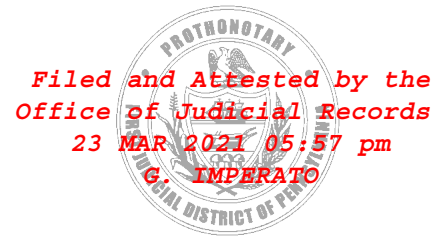


REED SMITH LLP

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*Attorneys for Plaintiff
Shaner Hotel Holdings, LP*

SHANER HOTEL HOLDINGS, LP
1965 Waddle Road
State College, PA 16803
gwolfe@shanercorp.com

Plaintiff,

v.

ACE AMERICAN INSURANCE COMPANY
436 Walnut Street
Philadelphia, PA, 19106
jeffrey.markle@chubb.com

ENDURANCE AMERICAN SPECIALTY COMPANY
1209 Orange Street
Wilmington, Delaware 19801
dcruz@sompo-intl.com

IRONSHORE SPECIALTY INSURANCE COMPANY
75 Federal Street
Boston, MA 02110
alberto.dilernia@ironshore.com

INTERSTATE FIRE AND CASUALTY COMPANY
225 W. Washington Street
Chicago, Illinois 60606
AGCSCommunication@agcs.allianz.com

CERTAIN UNDERWRITERS AT LLOYD'S (CONSORTIUM #9226)
750 Seventh Avenue
New York, New York 10019
business.claims@velocityrisk.com

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

COMMERCE PROGRAM

CIVIL ACTION

MARCH TERM, 2021

NO. _____

JURY TRIAL DEMANDED

EVEREST INDEMNITY COMPANY :
477 Martinsville Road :
Liberty Corner, NJ 07938 :
ryan.barron@everestre.com :
:
EVANSTON INSURANCE COMPANY :
10275 West Higgins Road :
Rosemont, IL 60018 :
markelclaims@markelcorp.com :
:
PRINCETON EXCESS AND SURPLUS :
LINES INSURANCE COMPANY :
555 College Road East :
Princeton, NJ 08543 :
eryan@munichreamerica.com :
:
ARCH INSURANCE COMPANY :
2345 Grand Boulevard, Suite 900, :
Kansas City, Missouri, 64108 :
claims@archinsurance.com :
:
Defendants. :
:

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint of for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

**Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, PA 19107
(215) 238-6333**

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascntar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con

todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

**Asociacion De Licenciados
De Filadelfia
Servicio De Referencia E
Informacion Legal
1101 Market St., 11th Piso
Filadelfia, Pennsylvania 19107
(215) 238-6333**

Respectfully submitted,

Dated: March 23, 2021

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SHANER HOTEL HOLDINGS, LP

1965 Waddle Road
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gwolfe@shanercorp.com

Plaintiff,

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ACE AMERICAN INSURANCE COMPANY

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jeffrey.markle@chubb.com

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1209 Orange Street
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**IRONSHORE SPECIALTY INSURANCE
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75 Federal Street
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COMPANY**

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**CERTAIN UNDERWRITERS AT LLOYD'S
(CONSORTIUM #9226)**

750 Seventh Avenue
New York, New York 10019
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**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

COMMERCE PROGRAM

CIVIL ACTION

MARCH TERM, 2021

NO. _____

JURY TRIAL DEMANDED

EVEREST INDEMNITY COMPANY :
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Princeton, NJ 08543 :
eryan@munichreamerica.com :

ARCH INSURANCE COMPANY :
2345 Grand Boulevard, Suite 900, :
Kansas City, Missouri, 64108 :
claims@archinsurance.com :

Defendants. :

COMPLAINT

Plaintiff Shaner Hotel Holdings, LP (“Shaner”), by its undersigned counsel, Reed Smith LLP, hereby submit its Complaint against Defendants, ACE American Insurance Company (“ACE”), Endurance American Specialty Insurance Company (“Endurance”), Ironshore Specialty Insurance Company (“Ironshore”), Interstate Fire and Casualty Company (“Interstate”), Defendant Certain Underwriters at Lloyd’s (Consortium #9226) (“Underwriters”), Everest Indemnity Insurance Company (“Everest”), Evanston Insurance Company (“Evanston”), Princeton Excess and Surplus Lines Company (“Princeton”), and Arch Insurance Company (“Arch”) (collectively, the “All-Risk Insurance Companies”), and in support thereof, avers as follows:

NATURE OF ACTION

1. This is an action for a declaratory judgment, breach of contract, and bad faith conduct under 42 Pa. Cons. Stat. Ann. § 8371, arising out of the All-Risk Insurance Companies’ refusal to pay amounts due under all-risk property and business interruption insurance policies

Shaner purchased from the All-Risk Insurance Companies. The “All-Risk Policies” are attached hereto as **Exhibits A through I**. This action concerns losses sustained by Shaner at forty of its hotel properties (the “Covered Hotel Properties”) insured under the All-Risk Policies due to the necessary interruption or reduction of business operations at the Covered Hotel Properties starting in March 2020, as more fully described below.

PARTIES

2. Plaintiff Shaner Hotel Holdings, LP is a Delaware limited partnership, with its principal place of business at 1965 Waddle Road, State College, Pennsylvania 16803.

3. At all relevant times, Plaintiff Shaner Hotel Holdings, LP (“Shaner”) was the Named Insured under the All-Risk Policies, and was (and still is) in the business of operating hotels insured under the All-Risk Policies.

4. ACE American Insurance Company (“ACE”) is an insurance company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 19106. At all relevant times Defendant ACE was, and presently is, duly authorized to transact the business of insurance in the Commonwealth of Pennsylvania and is in fact transacting the business of insurance in the Commonwealth of Pennsylvania.

5. Endurance American Specialty Insurance Company (“Endurance”) is an insurance company organized and existing under the laws of the State of Delaware with its principal place of business located at 1209 Orange Street, Wilmington, Delaware 19801.

6. Ironshore Specialty Insurance Company (“Ironshore”) is an insurance company organized and existing under the laws of the State of Arizona with its principal place of business located at 75 Federal Street, Boston, Massachusetts 02110.

7. Interstate Fire And Casualty Company (“Interstate”) is an insurance company organized and existing under the laws of the State of Illinois with its principal place of business located at 225 W. Washington Street, Suite 1800, Chicago, Illinois 60606.

8. Defendant Certain Underwriters at Lloyd’s, London (Consortium #9226) (“Underwriters”) subscribed to an insurance policy sold to Shaner. Lloyd’s is a market for the buying and selling of insurance risk among its members, or “names,” who can be individual underwriters and who may be bound together in syndicates and with All-Risk Insurance Companies that participate in the Lloyd’s market. Underwriters have consented to the jurisdiction of this Court and have agreed to comply with all requirements necessary to give this Court jurisdiction.

9. Defendant Everest Indemnity Insurance Company (“Everest”) is an insurance company organized and existing under the laws of the State of Delaware with its principal place of business located at 477 Martinsville Road, Liberty Corner, New Jersey 07938.

10. Defendant Evanston Insurance Company (“Evanston”) is an insurance company organized and existing under the laws of the State of Illinois with its principal place of business located at 10275 West Higgins Road, Suite 750, Rosemont, Illinois 60018.

