SUPREME COURT
STATE OF NEW YORK COUNTY OF ONONDAGA

6593 WEIGHLOCK DRIVE, LLC and 6580 WEIGHLOCK DRIVE COMPANY, LLC,

Plaintiffs,

-against-

SPRINGHILL SMC CORPORATION, FAIRFIELD FMC, LLC, MARRIOTT INTERNATIONAL, INC., and ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

VERIFIED COMPLAINT

Index No.

Plaintiffs, 6539 Weighlock Drive, LLC and 6580 Weighlock Drive Company, LLC ("Plaintiffs"), by and through their attorneys, the Lynn Law Firm LLP, complaining of the defendants, Springhill SMC Corporation ("Springhill"), Fairfield FMC, LLC ("Fairfield"), Marriott International, Inc. ("Marriott International" and, collectively with Springhill and Fairfield, the "Marriott Defendants"), and Zurich American Insurance Company ("Zurich" and, together with remaining defendants, collectively "Defendants") alleges and respectfully shows to the Court as follows:

INTRODUCTION

1. The plaintiffs own and operate two Marriott-flagged hotels in Syracuse's Carrier Circle area. The plaintiffs contract with two Marriott entities (the Springhill and Fairfield defendants) to manage those businesses.

2. Beginning in approximately January 2020, SARS-CoV2, the "novel coronavirus", began spreading in New York State.

3. As all are now aware, this virus spreads through droplets and aerosols and can, according to scientists, live on surfaces for up to several days.

4. As the virus reached Onondaga County, the State and County implemented dramatic and unprecedented closure orders, bringing economic activity to nearly a complete halt.

5. As the virus has continued to spread through the area (and, indeed, through the world), plaintiffs have lost millions of dollars.

6. The plaintiffs had business income coverage, and several other coverages, that were intended to and marketed as insurance for exactly these types of events: when, through no fault of their own, a foreign substance caused damage that threatened the entire economic foundation of their businesses.

7. The plaintiffs submitted claims to their insurer, defendant Zurich, for the losses as covered under their policy. Zurich denied those claims without even a cursory investigation.

8. The Marriott Defendants, who were contractually obligated to acquire insurance that would protect plaintiffs in these circumstances, have likewise denied all responsibility.

9. Plaintiffs strive merely to stay afloat, the companies that plaintiffs have relied on – and paid handsomely – to protect them have been nowhere to be found. Plaintiffs contracted with international and sophisticated companies to protect them from risk. When that loss occurred, despite their contractual obligations, Zurich and the Marriott Defendants now insist plaintiffs are on their own.

PARTIES

10. At all relevant times herein, plaintiff 6593 Weighlock Drive, LLC ("6593 Weighlock") is a domestic limited liability company with a principal place of business in Syracuse, New York.

11. At all relevant times herein, 6593 Weighlock owns and operates a hotel known as the Fairfield Inn & Suites by Marriott Carrier Circle, located at 6593 Weighlock Drive, East Syracuse, NY 13057.

12. In addition to guestrooms, The Fairfield Inn & Suites by Marriott Carrier Circle offers important amenities: a fitness center, indoor pool, conference center, and breakfast buffet.

13. At all relevant times herein, plaintiff 6580 Weighlock Drive Company, LLC ("6580 Weighlock") is a domestic limited liability company with a principal place of business in Syracuse, New York.

14. At all relevant times herein, 6580 Weighlock owns and operates a hotel known as the SpringHill Suites by Marriott Carrier Circle, located at 6580 Weighlock Drive, East Syracuse, NY 13057.

15. The SpringHill Suites by Marriott Carrier Circle is an all-suite hotel that offers important amenities: a fitness center, indoor pool, conference center, and breakfast buffet.

16. Upon information and belief, Fairfield FMC, LLC is a Delaware corporation with a principal place of business in Bethesda, Maryland, and a mailing address of 10400 Fernwood Road, Bethesda, Maryland 20817.

17. Upon information and belief, Springhill SMC Corporation a Delaware corporation with a principal place of business in Bethesda, Maryland, and a mailing address of 10400 Fernwood Road, Bethesda, Maryland 20817.

18. Upon information and belief Zurich American Insurance Company is a New York corporation with a principal place of business in Schaumburg, Illinois, and a mailing address of 1299 Zurich Way, Schaumburg, IL 60196.

