

20-127
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CRESCENT LAND DEV. ASSOC LLC., COMMACK SHOPPING
CENTER ASSOC., CP ASSOCIATES LLC, FOLKSAN REALTY
ASSOCIATES, 255 MALL LLC, NASSAU MALL PLAZA
ASSOCIATES, PLAINVIEW AVENUE ASSOCIATES, QUENTIN
ROOSEVELT ASSOCIATES LLC., CHALINE ESTATES INC.,
250 PARK LLC, 257 PARK AVENUE SOUTH ASSOCIATES ,
261 FIFTH AVE TIC OWNER LLC., 370 SEVENTH AVENUE
ASSOCIATES LLC, 488 MADISON AVENUE ASSOC LLC.,
JMC AS MGR FRENCH PART+NYC FRN, 2001 MARCUS AVE
LLC, 3601 TURNPIKE ASSOCIATES, 10 SOUTH
LASALLE OWNER LLC, SB FULTON REALTY ,
FULTON RETAIL LLC, 645 NO MICHIGAN LLC/NAKASH
TIC, RP FEIL 57 LLC, BAYPOINT COMMERCE CENTER,

Plaintiff,

-against-

ILLINOIS UNION INSURANCE COMPANY,

Defendant.
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To the above-named Defendant:

YOU ARE HEREBY SUMMONED to appear in the Civil Court of the City of New York, County of New York at the office of the Clerk of the said Court at 60 Centre Street, New York, New York in the County of New York City and State of New York, within the time provided by law as noted below and to file your answer to the annexed complaint with the Clerk; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action

Dated: New York, New York
December 20, 2021

WEG AND MYERS, P.C.
Attorney for Plaintiffs
800 Westchester Avenue
Suite N-513
Rye Brook, NY 10573
212-227-4210

Index No.:

SUMMONS

The Plaintiffs designate New York County as the place of trial.

The basis of venue is the presence of multiple of Plaintiff's principal places of business in New York County as detailed in Plaintiffs' Complaint, including 370 7th Avenue, New York, New York 10001.

Defendants' Address:
Illinois Union Insurance Company
436 Walnut Street, WA06T
Philadelphia, Pennsylvania 19106

NOTE: The law provides that: (a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

Yours, etc.,

WEG AND MYERS, P.C.
Attorneys for Plaintiffs

By: /s/ Joshua L. Mallin
Joshua L. Mallin, Esq.
800 Westchester Ave.,
Suite N-513
Rye Brook, NY 10573
(212) 227-4210

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OWNER LLC, SB FULTON REALTY, FULTON RETAIL LLC,
645 NO MICHIGAN LLC/NAKASH TIC, RP FEIL 57 LLC,
BAYPOINT COMMERCE CENTER,

Index No.:

COMPLAINT

Plaintiffs,

-against-

ILLINOIS UNION INSURANCE COMPANY,

Defendant.

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Plaintiffs, CRESCENT LAND DEV. ASSOC. LLC, COMMACK SHOPPING CENTER
ASSOC., CP ASSOCIATES LLC FOLKSAN REALTY ASSOCIATES, 255 MALL LLC,
NASSAU MALL PLAZA ASSOCIATES, PLAINVIEW AVENUE ASSOCIATES, QUENTIN
ROOSEVELT ASSOCIATES LLC, CHALINE ESTATES INC., 250 PARK LLC, 257 PARK
AVENUE SOUTH ASSOCIATES, 261 FIFTH AVE TIC OWNER LLC, 370 SEVENTH
AVENUE ASSOCIATES LLC, 488 MADISON AVENUE ASSOC LLC, JMC AS MGR
FRENCH PART+NYC FRN, 2001 MARCUS AVE LLC, 3601 TURNPIKE ASSOCIATES, 10
SOUTH LASALLE OWNER LLC, SB FULTON REALTY, SB FULTON REALTY, FULTON
RETAIL LLC, 645 NO MICHIGAN LLC/NAKASH TIC, RP FEIL 57 LLC, and BAYPOINT
COMMERCE CENTER, (hereinafter referred to as “Plaintiffs” or “Broadwall”), by their attorneys
Weg and Myers, P.C., as for their Complaint herein allege as follows:

INTRODUCTION

1. Plaintiffs, together with their managing agent Broadwall Management Corporation, manage and/or own a large portfolio of commercial real estate.

