

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

SFMB MANAGEMENT, LLC,

Plaintiff,

v.

STARR SURPLUS LINES INSURANCE
COMPANY,

Defendant.

Index No. _____

COMPLAINT

Plaintiff SFMB Management, LLC (“Plaintiff” or “SunPubs”) brings this action against Defendant Starr Surplus Lines Insurance Company (“Starr” or “Defendant”), and in support thereof states the following:

I. NATURE OF THE ACTION

1. This action seeks to rectify the wrongful denial of business interruption insurance coverage to Plaintiff, the owner and operator of nine full-service bars and restaurants in and around the Tampa, Florida area. Plaintiff has been left out in the cold by its insurer during the greatest business interruption in living memory: the COVID-19 pandemic, which threatens the future of SunPubs and the restaurant industry as a whole.

2. To protect its businesses in the event it suddenly had to suspend operations for reasons outside of its control, or in order to prevent further property damage, SunPubs purchased insurance coverage from Defendant Starr Surplus Lines Insurance Company (“Starr”).

3. SunPubs was forced to reduce or suspend operations at all of its locations due to the presence of SARS-CoV-2, the novel coronavirus that causes COVID-19, at its restaurant premises. All of SunPubs’ locations are in Florida, a major community-

transmission hotspot. It made a claim on its business interruption coverage with Starr for these losses, but was rebuffed.

4. Instead of providing the support it bargained for, Defendant Starr chose to issue blanket denials to all of its insureds affected by the virus pandemic. It did so without conducting any investigation into whether the insured property suffered physical loss of or damage to the premises by the introduction of COVID-19 droplets or aerosols.

5. Starr had no excuse for its intransigence. Unlike many policies that provide Business Income (“Business Interruption”) coverage, Plaintiff’s Policy lacks a “Communicable Disease” Exclusion in the Policy in effect when the COVID-19 Pandemic losses began. It later added such an exclusion to a renewal policy, confirming that the policy under which this claim was made does not exclude losses owing to the virus pandemic.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action because Starr has its principal place of business in New York and conducts business regularly in New York, and because the Policy specifies that actions thereon shall be brought in this Court.

7. Venue is proper in New York County because it is the county in which Starr’s principal office is located, and because a substantial part of the events or omissions giving rise to the claim occurred in New York County.

III. PARTIES

8. Plaintiff SFMB Management, LLC is a Florida limited liability company with its principal place of business in Tampa Bay, Florida. Plaintiff owns and operates nine restaurant locations in the Tampa Bay area.

9. Defendant Starr Surplus Lines Insurance Company is a Texas corporation with its principal place of business at 399 Park Avenue, 8th Floor, New York, NY 10022.

IV. FACTS

A. Transmission of the Coronavirus into the U.S. and Florida

10. Severe Acute Respiratory Syndrome Coronavirus 2, (“SARS-CoV-2” or the “coronavirus”), which causes coronavirus disease 19 (“COVID-19”), the respiratory disease responsible for the COVID-19 pandemic, began infecting humans in China in December 2019.

11. COVID-19 is not only highly contagious, but also deadly. More than 32 million Americans have had confirmed cases of COVID-19, and more than 580,000 have died according to the Centers for Disease Control and Prevention (“CDC”).¹

12. On March 11, 2020, the World Health Organization (“WHO”), “deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction” by governments, characterized COVID-19 as a pandemic.²

13. The pandemic quickly spread around the world and soon reached Florida.

14. Plaintiff operates locations in a least three counties (Hillsborough, Pinellas and Manatee) in and around Tampa Bay. In Hillsborough County, more than 138,000 COVID-19 cases have been reported.³ In Pinellas County, more than 78,000 COVID-19

¹ COVID Data Tracker, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last checked May 13, 2021).

