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GOODMAN MANAGEMENT, LLC
636 Old York Road, Ste 2
Jenkintown, Pennsylvania 19046

Plaintiff

v.

**ZURICH AMERICAN INSURANCE
COMPANY**
1299 Zurich Way
Schaumburg, Illinois 60196

Defendant

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS**

COMMERCE PROGRAM

OCTOBER TERM, 2021

Civil Case No.:

JURY TRIAL DEMANDED

NOTICE TO DEFEND

<p>“NOTICE</p> <p>“You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.</p> <p>“YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.</p> <p><u>THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.</u></p> <p>PHILADELPHIA BAR ASSOCIATION LAWYER REFERRAL and INFORMATION SERVICE One Reading Center Philadelphia, Pennsylvania 19107 (215) 238-1701”</p>	<p>“AVISO</p> <p>“Le han demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las páginas siguientes, tiene veinte (20) días, a partir de recibir esta demanda y la notificación para entablar personalmente o por un abogado una comparecencia escrita y también para entablar con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Sea avisado que si usted no se defiende, el caso puede continuar sin usted y la corte puede incorporar un juicio contra usted sin previo aviso para conseguir el dinero demandado en el pleito o para conseguir cualquier otra demanda o alivio solicitados por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.</p> <p>USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO (O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.</p> <p><u>ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO. SI USTED NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.</u></p> <p>ASOCIACION DE LICENCIADOS DE FILADELFA SERVICO DE REFERENCIA E INFORMACION LEGAL One Reading Center Filadelfia, Pennsylvania 19107 Telefono: (215) 238-1701”</p>
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TO: Zurich American Insurance Company

YOU ARE HEREBY NOTICED TO
PLEAD TO THE ENCLOSED
COMPLAINT WITHIN TWENTY (20)
DAYS FROM SERVICE HEREOF OR A
JUDGMENT MAY BE ENTERED
AGAINST YOU.

/s/ Marni S. Berger

Attorney for Plaintiff

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ATTORNEYS FOR
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COMPLAINT- DECLARATORY JUDGMENT ACTION

Plaintiff, Goodman Management, LLC (“Goodman Management”), by and through the undersigned counsel, brings this declaratory judgment action pursuant to 42 Pa.C.S. § 7531, *et seq.* against Defendant Zurich American Insurance Company (“Zurich”) and alleges as follows based on personal knowledge and information and belief:

INTRODUCTION

1. This declaratory judgment action arises out of a coverage dispute between Goodman Management, LLC and Defendant Zurich American Insurance Company (“Zurich” or “Defendant”) for Goodman Management’s direct physical loss of or damage to the covered properties it manages and operates and the resultant economic losses, including business interruption losses, caused by SARS-CoV-2 virus (“COVID-19”).¹

2. Goodman Management manages and operates approximately 150 commercial retail and real estate properties throughout the United States. These properties are owned by various special purpose entities who are each named as insureds under the below-described policies of commercial property insurance issued by Zurich.

3. Goodman Management brings this claim on behalf of itself and all ownership entities who are also named as insureds under these policies of insurance.

4. Goodman Management’s various insured properties were covered under two “all risk” insurance policies issued and sold to Goodman Management by Defendant Zurich—Policy Number CPO 5834698-07 (the “2019 Policy”), and Edge Policy Number ERP 4240415-00 (the “2020 Policy”). See **Exhibit A**, Zurich Policy Number CPO 5834698-07; **Exhibit B**, Zurich Edge Policy Number ERP4240415-00.

5. The 2019 Policy and 2020 Policy will be collectively referred to as the “Policies.”

6. The Policies both provide Goodman Management with insurance coverage for business interruption losses, including loss of business income and other related losses, caused by “direct physical loss of or damage to” covered property. Due to COVID-19, Plaintiff has suffered

¹The terms for the virus (“SARS-CoV-2,” “Coronavirus,” and the “virus”), and the term for the disease that it causes (“COVID-19”) are used interchangeably herein and should be read in context for reference to the virus, the disease, or both. For simplicity, COVID-19 is used as the predominant term.

“direct physical loss of or damage to” its covered properties under the plain and ordinary meaning of that term. Plaintiff has suffered “direct physical loss of or damage to” its covered properties because COVID-19 has physically damaged, infested, and impaired the covered properties. COVID-19 made the covered properties unusable in the way that they had been used before the onset of the COVID-19 pandemic.

7. COVID-19 has physically infested the covered properties and caused “direct physical loss of or damage to” the covered properties. The threat of continued infestation has also impaired the ability of Goodman Management to fully utilize the covered properties as intended.

8. COVID-19 is and has been actually present at the covered properties.

9. The function of Goodman Management’s various commercial covered properties was decimated by the physical infestation and permeation of the insured properties by COVID-19. The physical infestation of COVID-19 and the physical loss of or damage to the covered properties caused by COVID-19 resulted in the complete shutdown of Goodman Management’s various covered properties for a significant period of time and, upon being able to re-open the covered properties and resume operations, the covered properties were caused to operate at a significantly reduced capacity due to the continued physical infestation of COVID-19 and the ongoing physical loss of or damage to the covered properties caused by COVID-19. This caused Goodman Management to suffer tremendous financial loss.

10. These losses are direct—Goodman Management is not asking the Court to declare that Defendant Zurich reimburse Goodman Management after someone obtained a judgment against Goodman Management for getting them sick, which might be an indirect loss. Rather, Goodman Management is asking the Court to enter declaratory judgment that Defendant Zurich’s interpretation of the Policies is incorrect. Zurich has a duty to pay for Goodman Management’s

loss of business income occasioned directly by the physical loss of or damage to its covered properties due to the actual presence and continued presence and threat of COVID-19 infestation, and further occasioned directly by the inability of the covered properties to engage in their various intended functions due to the actual and continued presence of COVID-19.

