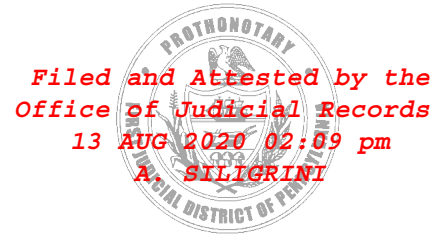


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:  
: **COURT OF COMMON PLEAS**  
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:  
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: AUGUST TERM, 2020  
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: NO. \_\_\_\_\_  
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: JURY TRIAL DEMANDED

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v.

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LTD.**  
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**CHINA RE**  
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**SWISS RE**  
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Cincinnati, OH 45202;

**QBE SPECIALTY INSURANCE  
COMPANY**

55 Water Street  
New York, NY 10004;

**NEON WORLDWIDE PROPERTY**

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Defendants.<sup>1</sup>

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**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**

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<sup>1</sup> Plaintiffs do not have the electronic mail addresses of the Defendants to provide in this caption per Phila. Civ. R. 1018. Plaintiffs have previously communicated with Defendants through Defendants' retained adjuster, Sedgwick, whose representative has provided the following electronic mail address: [Brian.Tovinsky@Sedgwick.com](mailto:Brian.Tovinsky@Sedgwick.com).

1101 Market Street, 11th Floor  
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**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 asentar 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  
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Servicio De Referencia E  
Informacion Legal  
1101 Market St., 11th Piso  
Filadelfia, Pennsylvania 19107  
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Respectfully submitted,

Dated: August 13, 2020

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**PHILADELPHIA COUNTY**

CIVIL ACTION

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AUGUST TERM, 2020

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**WASHINGTON TROTTING ASSOCIATION, LLC**

C/O PENN NATIONAL GAMING, INC.  
825 Berkshire Boulevard, Suite 200  
Wyomissing, PA 19610  
pnglegal@pngaming.com;

**MARQUEE BY PENN, LLC**

C/O PENN NATIONAL GAMING, INC.  
825 Berkshire Boulevard, Suite 200  
Wyomissing, PA 19610  
pnglegal@pngaming.com;

**SAM HOUSTON RACE PARK LLC**

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C/O PENN NATIONAL GAMING, INC.  
825 Berkshire Boulevard, Suite 200  
Wyomissing, PA 19610  
pnglegal@pngaming.com;

and

**PNGI CHARLES TOWN GAMING, LLC**  
825 Berkshire Boulevard, Suite 200  
Wyomissing, PA 19610  
pnglegal@pngaming.com,

Plaintiffs,

v.

**ZURICH AMERICAN INSURANCE  
COMPANY**  
1299 Zurich Way  
Schaumburg, IL 60196;

**AIOI NISSAY DOWA INSURANCE CO.  
LTD.**  
C/O ZURICH AMERICAN INSURANCE  
COMPANY  
1299 Zurich Way  
Schaumburg, IL 60196;

**CHINA RE**  
C/O ZURICH AMERICAN INSURANCE  
COMPANY  
1299 Zurich Way  
Schaumburg, IL 60196;

**SWISS RE**  
C/O ZURICH AMERICAN INSURANCE  
COMPANY  
1299 Zurich Way  
Schaumburg, IL 60196;

**INTERSTATE FIRE & CASUALTY  
COMPANY**  
225 W. Washington Street, Suite 1800  
Chicago, IL 60606;

**AMERICAN INTERNATIONAL GROUP  
UK LIMITED**  
c/o Mendes & Mount LLP  
750 Seventh Avenue  
New York, NY 10019;

**ACE AMERICAN INSURANCE  
COMPANY**  
436 Walnut Street



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Philadelphia, PA 19106;

**HALLMARK SPECIALTY INSURANCE  
COMPANY**

777 Main Street, Suite 1000  
Fort Worth, TX 76102;

**STARR SURPLUS LINES INSURANCE  
COMPANY**

399 Park Avenue, 8th Floor  
New York, NY 10022;

**KOREAN REINSURANCE COMPANY**

C/O STARR SURPLUS LINES  
INSURANCE COMPANY  
399 Park Avenue, 8th Floor  
New York, NY 10022;

**BERKLEY RE**

C/O STARR SURPLUS LINES  
INSURANCE COMPANY  
399 Park Avenue, 8th Floor  
New York, NY 10022;

**SINOSAFE GENERAL INSURANCE CO.,  
LTD.**

C/O STARR SURPLUS LINES  
INSURANCE COMPANY  
399 Park Avenue, 8th Floor  
New York, NY 10022;

**COLONY INSURANCE COMPANY**

175 E. Houston Street, Suite 1300  
San Antonio, TX 78205;

**AXIS SURPLUS INSURANCE  
COMPANY**

11680 Great Oaks Way, Suite 500  
Alpharetta, GA 30022;

**EVANSTON INSURANCE COMPANY**

10 Parkway North  
Deerfield, IL 60015;

**GREAT AMERICAN INSURANCE  
COMPANY**

301 E. Fourth Street  
Cincinnati, OH 45202;

**QBE SPECIALTY INSURANCE  
COMPANY**

55 Water Street  
New York, NY 10004;

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**NEON WORLDWIDE PROPERTY  
CONSORTIUM 9761**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor  
New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, KNOWN AS  
SYNDICATE NO. 1886 QBE**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor  
New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, KNOWN AS  
SYNDICATE NO. 1414 ASC**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor  
New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, KNOWN AS  
SYNDICATE AXIS SPECIALTY  
EUROPE SE, LIRMA A9505**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor  
New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, KNOWN AS  
SYNDICATE NO. 2468 NEO**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor  
New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, KNOWN AS  
SYNDICATE NO. 0033 HIS**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor  
New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, KNOWN AS  
SYNDICATE NO. 1183 TAL**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor  
New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, KNOWN AS  
SYNDICATE NO. 1200 AMA**  
Attn: Legal Department  
280 Park Avenue, East Tower, 25th Floor

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New York, NY 10017;

**HCC INTERNATIONAL INSURANCE  
COMPANY PLC**  
 Attn: Legal Department  
 280 Park Avenue, East Tower, 25th Floor  
 New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD’S, LONDON, KNOWN AS  
SYNDICATE NO. 4444 CNP**  
 Attn: Legal Department  
 280 Park Avenue, East Tower, 25th Floor  
 New York, NY 10017;

**CERTAIN UNDERWRITERS AT  
LLOYD’S, LONDON, KNOWN AS  
SYNDICATE NO. 1458 RNR**  
 Attn: Legal Department  
 280 Park Avenue, East Tower, 25th Floor  
 New York, NY 10017;

and

**CERTAIN UNDERWRITERS AT  
LLOYD’S, LONDON, KNOWN AS  
SYNDICATE NO. 0609 AUW**  
 Attn: Legal Department  
 280 Park Avenue, East Tower, 25th Floor  
 New York, NY 10017,

Defendants.<sup>1</sup>

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**COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES**

Plaintiff Penn National Gaming, Inc. (“PNG”), on behalf of itself and its subsidiaries identified above, by and through its attorneys, Reed Smith LLP, as its Complaint against the Defendant insurance companies, and in support of the claims made below, alleges as follows:

**I. NATURE OF THE ACTION**

1. PNG is a Pennsylvania-based gaming company that, through various subsidiaries, owns, manages, or has ownership interests in more than forty gaming operations, all of which

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<sup>1</sup> Plaintiffs do not have the electronic mail addresses of the Defendants to provide in this caption per Phila. Civ. R. 1018. Plaintiffs have previously communicated with Defendants through Defendants’ retained adjuster, Sedgwick, whose representative has provided the following electronic mail address: Brian.Tovinsky@Sedgwick.com.

were completely closed beginning in late March and early April due to orders of gaming control boards and similar civil authorities as a result of anticipated or actual property damage from the ubiquitous presence of the novel coronavirus formally known as SARS-CoV-2. As of June 15, 2020, PNG's losses of income from these compulsory closures were in excess of \$500 million, and will continue to increase until PNG can resume normal operations.

2. Prior to the outbreak of the disease known as COVID-19 caused by SARS-CoV-2, and as of December 31, 2019, PNG and its properties had approximately 28,300 full-time and part-time employees, many of whom are represented by ten distinct unions under thirty different collective bargaining agreements. The spread of SARS-CoV-2 and the mandatory closure orders produced unprecedented challenges to PNG's financial condition and liquidity. In response, PNG was compelled to undertake aggressive mitigation measures in order to remain viable, including: (i) furloughing and placing on unpaid leave approximately 26,000 employees, which represents over ninety percent of PNG's pre-COVID-19 workforce; (ii) enacting significant compensation reductions among PNG's remaining mission-critical personnel; (iii) drawing down the remaining available funds under PNG's revolving credit facility; (iv) entering into an amended credit agreement with PNG's lenders for temporary relief from financial covenants; (v) reducing rent payments by selling real estate assets in exchange for rent credits from a principal landlord; and (vi) executing substantial reductions in operating expenses, capital expenditures, including temporary suspension of planned development projects, and overall costs.

3. To protect itself from the revenue losses of closures such as the recent shutdown orders, PNG purchases business interruption insurance from numerous insurance companies that provide PNG and its subsidiaries with \$725 million in coverage under a group of similar, but not identical, "all risk" policies (the "All Risk Policies"). For this coverage, PNG paid over \$14 million in premiums in the year in question.

4. “All risk” property insurance policies are broad policies that cover all risks of direct physical loss or damage to insured property, unless particular risks are specifically excluded. Therefore, unless an insurance company specifically excludes the particular risk at issue, the policy is designed and written to cover the risk.

5. PNG is entitled to insurance coverage under a number of the All Risk Policies’ broad and overlapping coverages. Defendants (collectively “All Risk Insurers”) have nevertheless refused to pay for PNG’s SARS-CoV-2 losses under the All Risk Policies.