² Tedros Adhanom, WHO Director-General’s opening remarks at the media briefing on COVID-19, World Health Organization (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

³ Hillsborough County COVID-19 Data Dashboard, <https://www.hillsboroughcounty.org/residents/public-safety/emergency-management/stay-safe/covid-19-dashboard> (last checked May 13, 2020).

cases have been reported.⁴ In Manatee County, more than 39,000 COVID-19 cases have been reported.⁵ Even in early March 2020, there were cases of COVID-19 present in the Tampa Bay area.⁶

15. In the United States, federal and state governments were slow to act to stem the spread of infection. Despite evidence that the novel coronavirus was rapidly spreading in the United States and other parts of the world, many federal and state officials downplayed the risk to the United States. By mid-March 2020, however, it became clear that drastic action had to be taken to slow down the rate of infections.

16. The presence of COVID-19 has caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over Plaintiff's businesses (the "Closure Orders"). Further, the presence of COVID-19 has been found at Plaintiff's various restaurants causing physical harm to the property and triggering coverage under the various endorsements.

B. SARS-CoV-2 Spreads Through Droplets, Which Accumulate On Surfaces

17. According to the WHO:

"Transmission of SARS-CoV-2 can occur through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions or their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings.

⁴ Monitoring COVID-19 in Pinellas County, <https://covid19.pinellascounty.org/dashboard/#cases> (last checked May 13, 2021).

⁵ Manatee County Coronavirus (COVID-19) Information, https://www.mymanatee.org/departments/public_safety/coronavirus_information (last checked May 13, 2021).

⁶ Lawrence Mower, Florida's third coronavirus case is found in Hillsborough, Tampa Bay Times (Mar. 3, 2020), <https://www.tampabay.com/news/health/2020/03/03/third-coronavirus-case-found-in-florida-is-hillsborough-patients-sister/>.

Respiratory droplet transmission can occur when a person is in close contact with an infected person who has respiratory symptoms (e.g. coughing or sneezing) or who is talking or singing; in these circumstances, respiratory droplets that include virus can reach the mouth, nose or eyes of a susceptible person and can result in infection.”⁷

18. Infected individuals can be completely asymptomatic, and thus unaware that they may be spreading the virus through the mere touching of objects and surfaces. Indeed, studies have estimated that over 40% of infected individuals may never develop any symptoms.⁸ But even individuals who appear healthy and present no identifiable symptoms of the disease will still spread the virus by merely breathing, speaking, or touching objects and surfaces.

19. The CDC has acknowledged that the coronavirus and COVID-19 can spread through airborne transmission. Floating respiratory droplets, called aerosols, contain the live coronavirus. The coronavirus lives in “small droplets and particles that can linger in the air for minutes to hours,” and can thus infect persons who are “further than 6 feet away” even “after that person has left the space.”

20. Unlike larger droplets, which quickly fall to the ground or nearby surfaces, aerosols behave like smoke. After being expelled, they disperse through the air, to be inhaled by anyone present on the property, circulating through air flow and spreading the virus. Each coronavirus virion is a physical object with a material existence that can survive outside the human body in viral fluid particles that, like the virion itself, cannot be seen by

⁷ <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

⁸ Asymptomatic COVID-19 Cases May Be More Common Than Suspected (May 27, 2020), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>.

the naked eye. As with other small particles like dust, the physical viruses linger in the air, traveling on air currents until they attach to an object or other surface.

21. According to experts, buildings and properties accumulate the airborne virus indoors, which plays a significant role in community transmission.⁹

22. Outbreak reports related to indoor crowded spaces have suggested the possibility that aerosol transmission, combined with droplet transmission in restaurants, leads to “superspreader” type events.¹⁰

23. The WHO and the CDC have recognized the tendency of the coronavirus to attach to objects and surfaces, “such as tables, doorknobs, and handrails.”¹¹ The CDC has confirmed that the coronavirus “may remain viable for hours to days on surfaces made from a variety of materials.”¹² Numerous other scientific studies have discovered that the coronavirus can survive and persist on surfaces and buildings for nearly a month.¹³ Accordingly, the CDC has recognized that the coronavirus and COVID-19 can spread

⁹ Apoorva Mandavilli, ‘A Smoking Gun’: Infectious Coronavirus Retrieved From Hospital Air, New York Times (Oct. 5, 2020), <https://www.nytimes.com/2020/08/11/health/coronavirusaerosolsindoors.html>.