11. Defendant Princeton Excess and Surplus Lines Insurance Company (“Princeton”) is an insurance company organized and existing under the laws of the State of Delaware with its principal place of business located at 555 College Road East, Princeton, New Jersey 08543.

12. Defendant Arch Insurance Company (“Arch”) is an insurance company organized and existing under the laws of the State of Missouri with its principal place of business located at 2345 Grand Boulevard, Suite 900, Kansas City, Missouri 64108.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 42 Pa. C.S. § 931(a).

14. This Court has personal jurisdiction over ACE pursuant to 42 Pa. C.S. § 5301(a).

15. This Court has personal jurisdiction over Endurance, Ironshore, Interstate, Underwriters, Everest, Evanston, Princeton, and Arch pursuant to 42 Pa. C.S. § 5322. Among other things, Defendants contracted to insure property and risks located within this Commonwealth at the time of contracting and are licensed to engage in the business of insurance in the Commonwealth of Pennsylvania.

16. Venue is proper in this Court pursuant to Pa. R.C.P. 2179 and 231 Pa. Code 1006.

FACTUAL BACKGROUND

A. Shaner Hotel Business

17. Prior to the onset of the COVID-19 pandemic, Shaner operated a consistently profitable and expanding hospitality industry business.

18. Shaner owns, operates, and manages hotels under various brand names nationwide, including the forty Covered Hotel Properties at issue in this action. A list of these hotels and their locations are attached hereto as **Exhibit J**.

19. The Covered Hotel Properties have agreed to and ratified the authority of Shaner as their representative to pursue this lawsuit and their claims against the All-Risk Insurance Companies, including the authority to make decisions regarding the claims and collect for all covered losses on their behalf. Consequently, Shaner seeks recovery in this action on its behalf and on behalf of all of the ownership interests in the Covered Hotel Properties for all losses suffered by the Covered Hotel Properties beginning in March 2020.

20. The Covered Hotel Properties feature more than 5,000 rooms and suites and many of the properties have restaurants and eateries.

B. The All-Risk Policies

21. Shaner purchased the All-Risk Policies from the All-Risk Insurance Companies.

22. The All-Risk Policies list Shaner as the First Named Insured and insure all Locations “listed on a report provided the [All-Risk Insurance Companies] at inception.”

23. The All-Risk Policies collectively have a Limit of Liability of \$125,000,000 for the total of all coverages combined regardless of the number of Locations involved.

24. The All-Risk Insurance Companies agreed to underwrite their respective shares of the primary layer of \$25,000,000 and/or the excess layer of \$100,000,000 excess of \$25,000,000 as more fully defined in the All-Risk Policies and below. Specifically, ACE, Endurance, Ironshore, Interstate, Underwriters, and Everest (collectively, the “Primary All-Risk Insurance Companies”) underwrote their respective shares of the primary insurance layer (the “Primary All-Risk Policies”). In addition, Princeton, Interstate, Arch, Everest, and Evanston (collectively, the “Excess All-Risk Insurance Companies”) underwrote a portion of their respective shares of the excess insurance layer, as set forth below.

Insurance Company	Layer	Share
ACE	\$25MM	25%
Endurance	\$25MM	25%
Ironshore	\$25MM	20%
Interstate/Underwriters(Velocity Policy)	\$25MM	15%
Everest	\$25MM	15%
Princeton	\$100MM excess of \$25MM	38%
Interstate	\$100MM excess of \$25MM	22%
Arch	\$100MM excess of \$25MM	15%
Everest	\$100MM excess of \$25MM	15%
Evanston	\$100MM excess of \$25MM	10%

(a) **The Primary All-Risk Policies**

25. ACE sold Policy No. CX D38115364 004 (the “ACE Policy”), with a policy period from June 1, 2019 to June 1, 2020, insuring 25% of the \$25M primary insurance layer, that being \$6.25M, excess of deductibles. A true and correct copy of the ACE Policy is attached hereto as **Exhibit A**.

26. Endurance sold Policy No. GPR30000679701 (the “Endurance Policy”), with a policy period from June 1, 2019 to June 1, 2020, insuring 25% of the \$25M primary insurance layer, that being \$6.25M, excess of deductibles. A true and correct copy of the Endurance Policy is attached hereto as **Exhibit B**.

27. Ironshore sold Policy No. 000423609, with a policy period from June 1, 2019 to June 1, 2020, insuring 20% of the \$25M primary insurance layer, that being \$5M, excess of deductibles. A true and correct copy of the Ironshore Policy is attached hereto as **Exhibit C**.

28. Interstate Fire & Casualty Co. sold Policy No. VRX-CN-0001771-01 (the “Velocity Policy”), with a policy period from June 1, 2019 to June 1, 2020, insuring a part of 15% of the \$25M primary insurance layer, that being \$3.75M, excess of deductibles. A true and correct copy of the Velocity Policy is attached hereto as **Exhibit D**.

29. Underwriters sold Policy No. VPC-CN-0001771-01 (the “Velocity Policy”), with a policy period from June 1, 2019 to June 1, 2020, insuring a part of 15% of the \$25M primary insurance layer, that being \$3.75M, excess of deductibles.

30. Everest sold Policy No. RP8CF00020-191, with a policy period from June 1, 2019 to June 1, 2020, insuring 15% of the \$25M primary insurance layer, that being \$3.75M, excess of deductibles. A true and correct copy of the Everest Policy is attached hereto as **Exhibit E**.

(b) **The Excess All-Risk Policies**

31. Princeton Insurance Company sold Policy No. 78XPA3000050501, with a policy period from June 1, 2019 to June 1, 2020, insuring 38% of the excess layer of \$100M excess of \$25M, that being \$38M. A true and correct copy of the Princeton Policy is attached hereto as **Exhibit F**.

32. Interstate sold Policy No. MXF80517244, with a policy period from June 1, 2019 to June 1, 2020, insuring 22% of the excess layer of \$100M excess of \$25M, that being \$22M. A true and correct copy of the Interstate Policy is attached hereto as **Exhibit G**.

33. Arch sold Policy No. PRP0058521-04, with a policy period from June 1, 2019 to June 1, 2020, insuring 15% of the excess layer of \$100M excess of \$25M, that being \$15M. A true and correct copy of the Arch Policy is attached hereto as **Exhibit H**.

34. Everest sold Policy No. RP8CF00020-191, with a policy period from June 1, 2019 to June 1, 2020, insuring 15% of the excess layer of \$100M excess of \$25M, that being \$15M. A true and correct copy of the Everest Policy is attached hereto as **Exhibit E**.

35. Evanston sold Policy No. MKLV12XP003034, with a policy period from June 1, 2019 to June 1, 2020, insuring 10% of the excess layer of \$100M excess of \$25M, that being \$10M. A true and correct copy of the Evanston Policy is attached hereto as **Exhibit I**.

(c) **The Relevant Language of the All-Risk Policies**

36. Under the Insuring Agreement, the All-Risk Policies insure against “all risks of direct physical loss, damage or destruction occurring during the term of this policy to the type of property insured”

37. The All-Risk Policies do not define the phrase “direct physical loss, damage or destruction.”

38. The presence of the disjunctive “or” in the phrase “direct physical loss, damage *or* destruction” means that the insurance applies to all risks of “direct physical loss” *as well as* to all risks of “damage” *or* “destruction” to the property insured. The terms “loss” and “damage” and “destruction” each have independent meaning and are not mere surplusage.

