alteration makes physical contact with those previously safe, inert surfaces (e.g., walls, handrails, furniture) unsafe.

3.29 Second, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (i.e., those smaller than 5 μm) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the structural properties of air in buildings from safe and breathable to unsafe and dangerous.

3.30 Fomites, aerosols, respiratory droplets, and droplet nuclei containing COVID-19 are not theoretical. In fact, they are physical substances that are active on physical surfaces and in the air and have a tangible and dangerous existence.¹⁴

3.31 When COVID-19 adheres to a surface or material, it becomes part of that surface or material, changing them to fomites.¹⁵ This is a physical change in the impacted surface or material and constitutes physical loss and damage requiring remedial measures to eliminate COVID-19's presence thereon. Further, the physical alteration makes physical contact with these once-safe surfaces unsafe.

¹⁴ See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>

¹⁵ *Id.*

3.32 The presence of COVID-19 and/or the presence of infected persons within a facility causes physical loss by physically altering the premises and transforming it from a facility that once was safe and usable for its intended purpose into a facility that is not only unsafe and unusable, but also dangerous and potentially deadly for its patrons.

3.33 Plaintiffs own and operate various covered Omni Hotels properties in major cities across the country. Plaintiffs can show the actual presence of the COVID-19 virus at each of their covered locations. The presence of COVID-19 is direct physical loss or damage to property. In response to the direct physical loss or damage to property due to COVID-19, civil authorities across the United States issued orders requiring the suspension or restriction of business at a wide range of establishments, including civil authorities with jurisdiction over business activities at Plaintiffs' various Omni Hotel locations.

C. Closure Orders Bear Out that the Presence of COVID-19 Causes Direct Physical Loss and Damage

3.34 Beginning in March 2020, in an effort to slow the spread of COVID-19 and as a consequence of physical damage caused by COVID-19, executive officials across the country issued a series of unprecedented civil orders and advisements ("Closure Orders").

3.35 Loss and damage caused by COVID-19 and the related Closure Orders triggered multiple coverage provisions of Plaintiffs' RSUI Policy, the Underlying Policy and additional insurance policies.

3.36 Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing stay-at-home orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2 (Mar. 16, 2020)¹⁶ (emphasizing the virulence of COVID-19 and that it "physically is causing

¹⁶ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

property loss and damage”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)¹⁷ (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)¹⁸ (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)¹⁹ (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)²⁰ (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)²¹ (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)²² (in addition to COVID- 19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub. Health & Env’t, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)²³ (emphasizing the danger of “property loss, contamination, and damage”

¹⁷ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf

¹⁸ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

¹⁹ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf

²⁰ <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

²¹ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

²² [21 https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604](https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604)

²³ <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)²⁴ (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)²⁵ (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

3.37 The Closure Orders typically required businesses to close their doors and stop all in-person work, at least for a period of time. Although “essential” businesses were permitted to partially operate in some states, they did not escape the devastating financial impacts of the Closure Orders.

3.38 The Closure Orders, the damage caused by COVID-19, the transmission of COVID-19, and Plaintiffs’ efforts to preserve and protect its properties from COVID-19 have had a devastating impact on Plaintiffs’ businesses.

3.39 As a direct result of COVID-19 and the Closure Orders, issued directly because of COVID-19, physical loss and damage to property, and to prevent further immediately impending physical damage to property, Plaintiffs have suffered direct physical loss and damage or destruction, and a physical alteration to the property that led to lost and/or limited functionality of the Covered Properties.

²⁴ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf

²⁵ https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL

3.40 Aerosol, droplet and fomite transmission are the basis for masking, eye protection, use of gowns and gloves in the healthcare setting, social distancing, handwashing, stay-at-home orders, home-shelter orders, distance learning, reduced capacity and/or occupancy limits, and other measures implemented in these executive orders. The virus is physically present in the community, including in the air and on objects and surfaces. Aerosol and fomite transmission are real, and due to constant recontamination of air and surface areas, it is simply impossible to entirely eradicate the virus from indoor spaces and such surfaces if there continue to be unmasked people in the area.

3.41 Reducing capacity in public settings is one way to reduce the presence of the virus on objects and surfaces and, therefore, reduce the risk of transmission, especially during times of rising infection rates. Wearing masks reduces, but does not eliminate, the likelihood of the virus being aerosolized and transferred to objects and hard surfaces.