¹⁰ <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> citing Lu J, Gu J, Li K, Xu C, Su W, Lai Z, *et al.*, Early Release-COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020. *Emerg Infect Dis.* 2020; 26(7):1628-1631.

¹¹ Q&A on coronaviruses (COVID-19), World Health Organization (Oct. 20, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted>.

¹² Cleaning and Disinfection for Households, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html> (last updated July 17, 2020).

¹³ Jessie Hellman, COVID-19 virus can survive on some surfaces for nearly a month in lab conditions, The Hill (Oct. 12, 2020), <https://thehill.com/homenews/media/520647-covid-19-virus-can-survive-on-some-surfaces-for-nearly-a-month-in-lab>; *see also* Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February–March 2020, Centers for Disease Control and Prevention (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

through contact with surfaces and objects, and thus recommended measures to “routinely clean and disinfect frequently touched surfaces.”¹⁴

24. Recognizing the ability of the coronavirus to attach to surfaces, biotechnology companies have been able to detect the virus on surfaces.¹⁵

25. Studies suggest that the SARS-CoV-2 virus can remain on smooth surfaces for at least 28 days.¹⁶ During those 28 days, new virus particles may be introduced to a surface. Based on these factors, and the penetration of SARS-CoV-2 in the U.S. and specifically in Florida, it is more likely than not that, at any given time during the COVID-19 viral pandemic that reached the U.S. in full force in or before March 2020, any restaurant in Florida has SARS-CoV-2 particles on its surfaces.

26. The persistent presence of this deadly, airborne live coronavirus on surfaces and in the air renders buildings and properties damaged, lost, unsafe, unfit, and uninhabitable for occupancy or use. Without substantial physical alterations, system changes to facilities, and new protocols for air circulation, disinfection, and disease prevention, an infected property cannot remain open to the public. Cleaning of surfaces alone is insufficient. The scientific community has confirmed that coronavirus and COVID-19 alter the conditions of properties and buildings such that the premises are no longer safe and habitable for normal use.

¹⁴ How COVID-19 Spreads, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last updated Oct. 28, 2020).

¹⁵ Dr. Jay Bhatt & Kaitlyn Folmer, Testing buildings may become added weapon in coronavirus reopenings, ABC News (July 24, 2020), <https://abcnews.go.com/GMA/News/testing-buildingsaddedweapon-coronavirus-reopenings/story?id=71956136>.

¹⁶ Chin et al., Stability of SARS-CoV-2 in different environmental conditions, the Lancet, Vol. 1, Issue 1, e10, May 01, 2020, *see* [https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext); *see also e.g.*, <https://www.bbc.com/news/health-54500673>.

27. In this regard, the novel coronavirus causes direct physical loss and damage to buildings and properties. The coronavirus, which has a material existence and is contained in respiratory droplets, adheres to, attaches to, and alters the surfaces of the property and surfaces upon which these physical droplets land, and physically changes these once safe surfaces to “fomites.” Fomites are objects, previously safe to touch, that now serve as agents and mechanisms for transmissions of deadly, infectious viruses and diseases.¹⁷

28. Thus, the coronavirus and COVID-19 physically change properties and surfaces such that contact with these properties and surfaces, which previously would have been safe, is now deadly and dangerous. This constitutes real and severe damage to and loss of the properties. The coronavirus and COVID-19 also cause direct physical loss and damage to properties and buildings by altering the physical condition of air in buildings from safe and breathable, to unsafe and dangerous. The coronavirus and COVID-19 are able to live in aerosols and accumulate in buildings, which render the properties and premises damaged, lost, unsafe, and unfit for occupancy.