39. “Direct physical loss, damage or destruction” occurs when property is rendered unusable or unsuitable for its intended purpose or unsafe for normal human occupancy and/or continued use or when property loses its functionality.

40. The Time Element Coverage (Section V) of the All-Risk Policies insures “loss resulting from the necessary interruption or reduction of business operations conducted by the Insured and caused by direct physical loss, damage or destruction, of the property of the type insured hereunder”

41. The All-Risk Policies state if such a loss from the interruption or reduction of business operations occurs, it “shall be adjusted on the basis of the ‘Actual Loss Sustained’ by the Insured during the Period of Recovery resulting from the interruption or reduction of operations.”

42. The All-Risk Policies define “Actual Loss Sustained” as the reduction in ‘Business Interruption Gross Earnings’ less charges and expenses that do not necessarily continue during the interruption or reduction of the business operations.”

43. For non-manufacturing operations, like Shaner, the Policies define “Business Interruption Gross Earnings” as the sum of:

- a. Total net sales, and
- b. Other earnings derived from the operations of the business.

LESS THE COST OF:

- c. “Merchandise” sold,
- d. Materials and supplies consumed, and
- e. Services purchased from outsiders for resale which do not continue under contract.

- f. No other costs, including ordinary payroll unless otherwise stipulated in this policy, shall be deducted in determining “Business Interruption Gross Earnings” for non-manufacturing business.

44. The Time Element Coverage of the All-Risk Policies also insure “Extra expense” incurred by Shaner “resulting from direct physical loss, damage or destruction of property insured by a peril insured by this Policy.”

45. The All-Risk Policies define “extra expense” as “the reasonable and necessary extra costs incurred by the Insured during the Period of Recovery to temporarily continue as nearly normal as practicable the conduct of the Insured’s business” “Extra expense” includes “extra costs of temporarily using property of the Insured or others less any value remaining at the end of the Period of Recovery for property obtained in connection with an ‘extra expense’ loss.”

46. The All-Risk Policies state, in relevant part, that the Period of Recovery applicable to all Time Element coverages and Extensions of Time Element coverages, except “Business Interruption Loss of Profits,”

[s]hall not exceed such length of time required with the exercise of due diligence an dispatch to rebuild, repair, or replace lost, damaged or destroyed property and to make such property ready for operations under the same or equivalent physical and operating conditions that existed prior to the loss. . .

b. Applicable to “Time Element” as defined in Business Interruption Loss of Profits, the Period of Recovery shall be the period beginning with the occurrence of the direct physical loss, damage or destruction and ending not later than the “Maximum Period of Recovery” thereafter during which the results of the business are affected in consequence of the loss, damage or destruction.

47. Under the All-Risk Policies’ Extensions of Time Element, the Policies provide coverage for “a. Expenses to Reduce Loss,” and “insure[] expenses necessarily incurred for the purpose of reducing any ‘Time Element’ loss, even though such expenses may exceed the amount by which such ‘Time Element’ loss is reduced.”

48. The All-Risk Policies' Extensions of Time Element also include coverage for "b. Contingent 'Time Element' Coverage," which insures "direct physical loss, damage or destruction" of

ii. Property of others of the type insured by this Policy in the vicinity of a "location" of the Insured that attracts customers to the Insured's "location."

49. The Covered Hotel Properties exist in the vicinity of many restaurants, cafes, bars, other hotels, venues, and other businesses and attractions that have also suffered and continue to suffer direct physical loss, damage or destruction of property due to the ubiquitous presence of COVID-19 and/or due to orders restricting and/or prohibiting operation of and access to these businesses and facilities. These surrounding businesses are properties that attract customers and, thus, are Contingent Time Element Locations under the terms of the All-Risk Policies.

50. University graduations, conferences, conventions, and other large community gatherings on which the Covered Hotel Properties have historically relied to fill vacancies have also been canceled due to the closure of or limitations on operation of the facilities normally conducting them. The combined impacts of these and other actions mandated by the public and civil authority orders, as well as community infection of COVID-19 around the Covered Hotel Properties, have caused a precipitous decline in the business income of the Covered Hotel Properties.

51. The All-Risk Policies' Extensions of Time Element include coverage for "c. Interdependent 'Time Element'" which insures "loss sustained within and among companies or corporations owned, controlled or which are subsidiaries of the Insured, or joint ventures or partnerships in which the Insured has an interest"

52. The All-Risk Policies' Extensions of Time Element further include coverage for "d. Interruption by Civil or Military Authority" which insures "Time Element" loss sustained when

as a result of direct physical loss, damage or destruction or imminent loss by a peril insured by this Policy within ten (10) miles of an insured 'location,' normal business operations are interrupted or reduced because access to that 'location' is prevented or impaired by order of civil or military authority.

53. The All-Risk Policies' Extensions of Time Element further include coverage for "e.

Loss of Ingress or Egress" which insures

direct physical loss, damage or destruction or imminent loss by a peril insured by this Policy within ten (10) miles of an insured 'location,' normal business operations are interrupted or reduced because access to that 'location' is prevented or impaired by order of civil or military authority.

54. The All-Risk Policies' Extensions of Time Element include coverage for "g. Law, Ordinance, Regulation or Governmental Directive," which states in the event "any law, ordinance, regulation or governmental directive" regulates or prohibits "reconstruction, restoration, repair or use of property . . . at the time of direct physical loss, damage or destruction by a peril insured by this Policy," the Policies "shall pay for any increase in 'Time Element' loss . . . arising out of the additional time required to bring both the damaged and undamaged property into full compliance with the law, ordinance, regulation or governmental directive."

55. The All-Risk Policies, with the exception of the ACE Policy and Endurance Policy, contain as an Extension of Time Element, "i. Special Time Element – Cancellation Coverage" which insures

loss sustained by the Insured resulting from the cancellation of, and/or inability to accept bookings or reservations for accommodation, receive admissions, and/or interference with the business at any insured location all as a direct result of the 'Occurrence' of: . . . ii. contagious or infectious disease (including decontamination and clean up costs) . . . iv. Any of the following that occur within a radius of ten (10) miles of an insured location, to the extent such Time Element loss is not otherwise insured elsewhere in this policy; (a) outbreak of a contagious and/or infectious disease . . . v. closing of the whole or part of the premises of the Insured either by the Insured or by order of a Public Authority consequent upon the existence or threat of hazardous conditions either actual or suspected at an insured location

C. The COVID-19 Global Pandemic

56. In December 2019, during the policy period of the All-Risk Policies, an outbreak of illness known as COVID-19 caused by SARS-CoV-2 virions was identified in Wuhan, Hubei Province, China. A pandemic of global proportions then ensued.

57. The rapid spread of COVID-19 is due in part to the highly transmissible character of the virions.

58. Another unique challenge in dealing with COVID-19 is that it can be carried and transmitted from persons who are infected with the disease, but are asymptomatic with no showing of any indications that they are transmitting the virions to property and to other persons.

59. Further, the lack of testing facilities and supplies throughout the United States has rendered containment activities by national, state and local governmental entities and made it impossible to limit or contain the spread of the virions in any meaningful way.

