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8

9

UNITED STATES DISTRICT COURT

10

CENTRAL DISTRICT OF CALIFORNIA

11

GENERAL STAR INDEMNITY
12 COMPANY; IRONSHORE SPECIALTY
INSURANCE COMPANY; LLOYD'S
13 UNDERWRITER SYNDICATE NO. 1967
WRB SUBSCRIBING TO POLICY NO.
14 (UMR) B0180PG1902606; LLOYD'S
15 UNDERWRITER SYNDICATE NO. 1861
ATL SUBSCRIBING TO POLICY NO.
16 (UMR) B0180PG1902606; AXIS
17 SPECIALTY EUROPE SE, LIRMA
A9505 SUBSCRIBING TO POLICY NO.
18 (UMR) B0180PG1902606; LLOYD'S
19 UNDERWRITERS SYNDICATE AFB
20 2623 SUBSCRIBING TO POLICY NO.
(UMR) B0180PG1902606; AMERICAN
21 INTERNATIONAL GROUP UK
22 LIMITED SUBSCRIBING TO POLICY
NO. (UMR) B0180PG1902606; LLOYD'S
23 UNDERWRITER SYNDICATE NO. 1225
AES SUBSCRIBING TO POLICY NO.
24 (UMR) B0180PG1902611; ENDURANCE
25 WORLDWIDE INSURANCE LTD.,
26 LIRMA E9105 SUBSCRIBING TO
POLICY NO. (UMR) B0180PG1902611;
27 UNDERWRITER SYNDICATE NO. 1886
28 SUBSCRIBING TO POLICY NO. (UMR)

No. 2:21-cv-5287

**COMPLAINT FOR
DECLARATORY JUDGMENT**

1 B01PG1902610; COLONY INSURANCE
2 COMPANY; LLOYD’S UNDERWRITER
3 SYNDICATE NO. 0382 HDU
4 SUBSCRIBING TO POLICY NO. (UMR)
5 B0180PG1903066; LLOYD’S
6 UNDERWRITER SYNDICATE NO. 1945
7 SII SUBSCRIBING TO POLICY NO.
8 (UMR) B0180PG1903066; MAXUM
9 INDEMNITY COMPANY;
10 ENDURANCE AMERICAN SPECIALTY
11 INSURANCE COMPANY;
12 ARGO (NO. 604) LIMITED
13 SUBSCRIBING TO POLICY NO. (UMR)
14 B0180PG1902622;
15 EVANSTON INSURANCE COMPANY;
16 CRUM & FORSTER SPECIALTY
17 INSURANCE COMPANY;
18 ATEGRITY SPECIALTY INSURANCE
19 COMPANY; SCOTTSDALE
20 INSURANCE COMPANY; HOMELAND
21 INSURANCE COMPANY OF NEW
22 YORK; HALLMARK SPECIALTY
23 INSURANCE COMPANY; RSUI
24 INDEMNITY COMPANY; and MITSUI
25 SUMITOMO INSURANCE COMPANY
26 OF AMERICA,

18 Plaintiffs,

19 v.

20 JRK PROPERTY HOLDINGS, INC.,

21 Defendant.
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ADDITIONAL PLAINTIFFS' COUNSEL

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1 1. This is an action for declaratory judgment and other relief brought
2 pursuant to 28 U.S.C. §§ 2201 and 2202 to declare the rights, duties, and
3 responsibilities of the parties related to commercial property insurance policies (the
4 “Policies”) issued by Plaintiff insurers (the “Insurers”) to Defendant JRK Property
5 Holdings, Inc. (“JRK”). Specifically, the Insurers seek a declaration that they are
6 not obligated to provide coverage under the Policies for JRK’s business losses
7 arising out of the COVID-19 pandemic or government efforts to stop or mitigate
8 the spread of the coronavirus.

9 2. The issues presented in this action have been in front of this Court
10 before. JRK previously filed a complaint against the Insurers in the U.S. District
11 Court for the Eastern District of Virginia. JRK is headquartered in Los Angeles and
12 largely based in California, but it filed in federal court in Virginia in order to
13 attempt to take advantage of a favorable Virginia COVID-19 coverage decision.
14 The Eastern District of Virginia recognized the tenuous connection between the
15 case and that district, and it ordered the matter transferred to the U.S. District Court
16 for the Central District of California. The day after this Court issued a scheduling
17 order and twenty minutes after the Insurers filed a reply in support of their motions
18 to dismiss—and without notifying the Insurers—JRK voluntarily dismissed its
19 federal complaint. That same day, JRK filed a complaint alleging the same claims
20 for relief in the Superior Court of California for Los Angeles County.