19. Upon information and belief, Zurich American Insurance Company is authorized to sell insurance in the State of New York.

20. Upon information and belief, Marriott International, Inc. is a Delaware corporation with a principal place of business in Bethesda, Maryland, and a mailing address of 10400 Fernwood Road, Bethesda, Maryland 20817.

21. Upon information and belief, the Marriott Defendants (i.e., Springhill, Fairfield, and Marriott International) are part of the global Marriott company. Upon information and belief, the Marriott companies are the largest hotel business in the world.

THE GOVERNMENTAL ORDERS

22. On March 7, 2020, New York Governor Andrew Cuomo issued Executive Order 202 declaring a public emergency in New York State.

23. On March 20, 2020, Governor Cuomo issued Executive Order 202.8. Pursuant to Executive Order 202.8, all non-essential businesses were ordered closed effective March 22, 2020 at 8 p.m. All non-essential businesses were required to reduce their in-person workforces by 100 percent.

24. These closures were extended by successive Executive Orders 202.10, 202.11, 202.13, and 202.18. These State-wide orders required the closure of *all* nonessential businesses through at least May 15, 2020.

25. Beginning on May 15, 2020, the State started to permit certain other industries to open on a region-by-region and industry-by-industry basis. This was first instituted through Executive Order 202.31.

26. Parts of the state, including the most populous regions, continued to be subject to mandatory closures of all nonessential businesses under Executive Order 202.31 and later implementing orders.

27. Other Executive Orders, including Order 202.16, imposed requirements on even essential businesses in New York State, including that all employees wear face-coverings and that the businesses provide, at their expense, face-covering for employees.

28. Local municipalities, including Onondaga County, were implementing additional restrictions during this period.

29. On March 14, 2020, Onondaga County Executive J. Ryan McMahon declared a State of Emergency. He immediately ordered all schools to close on March 20, 2020 and cancelled all extracurricular activities.

30. This State of Emergency was subsequently extended on April 13, 2020, May 13, 2020, June 12, 2020, and July 12, 2020. A State of Emergency is currently in place through August 11, 2020, and may be further extended.

31. On March 27, 2020, County Executive McMahon ordered all non-essential gatherings of any size for any reason to be cancelled or postponed.

32. At least 42 states and countless local governments issued substantially similar directives. These orders were intended to mitigate and slow the spread and impact of coronavirus.

33. While hotels were declared essential and permitted to remain open throughout this period, the plaintiffs were forced to considerably alter their businesses. Important customer amenities, including the pools and fitness centers, were required to close.

34. Moreover, the travel that sustains the hotels was effectively barred: business travel became for most illegal and the events that brought many visitors to the hotels were cancelled because of the virus and government edict.

CORONAVIRUS IN ONONDAGA COUNTY

35. The first confirmed case of coronavirus in New York State was identified on March 11, 2020.[1]

36. The first confirmed case of coronavirus in Onondaga County was identified on March 16, 2020.[2]

37. Only a week later, the County confirmed the first death resulting from COVID-19, the disease resulting from the coronavirus.[3] (While sometimes conflated, the "novel coronavirus" or SARS-CoV2, and "COVID-19" refer to different things. The coronavirus is the virus, COVID-19 is the disease caused by the virus. Plaintiffs' claims are based on the presence of the coronavirus, not its sequalae, COVID-19).

38. The first confirmed COVID-19 death in Onondaga County coincided with the first date on which nonessential businesses in the State were closed.

39. As of July 20, 2020, Onondaga County alone has seen at least 3,169 confirmed cases of coronavirus and 192 deaths.[4]

40. In addition to the government-mandated closures, many events were cancelled. For example, Syracuse University announced on March 23, 2020 that the school would not host any in-person graduations in the spring of 2020.[5]

PLAINTIFFS' AGREEMENTS WITH THE MARRIOTT DEFENDANTS

41. The plaintiffs are owners and operators of two Marriott-flagged hotels.

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[1] https://www.syracuse.com/news/2020/03/new-york-state-confirms-first-case-of-coronavirus.html
[2] https://cortlandstandard.net/2020/03/16/first-coronavirus-case-in-onondaga-county/
[3] https://www.syracuse.com/coronavirus/2020/03/onondaga-county-confirms-first-coronavirus-death.html.
[4] https://www.syracuse.com/coronavirus-ny/
[5] https://www.syracuse.com/coronavirus/2020/03/syracuse-university-coronavirus-update-no-in-person-graduation-prorated-room-and-board.html

42. Each plaintiff has a management agreement with a Marriott entity under which the Marriott entity agrees to manage the property and perform certain services.