60. Similarly, as there is no quick, accurate, or efficient method to test for the presence of SARS-CoV-2 virions in or on property, business operations like Shaner are unable to detect meaningfully the presence of virions on their property to prevent completely property-to-person transmission of the virions.

61. Finally, the federal government's actions in downplaying and minimizing the presence and impact of SARS-COV-2 virions and their ability to spread in the United States throughout persons, property and businesses created a false sense of security among a substantial portion of the United States population that led to far greater spread and lack of containment of the virions in all of the areas of the United States in which the Covered Hotel Properties are located.

62. According to the CDC and World Health Organization (the "WHO"), people may become infected by, among other things, touching surfaces or objects that have the virions on them, and then touching their mouth, eyes, or nose.

63. Although these virions are very small, they are still physical objects that can travel and attach to other surfaces and cause harm, loss, and damage.

64. Current evidence suggests that SARS-CoV-2 virions may remain viable for hours to days to weeks on surfaces made from a variety of materials, including materials present at the Covered Hotel Properties.

65. For example, the virions can survive and remain virulent on stainless steel and plastic for a very substantial period of time. The CDC confirmed that SARS-CoV-2 virions were identified on surfaces of the *Diamond Princess* cruise ship a full 17 days after the cabins were vacated. See <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

66. Because hotels are indoor, ordinarily highly trafficked and extensive public gathering spaces, they are particularly susceptible to circumstances favorable to the impact of the easily transmitted nature of SARS-CoV-2 virions to property and people. An article published by the CDC analyzed a case study of three families (families A, B, and C) who had eaten at an air-conditioned restaurant in Guangzhou, China. See https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article. One member of family A, patient A1, had recently traveled from Wuhan, China. On January 24, 2020, that family member ate at a restaurant with families A, B, and C. *Id.* By February 5, 2020, 4 members of family A, 3 members of family B, and 2 members of family C had become ill with COVID-19. *Id.* The only known source for those affected persons in families B and C was patient A1 at the restaurant.

67. Since any recently developed treatment or vaccine to protect against COVID-19 remains limited in availability and distribution, effective control of the disease's spread necessarily relies on measures designed to reduce non-essential human-to-human and surface-to-human exposure.

D. The U.S. Government and Public Health Response to the Spread of COVID-19.

68. On January 30, 2020, with the outbreak spreading outside of China, impacting many countries including the United States, the WHO declared the COVID-19 outbreak a Public Health Emergency of International Concern.

69. On January 31, 2020, the U.S. Department of Health and Human Services declared that a public health emergency existed nationwide because of confirmed cases of COVID-19 in the United States (“National Public Health Declaration”).

70. The federal government and the state of the public health system in the U.S., both before and after the start of the pandemic, failed to stop the rampant spread of COVID-19, which led to the presence of SARS-CoV-2 virions throughout the communities where the Covered Hotel Properties are located, and in the immediate areas surrounding them. Guests and employees at the Covered Hotel properties were also infected with COVID-19.

71. All of this caused the Covered Hotel Properties to be rendered unusable in their normal state as of March 2020, and while they were forbidden to operate in their pre-pandemic manner by the various governmental orders prohibiting the operation of non-essential businesses, which includes all of the Covered Hotel Properties.

72. COVID-19 spread through the U.S. population, and individuals infected with COVID-19 roamed undetected throughout the community, including in and throughout business locations like the Covered Hotel Properties. Given the dearth of knowledge regarding the disease and how it spread in the early months of the pandemic, there was little guidance from the U.S. government or public health officials regarding the safe operation of hotels and similar businesses, including repairs and other modifications to facilities that could be implemented to allow for their safe operation and occupancy.

73. Starting in mid-March 2020, Shaner became aware of several incidents of individuals with actual or suspected cases of COVID-19 being present at the Covered Hotel Properties. Given the widespread presence of the disease within the community, including the areas where the Covered Hotel Properties are located, Shaner acted based on the reasonable belief, more likely than not, that individuals with COVID-19 were present at the Covered Hotel Properties starting in mid-March 2020. Shaner's actions to respond to the presence of SARS-CoV-2 virions were guided and mandated by government orders.

E. Recognition by the Supreme Court of Pennsylvania of COVID-19 As A Natural Disaster That Causes Damage to Property.

74. In a decision dated April 13, 2020, the Supreme Court of Pennsylvania recognized the pandemic as a "natural disaster" under Pennsylvania's Emergency Management Services Code, 35 Pa.C.S. § 7102 (the "Emergency Code"), that triggered the Governor's powers under 35 Pa.C.S. § 7301, entitled "General authority of Governor." *Friends of Devito v. Wolf*, 227 A.3d 872, 888 (Pa. 2020). The Emergency Code specifically and expressly authorizes the Pennsylvania Governor to declare a disaster emergency and thereafter to control the ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein. *Id.* at 886.

75. The Emergency Code defines "natural disaster" as "[a]ny hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion or *other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.*" (emphasis added). The Supreme Court of Pennsylvania in *Friends of Devito* held that the COVID-19 pandemic qualified as a "natural disaster" because it involves, among other things, "substantial damage to property . . ." 227 A.3d at 889.

F. National, State, and Local Governmental Reaction Further Impacting Shaner

76. Beginning in mid-March 2020, national, state and local governments imposed closure orders in an effort to slow community spread of COVID-19 and in response to the National Public Health Declaration and individual state public health declarations. To reduce and contain person-to-person and person-to-property-to-person transmission of the disease, these public authority orders mandated closure to the public at large and discontinuance or curtailment of operations of certain businesses deemed “non-essential” or aspects of business deemed non-essential, which impaired access to and interrupted the business of the Covered Hotel Properties and the restaurants and other services operating there. A non-exhaustive list of public authority orders in jurisdictions affecting the Covered Hotel Properties is attached hereto as **Exhibit K**.

(a) Pennsylvania

77. Pennsylvania Governor Thomas Wolf issued a series of orders in response to the presence and spread of COVID-19, including an order dated March 19, 2020, prohibiting the operation of businesses that were not life sustaining, and an order dated April 1, 2020, ordering all Pennsylvanians to “stay at home except as needed to access, support, or provide life-sustaining business, emergency, or government services” (collectively, the “Pennsylvania Public Authority Orders”).

78. The Pennsylvania Public Authority Orders referred to the Centers for Disease Control and Prevention’s (“CDC”) declaration of “a public health emergency of international concern” and the National Public Health Declaration as bases for the orders.

79. In addition to the Pennsylvania Public Authority Orders, on or about April 15, 2020, the Secretary of the Pennsylvania Department of Health issued an order directing “where feasible, businesses should conduct business with the public by appointment only and to the extent that this is not feasible, businesses must limit occupancy to no greater than 50% of the number stated on

the applicable certificate of occupancy at any given time, as necessary to reduce crowding in the business” This Pennsylvania Department of Health order also required businesses to “maintain a social distance of 6 feet at check-out and counter lines, and [] place signage through each site to mandate social distancing for both customers and employees.”

80. Due to the combination of restrictions in the Pennsylvania Public Authority and State Department of Health orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access was impaired to the Covered Hotel Properties located and operating in the Commonwealth of Pennsylvania (the “Shaner Pennsylvania Hotels”).