11. These losses are physical. Goodman Management has been and is unable to use the covered properties in the manner in which the covered properties had been previously used.² The covered properties have lost at least part of their functionality and most of their ability to generate revenue and income. The actual presence of COVID-19 and probability of illness prevents the covered properties from functioning in their normal way in no less of a way than, on a rainy day, a crumbling and open roof from the aftermath of a tornado would make the interior space of a business unusable.

12. Moreover, COVID-19 is physical—it can be seen, counted, measured, and destroyed; replicates itself and destroys other cells and organisms. Importantly, it can exist in the air and on surfaces for indeterminate periods of time, and it can be transferred from the air and surfaces into human bodies. The presence of the virus in a facility is a *physical* presence, and it is a damaging one. COVID-19 was physically present at the covered properties and rendered their normal and intended function dangerous.

13. The losses suffered by Goodman Management are losses under the Policies. The losses result from the loss of functionality of the covered properties otherwise available for the purpose of generating business income. The losses reflect the diminishment of the physical space

² Note, however, that Plaintiff is *not seeking recovery for its loss of use*. Plaintiff is seeking coverage for its loss of business income. As an example that drives home the difference, some law firms have been unable to use their office space because of COVID-19, but nevertheless the law firms' business income has increased, and they thus have faced no loss of business income. A claim by such a law firm for not being able to use its office space would be a "loss of use" claim. But the law firm would have no loss of *business income* claim. Here, Plaintiff's businesses have stalled because of the impairment of its business spaces, and Plaintiff is seeking a declaratory judgment that the loss of business income is covered under the business interruption coverage of the Policies.

in the covered properties. What once could hold many could only hold a few, if any, paying customers and people after COVID-19 physically infested and ravaged the covered properties.

14. These losses constitute damage. A virus has been physically present and infested in and around Plaintiff's covered properties, impairing the covered properties' function for their ordinary and intended uses, forcing their closures, and requiring steps to be taken to, at least temporarily, physically eradicate the virus and restore the covered properties to a usable and functional state.

15. Insurers around the country are now asking federal and state court judges to interpret the words "direct physical loss of or damage to," property, but those words need no interpretation. Insurers would like for courts to alter the meaning of those terms rather than allow for a jury to apply the facts of the case to these ordinary words and reach a verdict in the same way a jury would reach a verdict if called upon to answer whether a person was injured, or property was damaged.

16. Plaintiff, Goodman Management, was provided insurance coverage under the Policies for the business interruption losses Goodman Management has sustained as a direct result of COVID-19's physical infestation of and presence at the covered properties—Goodman Management now seeks a declaratory judgment that Zurich is obligated to provide coverage for these losses and compensate Plaintiff, Goodman Management, for the losses suffered.

17. Any ambiguity in the terms of the Policies or doubts as to the application of coverage is to be resolved in favor of Goodman Management and coverage granted in accordance with Goodman Management's reasonable expectations.

18. Despite Goodman Management reasonably believing and relying on the plain terms of the Policies to confer coverage in the event that they were forced to cease and/or reduce

operations as a result of the loss of or damage to the covered properties brought about by viruses such as COVID-19, Defendant has not honored its promises to cover the risks resulting from the dangers posed to property and persons at Goodman Management's locations caused by the prevalence and permeation of the properties by the virus which has rendered the premises unduly dangerous, uninhabitable and/or unfit for their intended purposes.

19. Although the Policies provide coverage to Plaintiff for "all risks," including that of business interruption and related losses due to physical loss of or damage to covered properties, Defendants have attempted to engage in a post-hoc reinterpretation and redefinition of the plain language of the Policies and have asserted that coverage and compensation is not owed to Goodman Management. Defendant has relied on its own inapplicable exclusions and its own internal schemes to limit or altogether deny Plaintiff from the recovery which it is rightfully owed under the Policies. Plaintiff has paid premiums in full and relied on the Policies as a shield against unforeseen loss or damage and resulting loss of income. Yet, Defendant Zurich insists that the Policies do not provide coverage and no compensation is owed. Plaintiff, Goodman Management, now seeks declaratory relief and judgment that coverage and compensation is owed under the Policies and that the exclusions on which Defendant Zurich relies are wholly inapplicable.

THE PARTIES, JURISDICTION, AND VENUE

20. Plaintiff, Goodman Management, is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business located at 636 Old York Road, Jenkintown, Pennsylvania 19046.

21. Defendant, Zurich American Insurance Company, is a corporation or other business entity organized and existing under the laws of the State of New York, with a principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196.

22. At all times relevant hereto, Defendant Zurich was acting by and through its employees, servants, and actual, apparent, and ostensible agents, acting within the course and scope of their employment, service, and/or agency with Defendant Zurich.

23. At all times relevant hereto, Defendant Zurich purposely established significant contacts in Pennsylvania, carried out, and continues to carry out, substantial, continuous, and systematic activities and business in the Commonwealth of Pennsylvania, and regularly conducts business in Philadelphia County. Many of the covered properties at issue in this action and which form the basis of Plaintiff's claims against Defendant are located in the Commonwealth of Pennsylvania.

24. This Court has specific personal jurisdiction over Defendant Zurich because it does substantial business in the Commonwealth of Pennsylvania and because the instant dispute arises from Defendant's activities within the Commonwealth of Pennsylvania, specifically as they relate to providing insurance to Goodman Management and its covered properties through the Policies.

25. This Court has subject matter jurisdiction over this matter pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §§ 7531, *et seq.*, which may be invoked to interpret the obligations of the parties under an insurance contract.

26. Venue is proper pursuant to Pa.R.Civ.P. 2179(b) because Defendant Zurich regularly conducts and transacts business in Philadelphia County and derives substantial revenue and pecuniary benefit from its activities in Philadelphia County.