2. Like most property owners, out of concern for the general possibility of unforeseen loss, Plaintiffs procured insurance in order to protect their assets against fortuitous losses.

3. Specifically, Plaintiffs procured a “pollution and remediation” policy of insurance sold bearing No. PPL G29003233 001 by Illinois Union Insurance Company (“Illinois Union”) with effective dates of June 18, 2018 through June 18, 2022, which was in full force and effect when the Covid-19 pandemic began to sweep through the nation (hereinafter, the “Subject Policy”).

4. The Subject Policy provided coverage for, *inter alia*, business interruption claims arising out of a “pollution condition” or “indoor environmental condition” at a “covered location.”

5. Beginning in early 2020, the United States began to experience the effects of the COVID-19 pandemic which would sweep the world, sickening millions.

6. The disease, COVID-19, is caused by the spread of the SARS-CoV-2 virus, which is spread both in the air through respiratory droplets and from surface contact via fomite transmission.

7. In March 2020, SARS-CoV-2 was physically present within Plaintiffs’ insured properties and constituted pollution and/or an indoor environmental condition insured by the Subject Policy.

8. Because of the presence of SARS-CoV-2 numerous businesses and tenants occupying space within the properties insured by the Subject Policy were forced to close.

9. Similarly, because of the presence of SARS-CoV-2 numerous businesses and tenants occupying space within the properties insured by the Subject Policy were unable to pay rent.

10. The presence of SARS-CoV-2 resulted in the loss of use of Plaintiffs' property insured by the Subject Policy.

11. The presence of SARS-CoV-2 resulted in the loss of use of tangible property of Plaintiffs' tenants at locations insured by the Subject Property.

12. Plaintiffs timely submitted a claim for its business income losses to Illinois Union in accordance with the terms and conditions of the Subject Policy.

13. Due to the fact that Plaintiffs had purchased a premises pollution liability policy of insurance from Illinois Union which did not contain any specific relevant exclusions, Plaintiffs expected that Illinois Union, after collecting annual premiums from Plaintiffs, would be responsive to its insureds during their time of need to address the above described harms from the COVID-19 pandemic and presence of SARS-CoV-2 at Plaintiffs' insured locations.

14. Unfortunately, these expectations were never met and to date, Illinois Union has refused to pay any amount of Plaintiffs' claims.

15. Illinois Union's conduct compelled Plaintiffs to commence this litigation in order to compel Illinois Union to live up to its contractual obligations and indemnify Plaintiffs for their losses.

PARTIES

16. At all times hereinafter mentioned, Broadwall Management Corp. is a domestic corporation duly organized and existing under and by virtue of the laws of New York, having its principal place of business at 370 7th Avenue, New York, New York 10001.

17. Upon information and belief, at all times hereinafter mentioned, Crescent Land Development Associates, LLC was is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business as 3507-3563 Hempstead Turnpike, Levittown, New York 11756.

18. Upon information and belief, at all times hereinafter mentioned, Commack Shopping Center Associates is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business as 2-50 Veterans Road, Memorial Highway, Commack, New York 11725.

19. Upon information and belief, at all times hereinafter mentioned, Commack Land Development Associates is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business as 6500 Jericho Turnpike, Commack, New York 11725.

20. Upon information and belief, at all times hereinafter mentioned, CP Associates, LLC was and is a domestic limited liability company duly organized and existing by virtue of the laws of New York and having it principal place of business at 200-238 E. 161st Concourse Plaza, Bronx, New York 10451.

21. Upon information and belief, at all times hereinafter mentioned, Folksan Realty Associates is a domestic limited liability company duly organized and existing by virtue of the laws of New York and having its principal place of business at 6500 Jericho Turnpike, Commack, New York 11725.

22. Upon information and belief, at all times hereinafter mentioned, 255 Mall LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 255-01 Union Turnpike, Glen Oaks, New York 11004.

23. Upon information and belief, at all times hereinafter mentioned, Nassau Mall Plaza Associates is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 3601 Hempstead Turnpike/Nassau Mall & Crescent Land, Levittown, New York 11756.

24. Upon information and belief, at all times hereinafter mentioned, Plainview Avenue Associates is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 600, 620, 1660, 1710 and 1730 Hempstead Turnpike and Makofske Ave, Elmont, New York 11003.