6. In addition to standard clauses commonly found in all risk business interruption policies, PNG’s All Risk Policies include a unique and relevant type of coverage, which is triggered when orders of a gaming control board (or similar authority) prohibit access to any of PNG’s casinos, racetracks or other gaming operations (“Gaming Facilities”). This Interruption by Gaming Control Board or Commission coverage applies even if the Gaming Facility never suffers any physical loss or damage (“Loss”), so long as the order was made in anticipation of such Loss.

7. Accordingly, for coverage to be triggered under this unique provision, an order closing a PNG Gaming Facility need not be based on actual Loss caused by SARS-CoV-2 or the presence of persons contracting COVID-19 at one of PNG’s Gaming Facilities, but merely the anticipation of such Loss.

8. State gaming control boards and other equivalent regulatory authorities, who issue and control the licenses under which PNG operates, have imposed mandatory orders in anticipation of SARS-CoV-2-related Losses. These orders specifically compelled the complete suspension of operations and closure of Gaming Facilities in all of the states in which PNG operates. In this highly regulated industry and being dependent on state gaming control boards for its operating licenses, PNG was unconditionally required to shut down abruptly and pursuant

to regulatory authorities' timetables. Losses from these closure orders are specially covered by the unique Interruption by Gaming Control Board or Commission language in the PNG Insurance Tower (as defined below).

9. PNG is further entitled to recover under other clauses in its All Risk Policies, including a provision covering loss when an order of a civil authority prohibits access to PNG's Gaming Facilities as a result of on-site or nearby property damage.

10. Under Pennsylvania law, property which cannot be used or occupied for its intended purpose and/or is rendered untenable has suffered physical loss or damage or Loss as defined here. Loss does not require structural alteration of the insured property if the property was rendered unfit or uninhabitable for its intended purpose.

11. Here, PNG has suffered Loss because all of its Gaming Facilities have been closed due to the ubiquitous presence of SARS-CoV-2 particles in the area of, attached to and damaging PNG's property, which made PNG's premises unsafe and unusable.

12. Thus, PNG has suffered Loss at every one of its insured Gaming Facilities because SARS-CoV-2 and the orders imposed by gaming control boards and civil authorities wholly prevented PNG from using or occupying its Gaming Facilities for their intended purpose.

13. There are multiple vectors for transmission of SARS-CoV-2, but it is widely accepted by the scientific community that two of the primary vectors involve transmission from an infected person to property to another person, or from infected persons to other persons in indoor spaces where numbers of people are present. The presence or suspected presence of SARS-CoV-2 causes Loss because it renders the physical property unfit and unsafe for its intended use. This Loss from SARS-CoV-2 was ubiquitous in the areas surrounding PNG's Gaming Facilities, and the orders of civil authority closing PNG's Gaming Facilities were motivated by this Loss.

14. All of the insurance companies in the PNG Insurance Tower had multiple opportunities to review the same “all risk” core policy wording (the “Policy Form”). Each insurance company could either sign on to cover PNG under the Policy Form’s wording or make changes, including carving out exclusions, creating policy sublimits, or adding, editing or eliminating endorsements. Each had extended and multiple opportunities to review the language in detail and to make changes which PNG would likely have had to accept.

15. Indeed, two insurance companies in the PNG Insurance Tower made changes in their respective policies to the Interruption by Gaming Control Board or Commission coverage clause. Chubb Bermuda Insurance Ltd., an insurance company not named as a defendant here due to its London arbitration provision, explicitly stated in its policy that it was not providing Interruption by Gaming Control Board or Commission coverage. Defendant Interstate Fire & Casualty Company specified in its policy that it was not providing Interruption by Gaming Control Board or Commission coverage for a particular layer covering losses in excess of \$300 million. All of the other insurance companies in the PNG Insurance Tower, including the Defendants named here, agreed to cover PNG’s losses under this bespoke and unique provision.

16. Other insurance companies in the PNG Insurance Tower made some changes, and notably, three insurance companies added exclusions for losses of income caused by a virus or communicable disease. Those three insurance companies are not named here as Defendants. None of the other twenty-nine insurance carriers, the All Risk Insurers named as Defendants here, added such exclusions to their All Risk Policies.

17. PNG submitted timely notice of its covered losses to the All Risk Insurers and regularly corresponded with the All Risk Insurers’ retained adjuster, Sedgwick. By letter dated August 6, 2020, Sedgwick, on behalf of virtually every insurance company participating in and collecting premium in the PNG Insurance Tower, denied coverage for losses suffered at PNG’s

Gaming Facilities with only minor inconsequential exceptions amounting to less than one percent (1%) of PNG's total losses.

18. PNG purchases hundreds of millions of dollars of insurance for business income losses precisely to cover catastrophic situations such as this, where all of PNG's Gaming Facilities were ordered to close and where PNG has suffered losses in excess of \$500 million. Despite the obvious purpose and intent of the All Risk Policies and the unique coverages for lost income in those policies, Defendant All Risk Insurers have refused to provide the coverage PNG purchased and have thereby refused to honor their obligations.

19. Thus, PNG seeks a declaration that PNG and its subsidiaries are covered for their losses and related expenses under the broad and overlapping coverages in the All Risk Policies.

20. PNG also seeks relief for the All Risk Insurers' breach of contract, including an award of damages, consequential damages, and pre- and post-judgment interest.

## **II. THE PARTIES**

21. Plaintiff Penn National Gaming, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 825 Berkshire Boulevard, Suite 200, Wyomissing, PA 19610.

22. Plaintiff Ameristar Casino Black Hawk, LLC is a limited liability company organized and existing under the laws of the State of Colorado with its principal place of business in Colorado.

23. Plaintiff SOKC, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Florida.

24. Plaintiff Penn Sanford, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Florida.



25. Plaintiff Ameristar Casino Council Bluffs, LLC is a limited liability company organized and existing under the laws of the State of Iowa with its principal place of business in Iowa.

26. Plaintiff Alton Casino, LLC is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business in Illinois.

27. Plaintiff HC Aurora, LLC is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business in Illinois.

28. Plaintiff HC Joliet, LLC is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business in Illinois.

29. Plaintiff Illinois Gaming Investors LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Illinois.

30. Plaintiff Ameristar Casino East Chicago, LLC is a limited liability company organized and existing under the laws of the State of Indiana with its principal place of business in Indiana.

31. Plaintiff Indiana Gaming Company, LLC is a limited liability company organized and existing under the laws of the State of Indiana with its principal place of business in Indiana.

32. Plaintiff Kansas Entertainment, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Kansas.

33. Plaintiff PNK (Bossier City), L.L.C. is a limited liability company organized and existing under the laws of the State of Louisiana with its principal place of business in Louisiana.

34. Plaintiff Louisiana-I Gaming is a partnership in commendam organized and existing under the laws of the State of Louisiana with its principal place of business in Louisiana.

35. Plaintiff PNK (Baton Rouge) Partnership is a partnership organized and existing under the laws of the State of Louisiana with its principal place of business in Louisiana.

36. Plaintiff PNK (Lake Charles), L.L.C. is a limited liability company organized and existing under the laws of the State of Louisiana with its principal place of business in Louisiana.

37. Plaintiff Bossier Casino Venture, LLC is a limited liability company organized and existing under the laws of the State of Louisiana with its principal place of business in Louisiana.

38. Plaintiff Plainville Gaming and Redevelopment, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Massachusetts.

39. Plaintiff HC Bangor, LLC is a limited liability company organized and existing under the laws of the State of Maine with its principal place of business in Maine.

40. Plaintiff Greektown Casino, L.L.C. is a limited liability company organized and existing under the laws of the State of Michigan with its principal place of business in Michigan.

41. Plaintiff The Missouri Gaming Company, LLC is a limited liability company organized and existing under the laws of the State of Missouri with its principal place of business in Missouri.

42. Plaintiff St. Louis Gaming Ventures, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Missouri.

43. Plaintiff PNK (River City), LLC is a limited liability company organized and existing under the laws of the State of Missouri with its principal place of business in Missouri.

44. Plaintiff RIH Acquisitions MS II, LLC is a limited liability company organized and existing under the laws of the State of Mississippi with its principal place of business in Mississippi.

45. Plaintiff PNK Vicksburg, LLC is a limited liability company organized and existing under the laws of the State of Mississippi with its principal place of business in Mississippi.

46. Plaintiff BTN, LLC is a limited liability company organized and existing under the laws of the State of Mississippi with its principal place of business in Mississippi.

47. Plaintiff BSLO, LLC is a limited liability company organized and existing under the laws of the State of Mississippi with its principal place of business in Mississippi.

48. Plaintiff HWCC-Tunica, LLC is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Mississippi.

49. Plaintiff Penn NJ OTW, LLC is a limited liability company organized and existing under the laws of the State of New Jersey with its principal place of business in New Jersey.

50. Plaintiff Zia Park LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in New Mexico.

51. Plaintiff Cactus Pete's, LLC is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business in Nevada.

52. Plaintiff LVGV, LLC is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business in Nevada.

53. Plaintiff Tropicana Las Vegas, Inc. is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Nevada.

54. Plaintiff Central Ohio Gaming Ventures, LLC is a limited liability company organized and existing under the laws of the State of Ohio with its principal place of business in Ohio.

55. Plaintiff Toledo Gaming Ventures, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Ohio.

56. Plaintiff Dayton Real Estate Ventures, LLC is a limited liability company organized and existing under the laws of the State of Ohio with its principal place of business in Ohio.

57. Plaintiff Youngstown Real Estate Ventures, LLC is a limited liability company organized and existing under the laws of the State of Ohio with its principal place of business in Ohio.