3.42 At the time of the loss and long thereafter, before vaccines were widely available and people lacked antibody protection, it was impossible to repair or restore the Covered Properties with cleaning and disinfecting. Immediately after cleaning and disinfecting, the presence of the virus on objects and surfaces was reduced, but that state of repair or restoration ended each time people entered the premises. There was a series of losses at each location as a result of the presence of the COVID-19 virus at, on and near each insured location.

3.43 Accordingly, Plaintiffs were forced to suspend or reduce business at its Omni Hotel locations due to the actual physical loss and damage to the properties caused by COVID-19.

3.44 COVID-19 and COVID-19-containing respiratory droplets and nuclei are physical substances that are active on physical surfaces and are also emitted into the air. Such substances are not theoretical, intangible, or incorporeal, but rather have a material existence and are physically dangerous.

3.45 Individuals, including employees, with COVID-19 or otherwise carrying COVID-19 have been physically present at Plaintiffs' covered locations. COVID-19 and/or coronavirus-containing fomites (i.e., inanimate objects), respiratory droplets, and nuclei from those individuals come into contact with, adhere to, and attach to the surfaces of the property upon which they land, including without limitation, the real property, furniture, fixtures, and personal property at Plaintiffs' hotels.

3.46 COVID-19 or COVID-19-containing fomites, respiratory droplets, and nuclei physically alter the property to which they adhere, attach, or come in contact, including by altering the surfaces of that property and/or by making physical contact with those previously safe, inert materials dangerous.

3.47 When individuals carrying COVID-19 breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. In addition, COVID-19 physically alters the air. The air inside buildings that was previously safe to breathe but can no longer safely be breathed due to COVID-19, has undergone a physical alteration.

3.48 The presence of COVID-19, including but not limited to COVID-19 droplets or nuclei on solid surfaces and in the air at insured properties, caused direct physical damage to physical property and ambient air at the premises. COVID-19, a physical substance, attached and adhered to Plaintiffs' property, and by doing so, altered that property. Such presence has also directly resulted in the loss of functionality of that property.

3.49 Persons who tested positive for COVID-19 were present at insured properties on various dates during 2020 and 2021. Persons who were in contact with persons diagnosed with COVID-19 were present at insured properties on various dates during 2020 and 2021.

3.50 Persons who were pre-symptomatic or asymptomatic and unknowingly carrying the coronavirus, including but not limited to employees, customers, and other business visitors, were present at the insured properties on various dates during 2020 and 2021.

3.51 COVID-19 droplets were conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to furniture, doors, floors, bathroom facilities, equipment, and supplies, and into the air and HVAC system at Plaintiffs' Covered Properties causing damage and alteration to physical property and ambient air at the premises. Aerosolized COVID-19 entered the air in Plaintiffs' Covered Properties and physically damaged the insured premises.

3.52 The physical losses to Plaintiffs' hotels include without limitation the physical transformation of their Covered Properties from a satisfactory state to a state dangerous and/or unsatisfactory for use because of the fortuitous presence and effect of the COVID-19, fomites, and respiratory droplets or nuclei directly upon its properties.

3.53 The physical losses to Plaintiffs' hotels include without limitation the physical loss of the ability to use Covered Properties for their primary function.

3.54 The presence of COVID-19 caused direct physical loss, damage or destruction, of the property of the type insured under the Policy by: (i) causing direct physical loss of or damage to the Covered Properties; (ii) denying use of and damaging the Covered Properties; (iii) requiring physical repair and/or alterations to the Covered Properties; and/or (iv) by causing a necessary suspension of operations during a period of restoration.

3.55 Because of the presence of COVID-19, the air in Plaintiffs' hotels and Plaintiffs' physical properties were altered, damaged, and became unsafe, necessitating repairs and/or alterations. In addition, Plaintiffs' indoor dining rooms lost their functionality, and these spaces

could only operate at limited capacities, if at all. Plaintiffs incurred significant expenses relating to the many structural alterations, changes, and/or repairs made to Plaintiffs' Covered Properties so that Plaintiffs could continue its business after experiencing direct property damage which was caused by COVID-19 and to avoid imminent threat of further property damage.

3.56 The Closure Orders prohibited access to Plaintiffs' Covered Properties and the area immediately surrounding the Covered Properties, in response to dangerous physical conditions resulting from a covered cause of loss.

3.57 Because of the presence of COVID-19 and the Closure Orders, Plaintiffs lost business income and incurred extra expense as further detailed below.

3.58 Plaintiffs submitted a claim for loss to Defendant RSUI and the underlying insurers under their policies due to the direct physical damage caused to Plaintiffs' properties by the presence of COVID-19 and the Closure Orders, but Defendant RSUI has effectively denied the claim.

