

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-005192-CA-01

SECTION: CA04

JUDGE: Carlos Guzman

IMC Property Management and Maintenance, Inc.

Plaintiff(s)

vs.

Westchester Surplus Lines Insurance Company et al

Defendant(s)

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

THIS CAUSE comes before the Court on Defendant Endurance American Specialty Insurance Company's Motion to Dismiss and Memorandum of Law in Support (Dkt. 58, hereinafter, "Endurance's Motion to Dismiss"); Motion to Dismiss Second Amended Complaint by the AmRisc Insurer Defendants (Defendants Certain Underwriters at Lloyd's, London, General Security Indemnity Company of Arizona, United Specialty Insurance Company, and Lexington Insurance Company) (Dkt. 57, hereinafter "AmRisc's Motion to Dismiss"); and Defendant Westchester's Motion to Dismiss Count VII of the Second Amended Complaint (Dkt. 56, hereinafter "Westchester's Partial Motion to Dismiss").

Defendant Endurance American Specialty Insurance Company moved to dismiss Counts II and V (for Declaratory Judgment and Breach of Contract, respectively) of Plaintiff's Second Amended Complaint for Declaratory Relief, Equitable Relief and for Damages (Dkt. 55, hereinafter "Second Amended Complaint") on the grounds that Plaintiff was unable to plead direct physical loss or damage to property; that a General Change Endorsement in the policy issued by Endurance deleted the Contagious Disease coverage under the Special Perils Business Interruption Extension; and that, even if any coverage were triggered, the Communicable Disease Exclusion in the policy

issued by Endurance would bar coverage for the subject claim.

Defendants AmRisc Insurers moved to dismiss Counts III and VI of Plaintiff's Second Amended Complaint (for Declaratory Judgment and Breach of Contract, respectively) based on a virus exclusion in the AmRisc Insurers' policies barring coverage for the subject claim and Plaintiff's failure to plead any physical loss or damage to property.

Defendants Westchester, Endurance, and AmRisc Insurers moved to dismiss Counts VII, VIII, and IX of Plaintiff's Second Amended Complaint (for Fraud in the Inducement), respectively, based on the independent tort doctrine and Plaintiff's failure to plead fraud with particularity, with Westchester and AmRisc Insurers additionally moving based on Plaintiff's failure to allege any damages for its fraud claim separate and distinct from the damages alleged in other counts of the Second Amended Complaint.

The aforementioned motions having been fully briefed, and the Court having reviewed and considered the briefs, having conducted a hearing on July 25, 2022, having conducted its diligence and researched the matter including the file and hearing notes, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** that:

1. Endurance's Motion to Dismiss (Counts II, V, and VIII of the Second Amended Complaint) is hereby **GRANTED** without prejudice;
2. AmRisc's Motion to Dismiss (Counts III, VI, and IX of the Second Amended Complaint) is hereby **GRANTED** without prejudice; and
3. Westchester's Partial Motion to Dismiss (Count VII of the Second Amended Complaint) is hereby **GRANTED** without prejudice.
4. Plaintiff shall have thirty (30) days from the date of this Order to file an amended complaint one more time, and Defendants will then have thirty (30) days thereafter to respond to the

amended pleading.

5. All remaining case management deadlines are hereby suspended until further notice from the Court.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 13th day of September, 2022.

2021-005192-CA-01 09-13-2022 3:12 PM

2021-005192-CA-01 09-13-2022 3:12 PM

Hon. Carlos Guzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on THIS MOTION

CLERK TO RECLOSE CASE IF POST JUDGMENT

Electronically Served:

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