58. Plaintiff Mountainview Thoroughbred Racing Association, LLC is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business in Pennsylvania.

59. Plaintiff CCR Racing Management is a partnership organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business in Pennsylvania.

60. Plaintiff Washington Trotting Association, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Pennsylvania.

61. Plaintiff Marquee by Penn, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Pennsylvania.

62. Plaintiff Sam Houston Race Park LLC is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Texas.

63. Plaintiff PNGI Charles Town Gaming, LLC is a limited liability company organized and existing under the laws of the State of West Virginia with its principal place of business in West Virginia.

64. Upon information and belief, Defendant Zurich American Insurance Company (“Zurich”) is an insurance company organized and existing under the laws of the State of New York with its principal place of business in Illinois.

65. Upon information and belief, Defendant Aioi Nissay Dowa Insurance Co. Ltd. (“Aioi”) is a foreign insurance carrier with its principal place of business in Japan.

66. Upon information and belief, Defendant China Re (“China Re”) is a foreign insurance carrier with its principal place of business in China.

67. Upon information and belief, Defendant Swiss Re (“Swiss Re”) is an insurance carrier organized and existing under the laws of the State of New York with its principal place of business in Armonk, New York.

68. Upon information and belief, Defendant Interstate Fire & Casualty Company (“Alternus”) is an insurance company organized and existing under the laws of the State of Illinois with its principal place of business in Illinois.

69. Upon information and belief, Defendant American International Group UK Limited (“Lexington London”) is a foreign insurance carrier with its principal place of business in London, England.

70. Upon information and belief, Defendant American Insurance Company (“Chubb US”) is an insurance company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business in Pennsylvania.

71. Upon information and belief, Defendant Hallmark Specialty Insurance Company (“Hallmark”) is an insurance company organized and existing under the laws of the State of Oklahoma with its principal place of business in Texas.

72. Upon information and belief, Defendant Starr Surplus Lines Insurance Company (“Starr”) is an insurance company organized and existing under the laws of the State of Illinois with its principal place of business in New York.

73. Upon information and belief, Defendant Korean Reinsurance Company (“Korean Re”) is a foreign insurance carrier with its principal place of business in Seoul, South Korea.

74. Upon information and belief, Defendant Berkley Re (“Berkley Re”) is an insurance carrier organized and existing under the laws of the State of Delaware with its principal place of business in Connecticut.

75. Upon information and belief, Defendant Sinosafe General Insurance Co., Ltd. (“Sinosafe”) is a foreign insurance carrier with its principal place of business in Shenzhen, China.

76. Upon information and belief, Defendant Colony Insurance Company (“Colony”) is an insurance company organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Texas.

77. Upon information and belief, Defendant Axis Surplus Insurance Company (“Axis Surplus”) is an insurance company organized and existing under the laws of the State of Illinois with its principal place of business in Georgia.

78. Upon information and belief, Defendant Evanston Insurance Company (“Markel”) is an insurance company organized and existing under the laws of the State of Illinois with its principal place of business in Illinois.

79. Upon information and belief, Defendant Great American Insurance Company (“Great American”) is an insurance company organized and existing under the laws of the State of Ohio with its principal place of business in Ohio.

80. Upon information and belief, Defendant QBE Specialty Insurance Company (“QBE US”) is an insurance company organized and existing under the laws of the State of North Dakota with its principal place of business in New York.

81. Upon information and belief, Defendant Certain Underwriters at Lloyd’s, London (“Lloyd’s”) is an unincorporated association and/or limited partnership organized under the laws of Great Britain for providing infrastructure for the international insurance market.

82. Upon information and belief, Lloyd’s itself does not insure any risk, but rather, it is comprised of individual underwriters known as “members” or “syndicates” that assume all or a portion of the risk underwritten.

83. Upon information and belief, the members are either individuals or corporations, with different or multiple residences or principal places of business.

84. Twelve syndicates at Lloyd’s have subscribed to the All Risk Policies that are at issue in this case.

85. Upon information and belief, Certain Underwriters at Lloyd’s, London, known as Syndicate No. 1886 QBE (“QBE Syndicate London”) is a syndicate member of Lloyd’s who has given the following address for service of suit: Lloyd’s America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

86. Upon information and belief, Certain Underwriters at Lloyd’s, London, known as Syndicate No. 1414 ASC (“Ascot”) is a syndicate member of Lloyd’s who has given the following address for service of suit: Lloyd’s America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

87. Upon information and belief, Certain Underwriters at Lloyd's, London, known as Syndicate Axis Specialty Europe SE, LIRMA A9505 ("Axis Specialty") is a syndicate member of Lloyd's who has given the following address for service of suit: Lloyd's America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

88. Upon information and belief, Neon Worldwide Property Consortium 9761 ("Neon") is a syndicate member of Lloyd's who has given the following address for service of suit: Lloyd's America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

89. Upon information and belief, Certain Underwriters at Lloyd's, London, known as Syndicate No. 2468 NEO ("Neon Syndicate London") is a syndicate member of Lloyd's who has given the following address for service of suit: Lloyd's America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

90. Upon information and belief, Certain Underwriters at Lloyd's, London, known as Syndicate No. 0033 HIS ("Hiscox") is a syndicate member of Lloyd's who has given the following address for service of suit: Lloyd's America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

91. Upon information and belief, Certain Underwriters at Lloyd's, London, known as Syndicate No. 1183 TAL ("Talbot") is a syndicate member of Lloyd's who has given the following address for service of suit: Lloyd's America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

92. Upon information and belief, Certain Underwriters at Lloyd's, London, known as Syndicate No. 1200 AMA ("Argo") is a syndicate member of Lloyd's who has given the following address for service of suit: Lloyd's America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.



93. Upon information and belief, HCC International Insurance Company PLC (“HCC”) is a syndicate member of Lloyd’s who has given the following address for service of suit: Lloyd’s America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

94. Upon information and belief, Certain Underwriters at Lloyd’s, London, known as Syndicate No. 4444 CNP (“Canopus”) is a syndicate member of Lloyd’s who has given the following address for service of suit: Lloyd’s America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

95. Upon information and belief, Certain Underwriters at Lloyd’s, London, known as Syndicate No. 1458 RNR (“Renaissance Re”) is a syndicate member of Lloyd’s who has given the following address for service of suit: Lloyd’s America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

96. Upon information and belief, Certain Underwriters at Lloyd’s, London, known as Syndicate No. 0609 AUW (“AUW”) is a syndicate member of Lloyd’s who has given the following address for service of suit: Lloyd’s America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York, NY 10017.

97. The All Risk Insurers collectively sold the All Risk Policies to PNG, agreeing to be bound by the All Risk Policies’ terms, which they reviewed, revised and ultimately adopted as their own.

### **III. JURISDICTION AND VENUE**

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

99. Further, Ascot’s All Risk Policy includes a choice-of-law provision providing that Pennsylvania law will govern Ascot’s All Risk Policy, and eleven other All Risk Insurers –

namely, QBE Syndicate London, Axis Specialty, Neon, Neon Syndicate London, Hiscox, Talbot, Argo, HCC, Canopus, Renaissance Re and AUW – agreed to follow the terms of Ascot’s All Risk Policy.

100. This Court has personal jurisdiction over Defendant All Risk Insurers pursuant to 42 Pa. C.S. § 5322(a)(6) because Defendant All Risk Insurers have contracted to insure the property of PNG, a Pennsylvania corporation located within this Commonwealth at the time of contracting.

101. Jurisdiction for the declaratory judgment sought exists pursuant to 42 Pa. C.S. § 7532 and Pa. R.C.P. 1602.

102. Venue is proper in this Court pursuant to Pa. R.C.P. 2156 and Pa. R.C.P. 2179 because this county is where the transaction took place out of which PNG’s cause of action arose. Specifically, Defendant All Risk Insurers negotiated the All Risk Policies and delivered the finalized All Risk Policies through PNG’s insurance broker, Marsh USA Inc., through its office located in Philadelphia, Pennsylvania. In addition, Defendant Chubb US, which insures certain percentages of six out of the seven layers in the PNG Insurance Tower, is located in Philadelphia, Pennsylvania.

#### **IV. FACTUAL BACKGROUND**

##### **A. The SARS-CoV-2 Virus in the United States**

103. In December 2019, during the term of the All Risk Policies, an outbreak of COVID-19 was first identified in Wuhan, Hubei Province, China. In an unprecedented event that has not occurred in more than a century, the virus quickly spread to Europe and then to the United States.

104. The rapid spread of COVID-19 is due in part to the highly transmissible character of the virus. For example, as of March 1, 2020, there were 42,198 confirmed COVID-19 cases

across the globe. That number increased to 747,899 confirmed cases in April and 2,421,669 cases in May. See <https://graphics.reuters.com/CHINA-HEALTH-MAP/0100B59S39E/index.html>. As of August 10, 2020, there have been more than 5 million cases in the United States and over 160,000 deaths. See <https://www.cnn.com/interactive/2020/health/coronavirus-us-maps-and-cases/>.

105. According to the Centers for Disease Control and Prevention (“CDC”), “everyone is at risk for getting COVID-19.” See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>. According to the CDC and World Health Organization (the “WHO”), a person may become infected by: (1) coming into close contact (about 6 feet) with a person who has COVID-19; (2) being exposed to respiratory droplets when an infected person talks, sneezes, or coughs; and/or (3) touching surfaces or objects that have the virus on them, and then touching his or her mouth, eyes, or nose. See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>; <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>.

106. Asymptomatic individuals may also transmit the virus. See <https://www.nature.com/articles/s41591-020-0869-5>. At least 44% of all infections occur from people without any symptoms. *Id.*; <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-may-be-more-common-suspected-n1215481>. Thus, even individuals who appear healthy and present no identifiable symptoms of infection can have, and can continue to spread, the virus by breathing, speaking, or touching objects and surfaces.