25. Upon information and belief, at all times hereinafter mentioned, Quentin Roosevelt Associates, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having a principal place of business at 100 Quentin Roosevelt Blvd, Garden City, New York 11530.

26. Upon information and belief, at all times hereinafter mentioned, Chaline Estates, Inc. is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having a principal place of business of 145 W. 30th Street, New York, New York 10016.

27. Upon information and belief, at all times hereinafter mentioned, 250 Park, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws

of New York and having a principal place of business of 488 Madison Avenue, New York, New York 10022.

28. Upon information and belief, at all times hereinafter mentioned, 257 Park Avenue South Associates is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having a principal place of business of 257-265 4th Avenue a/k/a Park Avenue South, New York, New York 10001.

29. Upon information and belief, at all times hereinafter mentioned, 261 Fifth Avenue, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having a principal place of business of 261 5th Avenue, New York, New York 10016.

30. Upon information and belief, at all times hereinafter mentioned, 370 Seventh Avenue Associates LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business of 362-378 7th Avenue, New York, New York 10001.

31. Upon information and belief, at all times hereinafter mentioned, 488 Madison Avenue Associates, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business of 488 Madison Avenue, New York, New York, 10022.

32. Upon information and belief, at all times hereinafter mentioned, French Partners LLC + NYC FRN is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 551 5th Avenue, New York, New York 10017.

33. Upon information and belief, at all times hereinafter mentioned, 2001 Marcus Avenue LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 2001 Marcus Ave., New Hyde Park, New York 11042.

34. Upon information and belief, at all times hereinafter mentioned, 3601 Turnpike Associates is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 3601 Hempstead Turnpike, Levittown, New York 11756.

35. Upon information and belief, at all times hereinafter mentioned, 10 South Lasalle Owner, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of Illinois and having its principal place of business at 10 South La Salle Street, Chicago, Illinois 60603.

36. Upon information and belief, at all times hereinafter mentioned, SB Fulton Realty is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 356 Fulton Street, Brooklyn, New York 11201.

37. Upon information and belief, at all hereinafter mentioned, Fulton Retail, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of Illinois and having its principal place of business at 813, 821, 825 West Fulton Market, Chicago, Illinois 60607.

38. Upon information and belief, at all times hereinafter mentioned, 645 North Michigan LLC is a domestic limited liability company duly organized and existing under and by

virtue of the laws of Illinois and having its principal place of business at 645 North Michigan Avenue, Chicago Illinois 60611.

39. Upon information and belief, at all times hereinafter mentioned, Nakash 645 North Michigan LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of Illinois and having its principal place of business at 645 North Michigan Avenue, Chicago Illinois 60611.

40. Upon information and belief, at all times hereinafter mentioned, RP Feil 57, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of New York and having its principal place of business at 200 West 57th Street, New York, New York 10019.

41. Upon information and belief, at all times hereinafter mentioned, Baypoint Commerce Center is a domestic limited liability company duly organized and existing under and by virtue of the laws of Florida and having its principal place of business at 9620 Executive Center Drive, St. Petersburg, Florida 33702.

42. Upon information and belief at all times hereinafter mentioned, Pointe Plaza Associates, LLC is a domestic limited liability company duly organized and existing under and by virtue of the laws of Delaware and having a principal place of business at 7 Penn Plaza, Suite 1100, New York, New York 10001.

43. At all times hereinafter mentioned, Defendant Illinois Union Insurance Company (hereinafter referred to as “Defendant” or “Illinois Union”) was and is a foreign business corporation, duly organized and existing under and by virtue of the laws of the State of Illinois, having its principal place of business at at 436 Walnut Street, WA06T, Philadelphia, Pennsylvania 19106.

THE NOVEL CORONAVIRUS AND ITS EFFECTS

44. It is beyond cavil that at all relevant times the world was experiencing a global pandemic from a disease caused by a novel coronavirus (specifically, SARS-CoV-2) and commonly referred to as Covid-19.

45. From as early as December 2019, Covid-19 began spreading, first in China and then, because the disease is highly contagious, rapidly around the globe.

46. On January 30, 2020, the World Health Organization (“WHO”) declared that the Covid-19 outbreak constituted a public health emergency of international concern.

