

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ZURICH AMERICAN INSURANCE COMPANY,

Index No.: _____/2021

Date Purchased: _____

Plaintiff,

v.

MASTERWORKS DEVELOPMENT CO., L.L.C.;
CLUB QUARTERS FRANCHISE NETWORK,
L.L.C.; CLUB QUARTERS MEMBERSHIP
NETWORK, L.L.C.; CEDAR & WASHINGTON
ASSOCIATES, LLC; 11 WEST 51 REALTY LLC;
451 LEXINGTON REALTY LLC;
NORTHUMBERLAND HOUSE LIMITED;
KINGSWAY LIF HOLDINGS LIMITED;
MICHIGAN WACKER ASSOCIATES, L.L.C.;
FANNIN & RUSK ASSOCIATES, L.P.;
URBAN LIFESTYLE MANAGEMENT, LLC;
PTH 40 ASSOCIATES, LLC;
MIDTOWN SOUTH OWNER LLC,

SUMMONS

Defendants.

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within 20 days after the service of the summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
April 6, 2021

MOUND COTTON WOLLAN & GREENGRASS LLP

By: /s/ Philip Silverberg
Philip C. Silverberg, Esq.

Jared K. Markowitz, Esq.
One New York Plaza, 44th Fl.
New York, NY 10004
Phone: (212) 804-4200
Fax: (212) 344-8066
Psilverberg@moundcotton.com
Jmarkowitz@moundcotton.com
Attorneys for Plaintiff,
Zurich American Insurance Company

TO: Masterworks Development Co., LLC
4 Bryant Park, Suite 502
New York, NY 10018

Club Quarters Membership Network, L.L.C.
One Atlantic Street, 5th Floor
Stamford, CT, 06901

Club Quarters Franchise Network, L.L.C.
50 Weston Street
Hartford, CT, 06120

Urban Lifestyle Management, LLC
11980 NE 24th Street, Suite 210
Bellevue, WA 98005-1516

PTH 40 Associates, LLC
18 West 40th Street
New York, NY, 10018

Cedar & Washington Associates, LLC
130 Cedar Street
New York, NY 10006

11 West 51 Realty LLC
128 East 45th Street
New York, NY 10036

451 Lexington Realty LLC
128 East 45th Street
New York, NY, 10017

Midtown South Owner LLC
40 West 45th Street
New York, NY, 10036

Fannin & Rusk Associates, L.P.

720 Fannin Street
Houston, TX, 77002

Michigan Wacker Associates, L.L.C.
75 East Upper Wacker Drive
Chicago, IL, 60606

Kingsway LIF Holdings Limited
61 Lincoln's Inn Fields
London WC2A 2JW

Northumberland House Limited
8 Northumberland Avenue
London WC2N 5BY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ZURICH AMERICAN INSURANCE COMPANY,

Plaintiff,

v.

MASTERWORKS DEVELOPMENT CO., L.L.C.;
CLUB QUARTERS FRANCHISE NETWORK,
L.L.C.;
CLUB QUARTERS MEMBERSHIP NETWORK,
L.L.C.;
CEDAR & WASHINGTON ASSOCIATES, LLC;
11 WEST 51 REALTY LLC;
451 LEXINGTON REALTY LLC;
NORTHUMBERLAND HOUSE LIMITED;
KINGSWAY LIF HOLDINGS LIMITED;
MICHIGAN WACKER ASSOCIATES, L.L.C.;
FANNIN & RUSK ASSOCIATES, L.P.;
URBAN LIFESTYLE MANAGEMENT, LLC;
PTH 40 ASSOCIATES, LLC;
MIDTOWN SOUTH OWNER LLC,

Defendants.

Index No.: ____/2021

**COMPLAINT FOR
DECLARATORY
JUDGMENT**

Plaintiff Zurich American Insurance Company (“Zurich”), by its undersigned counsel,
alleges as follows:

INTRODUCTION

1. Zurich seeks a declaration pursuant to CPLR § 3001 with respect to its rights and obligations to Defendant Masterworks Development Co., L.L.C. et al. (“Defendants”) under an insurance policy issued by Zurich to Masterworks Development Co., L.L.C. (“Masterworks”), with respect to claims for coverage asserted by Masterworks for alleged losses arising out of the

spread of the COVID-19 Virus (defined herein), affecting multiple locations of Masterworks in the United States and internationally.