43. Among other things, these agreements obligate the Marriott Defendants to procure insurance for the property.

44. 6580 Weighlock and Springhill SMC Corporation executed a Management Agreement dated January 30, 2004 (the "Springhill Agreement").

45. The Springhill Agreement has an initial term of 25 years and remains in force.

46. The Springhill Agreement contains a confidentiality provision prohibiting the public disclosure of the terms of the Springhill Agreement except in narrow circumstances. Accordingly, in an abundance of caution, plaintiff does not quote the applicable terms here.

47. Section 6.01 of the Springhill Agreement provides, among other things, that Springhill shall procure and maintain "all-risk" property and casualty insurance.

48. Section 6.03 of the Springhill Agreement permits Springhill to fulfil its insurance obligations by obtaining "blanket" insurance programs, but requires that any such programs satisfy Springhill's obligations.

49. Section 11.04 of the Springhill Agreement provides that the Springhill Agreement shall be construed under and shall be governed by the laws of the State where the hotel is located, i.e., the State of New York.

50. 6593 Weighlock and Fairfield FMC, LLC executed a Management Agreement dated January 25, 2013 (the "Fairfield Agreement").

51. The Fairfield Agreement has an initial term of 25 years and remains in force.

52. Section 6.01A of the Fairfield Agreement provides, among other things, that Fairfield shall procure and maintain "broad form" property and casualty insurance.

53. Section 6.01.B.2 of the Fairfield Agreement further governs Fairfield's obligations to procure insurance under the Fairfield Agreement.

54. Section 6.03 of the Fairfield Agreement allows Fairfield to fulfil its insurance obligations by obtaining "blanket" insurance programs, but requires that any such programs satisfy Springhill's obligations.

55. Pursuant to the terms of the Fairfield Agreement, 6593 Weighlock elected, and Fairfield FMC agreed, that the Manager (that is, Fairfield FMC) would procure insurance as provided therein.

56. Section 11.04 of the Springhill Agreement provides that the Springhill Agreement shall be construed under and shall be governed by the laws of the State where the hotel is located, i.e., the State of New York.

PLAINTIFFS' INSURANCE

57. As required by the Springhill and Fairfield Agreements, the Springhill and Fairfield Defendants undertook to procure insurance for the plaintiffs' hotels.

58. Plaintiffs relied on Springhill and Fairfield to do so.

59. Because Springhill and Fairfield were contractually obligated to procure insurance that met the terms of the Fairfield and Springhill Agreements, plaintiffs did not undertake to procure their own insurance.

60. The Springhill and Fairfield Defendants insured the properties under a blanket policy with Defendant Zurich.

61. The Marriott Defendants did not disclose the scope of coverages prior to the losses complained of herein and at no time did they notify plaintiff of any endorsements to the policies.

62. For the period from April 1, 2019 at 12:01 a.m. through April 1, 2021, the plaintiffs (as well as many others) were insured under Policy No. PPR 3700638-17 (the "First Policy").

63. Despite requests to the Marriott Defendants, plaintiffs have been provided only a heavily redacted version of this policy. A copy of the redacted policy is attached here as Exhibit A.

64. Upon information and belief, for the period from April 1, 2020 at 12:01 a.m. through April 1, 2020, the plaintiffs (as well as many others) were insured under Policy No. PPR 3700638-17 (the "Second Policy").

65. The First Policy is 79 pages including appendices, as shown in the Table of Contents:

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(Order in Which They Appear)

66. The First Policy is also modified by 18 Endorsements.

67. The First Policy identifies the Named Insured as Marriott International, Inc. It then provides that other entities which operate Marriott hotels and are so identified by Marriott International will also be insureds under the First Policy.

