

CAUSE NO. D-1-GN-20-005902

SUMMIT HOTEL PROPERTIES, INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CONTINENTAL CASUALTY COMPANY,	§	
ACE AMERICAN INSURANCE	§	
COMPANY, AMERICAN GUARANTEE	§	
AND LIABILITY INSURANCE COMPANY,	§	
STARR SURPLUS LINES INSURANCE	§	
COMPANY, ENDURANCE AMERICAN	§	
SPECIALTY INSURANCE COMPANY,	§	
ATEGRITY SPECIALTY INSURANCE	§	
COMPANY, INDEPENDENT SPECIALTY	§	
INSURANCE COMPANY, CERTAIN	§	
UNDERWRITERS AT LLOYD'S	§	
(CONSORTIUM #9226), INTERSTATE FIRE	§	
& CASUALTY COMPANY, NEON	§	
UNDERWRITING BERMUDA LIMITED,	§	
HDI GLOBAL INSURANCE COMPANY,	§	
EVEREST INDEMNITY INSURANCE	§	
COMPANY, ARCH SPECIALTY	§	
INSURANCE COMPANY, LEXINGTON	§	
INSURANCE COMPANY, QBE	§	
SPECIALTY INSURANCE COMPANY,	§	
THE PRINCETON EXCESS & SURPLUS	§	
LINES INSURANCE COMPANY,	§	
GENERAL SECURITY INDEMNITY	§	
COMPANY OF ARIZONA, STARSTONE	§	
SPECIALTY INSURANCE COMPANY,	§	
LANDMARK AMERICAN INSURANCE	§	
COMPANY, AND CERTAIN	§	
UNDERWRITERS AT LLOYD'S, LONDON	§	
SUBSCRIBING TO POLICY NO. GEP 3734,	§	
	§	
Defendants.	§	353RD JUDICIAL DISTRICT

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**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

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TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Summit Hotel Properties, Inc. (“Summit”) files this Original Petition for damages and declaratory judgment and Request for Disclosure against Defendants Continental Casualty Company, ACE American Insurance Company, American Guarantee and Liability Insurance Company, Starr Surplus Lines Insurance Company, Endurance American Specialty Insurance Company, Ategrity Specialty Insurance Company, Independent Specialty Insurance Company, Certain Underwriters at Lloyd’s (Consortium #9226), Interstate Fire & Casualty Company, Neon Underwriting Bermuda Limited, HDI Global Insurance Company, Everest Indemnity Insurance Company, Arch Specialty Insurance Company, Lexington Insurance Company, QBE Specialty Insurance Company, The Princeton Excess & Surplus Lines Insurance Company, General Security Indemnity Company of Arizona, Starstone Specialty Insurance Company, Landmark American Insurance Company, and Certain Underwriters at Lloyd’s, London Subscribing to Policy No. GEP 3734 (collectively, “Insurers” or “Defendants”), and respectfully shows as follows:

### **I. INTRODUCTION**

1. Summit brings this action against Insurers to recover for losses that are covered under its “all risks” insurance policy drafted and sold by Insurers to Summit. Despite incurring significant loss caused by coronavirus, COVID-19, the resulting civil authority orders issued because of the physical loss of or damage to property caused by COVID-19, and the dangerous conditions associated with that damage, Insurers have turned their backs on Summit, refusing to honor their contractual promises under the insurance policy.

2. Beginning in March 2020, Summit was forced to close or significantly restrict many of its operations because of coronavirus, COVID-19, and various related civil authority orders based on physical loss of or damage to property caused by COVID-19. The monetary loss associated with these closures was monumental.

3. Summit therefore files this action for breach of contract, violations of the Texas Prompt Pay Act, and Summit seeks a declaratory judgment that Insurers have a duty to indemnify Summit for its losses sustained resulting from coronavirus, COVID-19, and the resulting civil authority orders pursuant its insurance policy.

## **II. DISCOVERY CONTROL PLAN**

4. Plaintiff intends for discovery to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

## **III. PARTIES**

5. Summit is a corporation organized under the laws of the State of Maryland with its principal place of business located in Austin, Texas.

6. Upon information and belief, Continental Casualty Company (“CNA”)<sup>1</sup> is a corporation incorporated under the laws of Illinois, with its principal place of business located in Chicago, Illinois. CNA is, among other things, in the business of insuring companies such as Summit. CNA is a foreign insurance corporation that conducts business within the State of Texas. CNA may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

7. ACE American Insurance Company (“Chubb”) is a corporation incorporated under the laws of Pennsylvania, with its principal place of business located in Philadelphia, Pennsylvania. Chubb is, among other things, in the business of issuing insurance policies to companies such as Summit. Chubb is a foreign insurance corporation that conducts business within the State of Texas. Chubb may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

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<sup>1</sup> The Original Petition defines the Defendant insurance companies by the shortened version of their parent corporations.

8. Upon information and belief, American Guarantee and Liability Insurance Company (“Zurich”) is a corporation incorporated under the laws of New York, with its principal place of business located in New York, New York. Zurich is, among other things, in the business of issuing insurance policies to companies such as Summit. Zurich is a foreign insurance corporation that conducts business within the State of Texas. Zurich may be served with process by serving its registered agent, Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

9. Upon information and belief, Starr Surplus Lines Insurance Company (“Starr”) is a corporation incorporated under the laws of Texas, with its principal place of business located in Dallas, Texas. Starr is, among other things, in the business of issuing insurance policies to companies such as Summit. Starr is a domestic insurance corporation that conducts business within the State of Texas. Starr may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

10. Endurance American Specialty Insurance Company (“Sompo”) is a corporation incorporated under the laws of Delaware, with its principal place of business located in Wilmington, Delaware. Sompo is, among other things, in the business of issuing insurance policies to companies such as Summit. Sompo is a foreign insurance corporation that conducts business within the State of Texas. Sompo may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

11. Ategrity Specialty Insurance Company (“Ategrity”) is a corporation incorporated under the laws of Delaware, with its principal place of business located in Scottsdale, Arizona. Ategrity is, among other things, in the business of issuing insurance policies to companies such as Summit. Ategrity is a foreign insurance corporation that conducts business within the State of

Texas. Ategrity has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Ategrity with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

12. Independent Specialty Insurance Company (“ISIC”) is a corporation incorporated under the laws of Delaware, with its principal place of business located in Dover, Delaware. ISIC is, among other things, in the business of issuing insurance policies to companies such as Summit. ISIC is a foreign insurance corporation that conducts business within the State of Texas. ISIC has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code, and therefore may be served with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104.