81. Because of the Pennsylvania Orders, the Shaner Pennsylvania Hotels suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Shaner Pennsylvania Hotels have not yet returned to their pre-interruption level of business income.

(b) **Florida**

82. On or about March 1, 2020, the State of Florida Department of Health issued a Declaration of Public Health Emergency in response to the CDC’s recommendation that all states and territories implement aggressive measures to slow and contain transmission of COVID-19 in the United States and the WHO’s declaration of a public health emergency of international concern.

83. On or about March 20, 2020, in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, the County of Monroe imposed a civil order closing the entire Florida Keys to all non-residents and established a physical

roadblock/checkpoint at mile marker 112.5, which was located at the sole point of ingress/egress to the entirety of the Florida Keys, including the locations of the Playa Largo Resort & Spa and the Marathon Courtyard, which impaired or prohibited access to these locations.

84. Florida Governor Ronald DeSantis issued a series of executive orders in response to the presence and spread of COVID-19, including Executive Order No. 20-83 dated March 24, 2020, directing the State Surgeon General and State Health Officer to issue a public health advisory against all social or recreational gatherings of ten or more people, and Executive Order No. 20-89, dated March 30, 2020, directing “Miami-Dade County, Broward County, Palm Beach County and Monroe County to restrict public access to businesses and facilities deemed non-essential pursuant to the guidelines established by Miami-Dade County pursuant to its March 19, 2020 Emergency Order 07-20” (collectively, the “Florida Public Authority Orders”).

85. On or about April 1, 2020, Governor DeSantis issued Executive Order No. 20-91, ordering all persons in Florida to limit their movements outside of their home to only those necessary to obtain, provide or conduct essential activities.

86. Accordingly, business operations were necessarily interrupted at and access was impaired to the Covered Hotel Properties located and operating in the State of Florida (the “Shaner Florida Hotels”).

87. Because of the Florida Orders, the Shaner Florida Hotels suffered a substantial loss of business income due to necessary interruption of their business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Shaner Florida Hotels have not yet returned to their pre-interruption levels of business income.

(c) **Minnesota**

88. Minnesota Governor Timothy Walz issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including Executive Order 20-01, dated March 13, 2020, which declared a peacetime emergency, and Executive Order 20-20, dated March 25, 2020, which ordered all persons currently living within the State of Minnesota to stay at home or in their place of residence except to engage in certain essential activities (collectively, the “Minnesota Public Authority Orders”).

89. By requiring individuals, who did not participate in sectors deemed essential, to stay at home, the Minnesota Public Authority Orders thereby mandated the closure of all businesses that were not deemed essential and that could not operate through remote-only operations. Due to the combination of restrictions in the Minnesota Public Authority Orders, operations were necessarily interrupted at and access was impaired to the Residence Inn Minneapolis Edina.

90. Because of the Minnesota Public Authority Orders, the Residence Inn Minneapolis Edina suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Residence Inn Minneapolis Edina has not yet returned to its pre-interruption level of business income.

(d) **North Carolina**

91. North Carolina Governor Roy Cooper issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including Executive Order No. 116, dated March 10, 2020, declaring a statewide emergency and Executive Order No. 121, dated March 27, 2020, ordering all individuals currently in the State of North Carolina to stay at home, their place of residence, or current place of abode except for certain

essential activities and prohibiting the operation of businesses that were not life sustaining (collectively, the “North Carolina Public Authority Orders”).

92. Due to the combination of restrictions in the North Carolina Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access impaired to the Durham Marriott City Center.

93. Because of the North Carolina Public Authority Orders, the Durham Marriott City Center suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Durham Marriott City Center has not yet returned to its pre-interruption level of business income.

(e) **Rhode Island**

94. Rhode Island Governor Gina Raimondo issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including Executive Order No. 20-02, which declared a disaster emergency, and Executive Order No. 20-13, dated March 28, 2020, which ordered all Rhode Island residents to stay home except for essential activities, prohibited gatherings of more than five people in any public or private space, and “all non-critical retail businesses” to cease in-person operations (collectively, the “Rhode Island Public Authority Orders”).

95. Rhode Island Governor Gina Raimondo issued the Rhode Island Public Authority Orders pursuant to, *inter alia*, Rhode Island General Laws § 23-8-18 and § 30-15-9. Rhode Island General Laws § 23-8-18 states “whenever the governor shall deem it advisable for the preservation of public health and the prevention of the spread of infectious disease, he or she may, by

proclamation, place under quarantine the whole state or that portion of the state that he or she may deem necessary”

96. Due to the combination of restrictions in the Rhode Island Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access was impaired to the Newport Harbor Hotel.

97. Because of the Rhode Island Public Authority Orders, the Newport Harbor Hotel suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Newport Harbor Hotel has not yet returned to its pre-interruption level of business income.

(f) **Tennessee**

98. Tennessee Governor William Lee issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including Executive Order No. 14, dated March 12, 2020, declaring a state of emergency, and Executive Order No. 22, dated March 30, 2020, which ordered all persons in Tennessee to stay at home except when engaging in certain essential activities and prohibited the operation of businesses that were not life sustaining (collectively, the “Tennessee Public Authority Orders”).

99. Due to the combination of restrictions in the Tennessee Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access impaired to the Chattanooga Marriott Downtown.

100. Because of the Tennessee orders, the Chattanooga Marriott Downtown suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Chattanooga Marriott Downtown has not yet returned to its pre-interruption level of business income.

(g) **Georgia**

101. Georgia Governor Brian Kemp issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including an order dated March 14, 2020, declaring a public health state of emergency, and an order dated April 2, 2020, which ordered all persons in Georgia to stay at home except when engaging in certain essential activities, prohibited the operation of businesses that were not life sustaining, and prohibited gatherings of ten or more people (collectively, the “Georgia Public Authority Orders”).

102. Due to the combination of restrictions in the Georgia Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access impaired to the Fairfield Inn & Suites Augusta Fort Gordon Area.

103. Because of the Georgia orders, the Fairfield Inn & Suites Augusta Fort Gordon Area suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Fairfield Inn & Suites Augusta Fort Gordon Area has not yet returned to its pre-interruption level of business income.

(h) **Maryland**

104. Maryland Governor Lawrence Hogan issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including a proclamation dated March 5, 2020, declaring a state of emergency and existence of catastrophic health emergency, and Order No. 20-03-30-01 dated March 30, 2020, which ordered all persons in Maryland to stay at home except when engaging in certain essential activities, prohibited the operation of businesses that were not life sustaining, and prohibited gatherings of ten or more people (collectively, the “Maryland Public Authority Orders”).

105. Due to the combination of restrictions in the Maryland Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access impaired to the Courtyard Baltimore Downtown/McHenry Row.

106. Because of the Maryland orders, the Courtyard Baltimore Downtown/McHenry Row suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Courtyard Baltimore Downtown/McHenry Row has not yet returned to its pre-interruption level of business income.

(i) **New York**

107. New York Governor Andrew Cuomo issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including Executive Order No. 202 dated March 7, 2020, declaring a state of emergency, and Executive Order No. 202.14 dated April 7, 2020, which continued the cancellation of all non-essential

gatherings of individuals of any size for any reason (collectively, the “New York Public Authority Orders”).

