

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

TRIUMPH HOSPITALITY LLC DBA TRIUMPH
HOTELS, 47TH STREET MANAGEMENT CO. LLC,
IROQUOIS HOTEL L.L.C., WASHINGTON
JEFFERSON HOTEL L.L.C., BELLECLAIRE HOTEL
L.L.C., NESBIT HOTEL LLC, TRIBECA HOTEL
LLC, and WEST BROADWAY READE LLC,

Plaintiffs,

- against -

THE HARTFORD FIRE INSURANCE COMPANY
and ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

Index. No.

Date Filed:

SUMMONS

Plaintiffs designate New York
County as the place of trial.

Venue is proper in this County
pursuant to CPLR § 501

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
August 14, 2020

Respectfully submitted,

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L.L.C., NESBIT HOTEL LLC, , TRIBECA HOTEL
LLC, and WEST BROADWAY READE LLC,

Index. No.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiffs,

- against -

THE HARTFORD FIRE INSURANCE COMPANY
and ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

Plaintiffs Triumph Hospitality LLC dba Triumph Hotels (“Triumph Hotels”), 47th Street Management Co. LLC (“47th Street Management”), Iroquois Hotel L.L.C., Washington Jefferson Hotel L.L.C., Belleclaire Hotel L.L.C., Nesbit Hotel LLC, Tribeca Hotel LLC, and West Broadway Reade LLC (hereinafter collectively referred to as “Triumph” or “Plaintiffs”) by and through their undersigned counsel, Kasowitz Benson Torres LLP, bring this action against Defendants The Hartford Fire Insurance Company (“Hartford”) and Zurich American Insurance Company (“Zurich”) (collectively, “Defendants”).

INTRODUCTION

1. New York City is one of the most renowned and beloved travel destinations in the world, drawing over 65 million visitors in 2018, 13.6 million of which hailed from other countries. Tourism is a vital component of New York City’s economy.

2. For over twenty years, Triumph hotels have welcomed guests from across the United States and from countries all over the world. Plaintiffs’ boutique hotels offer their guests a unique and intimate experience, in the heart of the 11th largest city in the world. Through its

attention to detail and its guests, Triumph has built a loyal following of patrons and corporate partners. Triumph's business is entirely dependent on its guests, without whom it effectively has no business to run.

3. In March of 2020, for the first time in its history, Triumph was forced to close all of its hotels to the public, due to direct physical loss and property damage stemming from the COVID-19 pandemic. Across the country and across the world, prospective patrons were under government orders to stay at home or "shelter in place," preventing them from staying in Triumph hotels. New York State and New York City issued their own proclamations, directing citizens to stay at home except for essential needs. Broadway and various tourist attractions in New York City closed to the public. Hotel employees contracted the virus, and patrons cancelled their confirmed reservations. Rapidly changing and conflicting information regarding COVID-19 – including its lifespan on surfaces and the manner in which it is transmitted – made it impossible for Triumph to make its hotels safe for its patrons and employees, and made its properties effectively useless for their intended purpose.

4. Because of the nature of Triumph's business, Triumph prudently purchased premier business interruption policies with extended business interruption coverage for all of its hotels, in exchange for staggering annual premiums. Triumph's largest hotel, the Hotel Edison, is insured by Defendant Zurich. Triumph's other five hotels are insured by Defendant Hartford. Both policies are "all risk" policies, providing coverage for property damage, time element losses, and related losses. Specifically, the policies cover business interruption losses stemming from physical loss of the properties for their intended purposes, dependent properties, orders of civil authority, and restricted access to the properties. The policies also cover extra expenses. Notably, unlike standard general liability coverage provisions, which define property damage as

“physical injury to *tangible*” property, neither of the property policies at issue in this litigation restrict coverage to “physical injury to *tangible* property.” (Emphasis added.) The Hartford Policy also includes coverage for certain virus-related losses. Similarly, the Zurich Policy’s Inland Marine Coverage Form includes coverage for contaminant-related losses.

5. Despite the coverage afforded by these policies, both Hartford and Zurich have summarily denied Plaintiffs’ claims in breach of the applicable policies and the implied covenant of good faith and fair dealing, and in violation of New York General Business Law §349. Plaintiffs are informed and believe that Hartford and Zurich, in concert with other insurance companies, have summarily denied coverage for the claims of other hard-hit businesses nationwide, using the ongoing pandemic as an excuse to avoid making payments under their policy contracts.