13. Certain Underwriters at Lloyd’s (Consortium #9226) (“Asta”) is incorporated under the laws of the United Kingdom, with its principal place of business located in the United Kingdom. Asta is, among other things, in the business of issuing insurance policies to companies such as Summit. Asta is a foreign corporation that conducts business within the State of Texas. Asta has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Asta with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

14. Interstate Fire & Casualty Company (“Allianz”) is incorporated under the laws of Illinois, with its principal place of business located in Chicago, Illinois. Allianz is, among other things, in the business of issuing insurance policies to companies such as Summit. Allianz is a foreign insurance corporation that conducts business within the State of Texas. Allianz may be served with process by serving its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

15. Neon Underwriting Bermuda Limited (“Neon Bermuda”) is incorporated under the laws of Bermuda, with its principal place of business located in Hamilton, Bermuda. Neon Bermuda is, among other things, in the business of issuing insurance policies to companies such as Summit. Neon Bermuda is a foreign insurance corporation that conducts business within the State of Texas. Neon Bermuda has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Neon Bermuda with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

16. Upon information and belief, HDI Global Insurance Company (“HDI”) is a corporation incorporated under the laws of Illinois, with its principal place of business located in Chicago, Illinois. HDI is, among other things, in the business of issuing insurance policies to companies such as Summit. HDI is a foreign insurance corporation that conducts business within the State of Texas. HDI may be served with process by serving its registered agent, The Prentice Hall Corporation System at 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

17. Everest Indemnity Insurance Company (“Everest”) is a corporation incorporated under the laws of Delaware, with its principal place of business located in Liberty Corner, New Jersey. Everest is, among other things, in the business of issuing insurance policies to companies such as Summit. Everest is a foreign insurance corporation that conducts business within the State of Texas. Everest has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Everest with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

18. Arch Specialty Insurance Company (“Arch”) is a corporation incorporated under the laws of Missouri, with its principal place of business located in Kansas City, Missouri. Arch is, among other things, in the business of issuing insurance policies to companies such as Summit. Arch is a foreign insurance corporation that conducts business within the State of Texas. Arch has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Arch with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

19. Lexington Insurance Company (“AIG”) is a corporation incorporated under the laws of Delaware, with its principal place of business located in Boston, Massachusetts. AIG is, among other things, in the business of issuing insurance policies to companies such as Summit. AIG is a foreign insurance corporation that conducts business within the State of Texas. AIG has failed to appoint or does not maintain a registered agent in this State, as required by Section

804.103 of the Texas Insurance Code. Summit, therefore, may serve AIG with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

20. QBE Specialty Insurance Company (“QBE”) is a corporation incorporated under the laws of North Dakota, with its principal place of business located in Sun Prairie, Wisconsin. QBE is, among other things, in the business of issuing insurance policies to companies such as Summit. QBE is a foreign insurance corporation that conducts business within the State of Texas. QBE has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve QBE with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

21. The Princeton Excess & Surplus Lines Insurance Company (“Munich Re”) is a corporation incorporated under the laws of Delaware, with its principal place of business located in Princeton, New Jersey. Munich Re is, among other things, in the business of issuing insurance policies to companies such as Summit. Munich Re is a foreign insurance corporation that conducts business within the State of Texas. Munich Re has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Munich Re with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.



22. General Security Indemnity Company of Arizona (“SCOR”) is a corporation incorporated under the laws of Arizona, with its principal place of business located in New York, New York. SCOR is, among other things, in the business of issuing insurance policies to companies such as Summit. SCOR is a foreign insurance corporation that conducts business within the State of Texas. SCOR has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve SCOR with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

23. Starstone Specialty Insurance Company (“Starstone”) is a corporation incorporated under the laws of Delaware, with its principal place of business located in Jersey City, New Jersey. Starstone is, among other things, in the business of issuing insurance policies to companies such as Summit. Starstone is a foreign insurance corporation that conducts business within the State of Texas. Starstone has failed to appoint or does not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Starstone with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

24. Landmark American Insurance Company (“RSUI”) is a corporation incorporated under the laws of Oklahoma, with its principal place of business located in Atlanta, Georgia. RSUI is, among other things, in the business of issuing insurance policies to companies such as Summit. RSUI is a foreign insurance corporation that conducts business within the State of Texas. RSUI has failed to appoint or does not maintain a registered agent in this State, as required by Section

804.103 of the Texas Insurance Code. Summit, therefore, may serve RSUI with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving its registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

25. Certain Underwriters at Lloyd's, London Subscribing to Policy No. GEP 3734 ("Underwriters") are incorporated under the laws of the United Kingdom, with their principal place of business located in the United Kingdom. Underwriters are, among other things, in the business of issuing insurance policies to companies such as Summit. Underwriters are a foreign corporation that conducts business within the State of Texas. Underwriters have failed to appoint or do not maintain a registered agent in this State, as required by Section 804.103 of the Texas Insurance Code. Summit, therefore, may serve Underwriters with process by serving the Texas Commissioner of Insurance at Chief Clerk Office, 333 Guadalupe, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by serving their registered agent in Texas, to the extent such registered agent exists, wherever they may be found.

#### **IV. JURISDICTION AND VENUE**

26. This Court has subject matter jurisdiction over this dispute because the amount in controversy exceeds the minimum jurisdiction limits of this Court. Pursuant to Texas Rule of Civil Procedure 47, Summit seeks monetary relief over \$1,000,000.00, including attorneys' fees, pre-judgment and post-judgment interest, and damages.

27. This Court has personal jurisdiction over Insurers pursuant to the Texas long-arm statute because Insurers have submitted to jurisdiction in this State by transacting business in Texas, contracting to insure a person, property or risk located in Texas at the time of contracting, and making a contract substantially connected with Texas. Insurers' business includes: (a) making and issuing insurance contracts to Summit and other Texas residents; (b) taking or receiving

applications for insurance from Texas residents, including Summit; (c) receiving or collecting premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from Summit; and (d) the issuance or delivery of contracts of insurance to residents of the State of Texas or person authorized to do business in the State of Texas, including Summit. In addition, Insurers exercise substantial, systematic, and continuous contacts with Texas by doing business in Texas, serving insureds in Texas, and seeking additional business in Texas.

28. Venue is proper in Travis County, Texas because, among other reasons, all or a substantial portion, of the events involved in this lawsuit occurred in Travis County, Texas. Furthermore, this Court has jurisdiction to grant declaratory relief under Chapter 37 of the Texas Civil Practice and Remedies Code because an actual controversy exists between the parties as to their respective rights and obligations under the Policy with respect to Summit's insurance claim, detailed below.

## **V. FACTUAL BACKGROUND**

29. Summit is a publicly-traded real estate investment trust (NYSE: INN) based in Austin, Texas that owns premium-branded hotels in Texas and nationwide in the upscale segment of the lodging industry. As of the date of this filing, Summit's portfolio consists of 72 hotels, 67 of which are wholly-owned, with a total of 11,288 guestrooms located in 23 states. Summit's franchisors include Marriott International, Hilton Worldwide, Hyatt Hotel Corporation, and IHG.

30. To protect its business in the event of property loss and business interruption, Summit purchased a "manuscript" commercial property insurance policy from the insurers (the Insurers).

31. A "manuscript" policy is an insurance policy that is specifically tailored to and designed for the insured's business. Such policies, like Summit's, may include a number of

insurers that agree to share the insured's risk via quota share, meaning each insurer is responsible for a certain percentage of the insured's risk. Each insurer that agrees to take on the insured's risk then adopts that same manuscript policy.

