

RETURN DATE: APRIL 6, 2021)	
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NEW CASTLE HOTELS, LLC)	SUPERIOR COURT
)	
Plaintiff)	J.D. OF DANBURY
)	
v.)	AT DANBURY
)	
ZURICH AMERICAN INSURANCE)	
COMPANY,)	
)	
Defendant)	MARCH 10, 2021

COMPLAINT

Plaintiff, New Castle Hotels, LLC (“Plaintiff”), brings this action against Defendant, Zurich American Insurance Company (“Defendant”), and in support thereof state and allege the following:

INTRODUCTION

This case presents issues concerning whether the Commercial Property Insurance Policy (“the Policy”) provided to Plaintiff by Defendant provides coverage for damages sustained and/or expenses incurred by Plaintiff as a result of the unprecedented emergency Orders by state and local officials of various states across the country restricting Plaintiff’s on-premises business activities to mitigate the COVID-19 pandemic. The emergency Orders were intended to protect people and property from imminent, serious and irreparable injury, by suspending on-premises business activities and restricting access to such premises. In the alternative, or in addition to the effects of the emergency Orders, this case involves the fact that the Policy also provides coverage for damages sustained and/or expenses incurred by Plaintiff where the COVID-19 virus was present on-site, causing damage to Plaintiff’s property and on-premises business activities and as a result of the loss of use of the properties. Other theories of coverage are available to Plaintiff under the terms of the Policy and are pled in the alternative or cumulatively.

PARTIES

1. The Plaintiff is a Connecticut Limited Liability Company, located at 641 Danbury Road, Ridgefield, Connecticut, operating hotel and lodging accommodations in various states across the United States of America, including the following specific properties covered by the Policy:

- a. Bangor Sheraton Four Points – 308 Godfrey Blvd., Bangor, Maine 04401
- b. Charleston Cambria – 84 Ripley Point Dr., Charleston, South Carolina 29407
- c. New Orleans Fairfield Inn Downtown – 346 Baronne Street, New Orleans, Louisiana 70112
- d. Saratoga Holiday Inn – 32 Broadway, Saratoga, New York 12866
- e. Shelton Hampton Inn – 695 Bridgeport Avenue, Shelton, Connecticut 06484
- f. Westin Jekyll Island – 110 Ocean Way, Jekyll Island, Georgia 31527

2. The Plaintiff also operates hotel and lodging accommodations in various states across Canada (“the Canadian Properties”), including the following specific properties covered by the Policy:

- a. Dartmouth Courtyard/Residence Inn – 35 Shubie Dr., Dartmouth, NS B3B 0N4, Canada.
- b. Dartmouth Hampton Inn – 65 Cromarty Dr., NS B3B 0G2, Canada.
- c. Halifax Nova Scotia Westin - 1181 Hollis St., NS B3H 2P6, Canada.
- d. Moncton Residence Inn – 600 Main Street, Moncton, NB E1C 0M6, Canada.

e. The Algonquin Hotel & Resort – 184 Adolphus St., St. Andrews, NB E5B 1T7, Canada.

3. The Defendant is an insurance carrier organized under the laws of the state of New York, with its principal place of business at 1299 Zurich Way, Schaumburg, Illinois 60196. Defendant is authorized to offer insurance in the state of Connecticut and regularly does business in the state of Connecticut.

FACTS

I. The Policy

4. The Plaintiff purchased commercial business-owners insurance policy # PPR3169531-00 (the Policy) from the insurer prior to April 30, 2019. Attached hereto as Exhibit A. The policy period for the Policy is from April 30, 2019 through April 30, 2020. The Policy insured the Plaintiff's hotels and lodging accommodations listed in paragraphs one and two of this complaint. The Policy is incorporated herein and made a part of this Complaint.

5. The Policy is an all-risk commercial property insurance policy that provides coverage for physical loss of or damage to the insured property and other losses from all risks unless expressly limited or excluded by language in the body of the Policy or through a separate exclusion endorsement.

6. The Policy includes cause of loss coverages for Gross Earnings losses and extra expenses from all risks including but not limited civil authority actions affecting the functionality of one's property.

7. The Policy provides blanket coverage limits of \$150,000,000 for Time Element losses and a sublimit of \$10,000,000 for extra expenses for all of Plaintiff's insured properties listed in paragraph one and two of the Complaint (hereinafter "Covered Properties"). For the

Canadian Properties referenced in paragraph two of this Complaint, the Policy provides these coverages for any Difference in Limit and Difference in Condition from any coverage provided by a local commercial property insurance policy, commercial business-owners insurance policy # 8850759, sold by Zurich Insurance Company, Ltd.

8. There is no exclusion in the Policy for Gross Earnings loss and expenses caused by either emergency orders limiting one's business or the pandemic causing property damage and restricting the Plaintiff's business activities at its properties, or both.