108. Due to the combination of restrictions in the New York Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access impaired to the Buffalo Marriott Harborcenter.

109. Because of the New York orders, the Buffalo Marriott Harborcenter suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Buffalo Marriott Harborcenter has not yet returned to its pre-interruption level of business income.

(j) **New Jersey**

110. New Jersey Governor Philip Murphy issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including Executive Order No. 103 dated March 9, 2020, declaring a state of emergency, and Executive Order No. 107 dated March 21, 2020, which ordered all persons in to stay at home except when engaging in certain essential activities, prohibited the operation of businesses that were not life sustaining, and prohibited the gathering of individuals (collectively, the “New Jersey Public Authority Orders”).

111. Due to the combination of restrictions in the New Jersey Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings,

operations were necessarily interrupted at and access impaired to the Covered Hotel Properties located and operating in the State of New Jersey (the “Shaner New Jersey Hotels”).

112. Because of the New Jersey Public Authority Orders, the Shaner New Jersey Hotels suffered a substantial loss of business income due to necessary interruption of their business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Shaner New Jersey Hotels have not yet returned to their pre-interruption level of business income.

(k) **Delaware**

113. Delaware Governor John Carney issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including an order dated March 12, 2020 declaring a state of emergency due to a public health threat, and an order dated April 1, 2020, which ordered all persons in to stay at home except when engaging in certain essential activities, prohibited the operation of businesses that were not life sustaining, and prohibited gatherings of ten or more people (collectively, the “Delaware Public Authority Orders”).

114. Due to the combination of restrictions in the Delaware Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access impaired to the Courtyard Newark – University of Delaware.

115. Because of the Delaware orders, the Courtyard Newark – University of Delaware suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss

of functionality, and loss of economic utility. Further, the Courtyard Newark – University of Delaware has not yet returned to its pre-interruption level of business income.

(1) **West Virginia**

116. West Virginia Governor James Justice issued a series of executive orders in response to the ubiquitous presence and rapid spread of SARS-CoV-2 virions and COVID-19, including proclamation dated March 4, 2020, declaring a state of emergency, and Executive Order No. 9-20 dated March 23, 2020, which ordered all persons in to stay at home except when engaging in certain essential activities, prohibited the operation of businesses that were not life sustaining, and prohibited gatherings of ten or more people (collectively, the “West Virginia Public Authority Orders”).

117. Due to the combination of restrictions in the West Virginia Public Authority Orders in response to the presence and spread of COVID-19, including the stay at home mandate for individuals not participating in life-sustaining businesses and restrictions on public gatherings, operations were necessarily interrupted at and access impaired to the Holiday Inn Express Charleston – Civic Center.

118. Because of the West Virginia orders, the Holiday Inn Express Charleston – Civic Center suffered a substantial loss of business income due to necessary interruption of its business as a result of the physical loss of the premises for ordinary and usual occupancy and business use, loss of functionality, and loss of economic utility. Further, the Holiday Inn Express Charleston – Civic Center has not yet returned to its pre-interruption level of business income.

G. Shaner Losses Are Covered by the All-Risk Policies.

119. The direct physical loss, damage or destruction of and loss of use of Shaner’s property at each of the Covered Hotel Properties caused by the presence of the SARS-CoV-2 virions, and the closure or curtailment of operations at the Covered Hotel Properties as a

consequence of the above-referenced civil authority and public authority orders are the result of covered causes of loss under the All-Risk Policies.

120. The ubiquitous presence of COVID-19 and the above-referenced orders directly impacted the Covered Hotel Properties. The far-reaching restrictions and prohibitions imposed by the orders have been catastrophic for their business, interrupting and reducing operations and forcing them to close, thereby enduring a prolonged curtailment of earnings that threatens their survival.

121. The presence of COVID-19 and the above-referenced orders have also caused direct physical loss of or damage to properties Shaner depends on to attract business to the Covered Hotel Properties.

122. The presence of COVID-19 and the above-referenced orders have operated to prohibit or impair access to the Covered Hotel Properties and the immediate surrounding areas.

123. In the alternative, even if this Court finds that the physical presence and impact of SARS-CoV-2 virions at the Covered Hotel Properties have not caused physical damage to the property, the Covered Hotel Properties have still suffered physical loss.

124. The on-site SARS-CoV-2 virions, and respiratory droplets or nuclei containing SARS-CoV-2 virions in the air attached to surfaces within the Covered Hotel Properties and deprived, partially and/or totally, Shaner and its guests of the physical use of the Covered Hotel Properties by making them unsafe and unusable, causing a physical loss of property.

125. These physical losses to the Covered Hotel Properties include without limitation the rendering of the property from a satisfactory state to a dangerous and/or unsatisfactory state for use because of the fortuitous presence and effect of SARS-CoV-2 virions and respiratory

droplets or nuclei directly upon the property or the treat that such droplets would be present if the properties were allowed to run at their normal capacity.

126. Additionally, the civil and public authority orders issued because of the COVID-19 pandemic imposed physical limits on Covered Hotel Properties by imposing limits on their use of their physical spaces, including restricting restaurants from using in-person dining and closing on-site facilities.

127. The physical limitations imposed by the civil and public authority orders, issued because of the COVID-19 pandemic, constitute physical loss of property at the Covered Hotel Properties that is not excluded under the All-Risk Insurance Policies.

128. For the foregoing reasons, Shaner suffered and will continue to suffer direct physical loss of property insured under the All-Risk Insurance Policies.

129. The All-Risk Insurance Companies, and insurance industry generally, have known about the risks associated with viruses and pandemics for a century, particularly in recent decades during which there have been outbreaks and pandemics involving viruses such as SARS, MERS, H1N1, and Zika, and the industry has paid for these losses.

130. Because these risks are well known, there are exclusions in common usage in the insurance industry that specifically reference losses caused by pandemics. However, the All-Risk Insurance Companies did not include such specific pandemic exclusions as part of the All-Risk Insurance Policies they sold to Shaner.

H. The All-Risk Insurance Companies' Duties Under the Policies and Pennsylvania Law

131. As a result of Shaner's inability to use the Covered Hotel Properties due to the ongoing nature of the pandemic, the governmental inability to stop or lessen the effects of the pandemic on the Covered Hotel Properties and people, and the resulting governmental and public

health closure orders, the All-Risk Insurance Companies are obligated by the All-Risk Policies to pay up to their respective policy limits for Property Damage and Time Element, Extra Expense, Extensions of Time Element Coverage, and any other applicable coverage, including the coverage provided by any Communicable Disease Additional Coverage Endorsement.

132. In addition, the presence of the SARS-CoV-2 virions and COVID-19 infected persons throughout the states where the Covered Hotel Properties are located, including within ten miles of each hotel property, caused and continues to cause direct physical loss of or damage to property sufficient to trigger Property Damage and Time Element, Extra Expense, Extensions of Time Element Coverage, and any other applicable coverage, including the coverage provided by any Communicable Disease Additional Coverage Endorsement.