6. Plaintiffs are informed and believe that Hartford and Zurich, in concert with other insurance companies, have advanced and are now advancing interpretations of virus exclusions and their purported effect on coverage under business interruption policies that are in direct conflict with representations made to state insurance regulators in connection with securing approval of virus exclusion language. Under the doctrine of regulatory estoppel, Hartford, Zurich, and other insurance companies are therefore barred from now relying on those exclusions to deny coverage.

7. In this action, Plaintiffs seek compensatory, consequential, and punitive damages, prejudgment interest, attorneys’ fees, costs, and declaratory relief against Defendants Hartford and Zurich.

THE PARTIES

8. Plaintiff Triumph Hospitality LLC dba Triumph Hotels is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019.

9. Plaintiff 47th Street Management Co. LLC is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019. 47th Street Management Co. LLC operates the Hotel Edison, located at 228 W. 47th Street, New York, NY 10036.

10. Plaintiff Iroquois Hotel L.L.C. is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019. Iroquois Hotel L.L.C. operates the Iroquois Hotel, located at 49 W. 44th Street, New York, NY 10036.

11. Plaintiff Washington Jefferson Hotel L.L.C. is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019. Washington Jefferson Hotel L.L.C. operates the Washington Jefferson Hotel, located at 318 W. 51st Street, New York, NY 10019.

12. Plaintiff Belleclaire Hotel L.L.C. is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019. Belleclaire Hotel L.L.C. operates the Belleclaire Hotel, located at 2175 Broadway, New York, NY 10024.

13. Plaintiff Nesbit Hotel LLC is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019. Nesbit Hotel LLC operates the Evelyn Hotel, located at 7 E. 27th Street, New York, NY 10016.

14. Plaintiff Tribeca Hotel LLC is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019. Tribeca Hotel LLC operates the Frederick Hotel, located at 95 W. Broadway, New York, NY 10007.

15. Plaintiff West Broadway Reade LLC is a New York limited liability company, with its principal place of business at 1633 Broadway, 46th Floor, New York, NY 10019. West Broadway Reade LLC owns a restaurant space adjacent to the Frederick Hotel, which is leased and occupied by Serafina Tribeca restaurant.

16. Plaintiffs are informed, believe, and thereupon allege that Hartford is a Connecticut corporation with its principal place of business in Hartford, Connecticut.

17. Plaintiffs are informed, believe, and thereupon allege that Zurich is a New York corporation with its principal place of business at 4 World Trade Center, 150 Greenwich Street, New York, NY.

JURISDICTION AND VENUE

18. This Court has jurisdiction over Hartford because it is actively engaged in business within the jurisdiction, sold the relevant policy within the jurisdiction to Plaintiffs Triumph Hotels, Iroquois Hotel L.L.C., Washington Jefferson Hotel L.L.C., Belleclaire Hotel L.L.C., Nesbit Hotel LLC, Tribeca Hotel LLC, and West Broadway Reade LLC, and injured these Plaintiffs within the jurisdiction through the issuance of its denial letter. This Court has jurisdiction over Zurich because it is incorporated in and is a resident of the State of New York. Zurich also sold the relevant policy to Plaintiff 47th Street Management within the jurisdiction, and injured 47th Street Management within the jurisdiction through the issuance of its denial letter.

19. Venue is proper in this jurisdiction pursuant to CPLR §503(a) because the majority of the events giving rise to the claims asserted herein occurred within this jurisdiction.

FACTUAL ALLEGATIONS

A. Overview of Triumph's Business

20. Triumph Hotels operates six historic boutique hotels in New York City's most desirable neighborhoods: (i) Hotel Belleclaire (a designated historical landmark on the Upper West Side of Manhattan); (ii) The Iroquois Hotel (a four star boutique luxury hotel in midtown Manhattan, home to one of the highest ranked cocktail lounges in Manhattan, Lantern's Keep); (iii) The Frederick Hotel (a boutique TriBeCa hotel, with an adjacent restaurant, Serafina Tribeca); (iv) The Evelyn (a boutique NoMad hotel); (v) the Washington-Jefferson Hotel (a boutique theater district hotel); and (vi) the Hotel Edison (a historic Times Square art deco hotel and home to two popular restaurants and a bar). The hotels attract patrons from around the world, and – legend has it – have hosted James Dean, Abraham Lincoln, and Mark Twain.