THE PARTIES

2. Plaintiff Zurich is a New York corporation engaged in the insurance business with a statutory home office located at 4 World Trade Center, 150 Greenwich Street, New York, NY 10007, and its principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196. It is authorized to transact business and has transacted business in New York.

3. Defendant Masterworks is a New York limited liability company. William Lovejoy, a citizen of New York, is a member of Masterworks Development.

4. Club Quarters Membership Network, L.L.C. is a Connecticut limited liability company.

5. Club Quarters Franchise Network, L.L.C. is a Delaware limited liability company.

6. Urban Lifestyle Management, LLC is a Delaware limited liability company.

7. PTH 40 Associates, LLC is a Delaware limited liability company and owner of the insured hotel at 18 West 40th Street, New York, NY, 10018.

8. Cedar & Washington Associates, LLC is a New York limited liability company and owner of the insured hotel at 130 Cedar Street, New York, NY 10006.

9. 11 West 51 Realty LLC is a New York limited liability company and owner of the insured hotel at 128 East 45th Street, New York, NY 10036.

10. 451 Lexington Realty LLC is a New York limited liability company and owner of the insured hotel at 128 East 45th Street, New York, NY, 10017.

11. Midtown South Owner LLC is a New York limited liability company and owner of the insured hotel at 40 West 45th Street, New York, NY, 10036.

12. Fannin & Rusk Associates, L.P. is a Texas limited liability partnership and owner of the insured hotel at 720 Fannin Street, Houston, TX, 77002.

13. Michigan Wacker Associates, L.L.C. is a Delaware limited liability company and owner of the insured hotel at 75 East Upper Wacker Drive, Chicago, IL, 60606.

14. Kingsway LIF Holdings Limited is a United Kingdom private limited company and owner of the insured hotel at 61 Lincoln's Inn Fields, London WC2A 2JW.

15. Northumberland House Limited is a United Kingdom private limited company and owner of the insured hotel at 8 Northumberland Avenue, London WC2N 5BY.

JURISDICTION

16. Jurisdiction is proper under CPLR § 301.

17. Venue is proper in New York pursuant to CPLR § 503 because it is the county in which a substantial part of the events or omissions giving rise to the claim occurred.

18. This case properly is filed in the Commercial Division pursuant to Uniform Civil Rule 202.70(b)(10).

NATURE OF THE CASE

19. Zurich issued to Masterworks a Zurich Edge "All Risk" Commercial Policy, No. PPR0284147-02, effective from May 19, 2019 to May 19, 2020 and its renewal, Policy No. PPR0284147-03, effective from May 19, 2020 to May 19 2021 (collectively, the "Policy"), which provided, subject to all terms, conditions, exclusions, and definitions, coverage for "direct physical loss of or damage caused by a **Covered Cause of Loss** to Covered Property." A copy of the Policy is attached hereto as Exhibits A & B.

20. Defendants own, operate, transact, and/or have operations at a number of locations in the United States (specifically including Manhattan, Chicago, and Houston), and London.

21. The policy was issued to Masterworks, a New York limited liability company, by Zurich, a New York corporation, at Masterworks' New York address, which appears on the face of the Policy.

22. As a result of the COVID-19 pandemic, which was caused by SARS-CoV-2, the virus responsible for COVID-19 (the "COVID-19 Virus"), and the resulting stay-at-home or shutdown orders of various government officials and agencies, Defendants temporarily ceased certain operations at various locations.

23. Upon information and belief, Defendants have resumed its business operations.

24. Defendants made a claim to Zurich contending that it suffered losses arising from the spread of the COVID-19 Virus and various stay-at-home or shutdown orders, asserting that its losses give rise to coverage under certain provisions of the Policy.

25. On the basis of the information Defendants provided to date, coverage under the Policy is not, or may not be, afforded for one or more of the following reasons:

- a. There has been no direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property at an Insured Location under the terms, conditions and exclusions stated in the Policy.
- b. Under Section 3.03.02.05 of the Policy, the Policy excludes "Loss or damage resulting from the Insured's suspension of business activities, except to the extent provided by this Policy," and the suspension of business activities asserted by Defendants are not covered or are excluded by the terms, conditions and exclusions of the Policy.
- c. The suspension(s) of business activities asserted by Defendants are not covered or are excluded by the Policy for the following reasons:

- (i) Under “Exclusions” (Section 3.03) of the Policy, Sections 3.03.01.01 and 3.03.01.03 provide in part:

This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.