47. The World Health Organization (“WHO”) stated that “[t]he disease spreads primarily from person to person through small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks People can catch COVID-19 if they breathe in these droplets from a person infected with the virus These droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth.”¹

48. In addition, studies have verified that many individuals remain asymptomatic despite infection by COVID-19.² COVID-19 also includes a pre-symptomatic incubation period of up to 14 days, during which time infected people can transmit COVID-19 to people, into the air and onto surfaces without having experienced symptoms and without realizing that they are infected.³ COVID-19 is not only highly contagious, but also deadly. In April 2020, 3 people

¹ *Q&A on coronaviruses (COVID-19)*, World Health Organization, <https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novelcoronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> (last visited Mar. 20, 2021).

² See CDC, Jing Cai, Wenjie Sun, Jianping Huang, Michelle Gamber, Jing Wu, Guiqing He, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIONS DISEASES 6 (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited Mar. 20, 2021).

³ *Id.*

staying at a Hotel in midtown Manhattan died of COVID-19. The Hotel is located less than a mile from numerous of Plaintiffs' insured properties claiming losses in the instant action

49. Consequently, while during this time period it was possible to identify certain individuals who were suffering from obvious symptoms of the coronavirus, given a lack of significant medical testing at the time, it was impossible to distinguish between infected and non-infected members of the general public. Additionally, the existence and/or presence of the Coronavirus and COVID-19 is not simply reflected in reported cases or individuals' positive test results. The Centers for Disease Control and Prevention ("CDC") estimates that the number of people in the U.S. who have been infected with COVID-19 is likely to be 10 times higher than the number of reported cases.⁴

50. Orders of governmental authorities began to be issued by states and municipalities throughout March 2020.

51. The basis of these orders were all predicated, in part, on the effect of the presence of, Covid-19 within enclosed, highly trafficked locations.

52. Given the nature of Plaintiffs' business, the spread of the Covid-19 virus led to significant economic damages.

53. SARS-CoV-2 is a physical substance and a human pathogen which can be present outside the body and is more likely to be transmitted indoors.

54. As a result, when people infected with Covid-19 cough, sneeze, talk or breath, they produce respiratory droplets, or "fomites" carrying SARS-CoV-2.

⁴ Lena H. Sun and Joel Achenbach, CDC chief says coronavirus cases may be 10 times higher than reported, WASH. POST (June 25, 2020), <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/> (last visited Mar. 31, 2021).

55. Not only is SARS-CoV-2 transmitted human-to-human, but the WHO and scientific studies have confirmed that the virus can remain infectious on objects and surfaces.

56. As noted above, COVID-19 spreads both through aerosols which linger for an extended period of time in the air of the space that an infected person has entered or passed through.

57. COVID-19 also spreads through physical droplets which land on surfaces rendering those surfaces damaged by converting those surfaces into a vehicle for further infection to other customers, employees or any other person who subsequently comes in contact with those physical droplets.

58. Like many other threats to human health and life (for example, formaldehyde, radioactivity, carbon monoxide, and legionella) SARS-CoV-2 presents a threat to human life and health through the risk of contact with the virus on surfaces.

59. “Fomites” are physical objects or materials that carry, and are capable of transmitting infectious agents, altering these objects to become vectors of disease. Fomite transmission has been demonstrated for SARS-CoV-2, both from object-to-hand and from hand-to-mouth.⁵

60. At all relevant times, human beings have spread Covid-19 through the simple act of breathing in air that contains viral droplets. The New York Times has reported that “[a]n infected person talking for five minutes in poorly ventilated space can also produce as many viral droplets as one infectious cough.”⁶

⁵ See n.2 *supra*.

⁶ Yuliya Parshina-Kottas, Bedel Saget, Karthik Patanjali, Or Fleisher and Gabriel Gianordoli, *This 3-D Simulation Shows Why Social Distancing Is So Important*, New York Times (Apr. 14, 2020) <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html>.

61. At all relevant times, such damage both existing on surfaces found within the insureds' and surrounding premises as well as in the breathable air circulating within the insureds' and surrounding premises.

62. Fomites physically alter the surface of property into a potentially deadly Coronavirus transmission device. A study published in the Journal of Epidemiology and Infection demonstrated that after lockdown in the United Kingdom, Coronavirus transmission via fomites may have contributed to as many as 25% of deaths in that region.⁷

63. "Healthy individuals contacting contaminated surfaces as part of their daily routine allow transmission to happen from an infected person to a healthy person even though there is no direct contact."