9. Defendant has numerous duties under the Policy, including (but not limited to) answering insured questions regarding coverage, receiving loss notices, honestly investigating and assessing claims without a predetermined result, and issuing declination of coverage letters when appropriate, and promptly paying the claim when appropriate.

10. All conditions precedent to this action have been performed or have been waived.

11. The losses and expenses incurred by the Plaintiff's business operations are covered under various Policy provisions.

12. The Policy must be read as a whole in light of its purpose and the reasonable expectation of the parties. The Policy is an all-risk commercial property insurance policy that provides coverage for physical loss of or damage to the insured property unless expressly limited or excluded by language in the body of the Policy or through a separate exclusion endorsement.

13. The Policy contains the following relevant coverages for which the Plaintiff has made claim and for which the Defendant is liable:

A. Time Element Coverage

14. The Plaintiff's business interruption coverage provides for loss of business income under the Policy's Time Element coverage.

15. The Policy provides:

[Defendant] will pay for the actual Time Element loss the [Plaintiff] 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**,

See, Ex. "A" at 027.

16. Under the Time Element Coverages, the Policy covers Gross Earnings loss, which it defines as "the actual loss sustained by [Plaintiff] during the Period of Liability," resulting from the necessary **Suspension** of business activities at an Insured Location 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 Insured Location. See, Ex. "A" at 027.

17. Under the Policy, an Extended Period of Liability for Gross Earnings Loss continues until "(1) the date the [Plaintiff] could restore its business with due diligence, to the condition that would have existed had no direct physical loss or damage occurred to the Insured's Covered Property;" or "[365 days]." See, Ex. "A" at 017, 027.

18. The Plaintiff has experienced and continues to experience Gross Earnings loss due to the necessary **suspension** of its business activities due to the direct physical loss of or damage to Property of the type insurable under the Policy.

19. The Policy also includes coverage for 'Extra Expense' which is "reasonable and necessary" and "incurred by [Plaintiff] during the Period of Liability, to resume and continue as nearly as practicable the [Plaintiff'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. "A" at 028.

B. Civil Authority Coverage

20. The Policy also includes coverage for Civil Authority coverage which means:

The [Defendant] will pay for the actual Time Element loss sustained by the [Plaintiff], as provided by this Policy, resulting from the necessary **Suspension** of the [Plaintiff'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 rented by the Insured or insured under this Policy and located within the [one mile] of the [Plaintiff's] Location.

See, Ex. "A" at 033-034.

21. As described above, Orders from a civil authority effectively caused the Plaintiff's Covered Properties to be physically uninhabitable and/or substantially unusable. In turn, the prohibited access to and use of the Plaintiff's insured properties caused the Plaintiff to incur covered business income losses and incur necessary extra expenses.

C. Contingent Time Element Coverage

22. The Policy also provides Contingent Time Element Coverage that specifically provides coverage for:

Time Element loss as provided by the Policy, sustained by the [Plaintiff] during the Period of Liability directly resulting from the necessary **Suspension** of the [Plaintiff's] business activities at an Insured Location if the **Suspension** results from direct physical loss of or damage caused by a **Covered Cause of Loss** to Property (of the type insurable under this Policy other than **Finished Stock**) at **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties** located within [1 Mile].

See, Ex. "A" at 017, 037.

23. Upon information and belief, the actual presence of SARS-CoV-2, the threat of the presence of SARS-CoV-2, and the threat of the pandemic continue to exist at those **Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and/or Attraction Properties**, including but not limited to:

- a. The Saratoga Race Course, in Saratoga, New York, which was forced to cancel significant portions of its scheduled races in 2020 and 2021 due to the ongoing COVID-19 pandemic,
- b. The Mercedes-Benz Super Dome, in New Orleans, Louisiana, which was forced to cancel multiple events during 2020 and 2021 and was not able to allow in-person attendance to regularly scheduled home games by the New Orleans Saints during the 2020-2021 NFL Season due to the ongoing COVID-19 pandemic,
- c. The Bangor International Airport in Bangor, Maine, which suffered extensive reductions in flights and other restrictions to its premises due to the danger posed by the presence of the COVID-19 virus and orders aimed at avoiding such dangers,
- d. The Medical University of South Carolina, which while treating patients for COVID-19, had the actual presence of the COVID-19 virus on its premises and as a result was required to take actions to curtail normally scheduled elective surgeries,
- e. All beaches on Jekyll Island, Georgia, including those directly adjacent to Plaintiff's Jekyll Island location were closed effective March 21, 2020 due to the ongoing COVID-19 pandemic.

D. Ingress and Egress Coverage

24. The Policy also provides Ingress and Egress Coverage that specifically provides coverage for:

The actual Time Element loss sustained by the [Plaintiff], 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 [Plaintiff'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 and located within [one mile] of the Insured Location as stated in the Declarations.

See, Ex. "A" at 038.