D. The Presence of COVID-19 in, at and Around Plaintiffs' Properties Triggered The RSUI Insurance Policy

3.59 In return for the payment of a premium, Defendant issued the Excess Policy to Plaintiffs, which covers property located at each of Plaintiffs' businesses. The RSUI Policy follows the terms of the Underlying Policy and, therefore, RSUI is responsible for all elements covered under the Underlying Policy, except to the extent RSUI negotiated any additional exclusions with Plaintiffs.

3.60 Defendant drafted the Policy in question.

3.61 The RSUI Policy is effective from April 1, 2019, through April 1, 2020.

3.62 Plaintiffs performed all of their obligations under the RSUI Policy. in exchange for Defendant's agreement to take on Plaintiffs' risk of loss, Plaintiffs dutifully paid Defendant annual premiums.

3.63 The existence and actual presence of COVID-19 on the furniture, fixtures, walls, floors, door handles, railings, equipment, and other insured property at Plaintiffs' businesses have triggered coverage under the Policy because COVID-19 caused actual damage to the insured property and has also caused Plaintiffs to experience covered business interruption losses.

1) COVID-19 Triggered Coverage Under the "All Risks" Underlying Policy

3.64 The existence and actual presence of COVID-19 at Plaintiffs' businesses triggered coverage under the Policy and also caused Plaintiffs to experience a covered business interruption.

3.65 In addition, the existence and presence of COVID-19 on property away from Plaintiffs' businesses triggered coverage under the Policy.

3.66 COVID-19 has caused physical damage to property. The property was physically altered. COVID-19 also damaged many other properties, including those within and without a one-mile radius of each of Plaintiffs' businesses. The loss of functionality is no less physical than the impact of a property having lost its roof to a tornado or hurricane. Where once the property could carry on its business function, the property with a blown away and crumbling roof cannot operate in that way. Where once the property could service customers, it can no longer do so. That is physical damage.

3.67 The presence of COVID-19 on property physically alters and damages the property. It makes it unsafe.

3.68 The Covid virus is a real tangible element that causes sickness.

3.69 Plaintiffs' businesses suffered direct physical loss and damage. Due to COVID-19, Plaintiffs' businesses were physically altered and became unsafe, and thus did not function, for their intended purpose. Their businesses' business functions have been impaired. If they were to have remained open at full capacity and conducted business as usual, the disease and virus would have spread uncontrollably, and more people would have been injured and died. This is not a non-physical or remote loss such as one occasioned by a breach of contract, loss of a market, or the imposition of a government penalty.

3.70 The presence of virus or disease constitutes physical damage to property, as the industry has recognized since at least 2006. When preparing so-called "virus" exclusions to be placed in some policies, but not others, the insurance industry drafting arm, ISO, circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

See **EXHIBIT 3**, ISO Amendatory Endorsement – Exclusion Of Loss Due To Virus Or Bacteria at OMNI_0000101.

3.71 The presence of the virus resulted in direct physical loss and damage to property as described above.

3.72 Moreover, due to COVID-19, Plaintiffs' businesses have suffered direct physical loss and damage under the plain meaning of those words. COVID-19 has impaired Plaintiffs'

property by making them physically altered and unusable in the way that they had been used before COVID-19.

3.73 Plaintiffs' loss is "direct." Plaintiffs are not, for example, asking Defendant to reimburse Plaintiffs after someone obtained a judgment against Plaintiffs for getting them sick. Rather, Plaintiffs are asking Defendant to pay for its loss of business income occasioned by being unable to use its properties. Further, COVID-19 was not only a substantial factor in causing the loss, but it also was the predominant or immediate factor in causing the loss or damage: COVID-19. Plaintiffs will present expert testimony to a jury to establish the proximity of the virus and the common understanding of the cause of the virus, which will establish to a jury that the loss or damage was direct – even under the strictest test on the meaning of "direct.

3.74 Plaintiffs' loss is "physical." The physical spaces of Plaintiffs' business properties were altered by the presence of COVID-19 and its infectious spread characteristics. COVID-19 structurally altered the surfaces of Covered Properties and ambient air within Covered Properties. Plaintiffs will present expert chemical testimony to show the structural alteration to the ambient air within and surfaces of Covered Properties. Plaintiffs were unable to use their spaces in the manner in which they had previously used those spaces, as Plaintiffs will show through the facts and expert testimony on a safe occupancy of physical space. The confirmed presence of illness on the property as evidenced by many employees who tested positive for COVID-19 prevented the functioning and/or use of the physical space in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable.