21. For years, Triumph has operated a successful enterprise. Triumph derives the vast majority of its revenues from hotel guests who book directly with the hotel, or through online travel agencies such as Expedia and bookings.com. Triumph also derives substantial revenues from group bookings, and has contracts with third parties such as airlines, which purchase a minimum number of rooms per month. All of Triumph's hotels also have corporate tenants, such as Starbucks, restaurants, bars, and other retail establishments, from whom the hotels derive rental income. As of January 2020, Triumph employed approximately 510 people across its six hotels and corporate offices in New York City.

22. Triumph's revenue forecasting has been historically very accurate, within 5% of actual results. As of January 2020, Triumph forecasted millions of dollars in revenue for 2020.

B. The COVID-19 Pandemic

23. In or around December 2019, the novel coronavirus, known as SARS-CoV-2, began spreading to humans in Wuhan, China. The infectious disease caused by SARS-CoV-2 is known as COVID-19.

24. COVID-19 quickly spread around the world, with new “hot spots” arising at an alarming rate. COVID-19 reached the United States in January 2020, and the first reported case of COVID-19 in New York City was on January 30, 2020. As the world struggled to contain the spread of COVID-19, unprecedented measures were taken, with countries closing borders, prohibiting certain travel, ordering businesses shuttered, and ordering citizens to stay home except for essential needs. On March 11, 2020, the World Health Organization (“WHO”) officially declared COVID-19 a pandemic.¹

25. On March 7, 2020, the State of New York issued Executive Order Number 202, “declaring a State disaster emergency for the entire State of New York.” On March 20, 2020, the State of New York issued Executive Order No. 202.6, ordering all non-essential businesses to reduce in-person workforces by 50%. On March 17, 2020, New York City declared a state of emergency, and on March 22, 2020, issued its first “stay at home” order. The order explicitly states that COVID-19 is “causing property loss and damage.”² At least 42 U.S. states, dozens of countries, and numerous local governments issued similar orders. Additionally, the U.S. federal government issued various orders restricting travel from Asia and Europe into the U.S. Countries around the world have also discouraged their citizens from traveling to the United States based on the high infection rates.

¹ A pandemic is an epidemic of an infectious disease that has spread across a large region, for instance multiple continents or worldwide, affecting a substantial number of people.

² <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-101.pdf>

26. The number of COVID-19 cases grew exponentially in New York in late March and early April, making it the new global hot spot for the pandemic. New York City hit a single day peak of 6,378 new cases on April 6, 2020.³ As of the filing of this complaint, New York City has approximately 226,043 confirmed cases of COVID-19, 18,987 confirmed deaths, and 4,628 “probable” deaths.⁴

27. While the virus was initially thought to spread only through small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks, increasing evidence indicates it is also spread by aerosols, produced by normal breathing. Aerosols can remain suspended in air for hours until finally brought down by gravity to a surface. The virus survives on a variety of surfaces, including steel, ceramic, glass, paper and cloth – surfaces found all over hotels at common touch points. The CDC reported that evidence of the virus remained on the Diamond Princess cruise ship 17 days after all cabins had been vacated.

28. Testing in New York City lagged at the onset of the pandemic, and even today is largely limited to persons exhibiting symptoms. Studies have concluded that as many as 42% of infected persons are asymptomatic, making it extremely difficult to contain the spread of the pandemic.⁵

29. Although conditions in New York City have improved since April, New York is now imposing restrictions on travel into the state from other locations with high infection rates.

30. As of the filing of this Complaint, the United States leads the world with over

³ See <https://www1.nyc.gov/site/doh/covid/covid-19-data.page> [last visited on August 14, 2020]

⁴ “Probable” COVID-19 deaths are those believed to be COVID-related but which were not confirmed by testing.

⁵ See, e.g., <https://www.advisory.com/daily-briefing/2020/06/01/asymptomatic-patients>

5.11 million cases of COVID-19 and over 163,000 deaths. Infection rates are again rapidly rising, making it unlikely that government restrictions on travel will be lifted until late 2020 at the earliest.