133. To the extent that certain Covered Hotel Properties may operate partially, the presence of SARS-CoV-2 virions and COVID-19 infected persons throughout the states where the properties are located has caused and continues to cause direct physical loss of or damage, and Shaner has lost the functionality of those premises and has lost their economic utility. Because the highly contagious and potentially deadly SARS-CoV-2 virions are spread through several means, including property-to-human contact, aerosol, and surface contamination, the Covered Hotel Properties were unable to serve their full, intended use, suffered direct physical loss of or damage, and sustained a necessary suspension of their operations.

134. Moreover, the presence of SARS-CoV-2 virions and COVID-19 infected persons in and around the Covered Hotel Properties, including areas within ten miles of the Covered Hotel Properties, resulted in direct physical loss, damage or destruction of property, such that the continuation of business operations as normal would cause physical loss of or damage to the Covered Hotel Properties and/or created an unreasonable risk to persons and property.

135. As a result of the foregoing, the All-Risk Insurance Companies are obligated to pay for direct physical loss of or damage to the Covered Hotel Properties under the All-Risk Policies and all Property Damage and Time Element loss up to the All-Risk Policies' Limit of Liability, including Extra Expense, all applicable Extensions of Time Element Coverage, and any Communicable Disease Additional Coverage Endorsement.

136. Pennsylvania state insurance law further requires that the All-Risk Insurance Companies act in good faith, abstain from deception, and practice honesty and equity in all insurance matters. The business of insurance is affected by the public interest, and engaging in the business of insurance requires the All-Risk Insurance Companies to promptly conduct fair, balanced, and thorough investigations of all claims for benefits made by their policyholders, with a view toward honoring the claims. As part of these obligations, an insurance company is obligated to diligently search for and consider evidence that supports coverage of the claimed loss, and in doing so must give at least as much consideration to the interests of its policyholder as it gives to its own interests.

137. The All-Risk Insurance Companies have a duty to adopt and maintain a consistent and rational interpretation of the All-Risk Policies sold to Shaner over time, and not to deny coverage to Shaner simply because the scope of loss from the pandemic is so large.

138. The All-Risk Insurance Companies are bound to interpret and administer their insurance policies in accordance with the requirements of Pennsylvania law.

139. The All-Risk Insurance Companies are bound to investigate Shaner's claim in good faith and with an investigation into the cause of loss and terms in the All-Risk Policies, such as those set forth in greater detail above.

I. The All-Risk Insurance Companies' Improper Denial of Shaner's Claim and Wrongful Conduct

140. In a letter dated September 22, 2020, ACE denied insurance coverage for Shaner's Claim. ACE incorrectly stated there was no loss under the ACE Policy and no coverage under the ACE Policy's Communicable Disease Endorsement.

141. In a letter dated September 23, 2020, Endurance denied insurance coverage for Shaner's Claim. Endurance incorrectly stated there was no loss under the Endurance Policy and there was no coverage under the Endurance Policy for Time Element coverage.

142. In a letter dated October 23, 2020, Everest, Ironshore, and Interstate and Underwriters acknowledged coverage for Shaner's claim under the Special Time Element – Cancellation Coverage under their primary insurance policies, but denied coverage under any other policy provision.

143. To date, Everest, Ironshore, and Interstate and Underwriters have together paid only their respective shares of the Special Time Element – Cancellation Coverage, \$250,000 in total – and the remaining All-Risk Insurance Companies failed to make any payment to Shaner under the All-Risk Policies, despite the All-Risk Policies' total limit of liability of \$125,000,000.

144. Shaner has substantially performed or otherwise satisfied all conditions precedent to bringing this action and obtaining coverage pursuant to the All-Risk Policies and applicable law, or alternatively, Shaner has been excused from performance by the All-Risk Insurance Companies' acts, representations, conduct, or omissions.

145. Shaner purchased the All-Risk Policies reasonably expecting to be insured against losses of this precise type that prevent Shaner from operating the Covered Hotel Properties in their normal manner due to a risk caused by an outside source over which Shaner has no control,

including, but not limited to, business income losses at its Covered Hotel Properties. Those expectations were reasonable.

146. Shaner purchased the All-Risk Policies with a reasonable expectation that the All-Risk Policies would provide coverage in the event of a fortuitous and unexpected business interruption caused by the presence of virions, as well as for losses suffered as a result of a government order requiring a cessation of business, such as the business interruption suffered by Shaner due to the COVID-19 pandemic. The All-Risk Policies provide coverage for the expenses incurred to comply with governmental orders regulating or prohibiting the use of property (both damaged and undamaged property), as well as the prevention or impairment of access to the property as a result of governmental orders and directives, and broadly provided “all risks” coverage of loss unless specifically and unambiguously excluded.

147. Shaner had a reasonable expectation that the All-Risk Policies’ business interruption coverage would apply where the ubiquitous presence of a disease-causing agent in and around the Covered Hotel Properties, including within ten miles of the Covered Hotel Properties, renders Shaner’s property unsafe for its intended use due to the risks associated with indoor gatherings, thereby depriving Shaner of the functionality and economic utility of its property. Shaner also had a reasonable expectation that the Policies’ business interruption coverage would apply where civil and public health authorities required cessation or curtailment of operations at the Covered Hotel Properties, thereby barring or impairing access to the Covered Hotel Properties, due to physical damage in geographical areas that encompassed the Covered Hotel Properties, including those within ten miles of the Covered Hotel Properties.

J. The ACE Policy's Communicable Disease Additional Coverage Endorsement and Its Bad Faith Conduct

148. The ACE Policy contains a “Communicable Disease Additional Coverage Endorsement” that states

[t]his policy covers the following loss if, directly resulting from the actual or suspected presence of a communicable disease, the Insured's premises are totally or partially closed at the direction of The National Center for Disease Control and/or the applicable state, city or municipal department of public health (“Public Authority Order”) . . . 3. The actual loss sustained by the Insured of business income or gross profits . . . and the extra expense incurred by the Insured . . . resulting from the suspension of the Insured's operations during the Communicable Disease Period of Recovery, including cancellation of or inability to accept bookings for accommodations and/or a cessation or diminution of trade due to a loss of potential customers.

149. The ACE Policy's “Communicable Disease Additional Coverage Endorsement” is subject to a sublimit of “\$250,000 per Occurrence excess applicable deductibles.”

150. ACE has been and is engaged in an ongoing, one-sided, bad faith effort to ignore any and all obligations under the ACE Policy it sold to Shaner.

151. By acknowledging the existence of coverage under and paying their share of the Special Time Element Cancellation Coverage for Shaner's claim, Everest, Ironshore, Underwriters and Interstate admitted and accepted that a “Public Authority” order exists that has closed or partially closed the Covered Hotel Properties upon the existence of hazardous conditions either actual or suspected at the Covered Hotel Properties.

152. Despite the admission of Everest, Ironshore, Underwriters and Interstate that Special Time Element Coverage requiring the closing of all or part of the insured premises by a “Public Authority” order applied to Shaner's Claim, ACE has denied coverage under the Communicable Disease Additional Coverage Endorsement of the ACE Policy with the same “Public Authority” wording. In doing so, ACE has taken the baseless position that Shaner has not

shown that the Covered Hotel Properties were not closed at the direction of a “Public Authority” order.