3.75 Plaintiffs' loss is in fact a "loss." Plaintiffs lost the use and function of its physical spaces for business purposes. The alteration of the physical space in the buildings caused them

to be unusable. The direct physical loss flows from the alteration of the air and the surfaces of Covered Properties.

3.76 The impairment of the business function is also damage to the businesses.

3.77 Since Plaintiffs' loss is covered by the Underlying Policy, it is also covered by the RSUI Policy as this loss does not fall under any exclusion in the RSUI Policy.

3.78 Plaintiffs submitted claims pursuant to the RSUI Policy as a result of sustaining losses covered by the RSUI Policy. Defendant denied the claim. Plaintiffs allege that Defendant failed to properly investigate the claim and did so in bad faith based on a systematic company practice designed to minimize payments to its insureds.

3.79 More specifically, upon information and belief, Defendant has, on a wide-scale basis with many if not all of its insureds, wrongfully refused to provide coverage due to COVID-19 and the resultant executive orders by civil authorities that have required the suspension of business without any meaningful investigation of the claims.

2) *COVID-19 Triggered the Underlying Policy's Business Interruption Coverage and therefore also triggered the RSUI Policy*

3.80 The Underlying Policy affords coverage for Plaintiffs' business interruption losses, subject to the policy's terms and conditions. Since Plaintiffs' loss is covered by the Underlying Policy, it is also covered by the RSUI Policy as this loss does not fall under any exclusion in the RSUI Policy. COVID-19 caused Plaintiffs to suffer business interruption loss as a direct result of physical loss under both the Underlying Policy and the RSUI Policy.

3) *COVID-19 Triggered the Underlying Policy's Extra Expense Coverage and therefore also triggered the RSUI Policy*

3.81 COVID-19 caused Plaintiffs to incur reasonable and necessary expenses to continue, as close to normal as possible, the conduct of Plaintiffs' businesses. Such expenses are

beyond those that would have normally been incurred in conducting the businesses absent the presence of COVID-19.

3.82 The expenses incurred by Plaintiffs beyond those necessary in the normal operation of its businesses solely as a result of the physical loss and damage caused by COVID-19 trigger coverage under the Underlying Policy's Extra Expense coverage. Since Plaintiffs' loss is covered by the Underlying Policy, it is also covered by the RSUI Policy as this loss does not fall under any exclusion in the RSUI Policy.

4) *COVID-19 Triggered the Underlying Policy's Civil Authority Coverage and therefore also triggered the RSUI Policy*

3.83 The presence of COVID-19 at Plaintiffs' hotels resulted in the issuance of orders and directives expressly prohibiting access to Plaintiffs' hotels. Plaintiff sustained significant business interruption losses because of the Closure Orders issued as a direct result of the physical damage and potential property and human health risks associated with the presence of COVID-19 at, on and around the Covered Properties. Since Plaintiffs' loss is covered by the Underlying Policy, it is also covered by the RSUI Policy as this loss does not fall under any exclusion in the RSUI Policy.

5) *COVID-19 Triggered the Underlying Policy's Ingress/Egress Coverage and therefore also triggered the RSUI Policy*

3.84 COVID-19 and the physical loss and damage it caused resulted in the necessary interruption of Plaintiffs' 2020 and 2021 business activities by totally or partially preventing ingress to or egress from the Covered Properties as a direct result of physical loss and damage of the type insured to property.

3.85 The business interruption losses sustained by Plaintiff as a result of the total or partial denial of access to the insured properties trigger the coverage under the Underlying Policy's

Ingress/Egress coverage. Since Plaintiffs' loss is covered by the Underlying Policy, it is also covered by the RSUI Policy as this loss does not fall under any exclusion in the RSUI Policy.

E. No Exclusion Impacts Coverage

3.86 No exclusion in the Policy applies to preclude or limit coverage for the presence of COVID-19 on, at or around Plaintiffs' hotels, the physical loss, damage or destruction to property at Plaintiffs' hotels, and/or any of the Time Element business interruption losses that resulted from the direct physical loss and damage to Plaintiffs' hotels caused by the presence of COVID-19 at each of the covered locations. To the extent that Defendant contends any exclusion(s) apply, such exclusion(s) are unenforceable.

F. The Underlying Policy's Pollution and Contamination Exclusion Does Not Apply

3.87 The Underlying Policy contains an exclusion that purports to preclude coverage for "Contaminants or Pollutants" *See* **EXHIBIT 2**, Underlying Policy at Endorsement 20 OMNI_0000078-80.