C. The COVID-19 Pandemic Has Impacted Plaintiffs' Hotels

31. The pandemic has directly caused property damage to Plaintiffs' hotels (including but not limited to the actual and threatened presence of the virus at Plaintiffs' hotels), and the physical loss of the hotels for their intended purpose. Several staff members at each hotel contracted COVID. One staff member passed away. The pandemic also caused damage to properties in the immediate area of Plaintiffs' hotels. Indeed, the entirety of New York City, including Plaintiffs' hotels, has been designated by city and state officials as being affected by COVID-19. As one court has described it, "any location...where two or more people can congregate is within the disaster area [of COVID-19]."⁶ The pandemic has also caused significant expenses to Plaintiffs, in the form of additional sanitization costs, which are expected to continue into the foreseeable future.

32. The orders of civil authority issued around the world requiring residents to stay home except for essential needs, as well as the U.S. government's orders restricting travel into the United States, have directly impacted Plaintiffs' operations because their patrons' homes – the dependent properties on which Plaintiffs rely for their guests – were impacted by and damaged by the pandemic. Such orders also impacted airports, transportation hubs, and New York City tourist attractions (including but not limited to Broadway theaters, museums, retail establishments, dining establishments, and historical landmarks) resulting in a near-total cessation of business. Airports, transportation hubs, and tourist attractions are also dependent

⁶ See *Friends of Danny Devito v. Wolf*, 2020 Pa. LEXIS 1987, *34 (Apr. 13, 2020).

properties that attract customers of Plaintiffs' hotels within the meaning of the policies.

33. Faced with empty rooms and staggering overhead costs in the millions of dollars for rent, salary, utilities, maintenance, and other expenses, Triumph was forced to mitigate its damages by closing its hotels to the public, and reducing its 510 person workforce to just 32 people.

34. In addition to the loss of hotel room rental revenue, many of Plaintiffs' corporate tenants have stopped paying rent during the pandemic,⁷ which is also a covered loss under Plaintiffs' all-risk policies.

D. The Hartford Policy

35. Defendant Hartford issued to Plaintiff Triumph Hotels a Special Multi-Flex Policy, No. 10 UFJ DD3440, effective from August 1, 2019 to August 1, 2020 (the "Hartford Policy"),⁸ covering the Iroquois Hotel, Washington Jefferson Hotel, Belleclaire Hotel, Evelyn Hotel, Frederick Hotel, the Serafina Tribeca restaurant space, and certain additional properties. A true and correct copy of the Hartford Policy is attached hereto as "Exhibit A."⁹ The annual policy premium for the August 2019 to August 2020 policy period is \$348,148.

⁷ Plaintiff West Broadway Reade LLC's losses at issue in this action are limited to lost rental income from Serafina Tribeca restaurant and related expenses. West Broadway Reade LLC does not own or operate any hotels.

⁸ The Hartford Policy renewed for another year, effective August 1, 2020 to August 1, 2021, but Plaintiffs have not received a copy of the new policy as of the filing of this Complaint. Because Plaintiffs' losses are continuing, Plaintiffs intend to amend this Complaint if and as necessary upon receipt of the new policy.

⁹ For ease of reference, pagination has been applied to the Policy.

36. The Hartford Policy is an “all risks” property policy that provides coverage to Plaintiffs¹⁰ for loss to insured property, unless that loss is subject to an express exclusion or limitation.

37. The Hartford Policy expressly provides that “two or more coverages in this policy [may] apply to the same loss.” Hartford Policy at p. 16. The Hartford Policy further provides that “if we adopt any revision that would broaden this Coverage Part, without additional premium, within 45 days prior to inception of this policy or during this policy period, the broadened coverage will immediately apply to you.” *Id.*

38. The Hartford Policy’s “Property Choice Elite Coverage Part” includes a “Property Choice Elite Coverage Form,” which provides coverage for “*direct physical loss of* or direct physical damage to the following types of Covered Property at an ‘Insured Premises’ caused by or resulting from a Covered Cause of Loss.” Hartford Policy at p. 22 (emphasis added). The Hartford Policy does not define “direct physical loss of” or “direct physical damage,” but these terms can and have been reasonably construed to include circumstances in which a property has been rendered unusable for its intended purpose, or unsafe for use. Plaintiffs have suffered the “direct physical loss of” their hotels for their intended use as a result of the COVID-19 pandemic, as well as “direct physical damage” from the virus attaching itself to surfaces throughout hotel property.