68. Accordingly, plaintiffs are insureds under the First Policy.

69. The First Policy is an all-risk policy that "covers property, as described in this Policy, against all risks of direct physical loss or damage, except as hereinafter excluded, while located as described in this Policy occurring during the policy period."

70. The First Policy (exclusive of endorsements) contains no exclusions that would even arguably apply to the coronavirus.

71. The First Policy further provides for business interruption coverage of the actual loss sustained.

72. The First Policy further provides for rental insurance covering the actual loss sustained in loss of rents.

73. The First Policy further provides for Ingress/Egress Coverage for damages resulting to the interruption of business due to impairment of ingress to or egress from an Insured Location, whether or not the premises or property of the Insured is damaged, provided that such impairment is a direct result of direct physical damage of the type insured by this Policy, to the kind of property not excluded by this Policy.

74. The First Policy further provides for "Cancellation of Bookings" coverage, providing for the recovery of the actual loss sustained resulting from the cancellation of, or inability to accept, bookings or reservations resulting from, among other things, the "outbreak of contagious and/or infectious disease as well as restrictive guidance or travel advisories placed on a region or area by the Centers for Disease Control, World Health Organization, or comparable authority . . . ."

75. The First Policy further provides for coverage for Interruption by Civil and Military Authority, which provides for coverage for the actual loss sustained "during the period of time when, as a result of physical loss or damage not otherwise excluded herein, to the kind of property not otherwise excluded herein and access to the property of the insured is impaired by order or action of civil or military authority."

76. The Civil and Military authority coverage does not require that access be prohibited, only that it be "impaired."

77. Zurich America contends that a single endorsement to the First Policy applies to exclude plaintiffs' claims, Endorsement #4.

78. Endorsement #4 is titled "Mold, Mildew and Fungus Clause and Microorganism Exclusion." It provides for an exclusion for damage resulting from "mold, mildew, fungus, spores or other microorganisms of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health."

79. Notably, Endorsement #4 makes no mention of viruses (although the First Policy itself elsewhere uses the term).

80. Upon information and belief, the Second Policy is substantively identical to the First Policy with two exceptions.

81. First, the Second Policy does not contain any coverage for "Cancellation of Bookings."

82. Second, the Second Policy contains an Endorsement 11 that is not present in the First Policy.

83. It has been represented to plaintiffs that Endorsement 11 of the Second Policy reads:

> 1. This policy, subject to all applicable terms, conditions and exclusions, covers losses attributable to direct physical loss or physical damage occurring during the period of insurance. Consequently, and notwithstanding any other provision of this policy to the contrary, this policy does not insure any loss, damage, claim, cost expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the

fear or threat (whether actual or perceived) of a Communicable Disease.

2. For the purposes of this endorsement, loss, damage, claim cost, expense or other sum, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test:

1)for a Communicable Disease, or

2)any property insured hereunder that is affected by such Communicable Disease.

3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

1)the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and

2)the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

3)the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder.

84. Plaintiffs were never notified of these changes in coverage before receiving a reservation of rights letter from Zurich for the subject claims.

PLAINTIFFS SUFFERED AN IMMENSE BUSINESS LOSS AS A RESULT OF THE CORONAVIRUS

85. Plaintiffs' hotels have historically been successful and profitable. Located in the Carrier Circle area of Syracuse, they are an attractive option for business travelers, Syracuse University students and families, and other visitors to Central New York.

86. Historically, the first quarter of each year, coming as it does during the long Syracuse winter, is the slowest and plaintiffs make most of their revenue and income during the spring, summer, and fall.

87. Prior to the spread of the coronavirus, this same pattern was in place for 2020, with the hotels poised for another strong year once the spring began.

88. With the appearance of the coronavirus in New York State and then, soon thereafter, Onondaga County, the business immediately began to suffer.

89. The governmental closures, particularly the mandatory closure of all nonessential business and the effective prohibition on nonessential travel, decimated the plaintiffs' business.

90. Throughout March 2020, the plaintiffs, together with Marriott, created successively more dire projections for upcoming months, reflecting the immediate and immense impact of the coronavirus and the governmental closures.

91. From March 23 through the present, business has been essentially at a standstill. Plaintiffs have lost millions of dollars and these losses are ongoing.

92. The losses have been so severe that plaintiffs have discussed with Marriott the possibility of closing the hotels for some period of time.