107. According to a report in *The New York Times*, “[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough.” <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus->

transmission-cough-6-feet-ar-ul.html. Moreover, one human sneeze can expel droplets that can travel up to 27 feet at nearly a hundred miles an hour.

<https://www.nationalgeographic.com/science/2020/04/coronavirus-covid-sneeze-fluid-dynamics-in-photos/>.

108. Although these virus-containing droplets are very small, they are still physical objects that can travel and attach to other surfaces, thereby causing Loss to property.

109. Current evidence suggests that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials, including materials used by PNG throughout its Gaming Facilities. See <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>. The virus can survive and remain virulent on stainless steel and plastic for two to three days, on cardboard for up to twenty-four hours, and in aerosols for up to three hours. See <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>. In addition, the CDC confirmed that the virus was identified on surfaces of the *Diamond Princess* cruise ship a full 17 days after the cabins were vacated. <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

110. Indoor spaces, especially crowded ones, are reportedly particularly susceptible to circumstances favorable to the spread of the virus. A recent article published by the CDC analyzed a case study of three families (families A, B, and C) who had eaten at neighboring tables in the same indoor, windowless restaurant in Guangzhou, China. See [https://wwwnc.cdc.gov/eid/article/26/7/20-0764\\_article](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, patient A1 ate at a restaurant with families A, B, and C. By February 5, 2020, four members of family A, three members of family B, and two 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.

111. Without any generally recognized and reliable treatment or vaccine to protect against COVID-19, state and local governments as well as gaming authorities have tried to limit the transmission of the virus by issuing orders designed to reduce indoor human-to-human and human-to-surface-to-human exposure.

112. By ordering the closure of all non-life-sustaining businesses and all Gaming Facilities, state and local governments as well as gaming authorities and their equivalents have recognized the heightened risk that publically-accessible commercial property, where human contact and interaction are necessarily present, will cause injury through person-to-property-to-person infections.

113. Indeed, civil authorities issuing such orders in states where PNG operates have expressly cited the virus's threat to property as among the reasons motivating the orders.

114. In upholding Governor Tom Wolf of Pennsylvania's proclamation of a state-wide disaster emergency and March 19, 2020 Executive Order mandating the closure of physical operations at all non-life-sustaining businesses within Pennsylvania, the Pennsylvania Supreme Court acknowledged that because "one in four carriers of the virus are asymptomatic, and the virus can live on surfaces for up to four days," "any location [] where two or more people can congregate is within the disaster area." See *Friends of DeVito v. Wolf*, No. 68 MM 2020, \*34 (Pa. Apr. 13, 2020).

115. As there is no generally recognized and reliable method to test for the presence of SARS-CoV-2 on property, as many of those infected with COVID-19 are asymptomatic yet able to transmit the virus, and as PNG's employees and guests were so numerous, it is statistically certain that the virus was in and on PNG's insured properties and was and continues to be on surrounding properties. Moreover, local and state authorities have confirmed that the virus has been present in every county in which PNG's Gaming Facilities operate. Loss at PNG's Gaming

Facilities and at surrounding properties within five miles of PNG's Gaming Facilities existed or must be presumed to have existed.

116. As acknowledged by the Pennsylvania Supreme Court and various civil authorities, SARS-CoV-2 caused Loss to PNG's property, because SARS-CoV-2 rendered PNG's Gaming Facilities unusable for their intended purpose and unsafe for normal human occupancy or continued use. PNG's Gaming Facilities are intended to be used as gaming and racing facilities, restaurants and bars with on-site dining, hotel rooms, and event spaces. Because the highly contagious and deadly SARS-CoV-2 is spread by surface-to-human contact, PNG's Gaming Facilities were no longer able to serve their intended purpose and suffered Loss.

117. Indeed, the insurance industry has known, for years, that the presence of disease-causing agents on property constitutes Loss to that property. Since the 1960s, courts have held that the presence of disease-causing agents, in addition to other events which render property unfit or unsafe for its intended purpose, causes Loss to property.

118. In response to the most similar recent event to the current situation, insurance companies were paying claims under property insurance policies related to the SARS outbreak in the early 2000s without claiming there was a lack of property damage.

119. In 2006, when the insurance industry's drafting arm, the Insurance Services Office, Inc. (the "ISO"), sought regulatory approval for the introduction of its standard "Exclusion of Loss Due to Virus or Bacteria" – an exclusion which appears nowhere in the All Risk Policies of Defendant All Risk Insurers – the ISO recognized that "disease-causing agents" can cause property damage and lead to "business interruption (time element) losses." Filing CF-2006-OVBEF, "Amendatory Endorsement – Exclusion of Loss Due to Virus or Bacteria" at 1 (ISO Properties, Inc., 2006).

B. **PNG's Gaming Operations**

120. PNG operates more than forty Gaming Facilities in nineteen states. PNG's Gaming Facilities feature approximately 50,000 gaming machines, 1,300 table games and 8,800 hotel rooms.

121. The vast majority of PNG's revenue is gaming revenue, which is highly dependent upon the volume of customers at PNG's Gaming Facilities. PNG's gaming revenue is derived primarily from slot machines (which represented approximately 92%, 92% and 87% of PNG's gaming revenue in 2019, 2018 and 2017, respectively) and, to a lesser extent, table games and sports betting. Aside from gaming revenue, PNG's revenues are derived from PNG's hotel, dining, retail, concessions and certain other ancillary activities, and PNG's racing operations.

122. PNG operates in the highly regulated industries of gaming and racing. Each of PNG's Gaming Facilities is subject to extensive regulation under the laws, rules and regulations of the jurisdiction where it is located. Violations of laws or regulations in one jurisdiction can result in disciplinary action in other jurisdictions.

123. Typically, a state's gaming regulatory environment is established by statute and is administered by a regulatory body with broad discretion to regulate the owners and managers of gaming operations. Among other responsibilities, gaming authorities or their equivalents in the various jurisdictions in which PNG operates adopt, interpret, and enforce gaming laws, rules and regulations. Gaming laws are generally based upon declarations of public policy designed to protect gaming consumers and the viability and integrity of the gaming industry. Thus, PNG must satisfy the requirements of gaming control boards or their equivalents and comply with their orders, such as the closure orders at issue in this case, in order to maintain the licenses, registrations, permits and approvals necessary to continue PNG's operations.

124. In addition, PNG's operations are subject to various federal, state and local laws and regulations including, but not limited to, restrictions and conditions concerning health care, alcoholic beverages, environmental matters, employees, currency transactions, taxation, zoning and building codes, and marketing and advertising.

125. Prior to March 2020, PNG exhibited strong year-over-year performance and a high growth trajectory. In 2019 for example, PNG exceeded \$5.3 billion in revenue, an increase in revenue of over 60% from 2017. In addition, 20 million customers were enrolled in PNG's customer loyalty program, mychoice®.

**C. The Impact of the Presence of the SARS-CoV-2 Virus at or Near PNG's Gaming Facilities and of the Gaming Board and Civil Authority Orders on PNG's Operations**

**1. PNG's Total Loss of Income**

126. The Loss caused by SARS-CoV-2 and the threat of further Loss caused by SARS-CoV-2 has had a severely detrimental effect on PNG's business. The gaming board and civil authority orders, and the Loss of PNG's insured property caused by those orders, also has had a severely detrimental effect on PNG's business.

127. PNG has incurred a total estimated loss in excess of \$500 million through June 15, 2020 and is continuing to incur losses, which will accrue until PNG can resume normal operations. PNG is continuing to gather information and quantify its still-accruing business interruption and related losses following June 15, 2020 in amounts to be determined.

**2. Closure Orders' Impact on PNG Gaming Facilities**

128. Because of or in anticipation of covered Loss to PNG's Gaming Facilities, states' respective gaming boards and their equivalents ordered gaming facilities to close to the public ("GCB Orders") in every state where PNG's Gaming Facilities are located.



129. As a direct result of covered Loss to property, including property located within five miles of PNG's Gaming Facilities, state and local governments imposed closure orders ("Closure Orders") and stay at home orders ("Stay at Home Orders"). In an effort to slow the spread of COVID-19, in part by slowing person-to-property-to-person transmission, these Closure Orders and Stay at Home Orders mandated certain businesses deemed "non-essential," including PNG's Gaming Facilities, to close to the public and required residents to remain in their homes unless performing "essential" activities.

130. The GCB Orders as well as the civil Closure and Stay at Home Orders have caused a total prohibition of access to PNG's Gaming Facilities and are continuing to cause the total prohibition of access to certain of PNG's Gaming Facilities.

131. The GCB Orders as well as the Closure and Stay at Home Orders have caused and are continuing to cause PNG's business operations to incur losses.

**a. Ameristar Casino Resort Spa Black Hawk in Blackhawk, CO**

132. On March 17, 2020, the Colorado Department of Public Health and Environment's ("CDPHE") Executive Order 20-22 became effective, closing to the public all casinos in Colorado, including Ameristar Casino Resort Spa Black Hawk.

133. On March 26, 2020, the Governor of Colorado's Executive Order D 2020 017 and the CDPHE's Second Updated Public Health Order 20-24 became effective, requiring all residents to stay at home unless performing essential activities and requiring all non-critical businesses to close to the public. The CDPHE's updated Order 20-24 specifically acknowledged that "COVID-19 also physically contributes to property loss, [], and damage due to its propensity to attach to surfaces for prolonged periods of time" and "[t]his [Order] helps to reduce the property damage caused by COVID-19."

134. Originally, the CDPHE's Eighth Amended Public Health Order 20-28 required all casinos in Colorado to remain closed to the public until approximately July 30, 2020. On June 6, 2020 however, the CDPHE approved the Variance Request of Gilpin County, which allowed casinos in Gilpin County, including Ameristar Casino Resort Spa Black Hawk, to reopen subject to certain restrictions.