39. The Hartford Policy’s “Property Choice Elite Business Income Coverage Form” provides business income coverage to Plaintiffs, “for the actual loss of Business Income [they] sustain due to the necessary interruption of [their] business operations . . . due to *direct physical*

¹⁰ For purposes of Section D of this Complaint, “Plaintiffs” refers to Plaintiffs Triumph Hotels, Iroquois Hotel L.L.C., Washington Jefferson Hotel L.L.C., Belleclaire Hotel L.L.C., Nesbit Hotel LLC, Tribeca Hotel LLC, and West Broadway Reade LLC.

loss of or direct physical damage to property.” Hartford Policy at p. 47 (emphasis added).

“Interruption” is specifically designated as a “slowdown or cessation of any part of your business activities or the partial or total untenability of the premises.” *Id.* at 55. In turn, “Business Income” includes “net income” (including Rental Income) and “continuing normal operating expenses . . .” *Id.* The coverage part provides that it will not pay for “any increase of loss caused by or resulting from suspension, lapse or cancellation of any contract, lease or license... [except] if such suspension, lapse or cancellation is directly caused by a covered interruption of business operations.” *Id.* at p. 48. Plaintiffs have lost business income as a result of the interruption of their business operations due to “direct physical loss of” their hotels for their intended purpose. Plaintiffs have also lost business income due to the suspension and/or cancellation of contracts, which was directly caused by a covered interruption of business operations.

40. The Hartford Policy’s “Property Choice Elite Business Income Coverage Form” Endorsement provides special coverage for Plaintiffs in the event of “loss of Business Income” they incur “when access to [their] Scheduled Premises is specifically prohibited by order of civil authority...” Hartford Policy at p. 49. This civil authority coverage does not require a direct physical loss of Insured Premises, other than a loss of access to Plaintiffs’ insured locations. Similarly, business income losses when “ingress or egress” to the hotels is “specifically prohibited” is also covered, after a 24 hour waiting period. The state and city orders cited above have effectively prohibited access to Plaintiffs’ hotels.

41. The “Property Choice Elite Business Income Coverage Form” Endorsement also provides special Dependent Properties coverage for “the suspension of [Plaintiffs’] operations” caused by “direct physical loss of or direct physical damage to...premises owned and operated

by others that they depend on to... (2) accept [their] products or services.... [or] (4) Attract customers to your business premises.” Hartford Policy at pp. 49-50. Plaintiffs’ guests’ homes are dependent properties within the meaning of the Hartford Policy because they are premises owned by others on which Plaintiffs depend to accept their products or services, *i.e.*, their hotel rooms. Airports and other transportation hubs whose operations have been dramatically reduced by the pandemic are also dependent properties within the meaning of the Hartford Policy because they are premises owned by others on which Plaintiffs depend to attract guests to their premises. New York City tourist attractions, including but not limited to Broadway theaters, museums, retail and dining establishments, and historical landmarks, are also dependent properties within the meaning of the Hartford Policy because they are properties on which Plaintiffs rely to attract customers to their hotels.

42. The standard 30 days of business income coverage described above is expanded by the “Extended Income” coverage, which provides up to 365 days of additional business income.¹¹ Hartford Policy at p. 50.

43. The “Property Choice Elite Coverage Form” specifically provides coverage for “direct physical loss or direct physical damage to Covered Property caused by....virus.” Hartford Policy at p. 26. The “Property Choice Elite Business Income Coverage Form” also provides for business income coverage when business interruption is “necessary due to the loss or damage to property caused by....virus.” *Id.* at p. 51.¹²

¹¹ Though the policy form indicates 180 days of coverage, the more specific declarations page provides for 365 days.

¹² Subpart (a) of this section also provides for business interruption coverage when “virus is the result of one or more of the following causes that occurs during the policy period... (1) A “Specified Cause of Loss” other than fire or lightning.” Hartford Policy at p. 50. This coverage is illusory, however, given the definition of “Specified Causes of Loss” at page 11 of the Hartford Policy, since none of the specified causes of loss could cause a virus.