21 **PLAINTIFFS**

22 3. Plaintiff General Star Indemnity Company is a Delaware corporation
23 with its principal place of business in Connecticut.

24 4. Plaintiff Ironshore Specialty Insurance Company is an Arizona
25 corporation with its principal place of business in Massachusetts.

26 5. Plaintiff Lloyd’s Underwriter Syndicate No. 1967 WRB subscribing
27 to Policy No. (UMR) B0180PG1902606 is organized and registered under the laws
28 of the United Kingdom. Plaintiff Lloyd’s Underwriter Syndicate No. 1861 ATL

1 subscribing to Policy No. (UMR) B0180PG1902606 is organized and registered
2 under the laws of the United Kingdom. Plaintiff Axis Specialty Europe SE, LIRMA
3 A9505 subscribing to Policy No. (UMR) B0180PG1902606 is organized and
4 registered under the laws of the United Kingdom. Plaintiff Lloyd's Underwriter
5 Syndicate AFB 2623 subscribing to Policy No. (UMR) B0180PG1902606 is
6 organized and registered under the laws of the United Kingdom. Plaintiff American
7 International Group UK Limited, subscribing to Policy No. (UMR)
8 B0180PG1902606 is organized and registered under the laws of the United
9 Kingdom. The entities identified in this paragraph have their principal places of
10 business in the United Kingdom.

11 6. Plaintiff Lloyd's Underwriter Syndicate No. 1225 AES subscribing to
12 Policy No. (UMR) B0180PG1902611 is organized and registered under the laws
13 of the United Kingdom, and it has its principal place of business in the United
14 Kingdom.

15 7. Plaintiff Endurance Worldwide Insurance Ltd., LIRMA E9105
16 subscribing to Policy No. (UMR) B0180PG1902611 is organized and registered
17 under the laws of the United Kingdom, and it has its principal place of business in
18 the United Kingdom.

19 8. Plaintiff Lloyd's Underwriter Syndicate No. 1886 subscribing to
20 Policy No. (UMR) B01PG1902610 that is organized and registered under the laws
21 of the United Kingdom, and it has its principal place of business in the United
22 Kingdom.

23 9. Plaintiff Colony Insurance Company is a Virginia corporation with its
24 principal place of business in Virginia.

25 10. Plaintiff Lloyd's Underwriter Syndicate No. 0382 HDU subscribing
26 to Policy No. (UMR) B0180PG1903066 is organized and registered under the laws
27 of the United Kingdom. Plaintiff Lloyd's Underwriter Syndicate No. 1945 SII
28 subscribing to Policy No. (UMR) B0180PG1903066 is organized and registered

1 under the laws of the United Kingdom. The entities identified in this paragraph
2 have their principal places of business in the United Kingdom.

3 11. Plaintiff Maxum Indemnity Company is a Connecticut corporation
4 with its principal place of business in Connecticut.

5 12. Plaintiff Endurance American Specialty Insurance Company is a
6 Delaware corporation with its principal place of business in New York.

7 13. Plaintiff Lloyd's Underwriter Syndicate member ARGO (No. 604)
8 Limited subscribing to Policy No. (UMR) B0180PG1902622 is organized and
9 registered under the laws of the United Kingdom, and it has its principal place of
10 business in the United Kingdom.

11 14. Plaintiff Evanston Insurance Company is an Illinois corporation with
12 its principal place of business in Illinois.

13 15. Plaintiff Crum & Forster Specialty Insurance Company is a Delaware
14 corporation with a statutory home office in Delaware and a main administrative
15 office in Morristown, New Jersey.

16 16. Plaintiff Ategrity Specialty Insurance Company is a Delaware
17 corporation with its principal place of business in Arizona.

18 17. Plaintiff Scottsdale Insurance Company is an Ohio corporation with
19 its principal place of business in Arizona.

20 18. Plaintiff Homeland Insurance Company of New York is a New York
21 corporation with its principal place of business in Minnesota.

22 19. Plaintiff Hallmark Specialty Insurance Company is an Oklahoma
23 corporation with its principal place of business in Texas.

24 20. Plaintiff RSUI Indemnity Company is a New Hampshire corporation
25 with its principal place of business in Georgia.

26 21. Plaintiff Mitsui Sumitomo Insurance Company of America is a New
27 York corporation with its principal place of business in New Jersey.
28

DEFENDANT

1
2 22. Plaintiff JRK Property Holdings, Inc. is a California corporation with
3 its principal place of business in Los Angeles, California.