32. Summit's manuscript insurance policy is an "all risks" policy, meaning the policy provides coverage for all risks unless a risk is explicitly excluded.

33. Summit files this action to recover amounts owed to it under its insurance policy for its losses incurred as a result of the coronavirus/COVID-19 global pandemic and resulting civil authority orders.

#### **A. The Global Pandemic**

34. COVID-19 is an illness caused by the novel coronavirus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (the "coronavirus"), that emerged in Wuhan, China and swept the globe during the Policy's term. The World Health Organization ("WHO") defines a pandemic as "the worldwide spread of a new disease."<sup>2</sup> On March 11, 2020 the WHO declared the coronavirus outbreak as a global pandemic.<sup>3</sup> The coronavirus/COVID-19 pandemic has caused an unprecedented crisis due to its propensity to spread easily and overwhelm healthcare systems. And, by the WHO's own definition, the coronavirus/COVID-19 pandemic has spread across the

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<sup>2</sup> *What is a pandemic?*, The World Health Organization (Feb. 24, 2010), available at [https://www.who.int/csr/disease/swineflu/frequently\\_asked\\_questions/pandemic/en/](https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/).

<sup>3</sup> *WHO announces COVID-19 outbreak as a pandemic*, The World Health Organization (Mar. 12, 2020), available at <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic#:~:text=COVID-19%20can%20be,growing%20number%20of%20countries.>

world. Indeed, almost every country in the world has reported COVID-19 cases<sup>4</sup> and every state in the United States of America has reported COVID-19 cases.<sup>5</sup>

35. As of this filing, over 7.4 million people in the United States of America have been infected with, and over 205,000 people have died from COVID-19, according to the Center for Systems Science and Engineering at Johns Hopkins University.<sup>6</sup>

36. According to scientists, COVID-19 has several modes of transmission. In a “Situation Report” released by the World Health Organization (“WHO”), it is reported that coronavirus can be transmitted through symptomatic transmission, pre-symptomatic transmission, or asymptomatic transmission.<sup>7</sup>

37. The incubation period for COVID-19 – the time between exposure to coronavirus (becoming infected) and symptom onset – averages 5-6 days; however, it can be up to 14 days.<sup>8</sup> Empirical studies have indicated that individuals may be most infectious during the pre-symptomatic phase.<sup>9</sup>

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<sup>4</sup> *World Map*, Centers for Disease Control and Prevention (July 20, 2020), *available at* <https://www.cdc.gov/coronavirus/2019-ncov-global-covid-19/world-map.html>.

<sup>5</sup> *U.S. Map*, Johns Hopkins University & Medicine (July 17, 2020), *available at* <https://coronavirus.jhu.edu/us-map>.

<sup>6</sup>*Id.*

<sup>7</sup>*Coronavirus disease 2019 (COVID-19) Situation Report- 73*, World Health Organization (April 2, 2020), *available at* [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2).

<sup>8</sup> *See, id.*

<sup>9</sup> Syed M. Moghadas, *et al.*, *The implications of silent transmission for the control of COVID-19 outbreaks*, Proceedings of the National Academy of Sciences (July 6, 2020), *available at* <https://www.pnas.org/content/early/2020/07/02/2008373117>.

38. Recent studies indicate that asymptomatic infections are also common, accounting for 17.9% to 30.8% of all infected individuals.<sup>10</sup> Asymptomatic individuals can also transmit COVID-19.

39. Collectively, silent disease transmission during the pre-symptomatic and asymptomatic stages are responsible for more than 50% of the overall attack rate in COVID-19 outbreaks.<sup>11</sup>

40. Not only is COVID-19 spread by human-to-human transfer, but studies have confirmed that coronavirus is transmissible via surfaces and aerosols. According to a study documented in the *The New England Journal of Medicine*, COVID-19 was detectable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel.<sup>12</sup>

41. The results from *The New England Journal of Medicine* study suggest that individuals could become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, whether they were symptomatic or not.<sup>13</sup> Another scientific study documented in the *Journal of Hospital Infection* found that human coronaviruses, such as SARS-CoV and MERS-CoV, can remain infectious on inanimate surfaces at room temperature for

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<sup>10</sup> *See, id.*

<sup>11</sup> *See, id.*

<sup>12</sup> Neeltje van Doremalen, *et al.*, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, N. ENGL. J. MED. (Mar. 17, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>.

<sup>13</sup> *Id.*

up to nine days.<sup>14</sup> Contamination of frequently touched surfaces is, therefore, a potential source of viral transmission.<sup>15</sup>

42. Coronavirus is therefore active and/or remains capable of being transmitted on inert physical surfaces. For example, on March 27, 2020, the Centers for Disease Control and Prevention (“CDC”) released a report titled “*Public Health Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February - March 2020.*”<sup>16</sup> The report details COVID-19 outbreaks on three different cruise ships, which caused more than 800 confirmed cases and 10 deaths.<sup>17</sup> Of the individuals tested, a high proportion were found to be asymptomatic.<sup>18</sup> Significantly, on the Diamond Princess cruise ship, COVID-19 was identified on a variety of surfaces in cabins of both symptomatic and asymptomatic infected passengers up to 17 days after cabins were vacated on the Diamond Princess, but before disinfection procedures.<sup>19</sup>

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<sup>14</sup> G. Kampf, *et al.*, *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, J. OF HOSPITAL INFECTION (Jan. 31, 2020), available at <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3>.

<sup>15</sup> *See, id.*

<sup>16</sup> Leah F. Moriarty, *et al.*, *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020*, CDC Morbidity and Mortality Weekly Report (Mar. 27, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

<sup>17</sup> *See, id.* (“During February 7–23, 2020, the largest cluster of COVID-19 cases outside mainland China occurred on the Diamond Princess cruise ship, which was quarantined in the port of Yokohama, Japan, on February 3. On March 6, cases of COVID-19 were identified in persons on the Grand Princess cruise ship off the coast of California; that ship was subsequently quarantined. By March 17, confirmed cases of COVID-19 had been associated with at least 25 additional cruise ship voyages. On February 21, CDC recommended avoiding travel on cruise ships in Southeast Asia; on March 8, this recommendation was broadened to include deferring all cruise ship travel worldwide for those with underlying health conditions and for persons aged ≥65 years. On March 13, the Cruise Lines International Association announced a 30-day voluntary suspension of cruise operations in the United States. CDC issued a level 3 travel warning on March 17, recommending that all cruise travel be deferred worldwide.”).

<sup>18</sup> *Id.*

<sup>19</sup> *See id.* (“Cruise ships are often settings for outbreaks of infectious diseases because of their closed environment, contact between travelers from many countries, and crew transfers between ships. On the Diamond Princess, transmission largely occurred among passengers before quarantine was implemented, whereas crew infections peaked after quarantine. On the Grand Princess, crew members were likely infected on voyage A and then transmitted SARS-CoV-2 to passengers on voyage B. The results of testing of passengers and crew on board the Diamond Princess demonstrated a high proportion (46.5%) of asymptomatic infections at the time of testing. Available statistical models of the Diamond Princess outbreak suggest that 17.9% of infected persons never developed symptoms. A high

43. The presence of coronavirus particles on Summit's physical property therefore caused a loss of its usefulness and normal function. Additionally, the presence of coronavirus particles caused direct physical harm, direct physical damage, and/or direct physical loss to Summit's physical property.