64. According to a metaanalysis of studies reported in The Royal Society, "aluminum surfaces allowed coronavirus to stay alive for 2-8 [hours]," other results indicated that "steel, stainless steel, glass, silicone rubber, PVC, ceramic and Teflon all allowed coronavirus to stay active for 5 days."⁸ According to a study documented in The New England Journal of Medicine, Covid-19 was detectable in aerosols for up to 3 hours, up to 4 hours on copper, up to 24 hours on cardboard, and up to 3 days on plastic and stainless steel.⁹

⁷ A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (Oct. 2020), <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-COVID19-transmission-including-indirect-transmission-mechanisms-amathematicalanalysis/A134C5182FD44BEC9E2BA6581EF805D3> (last visited Mar. 20, 2021).

⁸ M. Aydogdu, E. Altun, E. Chung, G. Ren, S. Homer-Vanniasinkam, B. Chen and M. Edirisinghe, *Surface interactions and viability of coronaviruses*, Journal of the Royal Society (Jan. 6, 2021), <https://doi.org/10.1098/rsif.2020.0798> (last visited October 5, 2021).

⁹ Neeltje van Foremalen, Trenton Bushmaker, Dylan H. Morris, Myndi G Holbrook, Amandine Gamble, Brandi N. Williamson, Azaibi Tamin, Jennifer L. Harcourt, Natalie J. Thornburg, Susan I. Gerber, James O. Lloyd-Smith, Emmie de Wit, and Vincent J. Munster, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-Cov-1*, The New England Journal of Medicine (Mar. 17, 2020), <https://www.nejm.org/doi/full/10.1056/nejmc2004973>

65. Indeed, scientific studies suggest that during the relevant time period set forth herein, individuals could contract Covid-19 through indirect contact with surfaces or objects used by an infected person, regardless of whether the infected person was symptomatic.

66. Accordingly, at all relevant times, the presence of the Coronavirus in and on property, including in indoor air, on surfaces, and on objects, caused direct physical loss of or damage to property by causing harm to and altering property and otherwise making it incapable of being used for its intended purpose.

67. During the relevant time periods, removing COVID was difficult as well. A number of early studies found that the Coronavirus was much more resilient to cleaning than other respiratory viruses so tested.

68. Furthermore, during the relevant subject period, because Covid-19 physically affected surfaces of property and the air and could be transferred to individuals that come into contact with the surface or the air of the property, causing additional infections, effective response to the Covid-19 pandemic required measures designed to reduce human to human contact along with surface to human contact.

69. As a result, at all relevant times, the presence of Sars-CoV-2 caused physical loss or damage to Plaintiff's commercial spaces.

70. Additionally, the CDC recognized the importance of heating, ventilation and air conditioning ("HVAC") improvements prior to reoccupying buildings. According to the CDC, "[p]rotective ventilation practices and interventions can reduce the airborne concentrations and reduce the overall viral dose to occupants." For that reason, the CDC recommended that building

owners and operators make various physical modifications to their HVAC systems to reduce exposure to the virus on their properties and the spread of COVID-19.¹⁰

71. Like many other threats to human health and life (for example, formaldehyde, radioactivity, or carbon monoxide) at all relevant times, SARS-CoV-2 presented a threat to human life and health through the risk of contact with the virus on surfaces.

PLAINTIFFS' INSURANCE POLICY AND CLAIM

72. The commencement of this lawsuit results from a breach of insurance contract arising from the failure of Illinois Union to provide payment to Plaintiffs for their losses resulting from the global pandemic commonly referred to as coronavirus or Covid-19 beginning on or about March, 2020.

73. On or before June 18, 2017, for good and valuable consideration, Plaintiffs procured a policy of insurance from Illinois Union Insurance Company (the "Subject Policy") bearing policy number PPL G29003233 001.

74. The Subject Policy bears effective dates from June 18, 2017 to June 18, 2022.

75. The Subject Policy was in full force and effect as of March, 2020 and remains in full force and effect through the filing date of this Complaint.

76. The Subject Policy provides coverage for all first-party remediation costs including but not limited to coverage for business interruption in the amount of \$20,000,000.00 for each loss.