135. On June 17, 2020, Ameristar Casino Resort Spa Black Hawk re-opened. Since re-opening, Ameristar Casino Resort Spa Black Hawk has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

136. Ameristar Casino Resort Spa Black Hawk has suffered "Loss" and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**b. Sanford Orlando Kennel Club in Longwood, FL**

137. On March 18, 2020, Florida's gaming control board, the Division of Pari-Mutuel Wagering, advised PNG that pari-mutuel facilities throughout Florida were responding to COVID-19 by adjusting their hours or closing to the public. On March 21, 2020 at 8:00 P.M., Sanford Orlando Kennel Club also closed to the public.

138. From 12:01 A.M. on April 3, 2020 to April 30, 2020, the Governor of Florida's Executive Order No. 20-91 was in effect, requiring all persons in the state to stay at home unless performing essential activities.

139. On May 27, 2020, Sanford Orlando Kennel Club re-opened. Since re-opening, Sanford Orlando Kennel Club has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

140. Sanford Orlando Kennel Club has suffered "Loss" and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**c. Ameristar Casino Hotel Council Bluffs in Council Bluffs, IA**

141. On March 16, 2020, the Governor of Iowa's Proclamation of Disaster Emergency became effective, closing to the public all casinos and facilities conducting gaming operations in Iowa. Accordingly, Ameristar Casino Hotel Council Bluffs closed to the public on March 17, 2020.

142. On June 1, 2020, Ameristar Casino Hotel Council Bluffs was permitted to re-open pursuant to the Governor of Iowa's subsequent Proclamation of Disaster Emergency. Since re-opening, Ameristar Casino Hotel Council Bluffs has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

143. Ameristar Casino Hotel Council Bluffs has suffered "Loss" and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**d. Argosy Casino Alton in Alton, IL, Hollywood Casino Aurora in Aurora, IL, Prairie State Gaming, and Hollywood Casino Joliet in Joliet, IL (collectively, "PNG's Illinois facilities")**

144. From March 16, 2020 to July 1, 2020, the Illinois Gaming Board ordered all casinos in Illinois, including PNG's Illinois facilities, to cease public gambling operations.

145. On March 18, 2020, the Governor of Illinois' Executive Order 2020-07 became effective, prohibiting all gatherings of fifty people or more in the state and thereby restricting the intended use of PNG's Illinois facilities.

146. From March 20, 2020 to April 30, 2020, the Governor of Illinois' Executive Order 2020-10 was in effect, requiring all residents to stay at home unless performing essential activities and requiring all non-essential businesses to close to the public. Executive Order 2020-10 specifically acknowledged "the virus's propensity to physically impact surfaces and personal property."

147. On July 1, 2020, PNG's Illinois facilities re-opened. Since re-opening, PNG's Illinois facilities have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance.

148. PNG's Illinois facilities have suffered "Loss" and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**e. Ameristar Casino Hotel East Chicago in East Chicago, IN and Hollywood Casino Lawrenceburg in Lawrenceburg, IN (collectively, "PNG's Indiana facilities")**

149. From March 16, 2020 to June 15, 2020, the Indiana Gaming Commission ordered all licensed gaming operations in Indiana, including PNG's Indiana facilities, to close to the public.

150. From March 24, 2020 to May 1, 2020, the Governor of Indiana's Stay at Home and Closure Orders were in effect, requiring all residents to stay at home unless performing essential activities and requiring all non-essential businesses to close to the public. The Governor of Indiana's Stay at Home and Closure Orders specifically acknowledged "the virus's propensity to physically impact surfaces and personal property."

151. On June 15, 2020, PNG's Indiana facilities re-opened. Since re-opening, PNG's Indiana facilities have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance.

152. PNG's Indiana facilities have suffered "Loss" and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**f. Hollywood Casino at Kansas Speedway in Kansas City, KS**

153. From March 18, 2020 to May 22, 2020, the Kansas Lottery ordered gaming operations in Kansas, including Hollywood Casino at Kansas Speedway, to close to the public.

154. From March 30, 2020 to May 3, 2020, the Governor of Kansas' Stay at Home and Closure Orders were in effect, requiring all individuals within the state to stay at home unless performing essential activities.

155. On May 25, 2020, Hollywood Casino at Kansas Speedway re-opened. Since re-opening, Hollywood Casino at Kansas Speedway has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

156. Hollywood Casino at Kansas Speedway has suffered "Loss" and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**g. Boomtown Casino & Hotel Bossier City and Margaritaville Resort Casino in Bossier City, LA, Boomtown Casino & Hotel New Orleans in Harvey, LA, L'Auberge Casino & Hotel Baton Rouge in Baton Rouge, LA, and L'Auberge Casino Resort Lake Charles in Lake Charles, LA (collectively, "PNG's Louisiana facilities")**

157. From March 16, 2020 to May 18, 2020, the Louisiana Gaming Control Board ordered all gaming operations in Louisiana, including PNG's Louisiana facilities, to close to the public.

158. From March 23, 2020 to May 15, 2020, the Governor of Louisiana's Stay at Home and Closure Orders were in effect, requiring all individuals within the state to stay at home unless performing essential activities and requiring non-essential businesses to close to the public. The Governor of Louisiana's Proclamation No. 33 JBE 2020 specifically acknowledged that "these measures relating to closure of certain businesses and to limit the operations of non-essential businesses are necessary . . . because of . . . [the virus'] ability to attach to surfaces for prolonged periods of time."

159. Beginning on May 18, 2020, PNG's Louisiana facilities re-opened. Since re-opening, PNG's Louisiana facilities have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance.

160. PNG's Louisiana facilities have suffered "Loss" and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**h. Plainridge Park Casino in Plainville, MA**

161. From March 15, 2020 to July 6, 2020, the Massachusetts Gaming Commission ordered all gaming facilities in Massachusetts, including Plainridge Park Casino, to close to the public.

162. On March 17, 2020, the Governor of Massachusetts' order became effective, prohibiting gatherings of over twenty-five people and thereby restricting the intended use of Plainridge Park Casino.

163. From March 24, 2020 to May 18, 2020, the Governor of Massachusetts' Closure Orders were in effect, requiring non-essential businesses to close to the public.

164. On July 8, 2020, Plainridge Park Casino re-opened. Since re-opening, Plainridge Park Casino has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

165. Plainridge Park Casino has suffered "Loss" and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**i. Hollywood Casino Hotel and Raceway in Bangor, ME**

166. From March 16, 2020 to July 7, 2020, Maine's Department of Public Safety's Gambling Control Unit ordered Hollywood Casino Hotel and Raceway to close to the public.

167. On March 18, 2020, the Governor of Maine’s Executive Order No. 14 became effective, prohibiting gatherings of more than ten people and thereby restricting the intended use of Hollywood Casino Hotel and Raceway.

168. From March 24, 2020 to April 30, 2020, the Governor of Maine’s Stay at Home and Closure Orders were in effect, requiring all residents to stay at home unless performing essential activities and requiring non-essential businesses to close to the public.

169. On July 10, 2020, Hollywood Casino Hotel and Raceway re-opened. Since re-opening, Hollywood Casino Hotel and Raceway has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

170. Hollywood Casino Hotel and Raceway has suffered “Loss” and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**j. Greektown Casino Hotel in Detroit, MI**

171. From March 16, 2020 to August 5, 2020, the Michigan Gaming Control Board ordered Greektown Casino Hotel to cease all gaming operations.

172. From March 16, 2020 to August 5, 2020, the Governor of Michigan’s executive orders mandating among other things, the closure to the public of all casinos in Michigan, including Greektown Casino Hotel, were in effect.

173. On August 5, 2020, Greektown Casino Hotel re-opened. Since re-opening, Greektown Casino Hotel has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

174. Greektown Casino Hotel has suffered “Loss” and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**k. Argosy Casino Hotel and Spa in Riverside, MO, Hollywood Casino St. Louis in Maryland Heights, MO, and River City**

**Casino & Hotel in St. Louis, MO (collectively “PNG’s Missouri facilities”)**

175. From March 17, 2020 to May 31, 2020, the Missouri Gaming Commission ordered all gaming casinos in Missouri, including PNG’s Missouri facilities, to close to the public.

176. From April 6, 2020 to May 3, 2020, the Missouri Department of Health and Senior Services’ Stay at Home Orders were in effect, requiring all resident to stay at home unless performing essential activities.

177. On June 1, 2020, Argosy Casino Hotel and Spa re-opened. On June 16, 2020, Hollywood Casino St. Louis and River City Casino & Hotel re-opened. Since re-opening, PNG’s Missouri facilities have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance.

178. PNG’s Missouri facilities have suffered “Loss” and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**I. 1st Jackpot Casino in Robinsonville, MS, Ameristar Casino Hotel Vicksburg in Vicksburg, MS, Boomtown Casino Biloxi in Biloxi, MS, Hollywood Casino Gulf Coast in St. Louis, MS, and Hollywood Casino Tunica in Tunica Resorts, MS (collectively “PNG’s Mississippi facilities”)**

179. From March 16, 2020 to May 21, 2020, the Mississippi Gaming Commission ordered all Mississippi casinos, including PNG’s Mississippi facilities, to close to the public.

180. From April 3, 2020 to April 27, 2020, the Governor of Mississippi’s Stay at Home and Closure Orders were in effect, requiring all residents to stay at home unless performing essential activities and requiring non-essential businesses to close to the public. The Governor of Mississippi’s Stay at Home and Closure Orders specifically recognized that “the



risk of spread of COVID-19 within Mississippi . . . may result in substantial injury or harm to life, health, and property within Mississippi.”