44. Furthermore, there is emerging scientific evidence that aerosols also play a major role in transmitting the disease.<sup>20</sup> In fact, "[t]he aggressive nature of the disease is directly connected with the transport phenomena of both droplets and aerosols."<sup>21</sup> For example, researchers in Hong Kong tied COVID infections to more than 1,000 persons in an apartment complex to aerosols generated by the building's sewage system.<sup>22</sup> Accordingly, the presence of people infected with or carrying COVID-19 on Summit's physical property caused a loss of its usefulness and normal function. The presence of people infected with or carrying COVID-19 on Summit's physical property caused direct physical harm, direct physical damage, and/or direct physical loss to Summit's property.

45. In short, the coronavirus causes loss or damage to property.

## **B. Civil Authority Orders**

46. Beginning in March 2020, state and local governments across the nation imposed orders requiring residents to stay at home unless performing "essential" activities in an effort to

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proportion of asymptomatic infections could partially explain the high attack rate among cruise ship passengers and crew...Although these data cannot be used to determine whether transmission occurred from contaminated surfaces, further study of fomite transmission of SARS-CoV-2 aboard cruise ships is warranted.").

<sup>20</sup> Mahesh Jayaweera, *et al.*, *Transmission of COVID-19 virus by droplets and aerosols: A critical review on the unresolved dichotomy*, ENVIRON. RES. (June 3, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7293495/>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*



combat coronavirus and slow the spread of COVID-19 (“Stay at Home Orders”). In many instances, the Stay at Home Orders required Summit to close or severely restrict its operations.

47. The Stay at Home Orders were issued because of the spread of COVID-19 and, in particular, the transmission of the virus through human contact with affected property. The Stay at Home Orders were also issued because, among other things, the coronavirus causes direct physical loss of or damage to property due to its ability to attach to surfaces for prolonged periods of time. As previously discussed, coronavirus affects the property on which it is present and can be transferred to individuals that come into contact with the surface of such property, thereby infecting that individual. The Stay at Home Orders accordingly minimize the spread of COVID-19 by reducing the likelihood of an individual’s exposure.

48. Indeed, local authorities around the nation have recognized coronavirus’s ability to damage to property and have included such acknowledgement in their Stay at Home Orders as one reason, among others, for imposing such harsh restrictions. For example,

- a) On March 16, 2020, the Mayor of the City of New Orleans issued an emergency order suspending non-emergency gatherings and closing certain categories of businesses, stating “there is reason to believe that COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to person and *the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances.*” Summit owns a hotel in New Orleans.
- b) In Harris County, Texas, where Summit owns another hotel, the Harris County Stay at Home Order issued on March 24, 2020 recognized that

“the COVID-19 virus *causes property loss or damage due to its ability to attach to surfaces for prolonged periods of time.*”

- c) In San Francisco, where Summit owns four properties, the Mayor noted her Stay at Home Orders “[had] all been issued because of the propensity of the virus to spread person to person and also *because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time.*” In short, the Stay at Home Orders were issued as a result of a covered cause of loss.

49. The Stay at Home Orders have caused the suspension of both non-essential and essential businesses.

50. The Stay at Home Orders typically require businesses deemed “non-essential” to be closed and in-person work is not permitted, thereby prohibiting access to such businesses and even imposing civil fines or jail time if violated. However, there were jurisdictions that were more restrictive than others.

51. For example, in California, the Governor ordered a state-wide “shelter-in-place” prohibiting its citizens from leaving their homes except as needed to maintain continuity of operations of the federal critical infrastructure sectors. Summit owns 11 hotels in California, but hotels were only considered essential if they were “used for COVID-19 mitigation and containment measures, treatment measures, provide accommodation for essential workers, or providing housing solutions, including measures to protect homeless populations.” Summit’s properties were not used for these purposes.

52. Even businesses classified as “essential” have been impacted by the coronavirus/COVID-19 pandemic. Indeed, businesses deemed “essential” under the Stay at Home

Orders were not necessarily “open” to any customer. For example, while certain jurisdictions deemed hotels “essential,” many prohibited access to customers who were not considered employees of “essential” businesses.

53. Stay at Home Orders remain in effect today in various parts of the country. While not all Stay at Home Orders are as restrictive as most were in the beginning of the pandemic, most states still have restrictions that all businesses have to comply with, including limiting the capacity of persons permitted to work and/or enter a business.

54. Some states, unfortunately, have begun to re-implement tighter restrictions and have required businesses to close again after uncontrollable surges of COVID-19 cases and deaths.

55. These new restrictions may trigger a separate occurrence under Summit’s policies.

56. Summit’s operations are subject to these various Stay at Home Orders. Indeed, Summit owns hotels in 23 different states, and every state in which Summit owns a hotel was subject to a Stay at Home Order at one point. Many of these orders operated to prohibit access to Summit’s hotels and/or prohibit customers from patronizing the business.

57. Stay at Home Orders and the transmission of COVID-19 have had a devastating effect on Summit’s business. Summit was forced to suspend operations at six of its 72 hotels and consolidated operations at nine locations to other, proximate hotels. Summit was also prohibited from providing certain services and amenities that would otherwise be hallmarks of its customer care and service, including restaurant dining and fitness centers. Carry out or delivery services are not feasible for Summit given the nature of its business, which was known to Insurers when they underwrote and agreed to insure Summit.

58. Even where Summit was permitted to operate, Summit’s business volume and practices were significantly impacted. For example, Summit has had to increase frequency of

cleaning, purchase more sanitization products, reduce operational hours, institute “no contact” hand-off procedures, provide personal protective equipment to employees, and prohibit customers from entering certain facilities.

59. To date, Summit has had roughly 35 *reported* instances of either hotel employees or hotels guests testing positive for COVID-19 across numerous states. There is no way of knowing how many additional hotel guests were actually infected with COVID-19 during their stay at Summit’s properties or tested positive for COVID-19 after subsequently staying at a Summit property. Accordingly, Summit has been forced to operate and in turn, clean, as if every hotel guest was infected with COVID-19 during their stay on Summit’s property.

60. Coronavirus, COVID-19, and the resulting Stay at Home Orders have caused and continue to cause Summit to suffer direct physical loss of or damage to its property, significant business income losses, and have caused Summit significant extra expenses. Coronavirus, COVID-19, and the resulting Stay at Home Orders have also caused the necessary partial or total interruption of Summit’s business operations. Additionally, the Stay at Home Orders have caused direct physical loss or damage by denying use of and damaging Summit’s property, thereby causing a suspension or significant decrease in operations and prohibiting access to premises. Likewise, property within one mile of Summit’s insured locations has suffered direct physical loss of or damage to property, all caused by coronavirus and COVID-19, and access to property within five miles of Summit’s insured location has been prohibited by the Stay at Home Orders. Fortunately, Summit purchased insurance to protect against a situation like this.