3.88 The Underlying Policy recently added a definition for "contaminants or pollutants" to mean, "any material that after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use of property insured by this Policy, including, but not limited to, bacteria, virus, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act, or as designated by the U.S. Environmental Protection Agency." *Id.* (Emphasis added.)

3.89 Most compellingly, under the four corners of the Underlying Policy, the exclusion for any contaminant or pollutant requires as a prerequisite that the Insurer show that the contaminant or pollutant was released. These words are meaningful. The exclusion was designed

to exclude coverage in instances of the purposeful malicious release of contaminants or pollutants – the weaponizing of a virus or toxic substance – as opposed to a naturally occurring pollutant or contaminant. In this case, the Covered Properties were not subject to a release of contaminants or pollutants. Because the physical loss and damage to the Covered Properties was not the result of a released material or virus, the pollution and contamination exclusion does not apply to Plaintiffs’ claim for losses.

3.90 The Underlying Policy’s “Contaminants or Pollutants” exclusion does not exclude coverage for loss caused by “contagious or infectious disease.”

3.91 The Underlying Policy’s “Contaminants or Pollutants” exclusion does not exclude coverage for immediate costs to protect or preserve insured property due to impending physical loss or damage.

3.92 The Underlying Policy’s “Contaminants or Pollutants” exclusion does not purport to exclude coverage for business interruption losses.

3.93 Further, since at least 2006, when the insurance industry began recognizing that the presence of virus or disease can constitute physical damage. The insurance industry drafting arm, ISO, began drafting express “virus” exclusions, which the insurance industry began incorporating into their policies either in their form or as an endorsement which provides in pertinent part, “[W]e will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” *See EXHIBIT 3*, ISO Amendatory Endorsement – Exclusion Of Loss Due To Virus Or Bacteria at OMNI_0000105.

3.94 If Defendant had wanted to exclude losses due to “virus,” Defendant was free to do so and could have included a standardized express virus exclusion first drafted at least fourteen

(14) years ago.

3.95 In addition, the Underlying Policy’s “Contaminants or Pollutants” exclusion purports to exclude any direct “physical loss, damage or destruction caused by, resulting from, contributed to or made worse by actual, alleged, or threatened release, discharge, escape or dispersal of ‘pollutant or contamination’...” and defines “Contaminants or Pollutants” as “any material that after its release can cause or threaten damage to human health ...” Written as such, the Policy’s “Contaminants or Pollutants” exclusion only applies to “any material”, including “virus”, as some sort of medical or commercial waste that was actually, allegedly, or threatened to be, released, discharged, escaped, or dispersed and thus is inapplicable to Plaintiffs’ immediate claims.

3.96 To the extent that Defendant contends that the Underlying Policy’s “Contaminants or Pollutants” exclusion bars coverage for loss caused by “contagious or infectious disease,” cost incurred to preserve or protect Plaintiffs’ insured properties, Time Element business interruption loss, or some other aspect of Plaintiffs’ claim, the Underlying Policy is at best, ambiguous, and therefore, must be construed in favor of coverage.

IV. COUNT I – BREACH OF CONTRACT (PROPERTY DAMAGE)

4.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs, as if fully set forth herein.

4.2 The RSUI Policy and Underlying Policy are valid and enforceable contracts between Plaintiffs and RSUI.

4.3 In the RSUI Policy and Underlying Policy, insurers agreed to cover property against all-risks of physical loss or damage not otherwise specifically excluded.

4.4 COVID-19 caused actual physical loss and/or physical damage to Plaintiffs' Covered Properties.

4.5 No exclusions apply to bar coverage.

4.6 Plaintiffs are entitled to coverage for the physical loss and/or damage up to the RSUI Policy's per-occurrence limit of liability.

4.7 Plaintiffs complied with all applicable RSUI Policy provisions. Plaintiffs paid all premiums and provided timely notice of its claim.

4.8 Nonetheless, RSUI unjustifiably refuses to pay for Plaintiffs' physical loss or damage in breach of the RSUI Policy and Underlying Policy.

4.9 Plaintiffs suffered and continue to suffer damages as a result of Defendant's breach(es) of the RSUI Policy.

4.10 Plaintiffs are entitled to damages as a result of RSUI breaches in an amount to be determined at trial, including all available Policy benefits and coverages, attorney fees and reasonable expenses, pre- and post-judgment interest and any other costs and other relief that this Court deems appropriate.