Contamination, and any cost due to **Contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.

* * *

Loss or damage arising from the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, improvement, modification, demolition, occupancy, operation or other use, or removal including debris removal of any property.

The term “**Contamination(Contaminated)**” is defined in Section 7.09 as “Any condition of property due to the actual presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, **Fungus**, mold or mildew.”

- (ii) Under “Exclusions,” Section 3.03.02 provides in part:

This Policy excludes:

Loss or damage arising from delay, loss of market, or loss of use.

Each of these exclusions apply here. In particular, and without limitation, even if a temporary “loss of use” of real property during closures constituted “direct physical loss of or damage to”

property, the “loss of use” exclusion would bar recovery for any income losses arising exclusively from any such “loss of use.”

- (iii) Under “Definitions,” Section 7.11, “**Covered Cause of Loss**” is defined as “All risks of direct physical loss of or damage from any cause unless excluded.” Accordingly, “**Covered Cause of Loss**” does not include Contamination, defined as any condition of property due to the actual presence of any virus, or any cost due to such condition of property including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.
- (iv) The presence of the COVID-19 Virus on or in property does not constitute direct physical loss of or damage to property. To the extent Defendants contend that any direct physical loss of or damage to property was due to the actual presence of the COVID-19 Virus, such loss or damage is not covered and/or is excluded.
- (v) Under the Policy, pursuant to Section IV – Time Element, Section 4.01.01 and Section V - Contingent Time Element, Section 5.02.05, any loss did not result from the necessary Suspension of the Insured’s business activities at an Insured Location or Direct/Indirect Dependent Time Element Location and/or the Suspension was not due to direct physical loss of or damage to Property (of the type insurable under the Policy) caused by a Covered Cause of Loss at the Location or Direct/Indirect Dependent Time Element Location.
- (vi) Under the Policy, pursuant to Section 4.02.03, “Extra Expense,” coverage is afforded only 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** to Property.” Any loss did not result in the necessary Suspension of the Insured’s business activities and/or the Suspension was not due to direct physical loss of or damage to Property (of the type insurable under the Policy) caused by a Covered Cause of Loss. To the extent that Defendants contend that loss was suffered due to the actual presence of the COVID-19 Virus, such direct physical loss of or damage to property is excluded under the Policy by the Contamination exclusion, Section 3.03.01, and the definition of “**Contamination**,” which encompasses any condition of property due to the actual presence of “virus.”

- (vii) Under the Policy, pursuant to Section 5.02.03, “Civil or Military Authority,” coverage is afforded only 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 caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy and located within [5 miles] of the Insured’s Location.” Any order of civil authority at issue here did not prohibit access to any Insured Location and was not made in response to direct physical loss of or damage caused by a Covered Cause of Loss, whether to property within five miles of the Insured’s Location or elsewhere, but was made in response to a public health crisis and to slow or stop the spread of disease. To the extent that Defendants contend that loss was suffered due to the actual presence of the COVID-19 Virus, such direct physical loss of or damage to property is excluded under the Policy by the Contamination exclusion, Section 3.03.01, and the definition of “**Contamination**,” which encompasses any condition of property due to the actual presence of “virus.”
- (viii) Under the Policy, pursuant to Section 5.02.15, “Ingress/Egress,” coverage is afforded only 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 ingress or egress to that Insured Location by the Insured’s suppliers, customers or employees is prevented by physical obstruction due to direct physical loss of or damage caused by a **Covered Cause of Loss** to property not owned, occupied, leased or rented by the Insured or insured under this Policy . . . The Company will pay for actual Time Element loss sustained . . . during the time ingress or egress remains prevented by physical obstruction.” Any loss did not result in the necessary Suspension of the Insured’s business activities and/or the Suspension was not due to direct physical loss of or damage to Property (of the type insurable under the Policy) caused by a Covered Cause of Loss. To the extent that Defendants contend that loss was suffered due to the actual presence of the COVID-19 Virus, such direct physical loss of or damage to property is excluded under the Policy by the Contamination exclusion, Section 3.03.01, and the definition of “**Contamination**,” which encompasses any condition of property due to the actual presence of “virus.”