**C. Summit's "All Risk" Policy**

61. There are 21 insurers that agreed to share Summit's risk and adopted Summit's manuscript policy for the policy period of October 1, 2019 to October 1, 2020 (the "Policy Term"):

<b>Insurer</b>	<b>Policy No.</b>
CNA	6073160345
Chubb	CXD38079578-004
Zurich	ERP 0185335-04
Starr	SLSTPTY11225519
Sompo	GPR10009937903
Ategrity	01-B-SP-P00000736-0
ISIC	VIS-CN-0001983-01
Asta	VPC-CN-0001983-01
Allianz	VRX-CN-0001983-01
Neon Bermuda	BNPD19AA775Z
HDI	CPXD5514501
Everest	RP8CH00001-191
Arch	PRP0060008-00
AIG	011144909
QBE	AHAR11252-00
Munich Re	3DA3CM0000333-00
SCOR	TR00202191601367
Starstone	SSP15248
RSUI	LHD909987
Underwriters	GEP 3734

All policies identified in the above table, will be collectively referred to as "the Policy."

62. As is common with manuscript policies, each of the Insurers adopted the manuscript Policy that was drafted and catered towards Summit's business into their own individual policies, which collectively form the Policy.<sup>23</sup> In total, the Policy provides Summit up to \$300 million in coverage per occurrence.<sup>24</sup>

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<sup>23</sup> While each of Summit's insurers issued separate policies with different endorsements, the substantive terms of the manuscript policy that contains the relevant coverages are the same.

<sup>24</sup> "Occurrence" means "the aggregate loss by any covered cause of loss or combination of covered cause of loss insured against arising out of a single event."

63. The Policy insures against “*all* risks of direct physical loss *or* damage occurring during the Policy Term to property...except as...excluded.” (emphasis added). More specifically, the Policy provides coverage for and “insures the interest” of Summit in:

All Real and Personal Property owned, used, or intended for use by the **Insured**<sup>25</sup>, acquired by the **Insured**, property of others in the **Insured**’s care, custody or control in which the **Insured** has an insurable interest or obligation; for which the insured is legally liable; or for which the **Insured** has agreed in writing prior to any loss or damage to provide coverage, including the **Insured**’s liability for such property and including the costs to defend any allegations of liability for loss or damage to such property . . .

64. In addition to providing coverage for “all risks,” the Policy affords Summit coverage for its business interruption losses and extra expenses. The business interruption section of the Policy provides, in pertinent part, that “[t]he Insured has the option to make a Business Interruption claim based upon either Gross Earning<sup>26</sup> or Gross Profit<sup>27</sup> including all conditions described under the Extensions of Coverage and Interdependency clauses.”

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<sup>25</sup> The named Insured under the Policy includes: Summit Hotel Properties, Inc. and its affiliated, allied, associated, subsidiary, owned (wholly or partially) or controlled companies and/or corporations and the Insured’s interest in partnerships and joint ventures as now exist or may hereafter be constituted or acquired and any party in interest which the insured is responsible to insure.

<sup>26</sup> “Gross Earnings” means “Loss of Earnings resulting from the necessary interruption of business conducted by the **Insured** including all interdependencies between or among companies owned or operated by the **Insured** caused by physical loss, damage, or destruction by the covered cause of loss insured herein during the term of this policy to real and/or personal property described in Clause 7.A.

<sup>27</sup> “Gross Profit” means “The amount produced by adding to the Net Profit the amount of the Insured Fixed Charges, or if there be no Net Profit the amount of the Insured Fixed Charges less that proportion of any loss from business operations as the amount of the Insured Fixed Charges bears to all Fixed Charges.

“Net Profit” means “The net operating profit (exclusive of all capital receipts and accruals and all outlay properly chargeable to capital) resulting from the business of the Insured at the Insured Locations after due provision has been made for all fixed charges and other expenses including depreciation but before the deduction of any taxes on profits.

“Insured Fixed Charges” means “All fixed charges unless specifically excluded herein.”

65. The Policy also affords Summit coverage for its extra expenses:

This **Company(ies)**<sup>28</sup> will pay the **Insured** for the Extra Expense<sup>29</sup> incurred by the **Insured** in order to continue as nearly as practicable the normal operation of the **Insured's** business following physical loss, damage or destruction by the covered cause of loss insured herein during the term of this policy to Real and/or Personal Property as described in Clause 7.A.

66. Summit is also entitled to additional coverage under the following extended coverage sections in the Policy, among other grounds for coverage: Ingress/Egress, Civil or Military Authority, Contingent Business Interruption/Contingent Extra Expense, Rental Value and Rental Income, Debris Removal and Cost of Cleanup Extension, Pollutant Cost of Cleanup Extension, Soft Costs, Miscellaneous Property, Loss Adjustment Expenses, and Sue and Labor.

67. Summit is entitled to coverage under the Policy for its losses incurred due to lack of ingress/egress. The Policy provides, in pertinent part, that coverage is afforded for:

Loss sustained during the period of time when, as a result of a covered cause of loss insured against, ingress to or egress from the real or personal property is prevented or hindered. This coverage has a five (5) mile distance limitation from an insured location.

68. Separate and independent from the existence of direct physical loss of or damage to Summit's covered property, the Policy also extends coverage for civil or military authority, providing Summit coverage, in pertinent part, for its:

Actual loss as insured herein during the period of time when, as a result of a covered cause of loss insured against access to real or personal property is prohibited by order of civil authority. This coverage has a five (5) mile distance limitation from an insured location.

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<sup>28</sup> "Company(ies)" mean "any underwriting syndicate or insurance company participating on this policy."

<sup>29</sup> The term Extra Expense, as used herein, is defined as the excess (if any) of the total cost incurred during the recovery period to the operation of the Insured's business, over and above the total cost that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred.

69. With regard to contingent business interruption/contingent extra expense, the Policy provides that it “covers the Actual Loss Sustained and extra expense incurred by the Insured during the period of liability resulting from physical loss or damage at **contingent time element locations**<sup>30</sup> and **attraction properties**<sup>31</sup> located worldwide.”

70. With regard to rental value and rental income, the Policy provides Summit coverage for:

Loss of Rental Income and/or Loss of Rental Value of the **Insured** caused by physical loss, damage or destruction by the covered cause of loss insured herein during the term of this policy to property and/or premises rented/or occupied by the **Insured** and/or rented or leased by the **Insured** to others.

Rental Income shall include the following:

- (a) The total anticipated gross rental income from tenant(s) of the **Insured**'s building(s) and structure(s), and
- (b) The amount of all charges assumed by tenant(s), which would otherwise be obligations of the **Insured**, plus
- (c) A similar value for that portion occupied by the **Insured**.

Rental Value shall include the following:

This policy will serve as Rental Income Insurance in those situations where the **Insured** is required under a lease or rental agreement to maintain such insurance on behalf of any landlord.