181. On May 21, 2020, PNG’s Mississippi facilities re-opened. Since re-opening, PNG’s Mississippi facilities have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance.

182. PNG’s Mississippi facilities have suffered “Loss” and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**m. Favorites at Gloucester Township Off-Track Wagering and Sports Bar in Clementon, NJ**

183. On March 16, 2020, the Governor of New Jersey’s Executive Order 104 became effective, closing to the public all retail sports wagering lounges, including Favorites at Gloucester Township Off-Track Wagering and Sports Bar.

184. From March 21, 2020 to June 9, 2020, the Governor of New Jersey’s Stay at Home and Closure Orders were in effect, requiring all residents to stay at home unless performing essential activities and requiring non-essential businesses to close to the public. The Governor of New Jersey’s Closure Orders further required all retail sports wagering lounges, including Favorites at Gloucester Township Off-Track Wagering and Sports Bar, to remain closed to the public until June 26, 2020.

185. On July 8, 2020, Favorites at Gloucester Township Off-Track Wagering and Sports Bar re-opened. Since re-opening, Favorites at Gloucester Township Off-Track Wagering and Sports Bar has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

186. Favorites at Gloucester Township Off-Track Wagering and Sports Bar has suffered “Loss” and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**n. Zia Park Casino, Hotel & Racetrack in Hobbs, NM**

187. Since March 16, 2020, the New Mexico Department of Health’s orders have required the closure of all casinos in the state, including Zia Park Casino, Hotel & Racetrack. The New Mexico Department of Health’s orders specifically recognized that “the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State.”

188. Zia Park Casino, Hotel & Racetrack has not yet re-opened. Upon re-opening, Zia Park Casino, Hotel & Racetrack will remain subject to social distancing procedures and protocols, which will continue to detrimentally impact its financial performance.

189. Zia Park Casino, Hotel & Racetrack has suffered “Loss” and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**o. Cactus Pete’s Resort Casino in Jackpot, NV, M Resort Spa Casino in Henderson, NV, and Tropicana Hotel and Casino in Las Vegas, NV (collectively “PNG’s Nevada facilities”)**

190. From March 18, 2020 to June 4, 2020, the Nevada Gaming Control Board ordered all gaming operations, including PNG’s Nevada facilities, to close to the public.

191. From March 18, 2020 to May 15, 2020, the Governor of Nevada’s orders requiring the closure of all Nevada gaming operations were in effect. The Governor of Nevada’s Declaration of Emergency Directive 016 specifically recognized that “the ability of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time renders some property unusable and contributes to [], damage, and property loss.”

192. On June 4, 2020, PNG's Nevada facilities re-opened, aside from Tropicana Hotel and Casino which is scheduled to re-open in September 2020. Since re-opening, Cactus Pete's Resort Casino and M Resort Spa Casino have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance. Upon re-opening, Tropicana Hotel and Casino will remain subject to social distancing procedures and protocols, which will continue to detrimentally impact its financial performance.

193. PNG's Nevada facilities have suffered "Loss" and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**p. Hollywood Casino Columbus in Columbus, OH, Hollywood Casino Toledo in Toledo, OH, Hollywood Gaming at Dayton Raceway in Dayton, OH, and Hollywood Gaming at Mahoning Valley Race Course in Youngstown, OH (collectively "PNG's Ohio facilities")**

194. Effective March 14, 2020, the Ohio Casino Control Commission ordered all licensed casino facilities, including PNG's Ohio facilities, to implement compliance with the Ohio Department of Health's Director Order, which prohibited all mass gatherings of more than 100 people. On March 13, 2020, the Ohio Lottery Commission also ordered Hollywood Gaming at Mahoning Valley Race Course in particular to comply with the Ohio Department of Health's Director Order. By prohibiting access to PNG's Ohio facilities of more than 100 customers, the Ohio Casino Control Commission restricted the intended use of PNG's Ohio facilities and caused the partial interruption of PNG's business operations at PNG's Ohio facilities.

195. From March 12, 2020 to June 19, 2020, the Governor of Ohio's and the Ohio Department of Health's orders requiring the closure of all licensed casino facilities, including PNG's Ohio facilities, were in effect.

196. On June 19, 2020, PNG's Ohio facilities re-opened. Since re-opening, PNG's Ohio facilities have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance.

197. PNG's Ohio facilities have suffered "Loss" and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**q. Hollywood Casino at Penn National Race Course in Grantville, PA, The Meadows Casino in Washington, PA, and Marquee by Penn in Grantville, PA (collectively "PNG's Pennsylvania facilities")**

198. Effective March 17, 2020, the Pennsylvania Gaming Control Board ordered all Pennsylvania gaming properties, including PNG's Pennsylvania facilities, to close to the public.

199. From March 19, 2020 to June 4, 2020, the Governor of Pennsylvania's Stay at Home and Closure Orders were in effect, requiring all residents to stay at home unless performing essential activities and requiring non-essential businesses to close to the public.

200. On June 8, 2020, Marquee by Penn started to re-open. On June 9, 2020, The Meadows Casino re-opened. On June 19, 2020, Hollywood Casino at Penn National Race Course re-opened. Since re-opening, PNG's Pennsylvania facilities have remained subject to social distancing procedures and protocols, which continue to detrimentally impact their financial performance.

201. PNG's Pennsylvania facilities have suffered "Loss" and as a result, have incurred and are continuing to incur damages in an amount to be determined.

**r. Sam Houston Race Park in Houston, TX**

202. On March 25, 2020, the Stay at Home and Closure Order of Harris County Judge Lina Hidalgo became effective, requiring all residents to stay at home unless performing essential activities and requiring non-essential businesses, including Sam Houston Race Park, to

close to the public. The Harris County Judge’s Stay at Home Order ended in effect on May 1, 2020, but did not permit non-essential businesses, including Sam Houston Race Park, to re-open.

203. From April 2, 2020 to April 30, 2020, the Governor of Texas’ Stay at Home and Closure Order was in effect, requiring all residents to stay at home unless performing essential activities and requiring non-essential businesses to close to the public.

204. On June 3, 2020, Sam Houston Race Park re-opened pursuant to the Governor of Texas’ order. Since re-opening, Sam Houston Race Park has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

205. Sam Houston Race Park has suffered “Loss” and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**s. Hollywood Casino at Charles Town Races in Ranson, WV**

206. From March 18, 2020 to June 5, 2020, the Governor of West Virginia’s orders requiring the closure of all West Virginia casinos, including Hollywood Casino at Charles Town Races, were in effect.

207. On June 4, 2020, Hollywood Casino at Charles Town Races re-opened. Since re-opening, Hollywood Casino at Charles Town Races has remained subject to social distancing procedures and protocols, which continue to detrimentally impact its financial performance.

208. Hollywood Casino at Charles Town Races has suffered “Loss” and as a result, has incurred and is continuing to incur damages in an amount to be determined.

**D. The PNG Insurance Tower**

209. This coverage dispute arises under first-party commercial property All Risk Policies which the All Risk Insurers sold to PNG with a policy period of December 31, 2019 through December 7, 2020. Defendant All Risk Insurers’ All Risk Policies each formed part of

an insurance tower providing \$725 million in coverage per OCCURRENCE<sup>2</sup> for that period and consisting of seven layers of All Risk Policies (the “PNG Insurance Tower”).

210. Although Defendant All Risk Insurers generally sold separate respective All Risk Policies to PNG, every policy sold by Defendant All Risk Insurers incorporated the 89-page core Policy Form, subject to endorsements added by each Defendant. The Policy Form is attached hereto as **Exhibit A**, and is incorporated herein by reference.

211. “All Risk” policies provide the broadest coverage available, including time element coverage for lost gross earnings and extra expenses incurred as a result of an interruption of business. Under an all-risk policy, the policyholder’s burden is limited—the policyholder need only show that a loss occurred and that the loss was fortuitous. The burden then shifts to the insurance company to show that an express exclusion in the policy either bars or limits coverage. The “All Risk” coverage the All Risk Insurers sold to PNG provides that “[s]ubject to the terms, conditions, exclusions and limitations contained here or endorsed herein and in consideration of the premium charged, this “policy” covers all risks of direct physical loss or damage to insured property at insured location( s).” **Exhibit A**, § A.1.A.

212. PNG’s more than forty Gaming Facilities are Insured Locations as defined in the Policy Form. **Exhibit A**, § A.5.

213. The above-referenced gaming board and civil authority orders and the continuous spread and transmission of COVID-19 are covered causes of loss, not otherwise excluded under the Policy Form.

214. By reason of their sale of the All Risk Policies, Defendant All Risk Insurers each owe a fiduciary duty and a duty of good faith and fair dealing to PNG.

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<sup>2</sup> Terms defined in the Policy Form are signified by the use of all caps text. Unless otherwise stated, the use of all caps text signifies the use of the same in the Policy Form.

215. By reason of their review of the Policy Form, and the extensive changes they made and required PNG to accept, the All Risk Insurers adopted the Policy Form as their own.

216. PNG has satisfied all conditions precedent to bringing this action and obtaining coverage for its losses under each of the All Risk Policies.

217. PNG is entitled to coverage under a number of provisions in each of the All Risk Policies, many of which overlap. There is no provision in the All Risk Policies governing the manner in which PNG may structure its claim when multiple coverage provisions apply. Accordingly, PNG is entitled to structure its claim, to order its recovery, and to “stack” applicable coverages to maximize its recovery.

### **1. The Core Policy Form**

#### **a. OCCURRENCE**

218. Under the Policy Form, an OCCURRENCE is “all individual physical loss or damage arising out of and directly occasioned by one catastrophe....” **Exhibit A** at Endorsement 1.