27. This action was brought here in state court because the interpretation of the Policies involves unsettled areas of state law. One key question at issue is whether the presence of COVID-19 not just on surfaces, but also in the airspace of the insured properties which has thereby rendered the premises unsafe, unfunctional, and unfit for occupancy constitutes direct physical loss or

damage. This issue is particularly novel. This Court is best equipped to address this and the broader issues of COVID-19 business interruption insurance coverage, because this is a matter of public importance with far reaching consequences well beyond those of the litigants to this case.

28. In fact, this Court has already recognized that the issue of whether COVID-19 causes “physical loss or damage” is not one that be resolved by preliminary objections because it involves fact issues to be considered by the trier of fact. *Taps & Bourbon on Terrace, LLC v. Underwriters at Lloyds London*, No. 00375, 2020 WL 6380449, at *1, n.1 (Pa. Ct. Com. Pl. Oct. 26, 2020).

FACTUAL BACKGROUND

A. COVID-19 Is a Highly Contagious and Deadly Communicable Disease

29. On January 21, 2020, the United States reported its first case of the novel coronavirus: COVID-19. By this time, the virus had already spread across Asia and Europe. On January 31, 2020, the World Health Organization (“WHO”) declared COVID-19 a “public health emergency of international concern.”

30. The coronavirus and coronavirus-containing respiratory droplets and nuclei are physical substances that are active on physical surfaces and are also emitted into the air. Such substances are not theoretical, intangible, or incorporeal, but rather have a material existence and are physically dangerous. Fomites, droplets, droplet nuclei, and aerosols containing the coronavirus are dangerous physical substances that have a tangible existence.

31. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is a beta coronavirus that is genetically related to several other zoonotic coronaviruses, including SARS-CoV-1, the etiological agent of SARS. SARS-CoV-2 causes coronavirus disease 2019 (COVID-19) in humans. SARS-CoV-2 has glycoprotein “spikes” that are able to bind to human angiotensin

converting enzyme 2 (ACE-2) receptors, which is present on human respiratory epithelial cells. After binding to ACE-2, the virus is able to enter the cells and make copies of itself, which are then released. These released infectious viral particles are then expelled in respiratory secretions as respiratory droplets into a multiphase, turbulent gas cloud during breathing, coughing, sneezing, talking, and singing. There are large and small respiratory droplets within the cloud. Large respiratory droplets can infect other people either directly, through direct contact with respiratory mucosal surfaces, or indirectly, by contaminating surfaces which are then touched by another person who subsequently touches his or her mouth, nose, or eyes. The small droplets remain in the air as an aerosol, which can remain suspended in the air for hours, travel prolonged distances indoors along air currents induced by the heating and ventilation (“HVAC”) system, and travel from room to room, infecting people directly through contact with, and inhalation of, the aerosol. Particles from the aerosol can also contaminate surfaces.

32. According to the World Health Organization (“WHO”), the incubation period for COVID-19—*i.e.*, the time between exposure to the coronavirus and symptom onset—can be up to 14 days. Other studies suggest that the period may be up to 21 days. Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-symptomatic” period, they are most contagious, as their viral loads will likely be very high, and they may not know they have become carriers. In addition, studies from the CDC and others estimate that between 40% to 70% of infected individuals may never become symptomatic (referred to as “asymptomatic” carriers). Pre- and asymptomatic carriers are likely unaware that they are spreading the coronavirus by merely touching objects and surfaces, or by expelling droplets into the air. The National Academy of Sciences has found that most of the transmission is attributable to people who are not showing symptoms, either because they are pre-symptomatic or asymptomatic.

33. The virus cannot be observed by the human eye without enhancement. No one can see the virus in the air, on one's hands, or on a surface. This, of course, makes it difficult to eliminate the virus, or eradicate its transmission, from air or surfaces. The presence of the virus is only observed through the infection rate in a particular area.

34. The presence of the virus in a community, evidenced by infection rates, makes it more probably true than not, that live virus has been transferred in the air and to objects and surfaces. SARS-Co-V-2 spread is logarithmic.

35. Aerosol, droplet, and fomite transmission are the basis for social distancing, handwashing, stay-at-home orders, home-shelter orders, distance learning, reduced capacity and/or occupancy limits, and other measures implemented in various executive orders, including the Closure Orders from Pennsylvania, New Jersey, Delaware, Maryland, Michigan, Indiana, Ohio, West Virginia, Virginia, Tennessee, North Carolina, Alabama, and Florida. The virus is physically present in the community, including in the air and on objects and surfaces. Aerosol and fomite transmission are real, and due to constant recontamination of air and surface areas, it is simply impossible to entirely eradicate the virus from indoor spaces and such surfaces if there continue to be unmasked people in the area.

36. The scientific fact that SARS-CoV-2 alters the structure of property within a commercial space is shown in the preceding paragraphs, and is further proven from recent scientific studies that identify and measure the physical changes to property that occur when the virus encounters property, as follows:

- a. The "coronavirus" terminology stems from the spike protein that is stationed along the attack edge of the virus, where the spike protein is ready for chemical battle. Nature purpose-built the spike protein to chemically

bond the virus to anything physical that the virus encounters, including property in an office or restaurant. The spike protein “represents a viral fusion protein with a club-like shape of approximately 25 nm in length, as confirmed by cryo-EM measurements.”³

- b. Nature equips the spike protein with a positive charge that arms the spike protein to chemically attack any office or restaurant surface with a negative charge, including metal, wood, cotton, and glass. Opposites attract, and a chemical bond is made between virus and property whenever virus encounters property. The chemical bond that the spike protein causes between the virus and property is a structural alteration of property. Amino acids in the spike protein drive absorption onto “solid surfaces through double electrostatic interactions” between the ionized spike protein “and the oppositely charged surfaces.”⁴ In addition, there may also be “hydrogen bonding based on the surface characteristics.”⁵ The hydrogen bonding that the spike protein causes between the virus and property is a structural alteration of property.
- c. The spike protein also increases the roughness of the surface of property when it chemically bonds to the surface of property in an office or restaurant. The increased roughness that the virus inflicts upon property is

³ Adamczyk, *et al.*, SARS-CoV-2 virion physicochemical characteristics pertinent to abiotic substrate attachment Figure 1, *Current Opinion in Colloid & Interface Science* (Vol. 55 Jun 2, 2021), available at <https://tinyurl.com/2m6pf7e9>.