V. COUNT II – BREACH OF CONTRACT (BUSINESS INTERRUPTION)

5.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

5.2 The RSUI Policy and the Underlying Policy are valid and enforceable contracts between Plaintiffs and RSUI.

5.3 In the RSUI Policy, RSUI agreed to cover business interruption loss and incurred extra expense, as provided for in the business interruption coverage provision of the Underlying

Policy as a direct result of physical loss or damage of the type insured under the RSUI Policy and Underlying Policy.

5.4 COVID-19 caused actual physical loss and/or physical damage to Plaintiffs' properties that have caused Plaintiffs to suffer business interruption losses and incur extra expenses.

5.5 No exclusions apply to bar coverage.

5.6 Plaintiffs are entitled to coverage for their business interruption losses incurred extra expenses related to COVID-19 up to the RSUI Policy's per-occurrence limits of liability for business interruption losses or any applicable sub-limits.

5.7 Plaintiffs complied with all applicable RSUI Policy provisions.

5.8 Nonetheless, RSUI unjustifiably refused to pay for the covered losses and expenses in breach of the RSUI Policy.

5.9 Plaintiffs suffered and continue to suffer economic damages as a result of Defendant's breaches of the RSUI Policy and Underlying Policy.

5.10 Plaintiffs are entitled to damages as a result of Defendant's breaches in an amount to be determined at trial, including all available RSUI Policy benefits and coverages, attorney fees and reasonable expenses, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

**VI. COUNT III – BREACH OF CONTRACT
(ADDITIONAL COVERAGES AND COVERAGE EXTENSIONS)**

6.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs, as if fully set forth herein.

6.2 The RSUI Policy and the Underlying Policy are valid and enforceable contracts between Plaintiffs and RSUI.

6.3 In the RSUI Policy and the Underlying Policy, insurers agreed to afford additional coverage as provided in the Policies' Additional Coverages and Coverage Extensions. COVID-19 caused actual physical loss and/or physical damage to Plaintiffs' insured properties and caused Plaintiffs to suffer losses under the Policies' Additional Coverages and Coverage Extensions.

6.4 No exclusions apply to bar coverage.

6.5 Plaintiffs are entitled to coverage for losses related to COVID-19 up to the Underlying Policy's Additional Coverage and Coverage Extension's limit of liability or any applicable sub-limits under both the Underlying Policy and the RSUI Policy.

6.6 Plaintiffs complied with all applicable provisions under the RSUI Policy and the Underlying Policy.

6.7 Nonetheless, Defendant unjustifiably refused to pay for the covered losses and expenses in breach of the RSUI Policy.

6.8 Plaintiffs suffered and continue to suffer damages as a result of Defendant RSUI's breach of the RSUI Policy.

6.9 Plaintiffs are entitled to damages due to Defendant's breaches in an amount to be determined at trial, including all available Policy benefits and coverages, attorney fees and reasonable expenses, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

**VII. COUNT IV – BREACH OF THE COVENANT
OF GOOD FAITH AND FAIR DEALING**

7.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

7.2 Defendant RSUI denied Plaintiffs' claims resulting from the physical damage caused by COVID-19 by failing to timely pay the claim within the timeframe required under

O.C.G.A § 33-4-6. Further, RSUI failed to conduct a thorough and timely investigation of Plaintiffs' claim, failed to timely communicate as required by the RSUI Policy and Georgia law and unreasonably delayed and denied payment of Plaintiffs' covered claim. Contractual liability under the RSUI Policy and the Underlying Policy was reasonably clear or should have been reasonably clear had the insurers done a thorough and reasonable investigation of the claim.

7.3 In general, every contract has an implied covenant of good faith and fair dealing. This implied obligation assumes that the parties to a contract like the RSUI Policy and the Underlying Policy will act in good faith and deal fairly with one another without breaking their agreement, using shifty means to avoid obligations, or deny what the other party obviously understood.

7.4 As stated above, Plaintiffs paid RSUI a premium of \$25,000 in exchange for an agreement from RSUI to pay for "all-risks" that were not specifically excluded by the Underlying Policy language, including various specific business interruption and extended coverage provisions discussed above. RSUI did not negotiate or include an exclusion for contagious diseases or viruses such as COVID-19, despite the fact that these exclusions were standard provisions and widely used.

7.5 RSUI obviously understood that the RSUI Policy would provide coverage in the event of an unexpected but not excluded event such as the outbreak of COVID-19 and the subsequent related Closure Orders and ramifications.