4 23. JRK owns, manages, leases, and redevelops hotel and apartment
5 properties throughout the United States.

JURISDICTION AND VENUE

6
7 24. This Court has jurisdiction of this action for declaratory relief pursuant
8 to 28 U.S.C. § 2201(a). In addition, this Court has jurisdiction of this action
9 pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship
10 between the Insurers and JRK and the amount in controversy exceeds \$75,000,
11 exclusive of interest and costs.

12 25. This Court has general personal jurisdiction over JRK with respect to
13 all claims because JRK is a California corporation with its principal place of
14 business in California.

15 26. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a) because
16 JRK has its principal place of business in Los Angeles, California, and therefore
17 resides in this judicial district.

CONTROVERSY BETWEEN THE PARTIES

18
19 27. There is an actual, substantial, and continuing controversy between
20 the Insurers and JRK. On January 18, 2021, JRK sued each of the Insurers in the
21 U.S. District Court for the Eastern District of Virginia, Alexandria Division, in the
22 action titled *JRK Property Holdings, Inc. v. Colony Insurance Company, et al.*, No.
23 1:21-cv-00071-RDA-MSN (the “Virginia Action”). In its complaint in the Virginia
24 Action, JRK alleged that Plaintiffs were obligated under the Policies to provide
25 coverage for JRK’s business losses arising out of the COVID-19 pandemic and
26 government orders issued to stop or mitigate the spread of the coronavirus. On
27 February 18, 2021, JRK filed an amended complaint in the Virginia Action.
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1 28. On March 24, 2021, all of the Insurers jointly filed a motion to transfer
2 the Virginia Action to the U.S. District Court for the Central District of California.

3 29. On March 24, 2021, groups of Insurers or individual Insurers also filed
4 motions to dismiss the amended complaint for failure to state a claim under Fed.
5 R. Civ. P. 12(b)(6) or for improper venue under Fed. R. Civ. P. 12(b)(3).

6 30. On May 7, 2021, JRK filed an opposition to the Insurers' motion to
7 transfer the Virginia Action to the Central District of California. On the same day,
8 JRK filed a consolidated opposition to the Insurers' motions to dismiss.

9 31. On May 18, 2021, JRK filed a motion for discovery to commence in
10 the Virginia Action.

11 32. On May 19, 2021, the district court in the Virginia Action entered an
12 order granting the Insurers' motion to transfer and transferring the action to the
13 Central District of California.

14 33. On May 20, 2021, the transferred Virginia Action was opened in the
15 Central District of California as No. 2:21-cv-04186 (the "Central District Action").
16 The case was assigned to U.S. District Judge John A. Kronstadt and referred to
17 U.S. Magistrate Judge Michael R. Wilner. The Insurers' counsel began making
18 appearances in the Central District Action.

19 34. On May 26, 2021, the district court in the Central District Action
20 issued an order setting a Rule 16(b) and 26(f) scheduling conference in the Central
21 District Action and ordering submission of a Rule 26 meeting report by August 20,
22 2021.

23 35. On May 27, 2021, at approximately 10:25 a.m. PDT, the Insurers who
24 provided primary coverage filed their reply in support of the principal motion to
25 dismiss that had been filed in the Eastern District of Virginia before transfer.

26 36. Approximately 20 minutes after those Insurers filed their reply, and
27 without prior notice to the Insurers, JRK filed a notice of voluntary dismissal of the
28 Central District Action without prejudice under Fed. R. Civ. P. 41(a).

1 37. Despite JRK’s prior choice of a federal forum in the Virginia Action
 2 and the pendency of the transferred Central District Action, JRK subsequently filed
 3 on May 27, 2021, a state court action in the Superior Court of California for Los
 4 Angeles County (the “State Court Action”). The action, titled *JRK Property*
 5 *Holdings, Inc. v. Colony Insurance Company, et al.*, No. 21STCV19983, alleges
 6 the same claims for relief alleged in the Virginia Action and Central District Action.

7 **THE INSURERS’ POLICIES**

8 38. The Insurers each participated in JRK’s insurance program and issued
 9 either primary or excess commercial property policies that form a layered tower of
 10 coverage for JRK’s covered properties. In the Policies, each Insurer provides a
 11 specified per-occurrence limit of liability, as part of either a \$5-million primary
 12 layer or an excess layer, with various sublimits, time limits, and waiting periods for
 13 certain coverages, and per-occurrence deductibles.

14 39. The respective Policies were issued to JRK Property Holdings, Inc.,
 15 as the named insured, for the policy term of June 1, 2019 to June 1, 2020.