44. The Hartford Policy also includes a “Property Choice Elite Extra Expense Coverage Form,” which covers the “actual, necessary and reasonable expenses you incur during the Period of Restoration that you would not have incurred if there had been no direct physical loss or no direct physical damage to property caused by or resulting from a Covered Cause of Loss at ‘Insured Premises.’” Hartford Policy at p. 55. This coverage form includes coverage extensions for Civil Authority, Ingress or Egress, Dependent Properties, and Virus. The Virus provision provides that coverage applies when the virus is a result of a “Specified Cause of Loss” other than fire or lightning. Plaintiffs incurred numerous extra expenses because of the COVID-19 pandemic.

45. The Hartford Policy provides up to \$422,692,382 in business personal property coverage per occurrence, and up to \$140,792,382 in special business income coverage per occurrence. The Hartford Policy provides \$1,000,000 in Dependent Properties Coverage per occurrence, after a 24 hour waiting period. The Hartford Policy also includes coverage for damage caused by virus in the amount of \$50,000 per occurrence, capped at \$250,000 per year, business income for 30 days for the “actual loss sustained,” and extra expenses for 30 days. The Hartford Policy provides \$250,000 in clean-up costs for “pollutants and contaminants.”

46. The Hartford Policy contains a “New York Changes” endorsement, which states that the virus exclusion included earlier in the policy (at p. 41) is deleted, and that the “following exclusion applies to all coverage under all forms and endorsements that comprise this Coverage Part, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority: We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress,

illness or disease.” Hartford Policy at p. 89. This exclusion does not apply to Plaintiffs’ losses for several reasons, including but not limited to the following: (1) the exclusion conflicts with the virus coverage provided elsewhere in the policy (as cited above); (2) the exclusion does not exclude losses caused by pandemics; (3) the exclusion does not apply to losses based on ingress/egress or dependent properties; and (4) the exclusion does not apply to additional and/or extended coverages under the policy. In addition, the doctrine of regulatory estoppel prevents Hartford from relying on the exclusion.

E. The Zurich Policy

47. Defendant Zurich issued to 47th Street Management Co. LLC a Commercial Insurance Policy, Policy No. CPO5537939-06, effective from December 1, 2019 to December 1, 2020 (the “Zurich Policy”), covering the Hotel Edison, as well as a parking garage located at 257 West 47th Street and an office building located at 224-226 West 47th Street. Triumph Hospitality LLC (dba Triumph Hotels) is a Named Insured under the property. A true and correct copy of the Zurich Policy is attached hereto as “Exhibit B.”¹³ The annual policy premium is \$495,649.

48. The Zurich Policy is an “all risks” commercial insurance policy that provides coverage to Plaintiffs 47th Street Management and Triumph Hotels for loss of insured property, unless that loss is subject to an express exclusion or limitation, as well as general liability and other coverages.

49. The Zurich Policy expressly provides that “two or more coverages of this policy’s coverages [may] apply to the same loss...” Zurich Policy at p. 260. The Zurich Policy further provides that “if we adopt any standard form revision...that would broaden coverage in this Coverage Part, without additional premium, the broadened coverage will immediately apply to

¹³ For ease of reference, page numbers have been added to the entire policy package.

this Coverage Part if the revision is effective within 45 days prior to or during the policy period.”

Id. at p. 263.

50. The Zurich Policy’s “Building and Personal Property Coverage Form” provides coverage for “*direct physical loss of* or damage to Covered Property...resulting from any Covered Cause of Loss.” Zurich Policy at p. 120 (emphasis added). Significantly, this coverage form does not restrict property damage to “physical injury to tangible property,” as it does in the general liability coverage form of the Policy. *See id.* at p. 48. This Coverage Form in the Zurich Policy indeed does not define “direct physical loss of” or “direct physical damage,” but these terms can and have been reasonably construed to include circumstances in which a property has been rendered unusable for its intended purpose, or unsafe for use. Plaintiffs¹⁴ have suffered the “direct physical loss of” their hotel for their intended purpose because of the COVID-19 pandemic, as well as “direct physical damage” from the virus attaching itself to surfaces throughout hotel property.

51. The Zurich Policy’s “Business Income (And Extra Expense) Coverage Form” provides business income coverage to Plaintiffs for “actual loss of Business Income you sustain due to the necessary ‘suspension’ of your ‘operations’...” The “suspension” must be “caused by direct physical loss of or damage to property.” The term “Business Income” includes “Net Income...that would have been earned or incurred” and “Continuing normal operating expenses incurred, including payroll.” Zurich Policy at p. 136. The same coverage form states the Zurich Policy will pay “Extra Expense (other than the expense to repair or replace property) to: (1) Avoid or minimize the ‘suspension’ of business and to continue operations... (2) Minimize the

¹⁴ For purposes of Section E of this Complaint, “Plaintiffs” refers to Plaintiffs 47th Street Management and Triumph Hotels.