7.6 RSUI failed to act in good faith and deal fairly with Plaintiffs. It broke its agreement, used shifty means to avoid its obligations and unfairly denied coverage.

7.7 This failure to act in good faith is amplified by the fact that RSUI's conduct is prohibited by Georgia statutes on bad faith insurance practices. *See infra* at Count V.

7.8 More egregiously, insurance companies, including RSUI, Chubb and the insurance industry in general had a meeting of the minds and implemented practices that constitute bad faith on behalf of insurers, including failing to properly investigate claims, denying claims without just cause, and breaching their duty of good faith and fair dealing.

7.9 Plaintiffs are entitled to an award of actual and additional damages as a result of Defendant's bad faith in an amount to be determined at trial, including consequential damages caused by Defendant's bad faith denial of Plaintiffs' claim, punitive damages as allowed by Georgia law pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

VIII. COUNT V – VIOLATIONS OF O.C.G.A. § 33-6-3

8.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

8.2 Defendant RSUI was an insurance provider that engaged in unfair and deceptive acts and practices under O.C.G.A. § 33-6-3.

8.3 Specifically, RSUI engaged in the following acts and practices that constitute improper claims and settlement practices:

- a) Knowingly misrepresenting to claimants and insured relevant facts or policy provisions relating to coverages at issue;
- b) Failing to adopt and implement procedures for the prompt investigation and settlement of claims arising under its policies;
- c) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- d) Refusing to pay claims without conducting a reasonable investigation;

- e) RSUI committed these improper claims and settlement practices flagrantly and in conscious disregard of the rules and regulations of the State of Georgia;
- f) Further, RSUI has committed the improper claims and settlement practices with such frequency as to indicate a general business practice to engage in such conduct.

8.4 Defendant's systemic practices and procedures to delay and deny COVID-19 claims have compelled Plaintiffs to initiate this litigation to recover amounts due under the RSUI Policy which constitutes a violation of O.C.G.A. § 33-6-3.

8.5 As a result of Defendant's unfair or deceptive acts or practices, Plaintiffs suffered and continue to suffer actual contractual damages, actual consequential damages, additional damages, and attorneys' fees.

8.6 Plaintiffs are entitled to an award of actual and additional damages as a result of Defendant's unfair or deceptive acts or practices in an amount to be determined at trial, including contractual damages, actual consequential damages, statutory penalties, attorneys' fees, pre- and post-judgment interest and any other costs and other relief that this Court deems appropriate.

8.7 Plaintiffs have been required to retain the services of attorneys to commence this action and are further entitled to all reasonable and necessary attorneys' fees, costs and expenses in the amounts allowed by Georgia law.

IX. COUNT VI – BAD FAITH INSURANCE PRACTICES UNDER O.C.G.A. § 33-4-7

9.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

9.2 Plaintiffs made a claim for payment under the RSUI Policy and the Underlying Policy.

9.3 Plaintiffs' claim was covered under the all-risks policy because Plaintiffs' properties suffered actual physical loss and damage as a result of the outbreak of COVID-19 and neither contagious diseases nor viruses, such as COVID-19, were specifically excluded under the RSUI Policy.

9.4 Payment was due to Plaintiffs when it made the claim to the Insurers, including RSUI.

9.5 RSUI failed to timely pay Plaintiffs' claim.

9.6 RSUI's failure to pay Plaintiffs' claim was motivated by bad faith and constituted improper claims settlement practices under O.C.G.A. § 33-6-34, as described above.

9.7 Because of Defendant's unfair or deceptive acts or practices, Plaintiffs suffered and continue to suffer actual contractual damages, actual consequential damages, additional damages, and attorneys' fees.

9.8 Plaintiffs are entitled to an award of actual and additional damages as a result of Defendant's unfair or deceptive acts or practices in an amount to be determined at trial, including actual contractual damages, actual consequential damages, statutory penalties, attorneys' fees, pre- and post-judgment interest and any other costs and other relief that this Court deems appropriate.

9.9 Plaintiffs have been required to retain the services of attorneys to commence this action and are further entitled to all reasonable and necessary attorneys' fees, costs and expenses in the amounts allowed by Georgia law.

X. COUNT VII – CIVIL CONSPIRACY

10.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

10.2 Defendant RSUI engaged in a civil conspiracy with the other insurers who provided coverage to Plaintiffs, as well as insurers across the insurance industry.

10.3 RSUI and other insurers engaged in a common design, had a meeting of the minds, and arrived at a mutual understanding that the insurers would benefit, at the insured's expense, by uniformly failing to investigate COVID-19 claims and denying these claims despite their failure to properly investigate the claims.