⁴ Joonaki, *et al.*, Surface Chemistry Can Unlock Drivers of Surface Stability of SARS-CoV-2 in a Variety of Environmental Conditions, at 2137, *CHEM* (Sept. 10, 2020), available at <https://tinyurl.com/2vpwdezX>.

⁵ *Id.*

another structural alteration of property caused by the virus. “After spike protein adsorption, all the surfaces become rough with the obvious binding of spike protein.”⁶

- d. The spike protein also makes property more water repellent (*i.e.*, more hydrophobic) when it chemically bonds to the surface of property in an office or restaurant. The increased hydrophobic state of property is another structural alteration of property caused by the virus.

37. The scientific studies also further prove that the spike protein on the attack edge of the virus physically alters the air in a commercial space, which contains particulate matter. In particular, spike proteins bond to minerals, soot, and plastics found in particulate matter.⁷ The spike protein structurally alters the particulate matter in the commercial space when it chemically bonds with the particulate matter in the air of those spaces.

38. The spike protein of the virus caused the virus to structurally alter Plaintiff’s covered properties through chemical bonding, hydrogen bonding, increased roughness, and increased hydrophobic state. The spike protein of the virus also structurally altered the air in Plaintiff’s covered properties through the same chemical bonding, hydrogen bonding, increased roughness, and increased hydrophobic state of the particulate matter in the air of Plaintiff’s covered properties.

39. In the same way that the spike protein of the virus caused the virus to structurally alter the air and property in Plaintiff’s covered properties, it also caused the virus to structurally

⁶ Xie, *et al.*, A Nanochemical Study on Deciphering the Stickiness of SARS-CoV-2 on Inanimate Surfaces, ACS Appl Matter Interfaces (Dec. 30, 2020), available at <https://tinyurl.com/yy7x3x92>.

⁷ Duval, *et al.*, Chemodynamic features of nanoparticles: Application to understanding the dynamic life cycle of SARS-CoV-2 in aerosols and aqueous biointerfacial zones, Adv. Colloid Interface Sci. (Apr. 2021), available at <https://tinyurl.com/v3t9b36e>.

alter the air and property in hospitals, movie theaters, colleges and universities, and other Civil Authority and Attraction Property properties nearby Plaintiff's covered properties, discussed below.

40. **First**, respiratory droplets (*i.e.*, droplets larger than 5-10 μm) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change the property and its surface by becoming a part of that surface. This structural alteration makes physical contact with those previously safe, inert surfaces (*e.g.*, fixtures, handrails, furniture) unsafe.

41. According to the WHO, people can become infected with COVID-19 by touching such objects and surfaces, then touching their eyes, nose, or mouth. This mode of transmission—indirect transmission via objects and surfaces—is known as “fomite transmission.” As the WHO has noted, fomite transmission is “a likely mode of transmission for SARS-CoV-2” because studies have consistently confirmed the existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,” and because it is well known that other coronaviruses can be transmitted via fomite transmission.⁸

42. A study of a COVID-19 outbreak published in the CDC's Emerging Infectious Diseases journal identified indirect transmission via objects such as elevator buttons and restroom taps as an important possible cause of a “rapid spread” of the coronavirus in a shopping mall in Wenzhou, China.⁹

43. Research has indicated that the coronavirus can be detected on certain surfaces even weeks after infected persons are present at a given location.

⁸ See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>

⁹ See https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article.

44. In a study by the U.S. National Institutes of Health, researchers found that the coronavirus was detectable for up to three hours in aerosols, four hours on copper, up to 24 hours on cardboard, and up to three days on stainless steel and plastic surfaces.¹⁰

45. Another study found that the coronavirus remains active and dangerous on plastics for at least three days, while another reported that the coronavirus remained stable and viable for seven days on a range of common surfaces, including stainless steel, plastic, glass, and wood.¹¹ Another study even detected viable coronavirus samples on stainless steel and glass for approximately one month if left at or around room temperature. All these materials are used at Plaintiff's covered properties.

46. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials, they become a part of those surfaces and materials, converting the surfaces and materials to fomites.¹² This represents a physical change in the affected surface or material, which constitutes physical loss and damage.

47. Merely cleaning surfaces may reduce but does not altogether eliminate the risk of transmission amongst people. There may be surfaces with residual infectious virus, and aerosolized infectious particles. In other words, disinfection is temporary at best; however, a space may remain contaminated if an aerosol is present, and immediately become contaminated thereafter if another infected person is present in the area. This contamination will provide a constant modality for infection to people.

¹⁰ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hourssurfaces>.

¹¹ See <https://www.nejm.org/doi/full/10.1056/nejmc2004973>;
<https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf>;
<https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

¹² See <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

48. Despite the vaccine roll out, new variant strains of COVID-19, such as the “Delta Variant” and the “Epsilon Variant” first identified in India, pose an ongoing risk to the safety and welfare of employees, guests, and patrons and the physical integrity of the covered properties.

49. It has been scientifically proven that the new variant strains of COVID-19 enhance the virus’s “membrane fusion activity, infectivity, and viral replication.”¹³

50. **Second**, when individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5 µm) that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This process alters the structural properties of air in buildings from safe and breathable to unsafe and dangerous.

51. Aerosol transmission is believed to be a common mode of transmission in many settings. Aerosols can be generated through simple breathing, as well as heavier breathing while, for example, exercising at a health club. According to research published in The Journal of the American Medical Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet.¹⁴ If a person is infected with SARS-CoV-2, whether symptomatic or asymptomatic, infectious viral particles will be aerosolized into the air through their breathing. Infection clusters suggest that aerosol, droplet, and fomite transmission explain SARS-CoV-2 transmission amongst humans.