16 40. Except as otherwise noted, the Policies each contain the same relevant
 17 coverage provisions, although the Policies may have different attachment points or
 18 additional coverage exclusions.

19 41. Except for the Communicable Disease provision of the Policies, all
 20 coverages under the Policies require “direct physical loss or damage to”
 21 Insured Property.” The Policies provide, under “Perils Insured Against,” as
 22 follows: “This Policy insures against all risks of direct physical loss or damage to
 23 Insured Property, except as excluded.” Insurers contend that none of JRK’s
 24 properties has incurred any “direct physical loss or damage to” covered property as
 25 the result of COVID-19 or the Government Orders. Further, the Insurers contend
 26 that JRK’s claimed losses were not the result of any direct physical loss or damage
 27 to any property.
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1 42. The Policies also contain exclusions that apply to JRK’s claims. These
2 include the Pollutants or Contaminants Exclusion contained in all Policies; the
3 Exclusion for Delay, Loss of Market, and Loss of Use contained in all Policies; the
4 Organic Pathogens Exclusion contained in Evanston Insurance Company’s Policy;
5 the Communicable Disease Exclusion contained in Ironshore Specialty Insurance
6 Company’s Policy; and the Pathogen Exclusion contained in RSUI Indemnity
7 Company’s Policy.

8 **JRK’S CLAIMED LOSSES**

9 43. In January 2020, the first cases of COVID-19, a disease caused by the
10 novel coronavirus, were reported in the United States. The federal government
11 subsequently declared that COVID-19 had become a pandemic.

12 44. In response to the pandemic, state and local governments throughout
13 the United States imposed a variety of “stay-at-home” or other restrictive orders or
14 recommendations designed to stop or mitigate the person-to-person spread of
15 COVID-19 and the coronavirus (the “Government Orders”). Some of the
16 Government Orders were issued in jurisdictions where JRK’s properties are
17 located.

18 45. JRK contends that, as the result of the pandemic and resulting
19 Government Orders, JRK has suffered business losses. JRK claims that the losses
20 have resulted from, among other sources, the inability of JRK’s tenants to continue
21 paying rent, the tenants’ requests for decreased rents, the tenants’ termination of
22 their leases, and the tenants’ deferral of rent payments. At the same time, JRK
23 contends that various Government Orders have restricted the remedies available
24 for nonpayment of rent.

25 46. JRK also contends that, as the result of the pandemic and resulting
26 Government Orders, access to JRK’s hotels has been limited or prohibited; that
27 hotels lost many of their travelers; and that hotels that remained open or reopened
28

1 incurred costs for purchasing industrial disinfecting tools, installing hand sanitizer
2 stations, and other remedial measures.

3 47. JRK also contends that, as the result of the pandemic and resulting
4 Government Orders, some JRK residential properties were forced to close their
5 leasing offices temporarily or use remote procedures due to the presence of the
6 virus on the premises and to contain the spread of the virus, and that, as a result,
7 prospective tenants delayed or cancelled plans to move into a new property or were
8 not able to tour or view open apartments.

9 48. JRK also contends that, as of the filing of the amended complaint in
10 the Virginia Action, it had sustained tens of millions of dollars in business
11 interruption losses that it alleged were “all caused by the virus, the resulting
12 disease, the pandemic, governmental responses, the economic recession, inter-state
13 and international travel restrictions, and/or the [Government] Orders.”

14 49. In the Virginia Action, Central District Action, and State Court
15 Action, JRK has asserted claims for anticipatory breach of contract and declaratory
16 judgment based on its belief that the Insurers will deny coverage for its business
17 losses described above.

18
19 **COUNT ONE**
20 **DECLARATORY JUDGMENT AS TO**
21 **BUSINESS INTERRUPTION COVERAGE**

22 50. JRK claims that it is entitled to coverage for its business losses under
23 the Business Interruption coverage provided by the Policies.

24 51. With respect to “Business Interruption,” the Policies provide as
25 follows:

26 This policy covers loss resulting from necessary
27 interruption of business conducted by the Insured and
28 caused by direct physical loss, damage, or destruction by
any of the perils covered herein during the term of this
policy to property insured herein.

1 52. JRK is not entitled to Business Interruption coverage because JRK did
2 not incur direct physical loss or damage to covered property as the result of
3 COVID-19, the presence of the coronavirus or persons infected by it on JRK’s
4 premises, or the Government Orders.

5 53. Insurers are entitled to declaratory relief that JRK is not entitled to
6 Business Interruption coverage for its claimed losses.