#### **b. Coverages**

219. The Policy Form provides a number of coverages that are implicated, including, but not limited to, the following:

##### **(1) Interruption by Gaming Control Board or Commission**

220. In light of circumstances where a gaming control board or an equivalent authority could order one of PNG’s Gaming Facilities closed to the public even if there is no actual physical damage at that facility, PNG requested its insurance broker seek to obtain coverage for such circumstances where PNG does incur a resulting interruption to its business. The end result of this process was the inclusions of this coverage grant in the PNG Insurance Tower.

221. The bespoke Interruption by Gaming Control Board or Commission (“GCB”) coverage Defendant All Risk Insurers sold to PNG provides that:

This Policy covers the Actual Loss Sustained by the Insured during the PERIOD OF LIABILITY due to the necessary interruption of the Insured’s business due to an order of the gaming or racing control board commission or similar authority that prohibits access to the Insured Location and provided such order is made because of or in anticipation of physical loss or damage of the type insured against under this Policy, regardless of whether physical loss or damage actually occurs at the Insured Location. This policy shall cover the period of time starting at the time such order is issued and ending when the business is made ready for operations under the same or equivalent physical and operating conditions that existed prior to the order.

**Exhibit A, § C.3.J.**

222. GCB coverage has neither a sublimit applying in the aggregate regardless of the number of OCCURRENCES nor a sublimit per OCCURRENCE.

223. PNG has lost business income because of orders by gaming boards or commissions or similar authorities that prohibited access to PNG’s Gaming Facilities. These orders were issued because of or in anticipation of covered “physical loss or damage” – that is, the presence of SARS-CoV-2 on property and the continued transmission of the virus from persons to property.

224. PNG’s loss of business income is thus covered under the Policy Form’s GCB coverage.

**(2) Civil or Military Authority**

225. The Civil or Military Authority coverage Defendant All Risk Insurers sold to PNG provides that:

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY if an order of civil authority prohibits access to the Insured Location provided such order is the direct result of physical damage of the type insured against under this Policy at the Insured Location or within 5 miles of it.

**Exhibit A, § C.3.A.**



226. There is a per-OCCURRENCE sublimit of \$50,000,000 for Civil or Military Authority coverage. **Exhibit A**, § A.7. There is no aggregate limit.

227. PNG has lost business income and incurred extra cost because of state and local government orders that prohibited access to PNG's insured Gaming Facilities. These civil authority orders were the direct result of covered "physical damage" – that is, the presence of SARS-CoV-2 on property and the continued transmission of the virus from persons to property – within five miles of PNG's insured Gaming Facilities.

228. PNG's loss of business income and its sustained Extra Expenses are thus covered under the Policy Form's Civil or Military Authority coverage.

### (3) Loss of Attraction

229. The Loss of Attraction coverage Defendant All Risk Insurers sold to PNG provides that:

This policy is extended to include the Actual Loss Sustained by the Insured during a Period of Liability resulting from: (A) the cancellation by guests and/or customers of bookings for accommodation or (B) a cessation or diminution of trade due to loss of potential customers as a direct result of the interruption of or interference with the business carried on by the Insured at a location insured by this policy ... In consequence of ... (I) The discovery of a Notifiable Disease at the location or within a 5 mile radius thereof or attributable to food or drink supplied from that location, which causes restrictions on the use of that location on the order of a competent local authority."

**Exhibit A** at Endorsement 4.

230. A "Notifiable Disease" is defined as "any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome), an outbreak of which the competent local authority has stipulated shall be notified to them." **Exhibit A** at Endorsement 4.

231. The sublimit for Loss of Attraction coverage is \$5,000,000 per OCCURRENCE and in the aggregate. **Exhibit A**, § A.7.

232. PNC has lost business income resulting from both customers' cancellations of accommodation bookings and a cessation or diminution of trade due to loss of potential customers. These losses of business income are consequences of the discovery of a Notifiable Disease – COVID-19 – within five miles of PNG's insured Gaming Facilities.

233. PNG's loss of business income is thus covered under the Policy Form's Loss of Attraction coverage.

#### **(4) Gross Earnings**

234. The Gross Earnings coverage Defendant All Risk Insurers sold to PNG provides that:

The recoverable GROSS EARNINGS loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:

- i. Gross Earnings;
- ii. less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services;
- iii. less Ordinary Payroll;
- iv. plus all other earnings derived from the operation of the business.

**Exhibit A**, § C.2.A.

235. There is no sublimit for Gross Earnings coverage. **Exhibit A**, § A.7.

236. PNG has suffered business interruption loss as a direct result of Loss of the type insured under the Policy Form – specifically, the presence or suspected presence of SARS-CoV-2 at PNG's Gaming Facilities – and that loss is covered by the Policy Form's Gross Earnings provisions.

#### **(5) Extra Expense**

237. The Extra Expense coverage Defendant All Risk Insurers sold to PNG provides that:

The recoverable EXTRA EXPENSE loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the PERIOD OF LIABILITY:

a. Extra expenses to temporarily continue as nearly normal as practicable the conduct of the Insured's business; and

b. Extra costs of temporarily using property or facilities of the Insured or others,

less any value remaining at the end of the PERIOD OF LIABILITY for property obtained in connection with the above.

**Exhibit A, § C.2.B.**

238. There is no sublimit for Extra Expense coverage. **Exhibit A, § A.7.**

239. PNG is entitled to the Policy Form's Extra Expense coverage for the reasonable and necessary extra costs PNG incurred as a result of Loss at its Gaming Facilities, being the presence or suspected presence of SARS-CoV-2.

240. For example, PNG has incurred certain remediation and mitigation costs related to cleaning and disinfecting its Gaming Facilities in order to minimize the suspension of PNG's business. These remediation and mitigation efforts are continuing, and further efforts may be required to resume or continue normal or limited operations.

**(6) Protection and Preservation of Property**

241. The Protection and Preservation of Property coverage Defendant All Risk Insurers sold to PNG provides that:

This Policy covers: 1) reasonable and necessary costs incurred for actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent insured physical loss or damage to such insured property.

**Exhibit A, § B.3.V.**

242. There is no sublimit for Protection and Preservation of Property coverage.

**Exhibit A, § A.7.**

243. PNG is entitled to the Policy Form's Protection and Preservation of Property coverage for the reasonable and necessary extra costs PNG incurred to temporarily protect or

preserve insured property as a result of Loss at its Gaming Facilities, being the presence or suspected presence of SARS-CoV-2.

**(7) Leasehold Interest**

244. The Leasehold Interest coverage Defendant All Risk Insurers sold to PNG provides that:

The recoverable LEASEHOLD INTEREST incurred by the Insured of the following:

- a. If the lease agreement requires continuation of rent; and if the property is wholly untenable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially untenable or unusable, the proportion of the rent payable for the unexpired term of the lease.

**Exhibit A**, § C.2.C.

245. There is no sublimit for Leasehold Interest coverage. **Exhibit A**, § A.7.

246. Because the lease agreements of PNG and PNG’s Gaming Facilities have required the continuation of rent payments despite the presence of SARS-CoV-2 rendering the Gaming Facilities unusable, PNG is entitled to the Policy Form’s Leasehold Interest coverage.

**(8) Dependent Time Element (“DTE”)**

247. DTE coverage insures PNG for loss arising from “physical loss or damage of the type insured” to property at “Dependent Time Element Locations.” **Exhibit A**, § C.3.C.

248. A “Dependent Time Element Location” is defined as “[a]ny Location of a direct customer, supplier, contract manufacturer or contract service provider to the Insured” or any location “of any company under a royalty, licensing fee or commission agreement with the Insured.” **Exhibit A**, § C.3.C.3.a.

249. There is a per-OCCURRENCE sublimit of \$25,000,000 for DTE coverage. **Exhibit A**, § A.7. There is no aggregate limit.

250. PNG's direct customers and suppliers have experienced "physical loss or damage of the type insured" – that is, the presence or suspected presence of SARS-CoV-2 – to their property.

251. The Loss to property of PNG's direct customers and suppliers has prevented the suppliers from supplying their goods and services to PNG and the customers from accepting PNG's goods and services.

252. PNG has sustained and will continue to sustain loss of business income and incur extra expense resulting from PNG's suppliers' inability to supply their goods and services and customers' inability to accept PNG's goods and services.

253. These losses are covered under the Policy Form's DTE coverage.

#### **(9) Professional Fees**

254. The Professional Fees coverage Defendant All Risk Insurers sold to PNG provides that:

This Policy covers the actual costs incurred by the Insured for fees payable to the Insured's accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured's employees for producing and certifying any particulars or details contained in the Insured's books or documents or such other proofs, information or evidence required by the Company resulting from insured loss payable under this Policy for which the Company has accepted liability.

#### **Exhibit A, § B.3.U.**

255. There is a per-OCCURRENCE sublimit of \$5,000,000 for Professional Fees coverage. **Exhibit A, § A.7.** There is no aggregate limit.

256. While PNG has identified the foregoing coverages as ones that are applicable to the Loss it has suffered to date, PNG's Loss may also trigger additional coverages under the All Risk Policies as the Loss is continuing and causing PNG to suffer additional damages.

**c. Deductible**

257. Under the Policy Form, the Deductible is \$1,000,000 per OCCURRENCE for Property Damage, and a 2 day equivalent for Time Element loss. **Exhibit A**, § A.12.

**d. Exclusions**

258. No exclusion in the Policy Form applies to PNG's claim. To the extent the All Risk Insurers contend any exclusion(s) apply, such exclusion(s) are ambiguous and/or unenforceable.

259. PNG has not named as Defendants three insurance companies in the PNG Insurance Tower: (1) Homeland Insurance Company of Delaware ("One Beacon"); (2) Scottsdale Insurance Company ("Nationwide"); and (3) Endurance American Specialty Insurance Company ("Sompo").