52. Airborne viral particles are known to have spread into a building’s HVAC system, leading to transmission of the coronavirus from person to person. One study found the presence of the coronavirus within the HVAC system servicing hospital ward rooms of COVID-19 patients.

¹³ See <https://www.sciencedaily.com/releases/2021/07/210720114413.htm>.

¹⁴ See <https://jamanetwork.com/journals/jama/fullarticle/2763852>.

This study detected SARS-CoV-2 RNA in ceiling vent openings, vent exhaust filters, and central ducts that were located more than 50 meters from the patients' rooms.¹⁵

53. The Environmental Protection Agency (“EPA”) has compiled several studies reflecting “epidemiological evidence suggestive of [coronavirus] transmission through aerosol.”¹⁶ Based on these and other studies, the EPA has recommended that buildings make improvements to their HVAC systems by, for example, increasing ventilation with outdoor air and air filtration.¹⁷

54. The Center for Disease Control and Prevention (“CDC”) has updated the guidance for fully vaccinated people. The guidance includes making improvements on HVAC systems to insure the maximization of ventilation. The CDC also recommends adding portable air cleaners that use high-efficiency particle air filters to enhance air cleaning and ultraviolet germicidal irradiation as a supplemental treatment to inactivate the virus.¹⁸

55. The presence of COVID-19 at a property causes physical loss and damage by necessitating remedial measures to reduce or eliminate the presence of cases of COVID-19 and the coronavirus on-site.

56. The presence of the virus, whether circulating or stagnant, has changed the object, surface, or premises, in that it has become dangerous to handle and/or enter, and cannot be used without remedial measures. Its use can only be restored with remedial action and sufficient time for the contaminated air to be evacuated, as suggested by infectious disease experts.

57. The presence of cases of COVID-19 at a property causes physical loss and damage by rendering a property that is usable and safe for humans into a property that, absent remedial

¹⁵ See <https://www.researchsquare.com/article/rs-34643/v1>

¹⁶ See <https://www.epa.gov/coronavirus/indoor-air-and-covid-19-key-references-andpublications>

¹⁷ See <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>

¹⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/ventilation.html>

measures, is unsatisfactory for use, uninhabitable, unfit for its intended function, and extremely dangerous and potentially deadly for humans.

58. In addition, the presence of COVID-19 on property creates the imminent threat of further damage to that property or to nearby property. Individuals who come into contact, for example, with respiratory droplets at one location in the building by touching a fixture, pressing an elevator button, or gripping a handrail, will carry those droplets on their hands and deposit them elsewhere in the building, causing additional damage and loss.

B. Federal, State, and Local Governments Issued Civil Authority Orders Due to COVID-19

59. Due to the highly-contagious nature of COVID-19, in an effort to slow the spread of COVID-19, and as a consequence of physical loss or damage caused by COVID-19, federal, state, and local governments issued orders limiting the amount of people who could congregate in a group, requiring many businesses to close, and ordering individuals to stay at home except to participate in “essential” activities like going to the grocery store or going to a doctor for a pressing medical issue (“the Closure Orders”).

60. Under the Closure Orders, businesses that were deemed to be “non-essential” were required to be closed, with their employees working from home (if they were able to work at home, depending on the type of business—if not, they could not work).

61. Yet, even businesses that were labeled as “essential” under the Closure Orders have been severely affected—for example, restaurants could stay open under many Closure Orders, but were originally limited to take-out or delivery only.

62. Mass gatherings were and still are restricted under applicable Closure Orders.

63. The first confirmed cases of COVID-19 in Pennsylvania were reported on March 6, 2020.¹⁹

64. On March 19, 2020, Pennsylvania Governor Tom Wolf issued an indefinite Executive Order which prohibited the operation of businesses that are not “life sustaining.” The Order prohibited the operation of any place of business in the Commonwealth of Pennsylvania that is not a life sustaining business regardless of whether the business is open to members of the public. Plaintiff’s Insured Premises were covered by this March 19, 2020 Executive Order.²⁰

65. The March 19, 2020 Stay at Home Order ordered individuals residing in Allegheny, Bucks, Chester, Delaware, Monroe, Montgomery, and Philadelphia counties to stay at home at their places of residence.²¹

66. The March 19, 2020 Executive Order was subsequently amended to include residents of numerous other Pennsylvania counties and was to stay in effect through April 30, 2020.²²

67. On April 1, 2020, the Pennsylvania Secretary of the Department of Health instituted a Stay-at-Home order for all persons residing in the Commonwealth of Pennsylvania.²³

¹⁹ See <https://www.ydr.com/story/news/2020/03/06/coronavirus-in-pa-first-covid-19-case-confirmed-in-pennsylvania-wayne-delaware-county/4966026002/> (last visited December 28, 2020).

²⁰ See <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-TWW-COVID-19-business-closure-order.pdf> (last visited December 28, 2020).

²¹ See <https://www.governor.pa.gov/newsroom/governor-wolf-and-health-secretary-issue-stay-at-home-orders-to-7-counties-to-mitigate-spread-of-covid-19/#:~:text=Rachel%20Levine%20today%20issued%20%E2%80%9CStay,continue%20until%20April%206%2C%202020.> (last visited December 28, 2020).

²² See <https://www.governor.pa.gov/newsroom/gov-wolf-and-sec-of-health-expand-stay-at-home-order-to-carbon-cumberland-dauphin-and-schuylkill-counties-extend-school-closures-indefinitely/#:~:text=Rachel%20Levine%20revised%20their%20%E2%80%9CStay,will%20continue%20until%20April%2030.> (last visited December 28, 2020).

²³ See <https://www.governor.pa.gov/newsroom/gov-wolf-sec-of-health-pennsylvania-on-statewide-stay-at-home-order-beginning-at-8-pm-tonight-most-prudent-option-to-stop-the-spread/#:~:text=The%20statewide%20stay%2Dat%2Dhome,business%20closures%20remain%20in%20effect.&text=Staying%20at%20home%20means%20you%20must%20stay%20at%20home.%E2%80%9D> (last visited December 28, 2020).