This policy will respond for rental expenses incurred by the **Insured** in excess of the expenses, which would have been incurred, had a leased or rented premise not been damaged or destroyed by any covered cause of loss covered under this policy. Such coverage will apply for all additional expenses incurred during the period of

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<sup>30</sup> “Contingent time element location” means “Property that directly or indirectly prevents a direct supplier (including suppliers of any tier) of goods and/or services to the Insured from rendering their goods and/or services, or property that prevents direct customers (including customers of any tier of goods) and/or services from the Insured from accepting Insured’s goods and/or services.”

<sup>31</sup> “Attraction properties” means “Properties located within 5-mile radius of an insured location, not operated by the Insured, which attract potential customers to an Insured’s location.”



untenability of if the lease cannot be terminated until its expiration.

Rental value shall also include contingent rents for buildings under construction and rents from the vacant and/or unoccupied portion or portions of the buildings.

71. Coverage is also extended under the Policy under the debris removal and cost of cleanup extension, which provides that:

This policy covers the necessary and reasonable expenses actually incurred by the **Insured** due to physical loss or damage as insured against occurring during the term of this policy to remove from the insured premises debris of covered property remaining after any such loss or damage.

72. In addition to debris removal, the Policy affords coverage for pollutant cost of cleanup. More specifically, the pollutant cost of cleanup extension provides:

This policy covers the reasonable and necessary cost or expense of decontamination, removal or disposal of property including water, soil or any similar substance on or under the premises of the **Insured** which results from an insured cause of loss. Coverage under this extension include any costs or expenses incurred during emergency measures undertaken in order to mitigate any circumstances pertaining to Seepage, Pollution and/or Contamination,<sup>32</sup> whether or not at the instruction of any Government Agency or other Authority.

It is the condition precedent to recovery under this extension that the **Company(ies)** shall have paid or agreed to pay for physical loss or damage to the property insured hereunder unless such payment is precluded solely by the operation of any deductible and that the insured shall give written notice to the **Company(ies)** of intent to claim for cost of debris removal or cost to cleanup not later than 180 days after the date of such physical loss or damage following an occurrence that happened within the policy term as defined by Clause 1. Policy Term.

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<sup>32</sup> "Contamination" means "Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen, or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.

73. The Policy also “shall cover soft costs,<sup>33</sup> as hereinafter defined, incurred by the insured caused by loss, damage, or destruction by any of the covered cause of loss covered herein during the term of this policy to property as covered herein.”

74. The Policy also extends coverage “to include reasonable expenses incurred by the **Insured**, or by the **Insured**’s representatives for preparing and certifying details of a claim resulting from a loss which would be payable under this policy.” Additionally, the Policy extends coverage “to sue, labor and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof...”

**D. Coronavirus Triggered Coverage Under the “All Risk” Policy**

75. COVID-19, a highly contagious disease for which there is no known vaccine, is a peril not excluded under the Policy and therefore constitutes a covered peril.

76. The Stay at Home Orders are a peril not excluded under the Policy, and therefore constitute a covered peril.

77. The Policy expressly covers physical “loss” or “damage.” This necessarily means that either a “loss” *or* “damage” is required, and that “loss” is distinct from “damage.” While “physical loss” and “physical damage” are not defined by the Policy, the plain and ordinary meaning of “physical” means “having material existence: perceptible especially through the senses and subject to the laws of nature.”<sup>34</sup> Further, “loss” encompasses “the act of losing possession” and “deprivation.”<sup>35</sup>

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<sup>33</sup> “Soft Costs” is defined as: (a) Additional interest costs on money used to finance construction or repair; (b) Additional real estate and property taxes incurred for the period of time that construction extends beyond the projected completion date; (c) Additional legal and accounting fees; and (d) Additional advertising and promotional expenses which become necessary as a result of an insured loss.

<sup>34</sup> Merriam-Webster, [www.merriam-webster.com/dictionary/physical](http://www.merriam-webster.com/dictionary/physical) (last visited September 11, 2020).

<sup>35</sup> Merriam-Webster, [www.merriam-webster.com/dictionary/loss](http://www.merriam-webster.com/dictionary/loss) (last visited September 11, 2020).

78. The actual presence of coronavirus has triggered coverage under the Policy because it causes physical loss or damage to property. Coronavirus is a physical substance that can be active on inert physical surfaces, and may be also present in the air. Coronavirus attached to and deprived Summit of its property by making it unusable, resulting in direct physical loss to its premises and property. Indeed, prior and continuing positive COVID-19 tests by Summit's employees or hotel guests confirm that coronavirus and COVID-19 were present at Summit's hotels and caused direct physical loss of or damage to property by adhering to objects and surfaces. Summit has accordingly suffered "direct physical loss" of or "damage to" property from coronavirus, COVID-19, and the Stay at Home Orders. Moreover, even though there are not documented cases of employee or hotel guest infections at each of Summit's hotels, the ubiquitous nature of the pandemic confirms that coronavirus and COVID-19 have been present and were present when those hotels were forced to either close or restrict access due to the Stay at Home Orders. Indeed, the transmissibility of COVID-19 from people and objects is a primary consideration underlying the Stay at Home Orders.

79. In addition, the presence of coronavirus on property away from Summit's insured locations has triggered coverage under the Policy.

80. Coronavirus has caused and continues to cause Summit to experience covered business interruption losses and extra expense losses. Summit has therefore suffered "direct physical loss of [and] damage to" its property from a covered peril commencing in March 2020. There is a direct causal relationship between coronavirus and the loss. Coronavirus is not an excluded cause of loss. Therefore, it is covered under Summit's "all-risk" Policy.

**E. Multiple Coverages Are Triggered Under the “All Risks” Policy**

81. In addition to triggering the Policy’s “all risks” coverage, Summit’s coronavirus/COVID-19 claim also triggers multiple other coverages provided under the Policy including, but not limited to, the following: Business Interruption, Extra Expense, Ingress/Egress, Civil or Military Authority, Contingent Business Interruption/Contingent Extra Expense, Rental Value and Rental Income, Debris Removal and Cost of Cleanup Extension, Pollutant Cost of Cleanup Extension, Soft Costs, Miscellaneous Property, Loss Adjustment Expenses, and Sue and Labor.

***a) Coronavirus/COVID-19 Triggered the Policy’s Business Interruption Coverage***

82. The Policy affords coverage for Summit’s Business Interruption loss, subject to the Policy’s terms and conditions.

83. Coronavirus, COVID-19, and the Stay at Home Orders have caused Summit to suffer Business Interruption loss as a direct result of physical loss of or damage to property.

84. This loss triggers coverage under the Policy’s Business Interruption provision, including, without limitation, coverage for coverage for Gross Earnings or Gross Profits loss and Rental Income loss up to the Policy’s applicable limits.

***b) Coronavirus/COVID-19 Triggered the Policy’s Extra Expense Coverage***

85. Coronavirus/COVID-19 has caused Summit to incur reasonable and necessary extra expenses to temporarily continue as nearly normal as practicable the conduct Summit’s business. Such expenses are over and above those that would have normally been incurred in conducting the business absent the presence of coronavirus/COVID-19.

86. The expenses incurred by Summit over and above those necessary in the normal operation of its business solely as a result of the physical loss and damage caused by

coronavirus/COVID-19 trigger coverage under the Policy's Extra Expense coverage, subject to the Policy's applicable limits.