25. As described above, COVID-19, and the threat of COVID-19 have been ubiquitous in the areas in which the Plaintiff owns and maintains its properties. The Orders referenced hereto were made in response to actual presence of the SARS-CoV-2, the constant threat of the presence of SARS-CoV-2 together with the threat of the COVID-19 pandemic at other locations, including those within a one-mile radius of the Plaintiff's Covered Properties. These Orders effectively caused the Plaintiff's Covered Properties to be physically uninhabitable and/or substantially unusable. In turn, the prohibited physical access to and use of the Plaintiff's insured properties caused the Plaintiff to incur covered business income losses and incur necessary extra expenses.

E. Preservation of Property Coverage

26. Finally, the Policy provides coverage for "The reasonable and necessary costs incurred for actions to temporarily protect or preserve Covered Property; provided such actions are necessary due to actual or imminent physical loss or damage due to a **Covered Cause of Loss** to such Covered Property..." See, Ex. "A" at 041.

II. The COVID-19 Pandemic

27. The world is in the midst of a pandemic. SARS-CoV-2, the name given to the virus belonging to the *orthocoronavirinae* subfamily, is the coronavirus responsible for the COVID-19 pandemic, and associated collections of diseases, which, based on today's knowledge and science, is transmitted through respiratory droplets, fomites or aerosols which remain suspended in the air for prolonged periods of time.

28. The SARS-CoV-2 was and is ubiquitous in all parts of the United States, and more specifically in the states where the Plaintiff's properties are located.

29. Upon information and belief, at all relevant times, SARS-CoV-2 was present and/or a threat all of the Plaintiff's Covered Properties.

30. From the first reported case in the United States in January 2020 to the present, the impact of the COVID-19 virus has been devastating. More than 28,500,000 Americans have had a confirmed case of COVID-19, and more than 511,000 people have died from its resulting effects.

31. The global COVID-19 pandemic is exacerbated by the fact that SARS-CoV-2 is a physical substance that is active on surfaces of objects or materials in a building for extended periods. SARS-CoV-2 is airborne, directly emitted and permeates the insured property and premises. The virus is spread, in part, because of its aerosol transport in and throughout buildings and their airways.

32. SARS-CoV-2 is a cause of real physical loss of or damage to property. According to a study published in THE NEW ENGLAND JOURNAL OF MEDICINE, the virus adheres to its environment, remaining stable and transmissible in aerosols for at least three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. These are common objects found in the Plaintiff's insured premises. Other studies suggest a longer lifespan.¹

33. According to a study conducted by Tulane National Primate Research Center, the SARS-CoV-2 was able to survive in air for at least 16 hours. Other studies suggest a longer survival rate for aerosols.

34. Business establishments like the Plaintiff's Covered Properties (hotels, lodges, and

¹ Scientific findings are dynamic and may continue to evolve prior to trial.

associated restaurants) are highly susceptible to being or becoming affected by the presence of the SARS-CoV-2, as both respiratory droplets and fomites are likely to be retained on the Covered Property or in its air, remaining viable for an extended period of time.

35. The Plaintiff's businesses are also highly susceptible to being affected by the rapid transmission of the virus because of the nature of the property and its use as a highly social venue placing patrons and staff in close proximity to the property, to one another, and to the existing load of SARS-CoV-2 on surfaces or in the air.

36. The material dimensions of a property can be altered and damaged through microscopic changes caused by SARS-CoV-2. Such damage may produce deadly results to human beings. If a person infected with SARS-CoV-2 enters a building, then (until disinfected and decontaminated) the building is (1) physically altered by the direct physical presence of the virus on surfaces or in the air, and (2) thus physically damaged, and (3) may potentially be transformed into a superspreading viral incubator.

37. One of the best ways to decontaminate a building or mitigate its level of contamination is to keep those with COVID-19 out by depopulating it by or lowering the overall number of people allowed in at one time.

38. Many CO SARS-CoV-2 viral carriers (people) can infect others even though these carriers are asymptomatic. These carriers can transmit the virus directly or indirectly. Since the virus travels in aerosols or remains active on surfaces after being emitted by the carriers when they speak, shout, or sing, viral aerosols often end up on surfaces, in the air, and air circulation equipment of buildings.

39. The ongoing presence of large numbers of customers and employees, some of whom are virus carriers, in relatively confined indoor spaces, ultimately affects the building. At

all relevant times, this caused direct physical loss of or damage to the Plaintiff's Covered Properties.

III. State and Local Emergency Orders

40. When it became apparent that publicity alone concerning the COVID-19 pandemic would not naturally facilitate voluntary actions that would mitigate the pandemic, state and local authorities intervened through a series of emergency Orders.