7
8 **COUNT TWO**
9 **DECLARATORY JUDGMENT AS TO**
10 **EXTRA EXPENSE COVERAGE**

11 54. JRK claims that it is entitled to coverage for its business losses under
12 the Extra Expense coverage provided by the Policies.

13 55. With respect to “Extra Expense,” the Policies provide as follows:

14 This policy covers Extra Expense necessarily incurred
15 resulting from direct physical loss or damage to property
16 insured herein by any of the perils covered herein during
17 the term of this policy.

18 56. JRK is not entitled to Extra Expense coverage because JRK did not
19 incur direct physical loss or damage to covered property as the result of COVID-
20 19, the presence of the coronavirus or persons infected by it on JRK’s premises, or
21 the Government Orders.

22 57. Insurers are entitled to declaratory relief that JRK is not entitled to
23 Extra Expense coverage for its claimed losses.

24 **COUNT THREE**
25 **DECLARATORY JUDGMENT AS TO**
26 **RENTAL VALUE/RENTAL INCOME COVERAGE**

27 58. JRK claims that it is entitled to coverage for its business losses under
28 the Rental Value/Rental Income coverage provided by the Policies.

59. With respect to “Rental Value/Rental Income,” the Policies provide as follows:

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This policy covers Rental Value loss sustained by the Insured resulting directly from the necessary untenability caused by direct physical loss, damage, or destruction by any of the perils covered herein during the term of this policy to Real and Personal Property as insured herein, but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue during the period of untenability.

60. JRK is not entitled to Rental Value/Rental Income coverage because JRK did not incur direct physical loss or damage to covered property as the result of COVID-19, the presence of the coronavirus or persons infected by it on JRK’s premises, or the Government Orders.

61. Insurers are entitled to declaratory relief that JRK is not entitled to Rental Value/Rental Income coverage for its claimed losses.

**COUNT FOUR
DECLARATORY JUDGMENT AS TO
CONTINGENT TIME ELEMENT COVERAGE**

62. JRK claims that it is entitled to coverage for its business losses under the Contingent Time Element coverage provided by the Policies.

63. With respect to “Contingent Time Element,” the Policies provide as follows:

If direct physical loss or damage to the real or personal property of a direct or indirect supplier or customer of the Insured is damaged by a Covered Cause of Loss under this Policy

64. JRK is not entitled to Contingent Time Element coverage because no direct or indirect supplier or customer of JRK incurred direct physical loss or damage to covered property as the result of COVID-19, the presence of the coronavirus or persons infected by it on JRK’s premises, or the Government Orders.

1 65. Insurers are entitled to declaratory relief that JRK is not entitled to
2 Contingent Time Element coverage for its claimed losses.

3
4 **COUNT FIVE**
5 **DECLARATORY JUDGMENT AS TO**
6 **CIVIL AUTHORITY COVERAGE**

7 66. JRK claims that it is entitled to coverage for its business losses under
8 the Civil Authority coverage provided by the Policies.

9 67. With respect to “Interruption by Civil or Military Authority,” the
10 Policies provide as follows:

11 This policy is extended to cover the loss sustained during
12 the period of time specified in the sublimits, when as a
13 direct result of a peril insured against, access to real or
14 personal property is impaired by order of civil or military
15 authority.

16 68. JRK is not entitled to Civil Authority coverage because “perils insured
17 against” require direct physical loss or damage to covered property, and JRK did
18 not incur direct physical loss or damage to covered property as the result of
19 COVID-19, the presence of the coronavirus or persons infected by it on JRK’s
20 premises, or the Government Orders.

21 69. JRK also is not entitled to Civil Authority coverage because no
22 Government Order impaired access to its covered properties.

23 70. Insurers are entitled to declaratory relief that JRK is not entitled to
24 Civil Authority coverage for its claimed losses.

25 **COUNT SIX**
26 **DECLARATORY JUDGMENT AS TO**
27 **INGRESS/EGRESS COVERAGE**

28 71. JRK claims that it is entitled to coverage for its business losses under
the Ingress/Egress coverage provided by the Policies.

72. With respect to “Ingress/Egress,” the Policies provide as follows:

1 This policy is extended to cover the loss sustained during
2 the period of time specified in the sublimits, when as a
3 direct result of a peril insured against, ingress to or egress
4 from the Insured’s premises is thereby impaired.

4 73. JRK is not entitled to Ingress/Egress coverage because “perils insured
5 against” require direct physical loss or damage to covered property, and JRK did
6 not incur direct physical loss or damage to covered property as the result of
7 COVID-19, the presence of the coronavirus or persons infected by it on JRK’s
8 premises, or the Government Orders.