153. As discussed above, the actual or suspected presence of SARS-CoV-2 virions and COVID-19 infected persons, all of which involve a communicable disease, has directly caused the Covered Hotel Properties to totally or partially close under applicable state, city, or municipal department of health orders, triggering coverage under ACE’s Communicable Disease Additional Coverage Endorsement.

154. ACE is ignoring Shaner’s interests and coverage owed to Shaner in favor of its own interests, and acting only out of its self-interest in continuing to deny insurance coverage for Shaner’s claim.

155. ACE’s failure to provide coverage for Shaner’s Claim has caused Shaner damages.

COUNT I
DECLARATORY JUDGMENT AGAINST THE ALL-RISK INSURANCE COMPANIES

156. Shaner incorporates by reference the allegations contained in the above-stated paragraphs.

157. Shaner seeks a declaration, pursuant to 42 Pa. C.S. § 7532, that the All-Risk Insurance Companies are obligated, in accordance with the terms of the All-Risk Policies, to pay for the covered losses of Shaner in relation to each of the Covered Hotel Properties.

158. An actual and justiciable controversy exists between the parties with respect to this issue because of the All-Risk Insurance Companies’ failure to perform their obligations under the All-Risk Policies.

159. The insurance industry, including the All-Risk Insurance Companies, have uniformly refused to pay any claims like those of Shaner in response to the devastating financial losses caused by the pandemic.

160. A declaration of the parties' rights and obligations under the All-Risk Policies will serve to resolve the dispute between them.

WHEREFORE, Plaintiff Shaner demands judgment against the All-Risk Insurance Companies as follows:

- (i) A judicial declaration by this Court that the All-Risk Insurance Companies are obligated under the All-Risk Policies to pay Shaner for direct physical loss, damage or destruction caused at each Covered Hotel Property that has been impacted by the pandemic that deprived Shaner of the use for its intended purpose, the economic benefit and functionality of its property.
- (ii) Shaner seeks a further declaration that various Civil or Military Authority and Public Authority Orders issued by governmental officials in response to the actual or imminent SARS-CoV-2 virions and COVID-19 infected persons prevented Shaner from accessing and using its property to conduct its ordinary business activities, thereby depriving Shaner of the intended use of its property, the economic value of its property, and the functionality of its property, and resulting in insured losses.
- (iii) Shaner seeks a further declaration that its coverage under the All-Risk Policies is triggered up to the full Limit of Liability at each insured Location for Property Damage and Time Element; Extra Expense; Extensions of Time Element Coverage – including Expenses to Reduce Loss; Contingent “Time Element” Coverage; Interdependent “Time Element”; Interruption by Civil or Military Authority; Loss of Ingress or Egress; Law, Ordinance, Regulation or Governmental Directive; and

Special Time Element – Cancellation Coverage – and the ACE Policy’s Communicable Disease Additional Coverage Endorsement.

COUNT II
BREACH OF CONTRACT AGAINST THE PRIMARY ALL-RISK INSURANCE COMPANIES

161. Shaner incorporates by reference the allegations contained in the above-stated paragraphs.

162. As set forth above, in return for premiums paid, the Primary All-Risk Insurance Companies sold Shaner Primary All-Risk Policies, in which the Primary All-Risk Insurance Companies promised to pay for covered losses up to the applicable Limit of Liability.

163. Shaner promptly advised the Primary All-Risk Insurance Companies that it sustained and is sustaining losses covered by the Primary All-Risk Policies.

164. The Primary All-Risk Insurance Companies denied any obligation for any of Shaner’s losses under the Primary All-Risk Policies, except for certain payments made by Everest, Ironshore, and Interstate and Underwriters. This denial of coverage constitutes a breach of the Primary All-Risk Policies.

165. As a direct and proximate result of the Primary All-Risk Insurance Companies’ breach, Shaner has been deprived of the benefits of insurance coverage for which it paid substantial premiums, and has suffered substantial damage.

WHEREFORE, Shaner requests compensatory and consequential monetary damages in an amount to be proven at trial, prejudgment interest and other damages for delay, and an award of such additional relief as the Court deems just and appropriate.

COUNT III
BAD FAITH UNDER 42 Pa. C.S.A. § 8371 AGAINST ACE AMERICAN INSURANCE
COMPANY

166. Shaner incorporates by reference the allegations contained in the above-stated paragraphs.

167. Pennsylvania's "bad faith" statute (42 Pa. C.S.A. § 8371) provides a remedy for bad faith conduct of an insurance company by which it knowingly or with reckless disregard acts to unreasonably and without foundation deprive its insured of the benefits of an insurance policy, and states as follows:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith towards the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3 percent.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

168. ACE has an obligation to act in good faith towards Shaner in every decision it makes regarding the claim and to respond and investigate claims in good faith. As set forth above, ACE has continued to place its own interests ahead of those of Shaner, to the detriment of Shaner, and ACE is unjustified in its bad faith refusal concerning Shaner's claim.

169. ACE has acted in bad faith towards Shaner with respect to its claim by, among other things: a) denying coverage without a reasonable basis when Public Authority Orders have totally or partially closed the Covered Hotel Properties, triggering coverage under the ACE Policy's Communicable Disease Additional Coverage Endorsement; b) acting in a one-sided manner and exposing Shaner to severe losses for which Shaner purchased appropriate insurance coverage by

way of the ACE Policy; and c) refusing to pay for claims without legal compulsion and forcing Shaner to protect itself by way of this lawsuit against the All-Risk Insurance Companies.

170. As set forth above, ACE has not offered a reasonable basis or explanation for its denial of coverage and has refused to recognize coverage under the All-Risk Policy it sold Shaner when Everest, Ironshore, Underwriters, and Interstate have all acknowledged coverage under similar policy language. ACE has acted knowingly or in reckless disregard of its lack of a reasonable basis to withhold payment under the Communicable Disease Additional Coverage Endorsement.

171. ACE's bad faith conduct has caused damages to Shaner.

172. As a result of ACE's bad faith conduct, Shaner has incurred costs and expenses including attorneys' fees in connection with its pursuit for insurance coverage in this lawsuit.

WHEREFORE, Shaner requests (a) judgment in its favor and against ACE and (b) an award to Shaner of (i) interest on the amount of the claim from the date the claim was made by the Shaner in an amount equal to the prime rate of interest plus 3 percent, (ii) punitive damages, and (iii) court costs and attorney fees.

DEMAND FOR JURY TRIAL

Shaner demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: March 23, 2021

/s/ John N. Ellison
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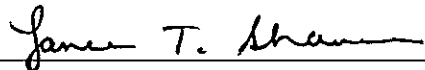
*Attorneys for Plaintiff
Shaner Hotel Holdings, LP*

VERIFICATION

The undersigned, being an authorized officer and representative of Plaintiff Shaner Hotel Holdings Limited Partnership in the foregoing Complaint hereby verifies that the statements contained in this Complaint are true and correct to the best of my knowledge, information, and belief.

I understand that any false statements herein made are subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Dated: March 18, 2021



Lance T. Shaner – Chief Executive Officer
Shaner Hotel Holdings Limited Partnership
On behalf of Plaintiff

CERTIFICATION OF COMPLIANCE
WITH CASE RECORDS PUBLIC ACCESS POLICY

TO THE PROTHONOTARY:

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

Dated: March 23, 2021

/s/ John N. Ellison

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