***c) Coronavirus/COVID-19 Triggered the Policy's Ingress/Egress Coverage***

87. The physical loss or damage caused by coronavirus and the resulting Stay at Home Orders has prevented or hindered ingress to or egress from Summit's insured locations or within five (5) miles from an insured location.

88. Summit's prevention or hindrance of ingress to or egress from Summit's insured locations or within five (5) miles from an insured location has triggered coverage under the Policy's Ingress/Egress coverage, subject to the Policy's applicable limits.

***d) Coronavirus/COVID-19 Triggered the Policy's Civil or Military Authority Coverage***

89. The physical loss or damage caused by the presence of coronavirus on property located at or within five (5) miles of Summit's insured locations has directly resulted in the issuance of orders from civil authorities (the Stay at Home Orders) restricting and/or prohibiting access to Summit's insured locations.

90. Summit has sustained and will continue to sustain actual losses because orders from civil authorities (the Stay at Home Orders) issued as a direct result of physical damage at Summit's insured locations or within five (5) miles of Summit's insured location, have prohibited or restricted access to Summit's insured locations. This actual loss triggers coverage under the Policy's Civil or Military Authority coverage, subject to the Policy's applicable limits.

***e) Coronavirus/COVID-19 Triggered the Policy's Contingent Business Interruption/Contingent Extra Expense Coverage***

91. The physical loss or damage caused by the presence of coronavirus at contingent time element location and attraction properties worldwide has triggered coverage under the

Policy's Contingent Business Interruption/Contingent Extra Expense coverage, subject to the Policy's applicable limits.

***f) Coronavirus/COVID-19 Triggered the Policy's Rental Value and Rental Income Coverage***

92. Coronavirus/COVID-19 has caused Summit to incur Loss of Rental Income and/or Loss of Rental Value.

93. The physical loss or damage caused by the presence of coronavirus to property and/or premises rented/or occupied by Summit is covered under the Policy's Rental Value and Rental Income coverage, subject to the Policy's applicable limits.

***g) Coronavirus/COVID-19 Triggered the Policy's Debris Removal and Cost of Cleanup Extension Coverage***

94. Coronavirus/COVID-19 has caused Summit to incur reasonable and necessary expenses to remove from its premises remaining debris.

95. The expenses incurred by Summit beyond those necessary solely as a result of the physical loss and damage caused by coronavirus/COVID-19 trigger coverage under the Policy's Debris Removal and Cost of Cleanup Extension coverage, subject to the Policy's applicable limits.

***h) Coronavirus/COVID-19 Triggered the Policy's Pollutant Cost of Cleanup Extension Coverage***

96. Coronavirus/COVID-19 has caused Summit to incur reasonable and necessary expenses of decontamination, removal or disposal of property on Summit's premises. Coronavirus/COVID-19 has also caused Summit to incur expenses during emergency measures undertaken in order to mitigate any circumstances pertaining to Pollution and/or Contamination.

97. The expenses incurred by Summit beyond those necessary solely as a result of the physical loss and damage caused by coronavirus/COVID-19 trigger coverage under the Policy's Pollutant Cost of Clean Up Extension coverage, subject to the Policy's applicable limits.

*i)      Coronavirus/COVID-19 Triggered the Policy's Soft Costs Coverage*

98.      Loss, damage, or destruction by coronavirus/COVID-19 has caused Summit to incur soft costs.

99.      The soft costs incurred by Summit as a result of the physical loss and damage caused by coronavirus/COVID-19 trigger coverage under the Policy's Soft Costs coverage, subject to the Policy's applicable limits.

*j)      Coronavirus/COVID-19 Triggered the Policy's Loss Adjustment Expenses Coverage*

100.     Coronavirus/COVID-19 has caused Summit and Summit's representatives to incur reasonable expenses for preparing and certifying details of Summit's claim resulting from a loss that is payable under the Policy.

101.     The expenses incurred by Summit solely as a result of the physical loss and damage caused by coronavirus/COVID-19 trigger coverage under the Policy's Loss Adjustment Expenses, subject to the Policy's applicable limits.

*k)      Sue and Labor Coverage*

102.     Coronavirus/COVID-19 has caused actual or imminent loss or damage to Summit's property. As a result, coronavirus/COVID-19 has caused Summit and Summit's representatives to incur reasonable expenses in defending, safeguarding, and recovering its damaged property.

**F.      Summit's Claim**

103.     Faced with a loss that Summit sought to insure in purchasing the Policy, Summit first provided notice of the loss to the Insurers on March 17, 2020.

104.     Certain Insurers confirmed receipt of Summit's claim on varying dates: Sampo on March 22, 2020; CNA on March 23, 2020; Allianz on March 29, 2020; Starr on March 30, 2020;

Ategrity on April 7, 2020; Munich Re. on April 9, 2020; Chubb and Zurich on April 24, 2020; RSUI on May 27, 2020; and Arch on July 19, 2020.

105. Without any investigation into Summit's claim, Allianz issued Summit a denial letter on June 1, 2020, stating that the reason for the coverage denial was because Summit failed "to trigger coverage under Insuring Agreement B., Non-Physical Business Interruption and Extra Expense" under the Allianz Policy. Allianz provided no explanation to Summit as to why coverage was not triggered under the multitude of other provisions in the Allianz Policy that trigger coverage.

106. Similarly, after no meaningful investigation, Sedgwick, the independent adjuster retained by Chubb, CNA, Starr, and American Guarantee, issued a denial letter on August 13, 2020. Sedgwick stated the denial was based on there being "no evidence" to support the contention that COVID-19 caused physical loss or damage to property. Sedgwick also stated that the relevant policies "contain an exclusion for "contamination" which is defined to include virus" and that "COVID-19 constitutes contamination within the meaning of [such] exclusion, because it caused by SARS-CoV-2, a virus." Lastly, Sedgwick concluded that "coverage that results from loss of use and loss of market, or from suspended, lapsed, or cancelled contracts are expressly excluded as well."

107. Sompo followed suit on August 13, 2020 and also issued Summit an almost verbatim denial letter. In addition to the reasons Sedgwick denied Summit's claim, however, Sompo stated that "COVID-19 is a communicable disease within the meaning of [the special perils exclusion and communicable or infectious disease] exclusions."

108. Others Insurers, including ISIC, Asta, Neon Bermuda, HDI, Everest, AIG, QBE, SCOR, Starstone, and Underwriters failed to acknowledge receipt of Summit's claim.



109. To date, the Insurers have not conducted nor attempted to conduct a meaningful investigation of Summit's claim, even though Summit has made a claim for a covered loss.

110. No insurer has agreed to provide coverage to Summit.

## **VI. BREACH OF CONTRACT**

111. Summit incorporates by reference the allegations set forth in paragraphs 1 through 113 above as if fully set forth herein.

112. The Policy is a valid and enforceable contract between Summit and Insurers. In the Policy, Insurers agreed to insure against all risks of direct physical loss of or damage to property from any cause unless excluded.

