

**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 GRANTING 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. 42, hereinafter, "Endurance's Motion to Dismiss"); Motion to Dismiss First 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. 46, hereinafter "AmRisc's Motion to Dismiss"); and Defendant Westchester's Motion to Dismiss Count VII of the Amended Complaint (Dkt. 47, 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 Amended Complaint for Declaratory Relief, Equitable Relief and for Damages (Dkt. 38, hereinafter "First Amended Complaint") on the grounds that Plaintiff failed to allege any 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 First 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 First 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 First Amended Complaint.¹

The aforementioned motions having been fully briefed, and the Court having reviewed and considered the briefs, having conducted a hearing on January 31, 2022, having conducted its diligence to research the matter notwithstanding the evidence and arguments, 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 First Amended Complaint) is hereby **GRANTED** without prejudice;
2. AmRisc's Motion to Dismiss (Counts III, VI, and IX of the First Amended Complaint) is hereby **GRANTED** without prejudice; and

¹Endurance's Motion to Dismiss also sought dismissal of Counts X, XI, and XII, but Plaintiff subsequently voluntarily dismissed those Counts in a Notice of Voluntary Dismissal filed October 18, 2021 (Dkt. 48).

3. Westchester's Partial Motion to Dismiss (Count VII of the First Amended Complaint) is hereby **GRANTED** without prejudice.

4. Plaintiff shall have twenty (20) days from the date of this Order to file an amended complaint, and Defendants will then have twenty (20) days thereafter to respond to the amended pleading.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 10th day of March, 2022.

2021-005192-CA-01 03-10-2022 11:37 AM

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Hon. Carlos Guzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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