10.4 This common design and civil conspiracy were illegal in that they involved acts of bad faith insurance practices, unfair and deceptive practices, including conduct that is defined by statute to be improper claims and settlement practices, as outlined above. This joint illegal and tortious conduct includes specifically, but is not limited to:

- a) Knowingly misrepresenting to claimants and insured relevant facts or policy provisions relating to coverages at issue;
- b) Failing to adopt and implement procedures for the prompt investigation and settlement of claims arising under its policies;
- c) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- d) Refusing to pay claims without conducting a reasonable investigation.

See O.C.G.A. § 3-6-34.

10.5 All insurers that provided coverage to Plaintiffs, including RSUI, are jointly and severally liable to Plaintiffs for its' damages. These insurers came to a common understanding, had a meeting of the minds, and committed overt acts, including, but not limited to, failing to investigate claims and the summarily denying COVID-19 business interruption claims even when the insurance policy was an "all-risks" policy that contained no exclusion for contagious diseases or viruses.

10.6 Defendant's complete and utter failure to engage in any type of investigation into any COVID-19 claim from Plaintiffs or any insured is more than just a breach of the covenant of good faith and fair dealing. This concerted and synchronized effort by the insurance companies amounts to a conspiracy to act in bad faith in refusing to investigate COVID-19 claims.

10.7 Some combination of RSUI and other insurers, including Chubb, engaged in a calculated scheme to deny Plaintiffs and other insureds' similar COVID-19 related claims.

10.8 The conspiring insurers, including RSUI, acted with intent to harm Plaintiffs and knew that refusing to investigate Plaintiffs' COVID-19 claims would cause harm to Plaintiffs.

10.9 To accomplish the object of their agreement, one or more of the conspiring insurers, including RSUI, refused to investigate Plaintiffs' COVID-19 claims in violation of their duty of good faith and fair dealing and Georgia law.

10.10 As a result of the insurers' agreement to refuse to investigate Plaintiffs' COVID-19 claims in violation of the covenant of good faith and fair dealing and Georgia law, Plaintiffs suffered and continues to suffer tremendous economic damages.

10.11 Defendant along with other insurers employed a systematic "one-size-fits-all" approach to adjusting and denying coverage for all COVID-19 claims, including Plaintiffs' claim. Without investigating the insured locations or talking to its insured's representatives, Defendant RSUI and the other co-conspirators engaged in a systemic denial of all COVID-19 claims submitted under the false assumption that every COVID-19 claim was the same, every COVID-19 claim was not covered, and every COVID-19 claim should be denied. That overly broad, institutional handling of every COVID-19 claim submitted, including Plaintiffs', without considering the unique facts of each submitted claim, each applicable governmental closure order

and each damage claim amounts to civil conspiracy, fraud, institutional bad faith, illegal insurance practices and reprehensible claims conduct.

10.12 Plaintiffs are entitled to an award of actual and additional damages as a result of Defendant's bad faith conduct, civil conspiracy, and unfair settlement practices. The damages shall be determined at trial, including consequential damages, attorney's fees, punitive damages as allowed by Georgia law, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

10.13 All parties shown to be part of the civil conspiracy are jointly and severally liable to Plaintiffs for their damages.

XI. COUNT VIII – ATTORNEYS' FEES AND EXPENSES PURSUANT TO O.C.G.A § 13-6-11

11.1 Plaintiffs repeat and reallege the allegations in the preceding paragraphs as if fully set forth herein.

11.2 Defendant RSUI's actions are evidence of bad faith, and Defendant RSUI was and is stubbornly litigious and has caused Plaintiffs undue expense. Thus, Plaintiffs are entitled to recover their necessary litigation expenses, including an award of reasonable attorney's fees and expenses required by this action, pursuant to O.C.G.A. § 33-6-11, as well as any other statutory or common law basis

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant as follows:

- a) Judgment against Defendant for actual damages in an amount to be determined by the jury as allowed by the RSUI Policy made the basis of this suit;

- b) Additional damages and/or punitive damages as allowed by applicable Georgia law;
- c) Statutory penalties under the Georgia Insurance Code as allowed by Georgia law;
- d) Reasonable and necessary attorney's fees, expenses and costs of court as allowed by Georgia law;
- e) Pre- and post-judgment interest, as provided by law;
- f) For such other and further relief as the Court deems just and proper.

Respectfully submitted this 22 day of June, 2022.

/s/ Robert M. Hammers, Jr.
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