9 74. JRK also is not entitled to Ingress/Egress coverage because no
10 Government Order impaired access to its covered properties.

11 75. Insurers are entitled to declaratory relief that JRK is not entitled to
12 Ingress/Egress coverage for its claimed losses.

13
14 **COUNT SEVEN**
15 **DECLARATORY JUDGMENT AS TO**
16 **BUILDING ORDINANCE LAW COVERAGE**

16 76. JRK claims that it is entitled to coverage for its business losses under
17 the Building Ordinance Law coverage extension provided by the Policies.

18 77. With respect to “Building Ordinance Law,” the Policies provide as
19 follows:

20 In the event of physical loss or damage covered under this
21 policy that causes the enforcement of any law, ordinance,
22 governmental directive or standard in effect at the time of
23 such loss or damage regulating the construction, repair or
24 use and occupancy of the property, Insurers shall be liable
25 for

25 78. JRK is not entitled to Building Ordinance Law coverage because JRK
26 did not incur physical loss or damage to covered property as the result of COVID-
27 19, the presence of the coronavirus or persons infected by it on JRK’s premises, or
28

1 the Government Orders. Moreover, the Government Orders were not caused by
2 physical loss or damage to covered property.

3 79. Insurers are entitled to declaratory relief that JRK is not entitled to
4 Building Ordinance Law coverage for its claimed losses.

5
6 **COUNT EIGHT**
7 **DECLARATORY JUDGMENT AS TO**
8 **DECONTAMINATION COSTS COVERAGE**

9 80. JRK claims that it is entitled to coverage for its business losses under
10 the Decontamination Costs coverage extension provided by the Policies.

11 81. With respect to “Decontamination Costs,” the Policies provide as
12 follows:

13 If insured property is contaminated as a direct result of
14 physical damage insured by this policy and there is in
15 force at the time of the loss any law or ordinance
16 regulating contamination due to the actual, not suspected,
17 presence of contaminants, then this policy covers, as a
18 direct result of enforcement of such law or ordinance, the
19 increased cost of decontamination and/or removal of such
20 contaminated insured property in a manner to satisfy such
21 law or ordinance.

22 82. JRK is not entitled to Decontamination Costs coverage because JRK
23 did not incur physical damage insured by the Policies as the result of COVID-19,
24 the presence of the coronavirus or persons infected by it on JRK’s premises, or the
25 Government Orders.

26 83. Insurers are entitled to declaratory relief that JRK is not entitled to
27 Decontamination Costs coverage for its claimed losses.
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**COUNT NINE
DECLARATORY JUDGMENT AS TO
PROFESSIONAL FEES COVERAGE**

84. JRK claims that it is entitled to coverage for its business losses under the Professional Fees coverage extension provided by the Policies.

85. With respect to “Professional Fees,” the Policies provide as follows:

This policy is extended to include reasonable and necessary expenses incurred by the insured, or by the insured’s representatives, including the cost of using the Insured’s employees (but excluding salaries of such employees), for preparing and certifying details of a claim resulting from a loss which is payable under this policy

86. Except to the extent that JRK demonstrates that it is entitled to coverage under the Policies’ “Interruption by Communicable Disease” provision, JRK is not entitled to Professional Fees coverage because JRK did not incur a loss that is payable under the Policies.

87. Insurers are entitled to declaratory relief that JRK is not entitled to Professional Fees coverage for its claimed losses.

**COUNT TEN
DECLARATORY JUDGMENT AS TO
TENANT RELOCATION AND MOVE BACK EXPENSE COVERAGE**

88. JRK claims that it is entitled to coverage for its business losses under the “Tenant Relocation and Move Back Expense” coverage extension provided by the Policies.

89. With respect to “Tenant Relocation and Move Back Expense,” the Policies provide as follows:

This policy is extended to cover relocation expenses incurred by the Insured to relocate:

1. Residents; tenants; patients or

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2. Lawful occupants;

To other quarters in the shortest possible time when rented space or living quarter(s) at an insured **Location** are made uninhabitable as a result of direct physical loss or damage insured by this policy.

90. JRK is not entitled to Tenant Relocation and Move Back Expense coverage because JRK did not incur direct physical loss or damage to covered property as the result of COVID-19, the presence of the coronavirus or persons infected by it on JRK’s premises, or the Government Orders.

91. Insurers are entitled to declaratory relief that JRK is not entitled to Tenant Relocation and Move Back Expense coverage for its claimed losses.