77. The Subject Policy provides in relevant part:

1. FIRST-PARTY REMEDIATION COSTS COVERAGE

¹⁰ *CDC Guidance with respect to Ventilation in Buildings* (June 2, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html> (citing *Laurence J. Schoen, P.E., Guidance for Building Operations During the COVID-19 Pandemic*, American Society of Heating, Refrigerating and Air-Conditioning Engineers Journal (May 2020)).

“First-party claims” arising out of: 1) a “pollution condition” on, at or migrating from a “covered location”; 2) an “indoor environmental condition” at a “covered location”; or 3) a “pollution condition” resulting from “transportation”, provided the “insured” first discovers such “pollution condition” or “indoor environmental condition” during the “policy period”.

78. Endorsement 17 to The Subject Policy also includes Contingent Business

Interruption Coverage Extensions in relevant part:

I. Section I, **Insuring Agreements**, of this Policy is hereby amended by addition of the following:

SUPPLEMENTAL COVERAGE – CONTINGENT BUSINESS INTERRUPTION COVERAGE

“First-party claims” arising out of a “pollution condition” or “indoor environmental condition” that originates beyond the boundaries of a “covered location” and threatens to immediately impact a “covered location”, but solely to the extent that any associated “loss” is the direct result of a formal governmental mandate related to such “pollution condition” or “indoor environmental condition”.

...

E. **“Business Interruption”** means the necessary partial or complete suspension of the “Insured’s” operations at a “covered location” for a period of time which is directly attributable to:

1. A “Pollution condition” or “indoor environmental condition” to which coverage **A** of this Policy applies; or
2. A “Pollution condition” or “indoor environmental condition” to which the Supplemental Coverage – Contingent Business Interruption Coverage applies.

...

F. **“Business Interruption loss”** means:

1. “Business income”;
2. “Extra expense”; and
3. “Delay expense”.

75. The Policy defines “Pollution Condition” as:

2. The discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous or thermal irritant, contaminant, or pollutant, including soil, silt, sedimentation, smoke, soot, vapors, fumes, acids, alkalis chemicals, electromagnetic fields (EMFs), hazardous substances, hazardous materials, waste materials, “low level radioactive waste”, “mixed waste” and medical, red bag, infectious or pathological wastes, on, in, or upon land and structures thereupon, the atmosphere, surface water, or groundwater.

76. The Policy defines “Indoor Environmental Condition” as:

1. The presence of “fungi” in a building or structure, or the ambient air within such building or structure; or
2. The discharge, dispersal, escape, migration or seepage of *legionella pneumophila* in a building or structure, or the ambient air within such building or structure.

77. Endorsement 28 to the policy, titled “Indoor Environmental Conditions Amendatory (Bacteria, Virus and Biological Agents) Endorsement, amends the definition of “Indoor Environmental Condition” to mean:

3. Solely with respect to coverage for a) “claims” seeking “remediation costs”; and b) “first-party remediation costs”, the discharge, dispersal, release, escape, migration or seepage of bacteria (exclusive of *legionella pneumophil*), viruses or “biological agents” in a building or structure, or the ambient air within such building or structure.

78. The Policy defines “Coverage A” as:

1. “First-party remediation costs”;
2. “Business Interruption loss”;
3. “Catastrophe management costs”; and
4. Associated “legal defense expense”.

79. Endorsement 20, First-Party Property Value Diminution Coverage Endorsement provides additional coverage for Plaintiffs losses separate and apart from any business income or remediation costs.

80. Specifically, Endorsement 20 provides as follows:

I. Section **I., INSURING AGREEMENTS**, of this Policy is hereby amended by addition of the following:

SUPPLEMENTAL COVERAGE – FIRST-PARTY DIMINUTION IN VALUE

“First-party claims” arising out of: 1) a “pollution condition” on, at or migrating from a “covered location”; 2) an “indoor environmental condition” at a “covered location, provided the “insured” first discovers such “pollution condition” or “indoor environmental condition” during the “policy period”. Any such “first-party claim” must be reported to the Insurer, in writing, during the “policy period” or within thirty (30 days after the expiration of the “policy period.”

III. Section V. **DEFINITIONS**, of this Policy is hereby amended by addition of the following:

“**Diminution in value**” means the decrease in the fair market value of a “covered location” arising out of a “pollution condition” on at or under, or an “indoor environmental condition” at, such “covered location”, which results in “first-party remediation costs” to which this Policy more generally applies. Such decrease shall be measured by either:

1. An amount developed in a final adjudication by a tax court of competent jurisdiction; or
2. By generally accepted property appraisal methods, including, but not limited to mortgage-equity analysis or sales comparison methods.