68. On April 5, 2020, the Pennsylvania Secretary of the Department of Health issued orders requiring building safety measures and cleaning protocols/guidelines that all businesses which were permitted to remain open had to abide by. These measures were in direct response to the actual presence of COVID-19 and the grave threat to health and safety presented by COVID-19.²⁴

69. On April 25, 2020, Governor Wolf announced reopening metrics which called for a phased reopening by region after a region satisfied certain metrics, such as having fewer than fifty new confirmed cases per 100,000 people in the preceding fourteen days.

70. On May 1, 2020, Governor Wolf announced that twenty-four counties would begin to reopen as of May 8, 2020—Delaware County, where the Insured Premises are located, was not among the counties permitted to reopen.²⁵

71. It was not until June 4, 2020, that Delaware County was included among the counties that could begin to reopen, albeit in a significantly limited capacity and with stringent social distancing requirements.²⁶

72. Pennsylvania was not unique as Closure Orders were issued in all the jurisdictions in which Goodman Management's covered properties operate.

73. As a result of the COVID-19 infestation of covered properties and other properties within one mile of said covered properties, and the resulting Closure Orders, Goodman Management was required to completely close the doors to its covered properties for a significant

²⁴ See <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200405-SOH-Building-Safety-Measures.pdf> (last visited December 28, 2020).

²⁵ See <https://www.governor.pa.gov/newsroom/gov-wolf-announces-reopening-of-24-counties-beginning-may-8/> (last visited December 28, 2020).

²⁶ See <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200604-TWW-amendment-to-yellow-phase-order.pdf> (last visited December 28, 2020); <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200415-SOH-worker-safety-order.pdf> (last visited December 28, 2020).

period of time and even upon reopening to varying degrees, the properties have been severely limited in their function due to the continued and actual presence of COVID-19.

74. As a result of the actual presence of COVID-19 at Plaintiff's covered properties, the physical damage or loss caused by COVID-19, and the resulting pandemic, Closure Orders and Stay at Home Orders, Plaintiff's ability to operate its businesses at the covered properties has been destroyed. Even where Plaintiff has been permitted to resume some, but not all, of its business activities, Plaintiff has not come close to operating at its pre-COVID-19 level.

C. Goodman Managements' Properties Underwent Demonstrable Alterations as a Result of the Emerging and Re-Emerging Presence and Imminent Threat of COVID-19.

75. Upon information and belief, on numerous dates before and after the issuance of the Closure Orders, employees, staff members, guests, tenants, and other visitors of Goodman Management's Properties brought COVID-19 onto the insured properties.

76. To mitigate and repair the physical loss or damage brought about by COVID-19, Goodman Management implemented numerous physical changes to the insured premises.

77. By way of example, Goodman Management installed Sterionizer devices at the Remix Fitness premises in Willow Grove, Pennsylvania and at the building located at 250 Gibraltar Road in Horsham, Pennsylvania.

78. The Sterionizer is an air purification device that is installed in airducts and splits oxygen molecules into positive and negative ions to eliminate pollutants and viruses from the air.

79. Upon information and belief, the insured properties were substantially refurbished to reduce the presence of COVID-19 from surfaces and the air through numerous measures including but not limited to the reduction of furniture, plexiglass barriers, the installation of hands-free measures, disinfectant stations, signage, and more.

80. These measures were implemented, at least in part, because of the continued emergence and reemergence of the virus which is not eliminated by cleaning where the virus is prevalent within a community and the insured premises are open to guests that can bring the virus into the property and allow for it to spread within the ambient air and alter the material condition of the surfaces of the covered properties.

D. Pertinent Policy Language Covers Goodman Management’s Losses Caused by COVID-19, Which Is a Covered Cause of Loss to Which No Exclusion Applies

81. The limits of liability under the 2019 Policy for property damage and time element coverages combined are \$350,000,000 per occurrence with sub-limits of a 30-day period of coverage for property within 1 mile of a covered property but not to exceed \$1,000,000 in Civil Authority coverage and 48 hours for Gross Earnings, not to exceed \$1,000,000 per Location for Protection and Preservation of Property coverage. *See Ex. A.*

82. Similarly, the limits of liability under the 2020 Policy for property damage and time element coverages combined are \$350,000,000 per occurrence with sub-limits of a 30-day period of Civil or Military Authority coverage for property within 1 mile of a covered property but not to exceed \$1,000,000 and 48 hours for Gross Earnings, not to exceed \$1,000,000 per Location for Protection and Preservation of Property coverage. *See Ex. B.*

83. In the 2019 Policy, Section A of the Business Income Coverage Form specifies that Zurich “will pay for the actual loss of **‘business income’** you sustain due to the necessary **‘suspension’** of your **‘operations’**” and that the **“‘suspension’** must be caused by direct physical loss of or damage to property at a **‘premises’**” and “[t]he loss or damage must be directly caused by a **‘covered cause of loss.’**” *See Ex. A* at Business Income Coverage Form, Section A.



Business Income Coverage Form (Excluding Extra Expense)

A. COVERAGE

We will pay for the actual loss of "business income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at a "premises" at which a Limit of Insurance is shown on the Declarations for Business Income. The loss or damage must be directly caused by a "covered cause of loss". We will not pay more than the applicable Limit of Insurance shown on the Declarations for Business Income at that "premises".

84. Similarly, the INSURING AGREEMENT found at Section 1.01 of the 2020 Policy explicitly states that Zurich "Insures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property...." See **Ex. B** at Section 1.01.

SECTION I – POLICY APPLICABILITY

1.01. INSURING AGREEMENT

This Policy Insures against direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property, at an Insured Location described in Section II-2.01, all subject to the terms, conditions and exclusions stated in this Policy.