41. Throughout the various states where the Plaintiff's operates, state and local governments responded as follows:

Connecticut

42. On March 20, 2020, Governor Lamont entered an order directing all residents in Connecticut to stay at home, imposing social distancing rules, limited occupancy of buildings, and reiterated that any entity that does not employ individuals to perform essential worker functions as set forth in guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) shall adhere to limitations on social gatherings and social distancing set forth in the Order. The purpose of the order was to mitigate and slow the spread of COVID-19 in the state.

43. Thereafter, Governor Lamont, has continued to enter a series of Executive Orders.

44. On March 26, 2020, the Governor of the State of Connecticut issued a civil authority order limiting social gatherings of more than 5 people. The purpose of the order was to mitigate and slow the spread of COVID-19 in the state. On September 1, 2020, the Governor of the State of Connecticut extended Connecticut's State of Emergency in response to the COVID-19 pandemic until February 9, 2021.

45. The Connecticut Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout Connecticut. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

46. As a response to COVID-19 and the Pandemic, the Governor of Connecticut has issued these orders pursuant to the authority vested in him by the Connecticut Constitution and the laws of Connecticut.

47. Similarly, the Connecticut Department of Public Health, pursuant to its authority under Connecticut law, has issued directives and guidance related to COVID-19 commencing on March 16, 2020 and continuing to the present time.

48. The State of Connecticut is a civil authority contemplated by Defendant's Policies.

49. The Governor of the State of Connecticut and the State of Connecticut Public Health Department are civil authorities contemplated by Defendant's Policies.

50. The Pandemic has constituted a disaster.

51. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Governor of Connecticut has issued these orders pursuant to the authority vested in him by the Connecticut Constitution and the laws of Connecticut

Georgia

52. On March 14, 2020, the Governor of Georgia ordered that all "bars" within the state cease operations and that all restaurants cease dine-in services allowing only delivery and takeout orders to be made.

53. On March 23, 2020, the Governor of Georgia ordered that no "business...shall allow more than ten (10) persons to be gathered at a single location if such gathering requires persons to stand or be seated within six (6) feet of any other person.

54. On April 2, 2020, the Governor of Georgia further ordered that all residents and visitors of the state of Georgia shelter in their homes or places of residence unless engaged in essential services or activities. The order further required that all visitors to and residents of Georgia observe social distancing, requiring keeping six (6) feet of distance between people at all time.

55. On May 12, 2020, the Governor of Georgia further ordered that any establishments operating as part of its business, a restaurant or dining room, no more than ten (10) individuals be allowed in per 300 square feet of public space.

56. Thereafter, the Governor of Georgia has continued to enter a series of Executive Orders.

57. The Georgia Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout Georgia. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

58. Similarly, the Georgia Department of Public Health, pursuant to its authority under Georgia law, has issued directives and guidance related to COVID-19 since March 14, 2020.

59. The State of Georgia is a civil authority contemplated by Defendant's Policies.

60. The Governor of the State of Georgia and the Georgia Department of Public Health are civil authorities contemplated by Defendant's Policies.

61. The Pandemic has constituted a disaster.

62. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Governor of Georgia has issued these orders pursuant to the authority vested in him by the Georgia Constitution and the laws of Georgia.

Louisiana

63. On March 13, 2020, the Governor of Louisiana ordered that effective immediately, gatherings at any one location of more than 250 people.

64. This order was extended further, restricting gatherings to no more than fifty (50) people on March 17, 2020 and to no more than ten (10) people on March 22, 2020.

65. By the same order dated March 22, 2020, the Governor mandated that all individuals within the state were subject to a general stay-at-home order directing them to stay at home unless performing an “essential activity.”

66. On March 16, 2020, Latoya Cantrell, Mayor of New Orleans, ordered that all bars cease operations and that restaurants cease dine-in service and only provide food and alcohol by takeout or delivery.

67. Thereafter, the Governor of Louisiana has continued to enter a series of Executive Orders.

68. The Louisiana Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout Louisiana. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff’s routine operations.

69. Similarly, the Louisiana Department of Health, pursuant to its authority under Louisiana law, has issued directives and guidance related to COVID-19 since March 14, 2020.

70. The State of Louisiana is a civil authority contemplated by Defendant’s Policies.

71. The Governor of the State of Louisiana and the Louisiana Department of Health are civil authorities contemplated by Defendant’s Policies.

72. The Pandemic has constituted a disaster.

73. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Governor of Louisiana has issued these orders pursuant to the authority vested in him by the Louisiana Constitution and the laws of Louisiana.

Maine

74. On March 18, 2020, the Governor of Maine ordered that gatherings of more than 10 people be prohibited. By the same order, the Governor mandated that all restaurants and bars close their dine-in facilities and provide service only through carry-out, delivery, or drive-through methods.

75. On March 31, 2020, the Governor of Maine ordered that effective April 2, 2020 that all people living in the state of Maine stay in their “homes or places of residences” except for conducting “essential activities.”