93. Plaintiffs provided proofs of loss to Zurich and Marriott estimating the business income loss at $3,970,506 (6593 Weighlock) and $2,537,382 (6580 Weighlock).

94. These estimates reflect an assumption that business in 2020 will be down nearly two-thirds from the prior year, and given current realities even these calculations may be overly optimistic.

PLAINTIFFS' CLAIMS ARE REJECTED

95. On June 15, 2020, plaintiff 6593 Weighlock served a sworn proof of loss on Zurich America that claimed a loss of $3,970,506 less a $25,000 deductible. With the proof of loss, 6593 Weighlock provided a detailed calculation of the basis for this claim.

96. On June 15, 2020, plaintiff 6580 Weighlock served a sworn proof of loss on Zurich America that claimed a loss of $2,537,382. With the proof of loss, 6580 Weighlock provided a detailed calculation of the basis for this claim.

97. As directed by Marriott, plaintiffs provided these proofs of loss directly to Zurich America.

98. Zurich assigned claim numbers 5730067945 and 5630048610 to these claims.

99. By letter of July 13, 2020, Zurich denied these claims in their entirety.

100. First, Zurich denied claims under the Cancellation of Bookings coverage because, purportedly, the $2.5 million sublimit had been eroded by claims by other Marriott hotels in Chile in "late 2019."

101. Second, Zurich contended that "the presence of COVID-19 does not constitute 'direct physical loss or damage.'"

102. Third, Zurich contended that even if the presence of coronavirus constituted direct physical loss, the claim would be excluded based on either a "contamination exclusion" in the First Policy or by Endorsement 4 (the Mold, Mildew and Fungus Clause and Microorganism Exclusion).

103. Fourth, Zurich contended that there was no coverage under either the Civil and Military Authority or Ingress/Egress Coverages because plaintiffs "have not demonstrated the prerequesites to coverage under these coverages."

104. Finally, Zurich contended that coverage was excluded under the *Second* Policy based on the new Endorsement 11, which excluded coverage for damages resulting from communicable diseases.

105. Plaintiff contends that each of these bases for denial are faulty.

106. As an initial matter, the loss commenced in March 2020. Accordingly, the applicable policy is the First Policy, which was effective until April 1, 2020, not the Second Policy.

107. The Policies do not define "direct physical loss".

108. The novel coronavirus (as distinct from the *disease* it causes, COVID-19) is unquestionably a tangible and physical thing.

109. "Physical" means "having material existence" or "of or relating to material things." *See Physical*, Merriam-Webster (2020), available at https://www.merriam-webster.com/dictionary/physical (last accessed July 20, 2020).

110. "Material" means "relating to, derived from, or consisting of matter". *See Material*, Merriam-Webster (2020), available at https://www.merriam-webster.com/dictionary/material (last accessed July 20, 2020).

111. Plaintiffs' hotels were open and available for anyone to enter before the coronavirus reached Onondaga County. After the virus reached the County, putative customers were barred from leaving their home or state.

112. That a virus can constitute direct physical loss is confirmed by Zurich's own policies *in this case*.

113. Subsequent to the appearance of the coronavirus and the economic destruction wreaked by it, Zurich America apparently added a new exclusion to plaintiffs' policy – the Endorsement 11 to the Second Policy.

114. Zurich America's effort to rely on the "contamination" exclusion in the First Policy also must fail. This provision is commonly understood (both by lay persons and the courts) to apply to pollution, not viruses.

115. Similarly, Zurich America's reliance on Endorsement 4 to the First Policy is misplaced.

116. This endorsement, as its title makes clear, is intended to apply to mold, fungus, and similar harms, not viruses. The word "virus" is never mentioned.

117. Upon information and belief, at the time the First Policy was issued, Zurich had issued many policies that did contain a so-called "virus exclusion" endorsement. That this exclusion was not included in the First Policy demonstrates that coverage was in fact available.

118. There is indisputably coverage for damages resulting from viruses under the Cancellation of Bookings Coverage.

119. Zurich does not contend otherwise but instead asserts that the policy limit has been "eroded" by unrelated claims on a different continent.

120. Plaintiffs were never informed that any policy coverages had, effectively, disappeared.

121. Moreover, Zurich has never identified a manner in which it allocates losses that exceed policy limits, and the policy provides none.