‘suspension’ of business if you cannot continue ‘operations.’” *Id.* at pp. 136-137. “Suspension” is defined as the “slowdown or cessation of your business activities.” *Id.* at p. 144. Plaintiffs have lost business income because of the interruption of their business operations due to “direct physical loss of” their hotel for their intended use. Plaintiffs incurred numerous extra expenses to minimize the suspension of their business.

52. The Zurich Policy’s “Business Income (And Extra Expense) Coverage Form” also provides for “...the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises,” provided that certain conditions are satisfied. Zurich Policy at p. 137. This civil authority coverage does not require a direct physical loss of the insured’s property, other than a loss of access to Plaintiffs’ insured locations.

53. The Zurich Policy also provides ingress/egress coverage. Zurich Policy at p. 234. Access to Plaintiffs’ hotel and related properties has been effectively prohibited by orders of state and local governments.

54. The Zurich Policy contains a “Business Income From Dependent Properties – Broad Form” which provides for the “actual loss of Business Income due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’” The endorsement provides that the suspension “must be caused by direct physical loss of or damage to ‘dependent property’ at the premises described in the Schedule caused by or resulting from a Covered Cause of Loss.” The endorsement further provides that the Zurich Policy will “pay for the actual loss of Business Income you sustain due to direct physical loss or damage at the premises of a ‘dependent property’ not described in the Schedule...caused by or resulting from any Covered Cause of Loss.” See Zurich Policy at p. 205. “Dependent property” is defined as a property “operated by

others whom you depend on to...Accept your products or services... [or] Attract customers to your business.” *Id.* Plaintiffs’ guests’ homes are dependent properties within the meaning of the Zurich Policy because they are premises owned by others on which Plaintiffs depend to accept their products or services: hotel rooms. Airports and other transportation hubs whose operations have been dramatically reduced by the pandemic are also dependent properties within the meaning of the Policy because they are premises owned by others on which Plaintiffs depend to attract guests to their premises. New York City tourist attractions, including but not limited to Broadway theaters, museums, retail and dining establishments, and historical landmarks, are also dependent properties within the meaning of the Zurich Policy because they are properties on which Plaintiffs rely to attract customers to their hotels.

55. The Zurich Policy includes an Inland Marine Coverage Form, which includes coverage for pollutants, defined as “any solid, liquid, gaseous, or thermal irritant or contaminant.” Zurich Policy at p. 285. This coverage form includes expenses to “extract ‘pollutants’ from land or water...” *Id.* at p. 289.

56. The Zurich Policy provides up to \$199,875,000 in building coverage per occurrence, and up to \$61,025,000 in business income coverage. The Zurich Policy provides Dependent Properties Coverage, up to the limits of business income. The Zurich Policy also includes coverage for business income for 30 days for the “actual loss sustained,” and extra expenses for 30 days. The Zurich Policy provides \$250,000 in clean-up costs for “pollutants and contaminants.” Zurich Policy at p. 180.

57. The Zurich Policy includes an inapplicable “New York – Exclusion of Loss Due to Virus or Bacteria” endorsement, which purports to modify insurance provided under the “Commercial Property Coverage Part.” Zurich Policy at p. 179. The endorsement states that the

exclusion applies to “all coverage under all forms and endorsements that comprise this Coverage Part, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.” The exclusion states: “We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” *Id.* This exclusion does not apply to Plaintiffs’ losses for several reasons, including but not limited to the following: (1) the exclusion does not exclude losses caused by pandemics;¹⁵ (2) the exclusion does not apply to losses based on ingress/egress or dependent properties; and (3) the exclusion does not apply to additional coverage, extended coverage, or to the pollution coverage contained in the Inland Marine Coverage Form of the Zurich Policy. In addition, the doctrine of regulatory estoppel prevents Zurich from relying on the exclusion.