76. Even though a gradual easing of restrictions on businesses occurred in the subsequent months, significant restrictions still remained, including, restricting occupancy of subject businesses to an occupancy limit of no more than 50% capacity as of October 6, 2020.

77. Then on April 3, 2020, the Governor of Maine imposed fourteen-day quarantine requirements on visitors arriving in the state and required that lodging accommodations, such as hotels close as of that date.

78. Thereafter, the Governor of Maine has continued to enter a series of Executive Orders.

79. The Maine Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout Maine. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff’s routine operations.

80. Similarly, the Maine Department of Health and Human Services, pursuant to its authority under Maine law, has issued directives and guidance related to COVID-19 since March 12, 2020.

81. The State of Maine is a civil authority contemplated by Defendants' Policies.

82. The Governor of the State of Maine and the Maine Department of Health and Human Services are civil authorities contemplated by Defendant's Policies.

83. The Pandemic has constituted a disaster.

84. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Governor of Maine has issued these orders pursuant to the authority vested in him by the Maine Constitution and the laws of Maine.

New York

85. On March 12, 2020, the Governor of New York ordered that all events to be attended by more than 500 people be cancelled and that all gatherings under 500 people be reduced by 50% and that venues with occupancy limits of under 500 people be similarly reduced by 50%.

86. On March 20, 2020, the Governor of New York ordered, *inter alia*, that all non-essential businesses be closed statewide, that non-essential gatherings of any size or reason be cancelled, and that businesses providing essential services implement rules to allow patrons and employees to socially distance – or keep six feet of space between all people.

87. On June 24, 2020, the Governor of New York ordered that all travelers arriving in New York from other states with high levels of cases of COVID-19 be required to quarantine at the time of arrival for fourteen (14) days.

88. Thereafter, the Governor of New York has continued to enter a series of Executive Orders.

89. The New York Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout New York. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

90. Similarly, the New York State Department of Health, pursuant to its authority under New York law, has issued directives and guidance related to COVID-19 since March 12, 2020.

91. The State of New York is a civil authority contemplated by Defendants' Policies.

92. The Governor of the State of New York and the New York State Department of Health are civil authorities contemplated by Defendant's Policies.

93. The Pandemic has constituted a disaster.

94. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Governor of New York has issued these orders pursuant to the authority vested in him by the New York Constitution and the laws of New York.

South Carolina

95. On March 17, 2020, the Governor of South Carolina ordered that all restaurants and bars in the state cease operations.

96. Thereafter, the Governor of South Carolina has continued to enter a series of Executive Orders.

97. The South Carolina Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout South Carolina. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

98. Similarly, the South Carolina Department of Health and Environmental Control, pursuant to its authority under South Carolina law, has issued directives and guidance related to COVID-19 since March 17, 2020.

99. The State of South Carolina is a civil authority contemplated by Defendants' Policies.

100. The Governor of the State of South Carolina and the State of South Carolina Public Department of Health and Environmental Control are civil authorities contemplated by Defendant's Policies.

101. The Pandemic has constituted a disaster.

102. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Governor of South Carolina has issued these orders pursuant to the authority vested in him by the South Carolina Constitution and the laws of South Carolina.

New Brunswick, Canada

103. On March 19, 2020, the Government of New Brunswick declared a provincial state of emergency, which mandated the closing of public businesses, with few exceptions. These orders required that businesses stop admitting members of the public and businesses such as restaurants and bars were reduced to take-out and delivery service only.

104. On March 25, 2020, the Chief Medical Officer of Health for New Brunswick ordered that all individuals arriving to the province self-isolate for a period of 14 days. The order further prohibited unnecessary travel into the province.

105. On March 27, 2020, the Government of New Brunswick further ordered that all businesses that were allowed to continue operating maintain "physical distancing" defined as at least two meters.

106. Thereafter, the Government of New Brunswick has continued to enter a series of Orders.

107. The New Brunswick Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout New Brunswick. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

108. The Province of New Brunswick and its government is a civil authority contemplated by Defendant's Policies.

109. The Pandemic has constituted a disaster.

110. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Government of New Brunswick has issued these orders pursuant to the authority vested in it by the laws of New Brunswick.

Nova Scotia, Canada

111. On March 17, 2020, the Government of Nova Scotia banned gatherings of more than 50 people and ordered, *inter alia*, that restaurants and bars be restricted to providing take-out and delivery service.

112. On March 19, 2020, the Government of Nova Scotia ordered that anyone coming to or returning to Nova Scotia outside of Canada self-isolate for 14 days.

113. On March 22, 2020, the Government of Nova Scotia declared a state of emergency and ordered that any individual returning to Nova Scotia from outside the province self-isolate for 14 days. By the same order, the Government of Nova Scotia banned gatherings of more than five people and mandated that workplaces could only remain open if individuals on-site were able to maintain "physical distance," defined as more than two meters.