C. The Florida Closure Orders

29. On March 17, 2020, Florida Governor Ron DeSantis issued Executive Order No. 20-68, restricting bars from selling alcohol and ordering every restaurant to limit its occupancy to 50% of current building capacity.¹⁸

¹⁷ Transmission of SARS-CoV-2: implications for infection prevention precautions, World Health Organization (July 9, 2020), <https://www.who.int/newsroom/commentaries/detail/transmission-of-sarscov-2-implications-for-infection-preventionprecautions>.

¹⁸ State of Florida, Office of the Governor, Executive Order Number 20-68 (March 17, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-68.pdf.

30. On March 17, 2020, Hillsborough County issued a civil authority order (Administrator Order Number 20-05) limiting restaurant services to take-out, delivery, or drive-through only.¹⁹ This affected two of SunPubs' nine locations.

31. On March 20, 2020, Governor DeSantis issued Executive Order Number 20-71, requiring the suspension of alcohol sales for on-premises consumption and the suspension of all dine-in eating at restaurants.²⁰

32. On March 25, 2020, the Pinellas County Commission unanimously ordered residents to stay home, in part because "there is reason to believe that COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and **causing increased infections to persons, property loss and damage in certain circumstances.**" (emphasis added).²¹ Restaurant limitations imposed by the Governor's orders were adopted by the County in its order. Six of SunPubs' locations are in Pinellas county.

33. On May 3, 2021 Governor DeSantis issued a civil authority order lifting the social distancing orders that he previously implemented.

¹⁹ Hillsborough County, Administrator Order Number 20-05 (March 17, 2020), https://www.hillsboroughcounty.org/library/hillsborough/media-center/documents/administrator/administrative-orders/ao05_32020.pdf at ¶ 3.

²⁰ State of Florida, Office of the Governor, Executive Order Number 20-71 (March 20, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-71.pdf.

²¹ Pinellas County, Resolution No. 20-20 (March 25, 2020), <https://www.pinellascounty.org/emergency/PDF/covid19/res20-20.pdf>

D. Presence of Virus at Plaintiff's Restaurants

34. Available data indicate a high probability that, at any given location in the Tampa Bay area during the COVID-19 pandemic—especially in a public place, and most especially a restaurant—droplets containing virus matter are physically present.

35. Data published in November 2020 by Nature Human Behavior indicates it is a “statistical certainty” that at social or public gatherings of at least 10 people such as a “bar, restaurant, [or] business event” there was at least one individual infected with COVID-19.²² The same data indicated that public gatherings with 50 or more people in Florida held around August 2020 had a greater than 75% chance that at least one attending individual had COVID-19.²³

36. A January 2021 study investigated the presence of the coronavirus in the air of public places such as shopping centers and public transportation. Researchers collected randomized air samples and evaluated them for presence of the virus. 100% of samples from shopping centers and subway trains detected the coronavirus, 80% from airport samples, and 33% from banks.²⁴

37. More specifically, Plaintiff's property has suffered “physical loss of or damage to” by virtue of the “physical loss of or damage to” Plaintiff's dining rooms or other qualifying property caused by the actual presence of virus droplets harmfully altering the air and the surfaces in the vicinity of and in Plaintiff's restaurants.

²² <https://www.nature.com/articles/s41562-020-01000-9>.

²³ <https://www.nature.com/articles/s41562-020-01000-9> (see figure 3).

²⁴ Hadei, Mostafa et al. “Presence of SARS-CoV-2 in the Air of Public Places and Transportation,” *Atmospheric Pollution Research* Vol. 12, 3 (2021): 302-306, <https://pubmed.ncbi.nlm.nih.gov/33519256/>.

38. In addition, Plaintiff's own employees suffered from COVID-19. More than 50 of its employees have tested positive for COVID-19 and Plaintiff has taken extensive measures to prevent further infection.

E. The Starr Policy

39. In return for the payment of a substantial premium, Starr issued an All-Risk Policy No. SLSTPTY11178619 (the "Policy," attached hereto as Exhibit A) to Plaintiff, in effect between May 15, 2019 and May 15, 2020.