**COUNT ELEVEN
DECLARATORY JUDGMENT AS TO
COMMUNICABLE DISEASE COVERAGE**

92. JRK claims that it is entitled to coverage for its business losses under the “Communicable Disease” coverage provided by the Policies.

93. With respect to “Interruption by Communicable Disease,” the Policies provide as follows:

This Policy covers the Actual Loss Sustained and Extra Expense incurred by the Insured during the PERIOD OF LIABILITY if access to a Location owned, leased or rented by the Insured is limited, restricted, or prohibited as a result of: a) An order of an authorized governmental agency regulating the actual not suspected presence of communicable disease; or b) A decision of an Officer of the Insured as a result of the actual not suspected presence of communicable disease.

94. In its complaint in the Virginia Action, JRK alleged that “[t]he limited or prohibited access to JRK properties was a result of the global pandemic and government responses to it, not due to an order by a governmental agency or JRK officer arising from the actual not suspected presence of the virus.”

1 95. JRK is not entitled to coverage for its claimed losses under the
2 Communicable Disease coverage because, among other reasons, it has not shown
3 that access to its covered properties was limited, restricted, or prohibited.

4 96. JRK also is not entitled to coverage for its claimed losses under the
5 Communicable Disease coverage because, among other reasons, it has not shown,
6 and previously disclaimed, that its claimed losses were the result of a “decision of
7 an Officer of the Insured as a result of the actual not suspected presence of
8 communicable disease” on JRK’s covered properties.

9 97. JRK also is not entitled to coverage for its claimed losses under the
10 Communicable Disease coverage because, among other reasons, it has not shown,
11 and previously disclaimed, that a Government Order “regulat[ed] the actual not
12 suspected presence of communicable disease” on JRK’s covered properties.

13 98. JRK also is not entitled to coverage for its claimed losses under the
14 Communicable Disease provisions of the Policies of several excess insurers
15 because the attachment points and participation levels of those excess insurers’
16 Policies are above the program sublimit of \$2.5 million provided by the Policies
17 for Interruption by Communicable Disease coverage. This includes the Policies
18 issued by Colony Insurance Company, Endurance American Specialty Insurance
19 Company, Evanston Insurance Company, Hallmark Specialty Insurance Company,
20 Homeland Insurance Company Of New York, Maxum Indemnity Company, Mitsui
21 Sumitomo Insurance Company of America, and Scottsdale Insurance Company.

22 99. Insurers are entitled to declaratory relief that JRK is not entitled to
23 Communicable Disease coverage for its claimed losses.

24
25 **COUNT TWELVE**
26 **DECLARATORY JUDGMENT AS TO**
27 **POLLUTANTS OR CONTAMINANTS EXCLUSION**

28 100. Under “Perils Excluded,” the Policies provide as follows:

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This policy does not insure:

I. Pollution caused directly or indirectly by the release, discharge, dispersal, seepage, migration, or escape of **Pollutants or Contaminants** unless the release, discharge, dispersal, seepage, migration, or escape is caused by a peril not otherwise excluded herein. However, if a peril not otherwise excluded herein ensues due to the release, discharge, dispersal, seepage, migration, or escape of **Pollutants or Contaminants**, such ensuing loss or damage shall be covered.

101. The Policies define “Pollutants or Contaminants” to include any “virus”:

“**Pollutants or Contaminants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to, bacteria, virus, or hazardous substances as listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency. Waste includes materials to be recycled, reconditioned or reclaimed.

102. The Pollutants or Contaminants Exclusion applies to and bars all coverages, excepting the Communicable Disease coverage, for JRK’s claimed losses.

103. JRK contends that the Pollutants or Contaminants Exclusion does not apply to its claimed losses.

104. Insurers are entitled to declaratory relief that, as the result of the Pollutants or Contaminants Exclusion, and excepting the Communicable Disease

1 coverage, JRK is not entitled to coverage for its claimed losses under any of the
2 Policies' coverages.

3
4 **COUNT THIRTEEN**
5 **DECLARATORY JUDGMENT AS TO**
6 **EXCLUSIONS FOR LOSS OF MARKET AND LOSS OF USE**

7 105. Under "Perils Excluded," the Policies provide as follows:

8 This policy does not insure:

9 ***

10 O. Delay, Loss of Market, Loss of Use

11 106. The Loss of Market and Loss of Use Exclusion applies to and bars all
12 coverages for JRK's claimed losses.

13 107. JRK contends that the Loss of Market and Loss of Use Exclusion does
14 not apply to its claimed losses.