114. Thereafter, the Government of Nova Scotia has continued to enter a series of Orders.

115. The Nova Scotia Closure Orders were issued in response to the rapid spread of the COVID-19 Pandemic throughout Nova Scotia. The Closure Orders are civil authority orders which contributed to causing the suspension of Plaintiff's routine operations.

116. The Province of Nova Scotia and its government is a civil authority contemplated by Defendant's Policies.

117. The Pandemic has constituted a disaster.

118. As a response to SARS-CoV-2 and the COVID-19 Pandemic, the Government of Nova Scotia has issued these Orders pursuant to the authority vested in it by the laws of Nova Scotia.

IV. General Nature of State Orders and Plaintiff's Compliance

119. The above-reference Orders were intended to protect people and property from imminent substantial harm and avoid the occurrence in the various states of a pandemic disaster.

120. For the most part, the emergency Orders (including those causing the Plaintiff's losses) were issued pursuant to the Executives' inherent emergency powers. They were not the result of the legislative or deliberative body's process typical of laws and regulations.

121. Plaintiff has complied with all Executive Orders referenced herein.

122. These unprecedented emergency Orders affecting Plaintiff were not a foregone conclusion or obvious consequence of the COVID-19 pandemic, as evidenced by the great variance between states, localities, and foreign nations as to the types and extent of restrictions placed on businesses and public activities, if any.

123. A national debate has evolved concerning the Orders' necessity, appropriateness, breadth and length, with some high-profile federal and state officials in some circumstances questioning the motivation behind them or their continuation. Public health authorities understood

that the risk of harm to people and property was real, concrete and imminent as COVID-19 was exploding in the general population at an alarming rate.

124. SARS-CoV-2 was an external physical force detrimental to people and/or property, that caused damage to the Plaintiff's properties.

125. SARS-CoV-2 virus was present at each of the Plaintiff's Covered Properties at all relevant times, or there was an imminent risk of on-site viral presence at all relative times, or both.

126. The goal of the emergency Orders was to mitigate actual or imminent harms caused by disease-causing agents, and to protect people and property.

127. The Plaintiff's compliance with applicable government Orders and the associated loss of use was a covered cause of loss under the Policy.

128. The Plaintiff's unilateral actions addressing an imminent risk of harm to property or others, regardless of the emergency Orders, are covered under the Policy.

129. SARS-CoV-2 constituted an imminent risk. A risk of harm that is imminent, as in the case of SARS-CoV-2, is itself a separate covered cause of loss under the Policy.

130. Orders by the government, acting on its inherent authorities are covered under the Policy, regardless of the actual presence of SARS-CoV-2 on-site.

131. Government Orders designating the Plaintiff's business as partially uninhabitable and unusable are covered causes of loss under the Policy.

V. The Effect of SARS-CoV-2, COVID-19, the Pandemic, and the Closure Orders on Plaintiff's Business and Business Activities

132. Loss of use of property due to the presence of SARS-CoV-2 or the imminent risk of the presence of SARS-CoV-2 constitutes direct physical loss of or damage to property for purposes of first-party property insurance.

133. As the drafter of the Policy, if the Defendant had wished to exclude from coverage loss of use of property that has not been physically altered or deformed, it could have used explicit language stating such a definition, but it did not do so.

134. The presence of SARS-CoV-2 and/or imminent threat of SARS-CoV-2 and/or the Pandemic caused direct physical loss of the Covered Properties under the Policy by causing a necessary suspension (in whole or in part) of operations during a period of liability.

135. As described above, the various states where the Plaintiff operates its business, through the Governors and Departments of Health, have issued and continue to issue authoritative orders in response to the pandemic governing citizens and businesses; including the Plaintiff's business, the surrounding businesses that the Plaintiff relies upon to support its own business known as Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and/or Attraction Properties, and individuals who might patronize one of the Plaintiff's locations.

136. These various Orders have alternatively and cumulatively (1) restricted access to the Plaintiff's hotels and associated bars and restaurants, (2) restricted potential customer's ability to travel to and access the Plaintiff's hotels and associated bars and restaurants, (3) restricted access to properties defined as Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and/or Attraction Properties, which in turn caused the Plaintiff Gross Earnings loss.

137. The effect of the COVID-19 pandemic and the resulting Orders have caused and continues to cause Plaintiff to cease and/or significantly reduce operations at the Covered Properties described in the Policies and to incur Extra Expense.

138. The Plaintiff has incurred actual Gross Earnings loss and reasonable and necessary Extra Expense caused by (1) actual presence of SARS-CoV-2 on Plaintiff's Covered Properties, (2) Orders of civil authorities prohibiting access to the Covered Properties or effectively doing so, (3) a covered cause of loss at Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and/or Attraction Properties, or (4) physical obstruction of the Plaintiff's Covered Properties caused by a covered cause of loss at a property not owned, occupied, leased, or rented by the Plaintiff within one mile of a Covered Property.