122. Plaintiffs are equally entitled to coverage under the Cancellation of Bookings coverage as any other Marriott hotel.

THE MARRIOT DEFENDANTS' FAILURES

123. Plaintiffs contend that there is coverage under the Zurich Policy. Zurich contends otherwise, in part on the basis of exclusions to their all-risks policy. But the Marriott defendants were obligated by contract to procure sufficient insurance for plaintiffs.

124. 6580 Weighlock's contract with SpringHill obligated SpringHill to obtain an "all-risk" policy.

125. It appears that SpringHill, in concert with defendant Marriott International, procured an all-risk policy but then agreed to weigh down that all-risk policy with exclusions. Plaintiffs were never informed of exclusions.

126. "All-risk" by definition covers "all" "risks". By obtaining a policy that excluded certain risks from coverage, SpringHill breached its contractual obligations.

127. Further, 6580 Weighlock relied on Springhill to procure its insurance, made a specific request of insurance through the Springhill Agreement, and was harmed thereby.

128. 6593 Weighlock's contract with Fairfield required Fairfield to obtain a "broad form" policy.

129. It appears that Fairfield, in concert with defendant Marriott International, procured an all-risk policy but then agreed to weigh down that all-risk policy with exclusions. Plaintiffs were never informed of these exclusions.

130. By obtaining a policy that excluded certain risks from coverage, Fairfield breached its contractual obligations.

131. The Marriott defendants further breached their obligations to plaintiffs by failing to procure sufficient Cancellation of Bookings coverage and mishandling that coverage that was procured.

132. The First Policy contained Cancellation of Bookings coverage that even Zurich appears to agree would cover losses resulting from the coronavirus.

133. By obtaining such coverage, Marriott confirmed that this coverage was "of the type" necessary to protect businesses such as plaintiffs.

134. However, the amount procured was on its face insufficient to cover the losses it was ostensibly protecting against: in any pandemic, this international hotel chain would suffer far more than $2.5 million in cancelled bookings.

135. Further, Marriott International appears (although no evidence has ever been provided to plaintiffs) to have adopted a first-come-first-serve approach to this woefully insufficient coverage.

136. Marriott never notified plaintiffs of the "erosion" of this coverage, and has provided no means for plaintiffs to receive the benefit of this coverage.

AS AND FOR A FIRST CAUSE OF ACTION BY 6593 WEIGHLOCK IN BREACH OF CONTRACT AGAINST DEFENDANT ZURICH AMERICA

137. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

138. Plaintiffs have fully complied with all terms, conditions, duties and obligations under the Policy.

139. The Loss was covered under the Policy.

140. Defendant Zurich America has breached its obligations to provide full insurance coverage under the Policy.

141. As a result of defendant's breach of their obligations to provide coverage for damage to the dwelling under the Policy, Plaintiffs have suffered direct and consequential damages.

AS AND FOR A SECOND CAUSE OF ACTION BY 6580 WEIGHLOCK IN BREACH OF CONTRACT AGAINST DEFENDANT ZURICH AMERICA

142. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

143. Plaintiffs have fully complied with all terms, conditions, duties and obligations under the Policy.

144. The Loss was covered under the Policy.

145. Defendant Zurich America has breached its obligations to provide full insurance coverage under the Policy.

146. As a result of defendant's breach of their obligations to provide coverage for damage to the dwelling under the Policy, Plaintiffs have suffered direct and consequential damages.

AS AND FOR A THIRD CAUSE OF ACTION BY 6593 WEIGHLOCK FOR DECLARATORY JUDGMENT AGAINST DEFENDANT ZURICH AMERICA

147. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

148. Plaintiffs have fully complied with all terms, conditions, duties and obligations under the Policy.

149. The Loss was covered under the Policy.

150. Defendant Zurich America has breached its obligations to provide full insurance coverage under the Policy.

151. Plaintiffs request an Order from the Court that Zurich is obligated to provide coverage under the First Policy.

AS AND FOR A FOURTH CAUSE OF ACTION BY 6580 WEIGHLOCK FOR DECLARATORY JUDGMENT AGAINST DEFENDANT ZURICH AMERICA

152. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

153. Plaintiffs have fully complied with all terms, conditions, duties and obligations under the Policy.

154. The Loss was covered under the Policy.

155. Defendant Zurich America has breached its obligations to provide full insurance coverage under the Policy.

156. Plaintiffs request an Order from the Court that Zurich is obligated to provide coverage under the First Policy.

AS AND FOR A FIFTH CAUSE OF ACTION BY 6580 WEIGHLOCK FOR BREACH OF CONTRACT AGAINST DEFENDANT FAIRFIELD FMC

157. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

158. 6580 Weighlock and Fairfield had a valid contract, the Fairfield Agreement.