81. The limit of liability for the Diminution of Value to Plaintiffs under the Subject Policy is \$10,000,000.

82. No exclusions contained in the Subject Policy apply to preclude coverage for the presence of Covid-19 at Plaintiffs’ property, or the business interruption losses that have and will continue to result from the pollution condition at Plaintiffs’ property.

83. As a result of the COVID-19 pandemic and the physical presence of SARS-CoV-2, Plaintiff sustained business interruption losses, including losses of rental income.

84. As a result of the COVID-19 and the physical presence of SARS-CoV-2, Plaintiffs properties sustained a diminution in value.

85. As a result of the COVID-19 pandemic and the civil authority orders that flowed therefrom, Plaintiffs experienced a loss in revenue, amongst other losses.

86. As Plaintiffs' losses continued to mount, and hoping to obtain some monetary relief, on or about June 16, 2020, Plaintiffs submitted a Sworn Statement in Partial Proof of Loss in the amount of \$20,000,00.00.

87. On or about July 1, 2020, Defendant sent Plaintiffs correspondence acknowledging receipt of Plaintiffs' Sworn Statement in Proof of Loss, and stating the Defendant would begin the process of reviewing the Proof of Loss.

88. Illinois Union's July 1, 2020 correspondence contained a request for information consisting of a generic questionnaire that reflected a clear lack of attention to the claim submitted by Plaintiffs.

89. Plaintiffs responded to this correspondence and provided all requested information.

90. To date, the designated adjuster for Defendant has not substantively responded to Plaintiffs' claim.

91. As documented by all of the information Plaintiffs have provided to Defendant, Plaintiffs have suffered a loss in an amount in excess of \$20,000,000.00.

EFFECTS OF COVID-19 ON PLAINTIFFS' PROPERTIES

92. Plaintiffs are commercial landlords operating spaces leased to various businesses impacted by COVID-19 and the subsequent civil authority orders mandating the closure of such businesses.

93. Plaintiffs' businesses include, *inter alia*, gyms, department stores and restaurants—businesses which are trafficked by high numbers of customers and which employ numerous personnel on-site in order to service those customers.

94. Owing in part to that high-volume customer traffic and the numerous employees present at each location, SARS-CoV-2 was present at Plaintiffs' property and constituted a

“pollution condition” and/or “indoor environmental condition” triggering coverage under the Subject Policy.

95. As a consequence of the presence of SARS-CoV-2, Plaintiff sustained business income losses including but not limited to loss of rental income.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Breach of Contract)

96. Plaintiffs repeat and reallege paragraphs “1” through “95”, with the same force and effect as if set forth at length herein.

97. The Subject Policy constituted a binding contract between Plaintiffs and Illinois Union.

98. Plaintiffs complied with all of their obligations under the Subject Policy, including through timely notification of a loss and the filing of a Sworn Statement in Partial Proof of Loss.

99. To date, Defendant has failed to compensate Plaintiffs for any of the losses documented in the Sworn Statement in Partial Proof of Loss submitted to Illinois Union Insurance Company on or about June 16, 2020.

100. Defendant’s failure to compensate Plaintiffs for their loss constitutes a breach of the Subject Policy.

101. As a result of Defendant’s breach of the Subject Policy, Plaintiffs have suffered business income damages, including a loss of rental income, of more than \$20,000,000.00 together with such additional and subsequent damages as may be proven at trial.

102. As a result of Defendant’s breach of the Subject Policy, Plaintiffs have suffered a diminution in value of their property of more than \$10,000,000.00, in excess of the limits of liability afforded by the Subject Policy.

WHEREFORE, Plaintiff demands judgment against Illinois Union as follows:

- (a) On the First Cause of Action, a money judgment against Illinois Union Insurance Company in the combined amount of at least \$20,000,000.00, together with such additional and subsequent damages as may be proven at trial; and
- (b) Reasonable fees and costs and such other and further relief as to which this Court deems just and proper.

Dated: New York, New York
December 20, 2021

Yours, etc.,

WEG AND MYERS, P.C.
Attorneys for Plaintiffs

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