- (ix) Under the Policy, any loss insured under any Time Element Coverages applicable during a Period of Liability was not sustained during a Period of Liability because under Section 4.03 the Period of Liability starts from the time of physical loss or damage of the type insured against under the Policy, and here there has been no physical loss or damage of the type insured against.
- (x) Under the Policy, pursuant Section 6.19.01.01, in the “event of loss or damage to Covered Property,” Zurich has the option to pay the “value of lost or damaged property” or “cost of repairing or replacing” it, or to “[t]ake all or any part of the property at any agreed valuation,” or to “[r]epair, rebuild or replace the property.” Here, there was no “direct physical loss of or damage to” property as those words are used in the Policy inasmuch as there was no property susceptible to being repaired, replaced, or that otherwise sustained any particular loss in value in excess of the deductible.
- (xi) Under the Policy, Section 7.11 defines “**Covered Cause of Loss**” as follows: “All risks of direct physical loss of or damage from any cause unless excluded.” Under this wording and at law, the Policy covers only fortuitous “risks” of direct physical loss of or damage to property. Here, by the date the renewal Policy incepted, there was no longer a fortuity – and, instead, there was a certainty – of losses from virus-related closures.
- (xii) Under the Policy, the “APPLICATION OF POLICY PERIOD” provision (Section 1.02) states that, “[i]n the event of a claim the Policy Period is measured by local time at the location where the direct physical loss or damage occurs.” Here, even if Defendants’ income losses had been caused by direct physical loss or damage to property, coverage would not apply insofar as Defendants already knew about the risk of losses from closures and/or the COVID-19 Virus and, indeed, such losses already were in progress prior to the renewal Policy’s May 19, 2020 inception. In other words, even if these closures had been caused by direct physical loss or damage to property, that property damage also would have had to have pre-dated the Policy, and the renewal Policy’s “APPLICATION OF POLICY PERIOD” provision would preclude recovery.

26. On or about March 8, 2021, Defendants filed a lawsuit in the Texas District Court of Harris County, alleging breach of contract against Zurich and seeking a declaratory judgment that coverage is available (the “Texas Action”).

27. Zurich denies that personal jurisdiction exists over it in the Texas Action with respect to the claims asserted by Masterworks because there is no general personal jurisdiction over Zurich in Texas and, as respects Texas's claims, Zurich did not direct its activities toward Texas or otherwise engage in conduct with respect to Masterworks in Texas, such that there is no specific personal jurisdiction as to those claims in Texas. In addition, Texas is not a proper or convenient forum with respect to Masterworks' claims against Zurich. Accordingly, Zurich will move to dismiss Masterworks' claims in the Texas Action for lack of personal jurisdiction and, based on diversity of citizenship, Zurich is removing the Texas Action to a United States District Court. Zurich will move that court to dismiss the Texas Action in favor of this action because this action will address all aspects of the claims, because this Court has jurisdiction with respect to all claims and because New York law governs this dispute in any event and this dispute should be resolved in the first instance by a court that is more familiar with New York law.

COUNT I: DECLARATORY JUDGMENT

28. Zurich incorporates the allegations of paragraph 1 through 28 as if set forth fully herein.

29. An actual case or controversy exists between Zurich and Defendants regarding whether the Policy affords coverage for the claimed losses arising out of the spread of the COVID-19 Virus.

30. Zurich is entitled to a declaration of the parties' rights and obligations under the Policy with respect to Defendants' claim for coverage, and specifically a declaration that the Policy does not provide coverage for Defendants' claimed losses arising out of the spread of the COVID-19 Virus.

WHEREFORE, Zurich respectfully requests:

1. a judgment in its favor declaring the parties' rights and obligations with respect to Defendants' claim for coverage on the basis of the facts, the language of the Policy, and applicable law;
2. a declaration that the Policy does not provide coverage for Defendants' claimed losses arising out of the spread of the COVID-19 Virus;
3. an award of fees and costs incurred by Zurich to the extent warranted by this action; and
4. all such other and further relief as the Court deems proper.

Dated: New York, NY
April 06, 2021

MOUND COTTON WOLLAN & GREENGRASS LLP

By: /s/ Philip Silverberg
Philip C. Silverberg, Esq.
Jared K. Markowitz, Esq.
One New York Plaza, 44th Fl.
New York, NY 10004
Phone: (212) 804-4200
Fax: (212) 344-8066

*Attorneys for Plaintiff,
Zurich American Insurance Company*