VI. The Plaintiff's Losses – The Devastating Slowdown and/or Cessation of the Plaintiff's Business

139. Beginning March 16, 2020, the Plaintiff was forced to severely restrict the services it could provide at its Covered Properties as a result of the emergency Orders described herein, the effect of such Orders on the Plaintiff's customers or potential customers, or the presence/imminent risk of the virus, or both, at the Plaintiff's Covered Properties or at properties within one mile of the Plaintiff's Covered Properties, causing it damages and extra expense.

140. To comply with the emergency Orders, the Plaintiff was required to slow down and eventually cease its business activities at times, including the renting of rooms to customers and providing food and alcohol service at the restaurants and bars contained within its Covered Properties.

141. Additionally, the emergency Orders, as well as the presence of SARS-CoV-2, caused a reduction in demand for the Plaintiff's services and restricted potential customers' ability to access the Plaintiff's Covered Properties.

142. At all times since the onset of the COVID-19 pandemic, the Plaintiff has been forced to repair and decontaminate its Covered Properties by conducting additional cleaning and decontamination, creating outdoor eating spaces integrated with its premises, adding plexiglass

and other barriers against transmission of SARS-CoV-2, the reconfiguration of the interior of its business, and depopulation of the Covered Properties either fully or partially.

143. This loss of and/or damage to the Plaintiff's Covered Properties caused the Plaintiff a substantial loss of Gross Earnings with substantial incurred extra expenses for renovations, retrofitting, cleaning, training, and re-stocking.

144. As a result of the emergency Orders, or SARS-CoV-2, or both, the Plaintiff suffered Gross Earnings loss and extra expense losses.

145. The Plaintiff alternatively states that it suffered direct physical loss of or damage to its property causing economic Gross Earnings loss and extra expense losses, as a result of: actual on-site SARS-CoV-2 contamination that caused a loss of, or damage to its property; or

- a. its reasonable actions—regardless of government orders—to preserve property and persons from an imminent risk of harm; or
- b. the risk of imminent harm, as said risk of imminent harm is itself a covered cause of loss; or
- c. government Orders designating the Plaintiff's business as uninhabitable and unusable on premises and in other forms; or
- d. government Orders pursuant to inherent authorities to act in a disaster regardless of the actual presence of SARS-CoV-2 on-site; or
- e. actual on-site SARS-CoV-2 contamination that caused a covered cause of loss at Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and/or Attraction Properties,

- f. physical obstruction caused by a covered cause of loss at a property within one mile of the Plaintiff's Covered Properties that was not owned, occupied, leased or rented by the Plaintiff,
- g. damages recognized under other available coverages under the Policy.

146. The Plaintiff's losses and expenses at its Covered Properties have continued through the date of filing of this action, and various operation restrictions in the emergency Orders are likely to continue.

147. The Plaintiff's actions were reasonable and necessary to comply with the various Orders or to mitigate the damages described herein to prevent greater harms, or both.

148. The Plaintiff's causes of loss are not excluded by the Policy.

149. The Plaintiff has suffered substantial losses of insured gross earnings loss and has incurred insured expenses caused by insured causes of loss within the terms and conditions of the Policy, or the common law.

VII. Plaintiff Purchased Insurance for Its Business, Not Just Its Buildings

150. In order to protect its property, businesses, and income from losses, prior to April 30, 2019, the Plaintiff purchased the Policy sold by the Defendant.

151. At all relevant times, the Policy was in full effect as the Plaintiff paid the substantial premiums due which Defendant accepted. The Plaintiff has been insured by the Defendant for the last several years, paying the required premiums annually.

152. At all times, the Plaintiff has relied on the Defendant's promises to cover its insured Gross Earnings losses and its additional Extra Expenses caused by such losses.

153. The premium the Plaintiff paid included coverages for, *inter alia*, buildings and personal property, gross earnings and extra expense, and commercial liability. It also included additional coverage for 'extended' periods of liability.

VIII. Defendant Has Failed to Admit or Deny Coverage

154. In late March 2020 and in communications subsequent thereto, the Plaintiff submitted notice of loss to the Defendant due to the presence of SARS-CoV-2 and the Pandemic. Despite the passage of eleven (11) months since notice of loss, the Defendant has neither denied nor agreed to coverage.

Upon information and belief, the Defendant did not engage in any meaningful investigation of the Covered Properties related to the claimed losses.

COUNT I **BREACH OF CONTRACT**

155. The Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

156. The Plaintiff purchased the Policy - a commercial property insurance policy - from the Defendant.

157. The Plaintiff has performed all its obligations as specified by the Policy including but not limited to the payment of all premiums due, cooperating in loss investigation, and seeking to avoid avoidable additional losses.

158. The Policy provides coverage for losses, expenses, damages and costs, including but not limited to, those for Time Element, Civil Authority, Contingent Time Element, Ingress/Egress, and Preservation and Protection of Property.