113. Summit submitted a claim for coverage for losses it incurred as a result of coronavirus, COVID-19, the pandemic, and the resulting Stay at Home Orders issued to prevent further loss to property.

114. Coronavirus and/or COVID-19 and the resulting pandemic are covered causes of loss.

115. Coronavirus and/or COVID-19 have caused, and are continuing to cause, direct physical loss of and/or damage to Summit's property and property within five miles of Summit's insured locations.

116. The Stay at Home Orders are also covered causes of loss.

117. The Stay at Home Orders have prohibited access to Summit's property and property within five miles of Summit's insured locations.

118. No exclusions apply to bar coverage.

119. Under the Policy, Insurers are obligated to pay Summit for its losses, including, but not limited to, business interruption and extra expense losses, caused by the coronavirus/COVID-19 pandemic, and the resulting Stay at Home Orders. Insurers have failed to make such payment.

120. All applicable terms, conditions, and other requirements under the Policy have been satisfied.

121. Alternatively, compliance with the applicable terms, conditions, and other requirements, in whole or in part, has been waived or compliance is unnecessary for other reasons, including Insurers' actions and inactions related to their handling of Summit's claim.

122. As a proximate, natural, probable, and foreseeable consequence of Insurers' wrongful refusal to pay and breach of the Policy, Summit has suffered and continues to suffer significant economic loss and been deprived of benefits due under the Policy.

123. Pursuant to Section 38.001 of the Texas Civil Practices and Remedies Code, Summit seeks recovery of its reasonable and necessary attorneys' fees and court costs incurred in connection with the prosecution of this breach of contract action.

124. Summit therefore demands judgment against Insurers in an amount to be determined at trial.

## **VII. VIOLATIONS OF THE TEXAS PROMPT PAY ACT**

125. Summit incorporates by reference the allegations set forth in paragraphs 1 through 127 above as if fully set forth herein.

126. An insurance company violates the Texas Insurance Code if, within 15 days after receiving notice, the insurer does not: "(1) acknowledge receipt of the claim; (2) commence any investigation of the claim; and (3) request from the claimant all items, statements, and forms that the insurer reasonable believes, at the time, will be required from the claimant." TEX. INS. CODE ANN. § 542.055.

127. An insurer may further violate the Texas Insurance Code by delaying payment for a claim for more than 60 days after receiving all items, statements, and forms reasonably requested under Section 542.055. *Id.* at § 542.058.

128. Notice of Summit's continuing and accruing loss was made to Insurers on March 17, 2020.

129. Only Sampo, CNA, Allianz, Starr, Ategrity, Munich Re., Chubb, Zurich, RSUI, and Arch acknowledged receipt of Summit's claim.

130. Allianz summarily denied Summit's claim on June 1, 2020 based on an alleged failure "to trigger coverage under Insuring Agreement B., Non-Physical Business Interruption and Extra Expense" without any investigation into Summit's claim or consideration of how other provisions in the Allianz Policy could trigger coverage.

131. Chubb, CNA, Starr, and American Guarantee, through Sedgwick, denied Summit's claim on August 13, 2020 after no meaningful investigation into Summit's claim. Sedgwick based the denial on the fact there allegedly was "no evidence" that COVID-19 caused physical loss or damage to property. Sedgwick also stated that "coverage that results from loss of use and loss of market, or from suspended, lapsed, or cancelled contracts are expressly excluded as well."

132. Sampo similarly denied coverage on August 13, 2020, providing an almost verbatim denial letter as Sedgwick. The only additional ground for denial provided by Sampo was the statement that "COVID-19 is a communicable disease within the meaning of [the special perils exclusion and communicable or infectious disease] exclusions."

133. Others, including ISIC, Asta, Neon Bermuda, HDI, Everest, AIG, QBE, SCOR, Starstone, and Underwriters have yet to acknowledge receipt of Summit's loss.

134. None of the Insurers have bothered to conduct a meaningful investigation into Summit's claim, and most have yet to provide Summit with anything beyond a form reservation of rights letter.

135. Insurers have sufficient information available to make a reasonable determination that coverage is warranted.

136. Indeed, the impact caused by coronavirus, COVID-19, and the resulting Stay at Home Orders is not unique to Summit. Insurers, like Summit, have access to the same, publicly available information that details the way coronavirus damages property and how the Stay at Home Orders have forced non-essential persons to remain at home and certain businesses to close and/or reduce capacity. Despite this, Insurers have still failed to make any payment to Summit for its claim.

137. Accordingly, Insurers are in violation of Sections 542.055 and 542.058 of the Texas Insurance Code as they have failed to investigate and pay Summit's claim within 60 days.

138. Pursuant to Section 542.060 of the Texas Insurance Code, Summit demands judgment against Insurers for its actual damages in an amount in excess of the jurisdictional minimum of this court, interest on the amount of the claim at the rate of 18%, plus reasonable and necessary attorneys' fees.

### **VIII. DECLARATORY JUDGMENT**

139. Summit incorporates by reference the allegations set forth in paragraphs 1 through 141 above as if fully set forth herein.

140. An actual and justiciable controversy exists between Summit and Insurers about whether the Policy provides coverage for Summit's claim.

141. Accordingly, pursuant to Section 37.001 *et seq.* of the Texas Civil Practices and Remedies Code, Summit is entitled to a judgment declaring that:

- a. It has experienced a covered loss;
- b. No exclusion bars coverage under the Policy; and

- c. Insurers breached the Policy by failing to pay Summit Hotel Properties, Inc.'s claim.

142. Pursuant to Section 37.009 of the Texas Civil Practices and Remedies Code, Summit seeks recovery of its reasonable and necessary attorneys' fees and costs incurred in connection with the prosecution of this declaratory judgment action.

#### **IX. CONDITIONS PRECEDENT**

143. All conditions precedent to the filing of this lawsuit have been performed or have occurred.

#### **X. JURY DEMAND**

144. Summit requests a trial by jury on all issues raised in this petition or by supplemental or amended pleading, and contemporaneous with this filing has tendered the necessary jury fee.

#### **XI. REQUEST FOR DISCLOSURE**

145. Pursuant to Texas Rule of Civil Procedure 194, Summit requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

#### **PRAYER**

WHEREFORE, Summit Hotel Properties, Inc. demands a jury trial on all issues so triable and respectfully prays for judgment in its favor and against Insurers. Summit Hotel Properties, Inc. further prays that, upon final hearing:

- i. Summit Hotel Properties, Inc. be awarded a judgment declaring that:
  - a. It has experienced a covered loss;
  - b. No exclusion bars coverage under the Policy; and
  - c. Insurers breached the Policy by failing to pay Summit Hotel Properties, Inc.'s claim.

- ii. Summit Hotel Properties, Inc. be awarded its damages resulting from Insurers' breach of the Policy, including pre-judgment and post-judgment interest;
- iii. Summit Hotel Properties, Inc. be awarded its reasonable and necessary attorneys' fees and court costs; and
- iv. Summit Hotel Properties, Inc. be awarded such other and further relief, general or special, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF  
SUMMIT HOTEL PROPERTIES, INC.**

\* *Pro hac vice* applications to be filed.