85. The 2019 Policy, at the Commercial Property Definitions section, defines "Covered Cause of Loss" as "*a fortuitous cause or event, not otherwise excluded, which actually occurs during this policy period.*" See **Ex. A**, at Commercial Property Definitions (emphasis added).

86. At SECTION VII – DEFINITIONS, at subsection 7.11, the 2020 Policy defines "Covered Cause of Loss" as "*[a]ll risks of direct physical loss of or damage from any cause unless excluded.*" See **Ex. B** at Section 7.11 (emphasis added).

87. Similar to the Business Income coverage granted by the 2019 Policy, at SECTION IV – TIME ELEMENT, the 2020 Policy provides that Zurich "will pay for the actual Time Element loss the Insured sustains" and that the Time Element loss "must result from the necessary **Suspension** of the Insured's business activities at an Insured Location." "The **Suspension** must

be due to direct physical loss of or damage to Property...caused by a **Covered Cause of Loss** at the **Location**....” See **Ex. B** at Section IV.

SECTION IV - TIME ELEMENT

4.01. LOSS INSURED

4.01.01. The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary **Suspension** of the Insured's business activities at an Insured Location. The **Suspension** must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than **Finished Stock**) caused by a **Covered Cause of Loss** at the **Location**, or as provided in Off Premises Storage for Property Under Construction Coverages.

88. The 2019 Policy also provides Civil Authority coverage which states that Zurich will “pay for the actual loss of **‘business income’** you sustain for up to the number of days shown on the Declarations for Civil Authority resulting from the necessary **‘suspension’**, or delay in the stat, of your **‘operations’** if the **‘suspension’** or delay is caused by order of civil authority that prohibits access to the **‘premises’** or **‘reported unscheduled premises’**. That order must result from a civil authority’s response to direct physical loss of or damage to property located within one mile from the **‘premises’** or **‘reported unscheduled premises’** which sustains a **‘business income’** loss. The loss or damage must be directly caused by a **‘covered cause of loss.’**” See **Ex. A** at Business Income Coverage Form, Section (B)(1).

89. Likewise, the 2020 Policy provides Civil or Military Authority Coverage and states that Zurich “will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary **Suspension** of the Insured’s business activities at an Insured Location if the **Suspension** is caused by order of civil or military authority that prohibits access to the **Location**. That order must result from a civil authority’s response to direct physical loss of or damage cause by a **Covered Cause of Loss** to property not owned, occupied, leased, or rented by Insured or insured under this Policy and located within the distance of the Insured’s Location as stated in the Declarations.” See **Ex. B** at Section 5.02.03.

90. The 2019 Policy provides coverage for Expense to Reduce Loss and provides that Zurich “will pay the reasonable and necessary expenses you incur...to reduce the amount of loss of **‘business income.’**” *See Ex. A* at Business Income Coverage Form, Section (B)(4).

91. The 2020 Policy provides that Zurich “will pay for the reasonable and necessary extra expenses incurred by the Insured...to resume and continue as nearly as practicable the Insured’s normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a **Covered Cause of Loss**[.]” *See Ex. B* at Section 4.02.03.

92. COVID-19 is a covered cause of loss, and both the 2019 Policy and 2020 Policy provide coverage for Goodman Management’s business interruption and Time Element losses.

93. Coverage under the Policies is triggered due to the actual presence of COVID-19 at Goodman Management’s covered properties and the ongoing threat of immediately impending COVID-19 and resulting loss or damage.

94. Furthermore, the presence of COVID-19 on property within one mile of covered properties triggers coverage under the Policies.

95. COVID-19 has caused (and continues to cause) direct physical loss and physical damage, as described above, to property, including Goodman Management’s covered properties.

96. Additionally, COVID-19 has caused (and continues to cause) Goodman Management to experience covered business interruption and Time Element losses.

97. There are no applicable exclusions in either the 2019 Policy or the 2020 Policy that could preclude coverage or otherwise excuse Zurich from compensating Goodman Management for its losses caused by COVID-19, a covered cause of loss which directly caused physical loss of or damage to Goodman Management’s covered properties.

98. Despite this and the fact that Goodman Management submitted claims to Defendant Zurich under both Policies for coverage and compensation and adhered to all terms of the Policies, by way of denial letters dated May 4, 2020 and September 27, 2021, Zurich has refused to honor its obligations under the Policies and has denied Plaintiff, Goodman Management's claims for coverage and compensation. Therein, Zurich has taken a flawed position that the presence of COVID-19 does not constitute direct physical loss or damage. Zurich has likewise relied on completely inapplicable exclusions and misreads and misapplies the exclusions to deny Goodman Management the coverage and compensation it deserves.

99. The Policies do not include, and are not subject to, any exclusion for losses caused by the spread of viruses or communicable diseases like COVID-19.

100. The lack of a virus or communicable disease exclusion is significant because the insurance industry has recognized that the presence of virus constitutes physical damage to property since at least 2006. When preparing so-called "virus" exclusions to be placed in some policies, but not others, the insurance industry drafting arm, The Insurance Services Office ("ISO"), circulated a statement to state insurance regulators that included the following:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.

101. Indeed, many governmental bodies specifically found that COVID-19 causes property damage when issuing Closure Orders. *See* N.Y.C. Emergency Exec. Order No. 100, at 2

(Mar. 16, 2020)²⁷ (emphasizing the virulence of COVID-19 and that it “physically is causing property loss and damage”); N.Y.C. Emergency Exec. Order No. 103 at 1 (March 25, 2020)²⁸ (“actions taken to prevent the spread of COVID-19 “have led to property loss and damage”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt., Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)²⁹ (emphasizing that the COVID-19 virus can cause “property loss or damage” due to its contagious nature and transmission through “person-to-person contact, especially in group settings”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa Cty. Health Officer (Mar. 18, 2020)³⁰ (issuing restrictions based on evidence of the spread of COVID-19 within the Bay Area and Napa County “and the physical damage to property caused by the virus”); City of Key West Fla. State of Local Emergency Directive 2020-03, at 2 (Mar. 21, 2020)³¹ (COVID-19 is “causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Oakland Park Fla. Local Public Emergency Action Directive, at 2 (Mar. 19, 2020)³² (COVID-19 is “physically causing property damage”); Panama City Fla. Resolution No. 20200318.1 (Mar. 18, 2020)³³ (stating that the resolution is necessary because of COVID-19’s propensity to spread person to person and because the “virus physically is causing property damage”); Exec. Order of the Hillsborough Cty. Fla. Emergency Policy Group, at 2 (Mar. 27, 2020)³⁴ (in addition to COVID-19’s creation of a “dangerous physical condition,” it also creates “property or business income loss and damage in certain circumstances”); Colorado Dep’t of Pub.