159. The Plaintiff has suffered and continues to suffer physical loss of and/or damage to its Covered Properties, which was caused by or resulted from the emergency Orders described herein.

160. In the alternative, the Plaintiff suffered and continues to suffer physical loss of and/or damage to the Covered Properties, which was caused by or resulted from the ubiquitous presence of SARS-CoV-2, and the numerous civil authority orders, and emergency Orders, or both, all of which qualify as types of loss that “all risk” property policies are designed to insure.

161. The Plaintiff further alternatively states that it suffered and continues to suffer physical loss of, or damage to its Covered Properties, which was caused by or resulted from:

- a. actual on-site SARS-CoV-2 contamination that caused a loss of, or damage to its property; or
- b. its reasonable actions—regardless of government orders—to preserve property and persons from an imminent risk of harm; or
- c. the risk of imminent harm, which is itself a covered cause of loss; or
- d. government Orders designating the Plaintiff’s business as uninhabitable and unusable on premises and in other forms; or
- e. government Orders pursuant to inherent authorities to act, regardless of the actual presence of SARS-CoV-2 on-site; or
- f. actual-onsite SARS-CoV-2 contamination that caused damage or loss at Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and/or Attraction Properties; or

- g. government Orders designating the Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and/or Attraction Properties as uninhabitable and unusable on premises and in other forms; or
- h. SARS-CoV-2 contamination or government Orders that caused a covered cause of loss at a property located within one mile of the Plaintiff's Covered Properties, which in turn caused physical obstruction to the Plaintiff's Covered Properties; or
- i. damages recognized under other available coverages under the Policy.

162. The physical loss of and/or damage to the Plaintiff's Covered Properties caused the necessary slowdown and cessation of the Plaintiff's business activities, resulting in a loss of Gross Earnings.

163. The Policy also provides that the Defendant will pay for any necessary expenses that the Plaintiff incurs that it would not have incurred had there been no physical loss of or damage to its property.

164. The Defendant is in breach of the Policy by refusing to adjust the Plaintiff's losses under the above-referenced coverages for the Covered Properties located in the United States of America described in paragraph one of this complaint.

165. To the extent that the Plaintiff's damages sustained at the Canadian Properties referenced in paragraph two of this Complaint are not completely satisfied by the local policy covering those properties, commercial business-owners insurance policy # 8850759, sold by Zurich Insurance Company, Ltd., the Defendant is in breach of the Policy by refusing to adjust the Plaintiff's losses under the Difference in Limit or Difference in Condition coverage.

166. As a result of the Defendant's breaches of the Policy, Plaintiff has sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

COUNT II
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

167. The Plaintiff incorporates by reference the preceding paragraphs as though fully set forth herein.

168. In Connecticut, the Defendant is bound by the implied contractual covenant of good faith and fair dealing.

169. The Plaintiff and Defendant are parties to a contract under which the Plaintiff reasonably expected to receive certain benefits; the Defendant engaged in conduct that injured the Plaintiff's right to receive those benefits; and when committing the acts by which it injured the Plaintiff's rights to receive benefits they reasonably expected to receive under the contract, the Defendant acted in bad faith.

170. The Defendant violated the covenant of good faith and fair dealing by using a predetermined decision not to cover any claim; failing to properly inquire into relevant facts supporting their denial; failing to take the appropriate procedures for handling Plaintiff's claim; failing to advise certain Plaintiffs as to its position regarding their notice of claim; declining to make clear, and good faith efforts to resolve the contractual relationship between Plaintiffs and Defendant, and ultimately failing to provide the Plaintiff with a coverage decision and withholding payment of the Plaintiff's claim.

171. As a result of the Defendant's bad faith, Plaintiff has sustained substantial damages for which Defendant is liable, in an amount to be established at trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant as follows:

- a. For a judgment against Defendant for the causes of action alleged against it;
- b. For compensatory damages in an amount to be proven at trial;
- c. For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- d. For Plaintiff's attorneys' fees;
- e. For Plaintiff's costs incurred;
- f. For punitive damages; and
- g. For such other and further relief as the Court deems just and proper.

**Respectfully submitted,
Attorneys for Plaintiffs**

By: /s/ Evan K. Buchberger

Evan K. Buchberger

Juris No. 433912

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RETURN DATE: APRIL 6, 2021)	
)	
NEW CASTLE HOTELS, LLC)	SUPERIOR COURT
)	
Plaintiff)	J.D. OF DANBURY
)	
v.)	AT DANBURY
)	
ZURICH AMERICAN INSURANCE)	
COMPANY,)	
)	
Defendant)	MARCH 9, 2021

STATEMENT OF AMOUNT IN DEMAND

The amount in demand exceeds Fifteen Thousand Dollars (\$15,000), exclusive of interest and costs.

**Respectfully submitted,
Attorneys for Plaintiffs**

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