

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 20-cv-62257

RUNWAY 84, INC. & RUNWAY 84
REALTY, LLC D/B/A ANTHONY'S
RUNWAY 84,

Plaintiff,

v.

CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON, PARTICIPATING
WITH LLOYD'S SYNDICATE 1686 IN
THEIR CAPACITY AS SUBSCRIBERS TO
LLOYD'S CERTIFICATE NO. ARP-
75203-20,

Defendant.

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, RUNWAY 84, INC. & RUNWAY 84 REALTY, LLC D/B/A ANTHONY'S RUNWAY 84 (hereinafter "Plaintiff"), by and through the undersigned attorneys, brings this action against the Defendant, CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING TO CERTIFICATE NUMBER ARP-75203-20 (hereinafter "Defendant"), and alleges the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1332 & 1391. The parties have complete diversity of citizenship, the amount in controversy is more than \$75,000.00, exclusive of costs, interest, and attorney's fees, and the events giving rise to this cause of action occurred in this District.

THE INSURANCE POLICY

2. In consideration for the premiums paid to it, Defendant issued Plaintiff a valid, binding, and enforceable policy of insurance bearing Policy Number ARP-75203-20 (hereinafter the "Subject Policy") that insured the Subject Property between the effective dates of coverage listed on the declarations page of the Subject Policy. A true and correct copy of the Subject Policy is attached hereto and incorporated herein as **Exhibit "A"** [D.E. 1-1].

3. The Subject Policy is an "all risk" policy that covers all direct physical losses to the Subject Property that are not otherwise expressly excluded.

4. The Subject Policy was and is effective between the dates of February 15, 2020, and February 15, 2021.

PARTIES

5. At all material times relevant to this Complaint, RUNWAY 84, INC. has been incorporated in the State of Florida, held its principle place of business in the State of Florida, is a citizen of the State of Florida, and is otherwise *sui juris*.

6. At all material times relevant to this Complaint, RUNWAY 84 REALTY, LLC, has been a limited liability corporation organized under the laws of the State of Florida whose sole member, Anthony Bruno, resides in Broward County, Florida, is a Citizen of the State of Florida, and is otherwise *sui juris*. For the purposes of diversity jurisdiction, RUNWAY 84 Realty, LLC, is a citizen of the State of Florida.

7. At all material times relevant to this Complaint, Plaintiff has owned and operated Anthony's Runway 84, a family owned, internationally renowned, fine dining restaurant, located at 330 West State Road 84, Fort Lauderdale, Broward County, FL 33315 (hereinafter the "Subject Property"), and is otherwise *sui juris*.

8. Defendant has been and is now a corporate body governed by the Lloyd's Act of 1871 and Acts of the Parliament of the United Kingdom operating as a partially-mutualized insurance marketplace in which groups of financial backers known as “Syndicates” underwrite insurance policies governed by Chapter 626, Florida Statutes, is authorized to insure all properties located in the State of Florida including properties located in County, Florida, and is otherwise *sui juris*. Specifically, Lloyd’s Syndicate 1686 is a syndicate duly authorized to conduct business within the Lloyd’s of London insurance market. Lloyd’s Syndicate 1686 has two corporate capital providers, sometimes referred to as “Names,” with those capital providers being AXIS Corporate Capital UK Ltd. At 70% and AXIS Corporate Capital UK II Ltd at 30%. Both Names are incorporated under the laws of the United Kingdom and have their principal places of business in London, England. Syndicate 1686 subscribes to 54.1237% the Subject Policy and, therefore, both Names have over \$75,000 at stake. Pursuant to the Service of Suit Clause in the Lloyd’s Policy, all other syndicates subscribing to the Policy have agreed that “in any suit instituted against any of them upon this contract, Underwriters will abide by the final decision of such Court or any Appellate Court in the event of an appeal” and, therefore, no other syndicates subscribing to the Subject Policy need to be named as parties to this lawsuit. *See* Exhibit “A” [D.E. 1-1, pg. 5 of 120].

THE CORONAVIRUS PANDEMIC

9. “Coronaviruses are a family of viruses that can cause illnesses such as the common cold, severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS). In 2019, a new coronavirus was identified as the cause of a disease outbreak that originated in China” designated as SARS-CoV-2 also known as the 2019 Novel Corona Virus or COVID-19 (hereinafter “COVID-19”).

10. COVID-19 is highly contagious and has, and continues to, rapidly spread across the State of Florida and United States of America.

11. COVID-19 is a physical substance, human pathogen, and can exist outside the human body in viral fluid particles with, according to the Centers for Disease Control and Prevention (“CDC”), everyone being at risk of contracting same.

12. COVID-19 is spread by a number of methods, including “community spread” caused by people unknowingly becoming infected without knowledge of the origin of the infection. Public health authorities, including the CDC, have reported significant ongoing community spread of the virus including instances of community spread in all 50 states.

13. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces. The CDC has reported that a person can become infected with COVID-19 by touching a surface or object where the virus is present and then touching their own mouth, nose or eyes.