40. The Policy provides an \$18,244,219 per-occurrence limit of liability.

41. SunPubs complied with all terms, conditions, obligations and requirements of the Policy, including full payment of a premium of \$109,730.

42. The Policy is "All-Risk" in nature, meaning it insures against the risk of loss due to any peril unless otherwise excluded. It begins with the broad statement that it "covers the property insured hereunder against all risks of direct physical loss or damage to covered property while at INSURED LOCATIONS occurring during the Term of this POLICY, except as hereinunder excluded or limited." Property Coverage Form General Conditions, § 1.

43. As part of the protection from "all risks," insured under the Policy, the Policy contains several different sections characterized as "TIME ELEMENT" coverage. Specifically, "TIME ELEMENT" is defined as "[T]he actual loss sustained due to the necessary interruption of the Insured's NORMAL business operations including but not limited to, loss described in the BUSINESS INTERRUPTION SECTION, if attached, and the following TIME ELEMENT extensions" endorsed on to the Policy: Extra Expense, Ingress/Egress, Leasehold Interest. Property Coverage, General Conditions, § 13(Z).

44. The Policy's "Business Interruption" form contains Starr's promise to pay for "Loss directly resulting from necessary interruption of the Insured's NORMAL business operations caused by direct physical loss or damage to real or personal property covered herein... arising from a peril insured against hereunder and occurring during the term of this POLICY; all while located at INSURED LOCATIONS." Business Interruption, § I.

45. The Business Interruption coverage protects losses to Plaintiff's gross earnings and expenses from the interruption of its business. The Policy covers the "ACTUAL LOSS SUSTAINED by the Insured resulting directly from the necessary interruption of business, but not exceeding the reduction in GROSS EARNINGS less charges and expenses which do not necessarily continue during the interruption of business." Business Interruption, § 2. Starr also agreed to cover "Expenses Related to Reducing Loss," which are "expenses as are necessarily incurred for the purpose of reducing loss under this POLICY" *Id.*, Business Interruption, § 4.

46. The Policy also includes coverage for "Interruption by Civil or Military Authority" which promises to pay for loss caused by the action of a civil authority that prohibits access to the insured premises. This section provides:

This POLICY is extended to include, starting at the time of physical loss or damage, the actual loss sustained by the Insured, resulting directly from an interruption of business as covered hereunder, during the length of time, not exceeding the number of days shown under TIME LIMITS stated in the Declarations, when, as a direct result of damage to or destruction of property within one (1) statute mile of an INSURED LOCATION by the peril(s) insured against, access to such described premises is specifically prohibited by order of civil or military authority.

Business Interruption, § 7.

47. Also as part of its broad coverage for interference with access to Plaintiff's properties, the Policy also provides Ingress/Egress coverage as long as access to Plaintiff's

premises is impaired as a result of loss or damage like that caused by the coronavirus. The Ingress/Egress coverage provides extended coverage for “the ACTUAL LOSS SUSTAINED ... when as a direct result of loss or damage by a peril insured against to property of a type insured against within one (1) mile of an INSURED LOCATION, ingress to or egress from the premises insured is impaired irrespective of whether the premises or property insured shall have been damaged.” Endorsement 15.

48. The Extra Expense coverage goes beyond the promise to pay for “Expenses Related to Reducing Loss” in the Business Interruption Section and covers “the reasonable and necessary EXTRA EXPENSE²⁵ incurred by the Insured in order to continue as nearly as practicable the NORMAL operation of the Insured’s business following direct physical loss or damage of real or personal property at an INSURED LOCATION(S), by the peril(s) insured against during the Term of this POLICY.” Endorsement 11.