159. At all relevant times, the Fairfield Agreement was in effect.

160. Pursuant to the Fairfield Agreement, Fairfield was obligated to procure insurance on behalf of 6580 Weighlock.

161. The Fairfield Agreement identified precisely the coverages required to be procured.

162. Fairfield failed to procure insurance as required by the Fairfield Agreement.

163. By reason of this failure, 6580 Weighlock suffered direct and consequential damages.

AS AND FOR A SIXTH CAUSE OF ACTION BY 6580 WEIGHLOCK FOR NEGLIGENT PROCUREMENT AGAINST DEFENDANT FAIRFIELD FMC

164. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

165. 6580 Weighlock had a longstanding relationship with Fairfield.

166. As part of this relationship, 6580 Weighlock reasonably relied on Fairfield to obtain insurance that would adequately protect it.

167. Pursuant to the Fairfield Agreement, 6580 Weighlock requested certain insurance to be procured on its behalf.

168. Fairfield had a duty to 6580 Weighlock to procure adequate insurance.

169. Fairfield failed to procure adequate insurance or insurance as required by the Fairfield Agreement.

170. 6580 Weighlock was damaged by this failure.

AS AND FOR A SEVENTH CAUSE OF ACTION BY 6593 WEIGHLOCK FOR BREACH OF CONTRACT AGAINST DEFENDANT SPRINGHILL SMC

171. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

172. 6580 Weighlock and Fairfield had a valid contract, the Fairfield Agreement.

173. At all relevant times, the Fairfield Agreement was in effect.

174. Pursuant to the Springhill Agreement, Springhill was obligated to procure insurance on behalf of 6593 Weighlock.

175. The Springhill Agreement identified precisely the coverages required to be procured.

176. Springhill failed to procure insurance as required by the Springhill Agreement.

177. By reason of this failure, 6593 Weighlock suffered direct and consequential damages.

AS AND FOR A EIGHTH CAUSE OF ACTION BY 6593 WEIGHLOCK FOR NEGLIGENT PROCUREMENT AGAINST DEFENDANT SPRINGHILL SMC

178. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

179. 6593 Weighlock had a longstanding relationship with Springhill.

180. As part of this relationship, 6593 Weighlock reasonably relied on Springhill to obtain insurance that would adequately protect it.

181. Pursuant to the Springhill Agreement, 6593 Weighlock requested certain insurance to be procured on its behalf.

182. Springhill had a duty to 6593 Weighlock to procure adequate insurance.

183. Springhill failed to procure adequate insurance or insurance as required by the Springhill Agreement.

184. 6593 Weighlock was damaged by this failure.

AS AND FOR A NINTH CAUSE OF ACTION BY PLAINTIFFS FOR NEGLIGENCE AGAINST DEFENDANTS SPRINGHILL SMC, FAIRFIELD FMC, AND MARRIOTT INTERNATIONAL

185. Plaintiffs repeat and reallege the allegations contained in Paragraphs "1" through "136" above as though fully restated here.

186. Plaintiffs relied on the Marriott Defendants to procure and manage insurance for the properties.

187. The Marriott Defendants had duties to protect the interests of plaintiffs in the Policies.

188. The Marriott Defendants breached these duties.

189. By reason of these breaches, plaintiffs were damaged.

WHEREFORE, plaintiffs demand judgment be entered against the defendants for the following relief:

a. Compensatory damages arising out of the Loss in an amount to be proven at trial;

b. Applicable interest from the date of loss, date of disclaimer or such other date as the Court deems just and proper; and

c. For such other and further relief as this Court deems just and proper.

Dated: August 4, 2020
Syracuse, New York

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