14. More specifically, COVID-19 infections are spread through droplets of different sizes which can be deposited on surfaces or objects, and some studies suggest that COVID-19 remains infectious while present as particles in the air.

15. COVID-19 has been transmitted by way of human contact with surfaces and items, human to human contact, and through contact with airborne particles throughout the State of Florida.

16. The presence of COVID-19, whether on a surface or in the air, or being carried by an infected host, renders physical and personal property unsafe and impairs the value, usefulness, or function of said property resulting in direct physical loss or damage to that property.

17. On March 9, 2020, Florida Governor Ron DeSantis, ostensibly on the recommendations of the CDC, the State Surgeon General, and the State Health Officer, declared that a State of Emergency exists in Florida as a result of the COVID-19 outbreak.

18. On March 10, 2020, Broward County issued a Declaration of Emergency due to the presence of COVID-19 posing “a clear and present threat to the health and welfare of the people of Broward County.”

19. On March 11, 2020, the World Health Organization announced that, due to “the alarming levels of spread and severity,” the COVID-19 outbreak rose to the level of a pandemic.

20. On March 13, 2020, President Donald J. Trump declared that the “COVID-19 outbreak constitutes a national emergency” and applied same retroactively to March 1, 2020.

21. On March 22, 2020, Broward County issued Emergency Order 20-01 ordering the closure of all nonessential retail and commercial businesses due to “the propensity of [COVID-19] to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.”

22. The COVID-19 pandemic is a public health crisis that has impacted our society in unprecedented ways, including the American public’s ability to frequent establishments, such as the Plaintiff’s restaurant, due to the presence of, and direct physical loss caused by the presence of, COVID-19.

THE CLAIM

23. On or about March 13, 2020, the presence of COVID-19, as caused by the COVID-19 pandemic, caused direct physical loss and resultant/ensuing damages to the Subject Property (hereinafter the "Loss").

24. Additionally, as a result of the Loss, Plaintiff sustained a loss of business income.

25. To compound issues, the closure of all nonessential retail and commercial businesses as mandated in Broward County Emergency Order 20-01, and those which followed, caused additional lost business income.

26. Direct, resultant, and/or ensuing damages and/or loss of business income caused by COVID-19, the COVID-19 pandemic, and Emergency Order 20-01 *et. seq.* are covered under the Subject Policy.

27. Direct, resultant, and/or ensuing damages and/or loss of business income caused by COVID-19, the COVID-19 pandemic, and Emergency Order 20-01 *et. seq.* are not excluded from the Subject Policy.

28. Direct, resultant, and/or ensuing damages and/or loss of business income caused by COVID-19, the COVID-19 pandemic, and Emergency Order 20-01 *et. seq.* are covered under the Subject Policy.

29. Direct, resultant, and/or ensuing damages and/or loss of business income caused by COVID-19, the COVID-19 pandemic, and Emergency Order 20-01 *et. seq.* are not excluded from the Subject Policy.

30. Plaintiff timely notified Defendant of the Loss

31. Defendant responded to the Loss by opening claim number 4170479 (hereinafter the "Claim").

32. Through its adjustment of the Claim, Defendant has been afforded the opportunity to fully adjust the Loss, including conducting a recorded statement wherein all questions were answered in full leaving no remaining requests for compliance outstanding.

33. Ultimately, Defendant denied coverage for the Claim. A copy of the Denial Letter is attached hereto as **Exhibit "B"** [D.E. 1-2].

34. Plaintiff has complied with all prerequisites, whether denominated conditions precedent, duties after loss, or otherwise, to receive benefits or proceeds under the Subject Policy, or maintain the instant suit for the breach or declaration of the Subject Policy; alternatively, Defendant has waived or never had standing to assert any prerequisites, whether denominated as conditions precedent, duties after loss, or otherwise.

COUNT I – DECLARATORY RELIEF

35. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34 as if fully set forth herein and further state:

36. This is an action for declaratory relief brought pursuant to Fla. Stat. § 86.011.

37. The Subject Policy contains an exclusion related to, in pertinent part, “[d]ischarge, dispersal, seepage, migration, release or escape of ‘pollutants’...” *See* Exhibit “A” [D.E. 1-1, pg. 85 of 120].

38. However, the Subject Policy’s definition of “pollutant,” to wit, “any solid, liquid gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste” does not reference any pathogenic, biological, or microorganic materials such as bacteria or viruses in any way. *See* Exhibit “A” [D.E. 1-1 at pg. 69 of 120 and pg. 78 of 120].