49. For all coverages, the Policy also provides general coverage for “Protection and Preservation of Property” such that Plaintiff would not be penalized for actions taken to protect its property. This coverage states:

In case of actual physical loss or damage of the type insured against by this POLICY, the expenses incurred by the Insured in taking reasonable and necessary actions for the temporary protection and preservation of Property insured hereunder shall be added to the total direct physical loss or damage otherwise recoverable under this POLICY and be subject to the applicable Deductible.

Property Coverage, General Conditions, § 9.

50. In 2006, the Insurance Services Office (ISO), a service provider to the insurance industry, crafted a specific exclusion for “Communicable Diseases.”

²⁵ “Extra Expense” is defined as the “excess, if any, of the total cost incurred during the PERIOD OF INDEMNITY chargeable to the operation of the Insured’s business, over and above the total cost that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred.” Policy, Endorsement 11, § G.

51. Unlike many property policies offering business interruption coverage, the Policy does not contain ISO's "communicable disease" exclusion, or any other dedicated exclusion that would apply to a claim made for losses stemming from a virus.

52. The presence of COVID-19 caused direct physical loss or damage to the covered property under the Plaintiff's policy, by denying use of and damaging the covered property, and by causing a necessary interruption of business during the "period of indemnity."

53. A "slowdown or cessation" of business activities at the Covered Property is a "suspension" under the policy.

54. These events triggered the Business Interruption, Interruption by Civil or Military Authority, Ingress/Egress, and Leasehold Interest coverage.

55. As a result of the presence of COVID-19, Plaintiff lost Business Income and also incurred Extra Expenses. These included, without limitation, weekly mandatory testing for its employees beginning July 2, 2020, physical modifications to the restaurant, increased labor costs to manage social distancing, personal protective equipment, additional seats, increased print cost for menus and signage, and tenting of additional space.

F. SunPubs' Claim Is Denied Without Investigation

56. SunPubs submitted its claim to Starr on March 18, 2020 for losses associated with COVID-19 and the Closure Orders. Defendant denied those claims on August 20, 2020. SunPubs filed a formal complaint on March 16, 2021, which Defendant also denied on March 31, 2021.

57. Starr's denial was in bad faith at least in part because it well knew that SunPubs' interpretation of the policy was reasonable. Specifically, it knew that a court had

held the insured’s interpretation of “physical loss or damage to property” was reasonable, that the Pollution and Contamination clause was inapplicable to the coronavirus, and that Civil or Military Authority coverage applied. *See JGB Vegas Retail Lessee, LLC v. Starr Surplus Lines Ins. Co.*, No. A-20-816628-B, 2020 WL 7190023, at *3 (Nev. Dist. Ct. Nov. 30, 2020) (in COVID-19 business income loss case relying on nearly identical Starr policy, court found “Starr has not shown that it is unreasonable to interpret the Pollution and Contamination Exclusion to apply only to instances of traditional environmental and industrial pollution and contamination that is not at issue here, where [plaintiff’s] losses are alleged to be the result of a naturally-occurring, communicable disease. This is the case, even though the Exclusion contains the word ‘virus.’”)

58. Furthermore, Starr never tested for coronavirus at any SunPubs restaurant to determine whether the SARS-CoV-2 virus was present at any of the insured premises.

59. In fact, Starr conducted no investigation of any kind into SunPubs’ claim.

60. It is apparent from correspondence that Starr merely issued a blanket denial it sent to all restaurants experiencing COVID-19-related losses, instead of handling SunPubs’ claim in good faith.

61. After the end of the Policy in May 2020, Plaintiff renewed it for another year, paying a premium of \$123,000. This policy included, at Starr’s instigation, an additional exclusion for communicable disease.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

62. Plaintiff SunPubs repeats and realleges Paragraphs 1-61 as if fully set forth herein.

63. Starr issued the Policy to SunPubs in return for a premium which SunPubs paid in full.

64. SunPubs complied with all terms, conditions, obligations and requirements of the Policy.

65. In the Policy, Starr agreed to pay for SunPubs' actual loss of Business Income sustained due to the necessary interruption of business during the "period of indemnity." Starr agreed to pay for loss of Business Income during the "period of indemnity" that begins with the date of direct physical loss or damage.