260. In contrast to the Policy Form and the respective policies of the Defendant All Risk Insurers, the policies sold by One Beacon and Nationwide to PNG contain exclusions referencing "virus", and the policy issued by Sompo contains a communicable disease exclusion.

261. The One Beacon Policy exclusion states:

This Policy does not insure against loss or damage caused directly or indirectly by or resulting from the actual or threatened existence, growth, presence, proliferation, spread, release, transmission, migration, dispersal or any activity of fungus, wet rot, dry rot, virus or bacteria.

262. The Nationwide Policy exclusion states:

We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

263. The Sompo Policy exclusion states:

This policy does not apply to any loss, demand, claim, occurrence, direct physical loss or damage, expense or suit arising out of or related in any way to communicable or infectious disease, condition or sickness, including but not limited to:

1. Any causative agent of any such condition, disease, or sickness regardless of whether such agent gives rise to any such condition, disease, or sickness;
2. Any actual or attempted testing for, containing, detoxifying, mitigating, monitoring or neutralizing of, responding to, or assessing the effects of any communicable or infectious disease, condition or sickness or causative agent.

264. The Policy Form contains an exclusion for “Contamination, and any cost due to Contamination including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy.” **Exhibit A**, § B.5.D.1. (the “Contamination Exclusion”). The Contamination Exclusion does not preclude coverage for PNG’s claim under the All Risk Policies. If the Loss caused by SARS-CoV-2 were already excluded by the Contamination Exclusion, the One Beacon, Nationwide and Sompo exclusions would be redundant and unnecessary.

## 2. Specific Policy Provisions

### e. Alternus Policy No. RTX20008919

265. Pursuant to the Communicable Disease Additional Coverage Endorsement, the Alternus Policy expressly provides:

This 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, as defined and covered elsewhere in this Policy, and the extra expense incurred by the Insured, as defined and covered elsewhere in this Policy, 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.

There is no listed sublimit for this coverage.

266. The actual or suspected presence of SARS-CoV-2 has caused PNG’s Gaming Facilities to totally or partially close at the direction of state departments of public health,

thereby triggering coverage under the Alternus Policy's Communicable Disease Additional Coverage Endorsement.

**f. Chubb US Policy No.: GPAD3782320A010**

267. Pursuant to the Communicable Disease Additional Coverage Endorsement, the Chubb US Policy expressly provides:

This 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, as defined and covered elsewhere in this Policy, and the extra expense incurred by the Insured, as defined and covered elsewhere in this Policy, 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.

There is no listed sublimit for this coverage.

268. The actual or suspected presence of SARS-CoV-2 has caused PNG's Gaming Facilities to totally or partially close at the direction of state departments of public health, thereby triggering coverage under the Chubb US Policy's Communicable Disease Additional Coverage Endorsement.

**E. PNG's Claim for Coverage**

269. On March 23, 2020, PNG timely notified Defendant All Risk Insurers that PNG had experienced, and was continuing to experience, covered losses as a consequence of the actual or anticipated Loss caused by SARS-CoV-2 and the resulting gaming board and civil authority orders.

270. The All Risk Insurers retained a third-party adjuster, Sedgwick, who assigned to PNG's claim the number PHI20106530 (the "Claim").



271. On May 1, 2020, the All Risk Insurers, through Sedgwick, sent PNG a letter, asserting that an investigation of the Claim was underway and forwarding several requests for information.

272. On June 1, 2020, PNG responded to the May 1, 2020 letter by addressing each request for information.

273. On July 2, 2020, PNG provided its initial Claim submission as PNG's initial best estimate through June 15, 2020 of its loss of income from the gaming board and civil authority orders. In its July 2, 2020 letter, PNG also requested an advance payment to help mitigate further loss.

274. In a reservation of rights and denial letter dated August 6, 2020, Defendant All Risk Insurers stated that they would not be tendering any advance payment and denied coverage for losses suffered at PNG's covered properties with only minor inconsequential exceptions amounting to less than one percent (1%) of PNG's total losses.

275. Defendant All Risk Insurers asserted that aside from potentially Loss of Attraction coverage and the Communicable Disease Additional Coverages provided by the Alternus and Chubb Policies, "each of the coverages outlined above that potentially could be implicated in the Claim require that there be direct physical loss or damage to property before such coverages become applicable." Defendant All Risk Insurers concluded that they "are not aware of any evidence or facts suggesting there was direct physical loss or damage to insured property." Therefore, Defendant All Risk Insurers denied coverage for over 99% of the losses incurred by PNG.

276. Consequently, Defendant All Risk Insurers wrongly claimed that the only coverages potentially responsive to the losses PNG suffered were Loss of Attraction and the

Communicable Disease Additional Coverages provided by the Alternus and Chubb Policies, an amount which would leave more than 99% of PNG's losses uncovered.

277. At no time subsequent to PNG providing notice to Defendant All Risk Insurers of the Claim have Defendant All Risk Insurers, or its representatives, requested to access, inspect, and/or test PNG's covered properties.

278. Defendant All Risk Insurers' wrongful denial of coverage has caused PNG to suffer and continue to suffer significant damages.

279. Due to the All Risk Insurers' denial of coverage, PNG's Claim has been placed in doubt of its rights under the All Risk Policies.

## **V. CLAIMS FOR RELIEF**

### **COUNT ONE – DECLARATORY JUDGMENT**

280. PNG incorporates the foregoing paragraphs by reference.

281. Under the Pennsylvania Declaratory Judgments Act, the Court has the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." 42 Pa. C.S. § 7532. An insurance contract may be interpreted under the Pennsylvania Declaratory Judgments Act before there is a breach or even a claim for coverage. *See* 42 Pa. C.S. § 7534.

282. PNG seeks entry of an order declaring the parties' rights and duties under the All Risk Policies.

283. As set forth above, Defendant All Risk Insurers sold PNG the All Risk Policies protecting against Loss to property, business interruption loss, and Extra Expense, among other losses and expenses now being suffered by PNG because of closure orders and the presence, suspected presence or anticipated presence of the virus in the locales where PNG's covered properties are located.

284. As a direct and proximate result of Defendant All Risk Insurers' breaches of contract and denial of their coverage obligations, PNG has suffered and will continue to suffer serious harm in an amount of millions of dollars, exclusive of interest and costs.

285. An actual and justiciable controversy exists between PNG and Defendant All Risk Insurers regarding the interpretation, application, and meaning of the All Risk Policies.

286. Accordingly, PNG is entitled to declaratory judgment of this Court of its rights and of the obligations of Defendant All Risk Insurers under the All Risk Policies.

287. The All Risk Policies constitute valid and binding agreements obligating Defendant All Risk Insurers to indemnify PNG for covered time-element losses.

288. Despite PNG timely notifying Defendant All Risk Insurers of its losses and satisfying all conditions precedent under the All Risk Policies, Defendant All Risk Insurers have failed to indemnify PNG for its covered time-element losses.

**WHEREFORE**, PNG seeks judgment in its favor as to Count I as follows:

- (1) The entry of an Order declaring that PNG's loss of income is covered in full under the various provisions of the All Risk Policies, including under the coverages for Gross Earnings, Leasehold Interest, Extra Expense, and various Additional Coverages and Coverage Extensions, such as Interruption by Gaming Control Board or Commission, Civil or Military Authority, Loss of Attraction, Protection and Preservation of Property, Dependent Time Element, Professional Fees, and Communicable Disease; and
- (2) The entry of an Order declaring Defendant All Risk Insurers are obligated to indemnify PNG for its covered Claim, including but not limited to payment of pre- and post-judgment interest, attorneys' fees, and all other relief this Court deems just and appropriate.

## COUNT TWO – BREACH OF CONTRACT

289. PNG incorporates the foregoing paragraphs by reference.

290. The All Risk Policies are valid and enforceable contracts binding upon Defendant All Risk Insurers, as insurers, and PNG, as policyholder.

291. PNG provided prompt notice of its losses, performed all obligations required of it under the All Risk Policies, and was ready, willing, and able to perform its obligations under the All Risk Policies.

292. The breaches occurred when Defendant All Risk Insurers failed to promptly provide and otherwise denied some or all coverage owed to PNG under the All Risk Policies. On August 6, 2020, Defendant All Risk Insurers refused to provide the overwhelming majority of the coverage owed to PNG under the All Risk Policies.

293. Under the terms of the All Risk Policies, Defendant All Risk Insurers must pay up to the All Risk Policies' limits of insurance for any loss covered under the All Risk Policies, subject only to sublimits, time limits, or deductibles for specific coverages.

294. Defendant All Risk Insurers have not paid any or all amounts due to PNG in connection with its Claim. Instead, Defendant All Risk Insurers have asserted various inapplicable bases to wrongfully deny coverage for PNG's Claim.

295. As a direct and proximate result of Defendant All Risk Insurers' breaches of contract, PNG has suffered and will continue to suffer damages in an amount to be determined at trial, as well as consequential damages.

**WHEREFORE**, this Court should (i) enter judgment in favor of PNG as to Count II and against Defendant All Risk Insurers for all monetary damages suffered by PNG caused by Defendant All Risk Insurers' breaches of contract, including, without limitation, compensatory damages, consequential damages, pre-judgment interest, post-judgment

interest, attorneys' fees, and costs, and (ii) award such other relief as it deems equitable and just.

**DEMAND FOR JURY TRIAL**

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

Respectfully submitted,

Dated: August 13, 2020

\_\_\_\_\_  
/s/ John N. Ellison

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**VERIFICATION**

The undersigned, being an authorized officer and representative of Plaintiffs 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: 8/12/20



\_\_\_\_\_  
Carl Sottosanti, EVP, General Counsel & Secretary  
Penn National Gaming, Inc.  
On behalf of Plaintiffs

**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: August 13, 2020

/s/ John N. Ellison

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