39. This exclusionary provision is seemingly bolstered by the “Seepage and/or Pollution and/or Contamination Exclusion” endorsement; however, such endorsement relates to pollution and contamination as follows:

- (a) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a "hazardous substance" by the United States Environmental Protection Agency or as a "hazardous material" by the United States Department of Transportation, or defined as a "toxic substance" by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous

or deleterious to persons or the environment under any Federal, State, Provincial, Municipal or other law, ordinance or regulation; and

- (b) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

See Exhibit “A” [D.E. 1-1, pg. 23 of 120]

40. Similarly, each of the materials designated as a “hazardous substance” by United States Environmental Protection Agency (“EPA”), a “hazardous material” by the United States Department of Transportation (“DOT”), or a “toxic substance” by the Canadian Environmental Protection Act (“CEPA”) relate to chemical substances typically utilized in consumer products or for industrial use and do not reference any pathogenic, biological, or microorganic materials such as bacteria or viruses in any way.

41. Defendant’s denial of the Claim was based, in pertinent part, on the assertion that damage caused by the COVID-19 pandemic generally would be excluded under the above referenced pollution exclusions contained within the Subject Policy. *See* Exhibit “B” [D.E. 1-2].

42. Reading the Subject Policy *esjudem generis*, the pollution exclusions can be read so as to apply only to chemicals such as those utilized in consumer products or for industrial use and so as not to apply to viruses such as COVID-19.

43. As the policies definitions of “pollutant” *et. al.* does not in any way reference viruses such as COVID-19 qualifying as same and, as such, can be subject to more than one meaning due to the Defendant’s inclusion of COVID-19 as a pollutant for the purposes of denying the Claim, the Subject Policy is ambiguous and coverage must be construed in favor of the non-drafting party, to wit, the Plaintiff.

44. As such, Plaintiff is in doubt as to its rights under the Subject Policy and whether a virus such as COVID-19 can be excluded under the pollution exclusions outlined herein.

45. Defendant's actions and positions taken demonstrate an actual, present practical need for declaration from this Honorable Court.

46. This Honorable Court is permitted to determine the existence or non-existence of any right, duty, power, or privilege, or of any fact upon which the legal relationship between the parties depends.

47. The Plaintiff is entitled to have this Honorable Court remove all doubts raised by Defendant concerning the application of the facts of the Claim to the Subject Policy.

48. The declaration sought with regard to the instant controversy is of a justiciable nature, does not amount to an advisory decree, and will assist in the resolution of the controversy between the parties.

49. As a result of this dispute, it has become necessary that Plaintiff retain the services of the undersigned attorneys. Plaintiff is obligated to pay a reasonable fee for the undersigned attorneys' services in bringing this action, plus costs. Plaintiff is entitled to reimbursement of these fees and costs by the Defendant subject to Section 626.9373, Florida Statutes.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Declare that the provisions of the Subject Policy, including any ambiguities, be construed strictly and most strongly against the insurer, and liberally in favor of the insured, so as to affect the dominant purpose of coverage and/or indemnification;
- B. Declare that the Subject Policy does not exclude coverage for loss caused by viruses under the microorganism exclusion;
- C. Declare that the Plaintiff is entitled to a claim for attorneys' fees and costs against Defendant, and to determine the amount of such fees and costs to be paid to the Plaintiff inclusive of a contingency fee multiplier; and
- D. Determine and declare any other material matters pertaining to the respective rights and responsibilities under the Policy, as needed to do complete justice in this case.

COUNT II - BREACH OF CONTRACT

50. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34 as if fully set forth herein and further state:

51. Defendant has failed and/or refused to honor the contractual coverage in the Subject Policy by failing and/or refusing to compensate Plaintiff and/or pay benefits owed under the Subject Policy for the Claim based on the Loss.

52. Plaintiff has suffered damages including, but not limited to, insurance benefits under the Subject Policy and damages from Defendant's breach of the Subject Policy.

53. Defendant's denial of the Claim refusal to pay any amounts due and owing under the Subject Policy is a breach of the insurance contract.

54. As a result of this dispute, it has become necessary that Plaintiff retain the services of the undersigned attorneys. Plaintiff is obligated to pay a reasonable fee for the undersigned attorneys' services in bringing this action plus costs. Plaintiff is entitled to reimbursement of these fees and costs by the Defendant subject to Section 626.9373, Florida Statutes.

55. Should Plaintiff prevail in this action, Plaintiff shall be entitled to interest as prescribed by the governing laws.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court award:

- A. General compensatory damages as provided by the Subject Policy;
- B. Interest;
- C. Attorneys' fees associated with the instant litigation, including a contingency fee multiplier;
- D. Costs incurred as a result of the instant litigation; and
- E. Any such other and further relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, RUNWAY 84, INC. & RUNWAY 84 REALTY, LLC D/B/A ANTHONY'S

RUNWAY 84, demands a trial by jury on all issues so triable.

Respectfully submitted this day, November 5, 2020.

CASSEL & CASSEL, P.A.
Attorneys for Plaintiff
4000 Hollywood Blvd.
Suite 685-S
Hollywood, FL 33021
t: (954) 589-5504
f: (954) 900-1768
Service: pleadings@cassel.law

/s/Michael A. Cassel
Michael A. Cassel, Esq.
Florida Bar No. 97065
Hillary B. Cassel, Esq.
Florida Bar No. 31005