²⁷ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf>

²⁸ <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf>

²⁹ https://www.taa.org/wp-content/uploads/2020/03/03-24-20-Stay-Home-Work-Safe-Order_Harris-County.pdf

³⁰ <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order>

³¹ https://www.cityofkeywest-fl.gov/egov/documents/1584822002_20507.pdf

³² <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

³³ <https://www.pcgov.org/AgendaCenter/ViewFile/Item/5711?fileID=16604>

³⁴ <https://www.hillsboroughcounty.org/library/hillsborough/mediacenter/documents/administrator/epg/saferathomeorder.pdf>

Health & Env't, Updated Public Health Order No. 20-24, at 1 (Mar. 26, 2020)³⁵ (emphasizing the danger of “property loss, contamination, and damage” due to COVID-19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, 26 (Mar. 27, 2020)³⁶ (“This order and the previous orders issued during this emergency have all been issued ... also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC, Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)³⁷ (prohibiting entities that provide food services from allowing food to be eaten at the site where it is provided “due to the virus’s propensity to physically impact surfaces and personal property”).

102. The ISO even drafted a form exclusion that could be inserted into insurance carriers’ policies that would unquestionably exclude coverage for losses caused by viruses or communicable diseases.

103. Defendant Zurich was unquestionably aware of the ISO’s 2006 statement and form exclusion.

104. Zurich could have easily included the ISO form exclusion, or even a variation of the ISO form exclusion in the Policies to exclude coverage for losses caused by viruses or communicable diseases, but consciously and deliberately chose not to.

105. Zurich’s conscious and deliberate decision not to include the ISO form virus exclusion or even a variation of it is extremely telling and demonstrates that Zurich never intended to exclude coverage for losses caused by viruses like COVID-19.

³⁵ <https://www.pueblo.us/DocumentCenter/View/26395/Updated-Public-Health-Order---032620>

³⁶ https://sfgov.org/sunshine/sites/default/files/sotf_061020_item3.pdf

³⁷ https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL

106. Zurich's post-hoc attempts to shoehorn the losses suffered by Goodman Management as a direct result of COVID-19 into completely inapplicable and unrelated exclusions to avoid providing Goodman Management the compensation it deserves must fail.

107. Any ambiguity in the terms of the Policies or doubts as to the application of coverage is to be resolved in favor of Goodman Management and coverage granted in accordance with Goodman Management's reasonable expectations.

108. Despite Goodman Management reasonably believing and relying upon the plain terms of the Policies to confer coverage in the event that it was forced to cease and/or reduce operations as a result of the loss of or damage to the covered properties brought about by viruses such as COVID-19, Defendant has not paid Plaintiff for its business interruption losses and Plaintiff now seeks a declaratory judgment that Zurich has a duty to pay.

COUNT I – DECLARATORY JUDGMENT

109. Plaintiff, Goodman Management, hereby incorporates by reference the preceding paragraph numbers 1 through 108 of this Complaint the same as though set forth fully herein.

110. Plaintiff seeks the Court's declaration of the parties' rights and duties under the Policies pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541.

111. Goodman Management contends but Zurich denies that Zurich had a duty to pay for Goodman Management's losses caused by the COVID-19 and the pandemic pursuant to the terms and conditions under multiple coverages of the Policies.

112. Goodman Management maintains that the Policies provide the full policy limits coverage for their losses and that Zurich's analysis to date contravenes the language of the Policies, the governing law and public policy.

113. Goodman Management has complied with all the terms and conditions of the Policies, except to the extent performance has been or is excused or waived by Zurich.

114. A justiciable controversy exists between Plaintiff and Defendant regarding the availability of coverage under the Policies for Plaintiff's claims.

115. The Policies must be interpreted in a reasonable manner to provide the same coverage the parties intended when they entered the Policies, in accordance with Goodman Management's reasonable expectations. Goodman Management has been informed and believes that Zurich disputes these contentions.

116. Accordingly, an actual and justiciable controversy exists between Plaintiff and Defendant is ripe for judicial review.

117. Goodman Management is entitled to a judicial declaration by the Court under 42 Pa.C.S. §§ 7531-7541 declaring that: Zurich's contentions regarding coverage under the Policies is incorrect and Goodman Management's coverage position is correct; Zurich must honor its duties under the Policies, including its obligation to pay for the full amount of the losses incurred as a result of the risks associated with COVID-19 and the pandemic; and, that Goodman Management is excused from performing or complying with any conditions or duties otherwise imposed upon it under the Policies.

118. Declaratory relief by this Court will terminate some or all of the existing controversy between the Parties.

WHEREFORE, Goodman Management prays that judgment be entered in its favor and against Zurich as follows:

- (a) Judgment in favor of Goodman Management and against Zurich;
- (b) Declaratory Judgment as set forth in Count I above;
- (c) An Award of attorney' fees and costs of suit incurred; and
- (d) Such other and further relief as the Court deems proper.

JURY DEMAND

Goodman Management demands a trial by jury consisting of 12 members on all claims, issued and disputed issues of fact so triable.

Date: October 29, 2021

Respectfully submitted,

/s/ Robert J. Mongeluzzi

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