66. The presence of COVID-19 onsite caused direct physical loss and damage to SunPubs' covered properties, requiring suspension of restaurant operations at those properties. Losses caused by COVID-19 thus triggered the Business Income provision of Plaintiff's policies.

67. SunPubs' losses also triggered coverage under the Interruption by Civil or Military Authority coverage, the Ingress/Egress coverage, the Extra Expense coverage, and the Leasehold Interest coverage.

68. Plaintiff has complied with all applicable provisions of its policies yet Defendant has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms.

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

SECOND CAUSE OF ACTION

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR

DEALING

70. Plaintiff SunPubs repeats and realleges Paragraphs 1-61 as if fully set forth herein.

71. The Policy is a contract under which SunPubs paid a premium in exchange for Starr's promise to pay claims covered by the Policy.

72. Under New York law, insurers are obligated to thoroughly investigate any plausible claim filed and to negotiate in good faith.

73. Starr has failed in this obligation. Starr (and the insurance industry) as a whole have issued omnibus denials to all pandemic-related claims despite the insured's reasonable expectation of coverage, and despite the "All-Risk" nature of its obligations under the Policy.

74. Defendant acted in bad faith by unreasonably denying SunPubs' claim despite the absence of a communicable disease or other dedicated virus exclusion in the Policy.

75. Starr acted in bad faith, and also prejudiced SunPubs' ability to prove its claim, by failing to timely and reasonably investigate the circumstances of SunPubs' claim, including but not limited to Starr's failure to test for coronavirus at SunPubs' premises.

76. By denying all claims related to COVID-19 in conjunction with its obligation to investigate the claims, the Defendant breached its duty to investigate and settle a claim in good faith. Defendant's failure to provide coverage to its insureds during the worst global pandemic in more than 100 years violates the duty to act in good faith.

THIRD CAUSE OF ACTION**DECLARATORY JUDGMENT**

77. SunPubs repeats and realleges Paragraphs 1-61 as if fully set forth herein.
78. Starr issued the Policy to SunPubs in return for a premium which SunPubs paid in full.
79. SunPubs complied with all terms, conditions, obligations and requirements of the Policy.
80. In the Policy, Starr agreed to pay for SunPubs' actual loss of Business Income sustained due to the necessary interruption of business during the "period of indemnity." Starr agreed to pay for loss of Business Income during the "period of indemnity" that begins with the date of direct physical loss or damage.
81. The presence of COVID-19 onsite caused direct physical loss and damage to SunPubs' covered properties, requiring suspension of restaurant operations at those properties. Losses caused by COVID-19 thus triggered the Business Income provision of Plaintiff's policies.
82. SunPubs' losses also triggered coverage under the Interruption by Civil or Military Authority coverage, the Ingress/Egress coverage, the Extra Expense coverage, and the Leasehold Interest coverage.
83. SunPubs has complied with all applicable provisions of its policies yet Defendant has abrogated its insurance coverage obligations pursuant to the policies' clear and unambiguous terms.
84. SunPubs seeks a declaratory judgment from this Court declaring the following:

- (i) Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the policy; and
- (ii) Defendant is obligated to pay Plaintiff for the full amount of such losses.

PRAYER FOR RELIEF

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

- a. Entering judgment in favor of the Plaintiff SunPubs and awarding damages for breach of contract in an amount to be determined at trial, together with pre- and post-judgment interest;
- b. Entering declaratory judgment as follows:
 - (i) Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the policy; and
 - (ii) Defendant is obligated to pay Plaintiff for the full amount of such losses;
- c. Ordering Defendant to pay both pre and post-judgment interest on any amounts awarded;
- d. Ordering Defendants to pay attorneys' fees and costs of suit; and
- e. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all claims so triable.

Dated: New York, New York
May 14, 2021

Respectfully submitted,

HECHT PARTNERS LLP

By:  _____

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