15 108. Insurers are entitled to declaratory relief that, as the result of the Loss
16 of Market and Loss of Use Exclusion, JRK is not entitled to coverage for its claimed
17 losses under any of the Policies' coverages.

18
19 **COUNT FOURTEEN**
20 **DECLARATORY JUDGMENT AS TO**
21 **EXCLUSION FOR ORGANIC PATHOGENS EXCLUSION**

22 109. The Policy issued by Evanston Insurance Company contains an
23 addition exclusion titled "Exclusion – Organic Pathogens." The exclusion states,
24 "This endorsement modifies insurance provided under all Property coverage forms
25 attached to this policy."

26 110. The Organic Pathogens Exclusion provides that Evanston Insurance
27 Company "will not pay for loss or damage caused directly or indirectly" by the
28 "[p]resence, growth, proliferation, spread or any activity of 'organic pathogens'."

1 111. “Organic pathogen” is defined in the Organic Pathogens Exclusion to
2 mean, among other terms, any “organic irritant or contaminant including, but not
3 limited to ... virus or other microorganisms of any type.”

4 112. By its terms, the Organic Pathogens Exclusion “applies regardless of
5 whether there is any:

6 1. Direct physical loss or damage to Covered Property;

7 2. Loss of use, occupancy or functionality or
8 decreased valuation of Covered Property or loss of
9 Business Income.

10 113. The Organic Pathogens Exclusion applies to and bars all coverages for
11 JRK’s claimed losses under Evanston Insurance Company’s Policy, excepting the
12 Communicable Disease coverage.

13 114. JRK contends that the Organic Pathogens Exclusion does not apply to
14 its claimed losses.

15 115. Evanston Insurance Company is entitled to declaratory relief that, as
16 the result of the Organic Pathogens Exclusion and the program sublimit for
17 Communicable Disease coverage, JRK is not entitled to coverage under Evanston
18 Insurance Company’s Policy for its claimed losses.

19
20 **COUNT FIFTEEN**
21 **DECLARATORY JUDGMENT AS TO**
22 **EXCLUSION FOR COMMUNICABLE DISEASE**

23 116. The Policy issued by Ironshore Specialty Insurance Company
24 contains an additional exclusion for communicable disease, which provides in
25 relevant part as follows:

26 Endorsement # 10

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In consideration of the premium charge at inception, it is understood and agreed that the following Terms and Conditions hereby amend this policy.

- Communicable Disease is Excluded.

117. The Communicable Disease Exclusion applies to and bars all coverages for JRK’s claimed losses under Ironshore Specialty Insurance Company’s Policy.

118. JRK contends that the Communicable Disease Exclusion does not apply to its claimed losses.

119. Ironshore Specialty Insurance Company is entitled to declaratory relief that, as the result of the Communicable Disease Exclusion, JRK is not entitled to coverage under Ironshore Specialty Insurance Company’s Policy for its claimed losses.

**COUNT SIXTEEN
DECLARATORY JUDGMENT AS TO
EXCLUSION FOR PATHOGEN**

120. The Policy issued by RSUI Indemnity Company contains an additional exclusion titled “EXCLUSION OF PATHOGENIC OR POISONOUS BIOLOGICAL OR CHEMICAL MATERIALS.”

121. The Pathogen Exclusion provides in relevant part as follows:

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS

The following exclusion is added:

We will not pay for loss or damage caused directly or indirectly by the discharge, dispersal, seepage, migration, release, escape or application of any pathogenic or poisonous biological or chemical materials. Such loss or damage is excluded regardless of any other cause or event

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that contributes concurrently or in any sequence to the loss.

122. The Pathogen Exclusion applies to and bars all coverages for JRK’s claimed losses under RSUI Indemnity Company Policy, excepting the Communicable Disease coverage.

123. JRK contends that the Pathogen Exclusion does not apply to its claimed losses.

124. RSUI Indemnity Company is entitled to declaratory relief that, as the result of the Pathogen Exclusion, JRK is not entitled to coverage under RSUI Indemnity Company’s Policy for its claimed losses.

WHEREFORE, Plaintiffs pray for relief as follows:

- A. Declaratory judgments that JRK is not entitled to coverage for its claimed business losses under the terms of the Insurers’ policies;
- B. Declaratory judgments that the Insurers have not breached or anticipatorily breached their Policies by declining to pay JRK’s claimed losses; and
- C. Such other and further relief that the Court deems just and proper.

DATED this 29th day of June, 2021.

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ATTESTATION

Pursuant to L.R. 5-4.3.4(a)(2)(i), the filer attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.