F. Hartford Wrongfully Denies Coverage

58. Plaintiff Triumph Hotels purchased an all-risk property and business income coverage from Defendant Hartford to protect against the kinds of losses described in this Complaint. Plaintiff’s covered losses include, but are not limited to: (a) multiple occurrences of direct physical loss of and physical damage to insured property; (b) multiple occurrences of lost business income, extra expense, extended income, and future earnings due to the direct physical loss of insured property; (c) multiple occurrences of lost business income, extra expense,

¹⁵ Indeed, in separate litigation pending in the UK, Zurich has effectively conceded that it could have but did not include a pandemic exclusion in its policies. Plaintiffs are informed and believe and thereupon allege that Zurich also includes specific language regarding pandemics in other business interruption policies sold in North America. Zurich’s deliberate choice *not* to phrase the exclusion in this policy as a pandemic exclusion must be construed against Zurich and in favor of Plaintiffs.

extended income, and future earnings due to the restriction of access to premises by order of civil authority; and (d) multiple occurrences of lost business income, extra expense, extended income and future earnings due to the necessary suspension of Plaintiff's operations with Dependent Properties (including but not limited to guest homes, airports, transportation hubs, and tourist attractions).

59. Plaintiff Triumph Hotels gave Defendant Hartford notice of these losses under the Hartford Policy on or about March 24, 2020. On April 7, 2020, Defendant Hartford sent a denial letter to Triumph, a true and correct copy of which is attached hereto as Exhibit C.

60. Based on Defendant's conduct to date, it is apparent that Defendant has accepted Plaintiffs' policy premiums with no intention of providing any coverage under the Hartford Policy.

61. Upon information and belief, Hartford has similarly preemptively and summarily denied coverage for the claims of other hard-hit businesses nationwide, using the ongoing pandemic as an excuse to avoid making payments under its policy contracts. Indeed, on its website, Hartford falsely asserts that the "civil authority and dependent property coverage" it sold Plaintiff and others was "designed to cover losses that result from direct physical loss or damage to property caused by hurricanes, fires, wind damage or theft and is not designed to apply in the case of a virus." Hartford's denial letter to Plaintiffs further relied on plainly inapplicable exclusions for pollution, loss of market, and loss of use.

62. Hartford's denial of coverage is wrongful. By its express terms, Hartford's civil authority and dependent property coverage does not require direct physical loss to the insured premises. Moreover, any alleged direct physical loss requirement in the other coverages is satisfied by the loss of access to and lost functionality of property, as well as damage to the

properties themselves. Hartford cannot meet its burden to show that exclusions for virus, pollution, loss of market, or loss of use apply.

63. Hartford is obligated to pay Plaintiff's losses under the terms of the Hartford Policy. Indeed, without the payment to which it is entitled, Triumph will continue to suffer immediate and irreparable harm to its business. In fact, numerous hotels in New York City have already announced they will be unable to reopen due to the devastating impact of the pandemic on their businesses.

G. Zurich Wrongfully Denies Coverage

64. Plaintiff 47th Street Management purchased an all-risk property and business income coverage from Defendant Zurich, on behalf of itself and Plaintiff Triumph, to protect against the kinds of losses described in this Complaint. Plaintiff 47th Street Management's covered losses include, but are not limited to: (a) multiple occurrences of direct physical loss of insured property; (b) multiple occurrences of lost business income, extra expense, extended income, and future earnings due to the direct physical loss of insured property; (c) multiple occurrences of lost business income, extra expense, extended income, and future earnings due to the restriction of access to premises by order of civil authority; (d) multiple occurrences of lost business income, extra expense, extended income and future earnings due to the necessary suspension of Plaintiff's operations with Dependent Properties (including but not limited to guest homes, airports, transportation hubs, and tourist attractions); and (e) losses related to COVID-19 contamination, covered under the Inland Marine Coverage Form.

65. Plaintiff 47th Street Management gave Defendant Zurich notice of these losses under the Zurich Policy on or about March 20, 2020. After engaging in *pro forma* discussions regarding 47th Street Management's losses, Zurich issued a formal denial letter on August 4,

2020, a true and correct copy of which is attached hereto as Exhibit D. Zurich's denial letter to Plaintiffs erroneously relies on the policy's virus exclusion, as well as inapplicable exclusions for pollution, loss of market, loss of use, and governmental action.

66. Based on Defendant Zurich's conduct to date, it is apparent that Defendant has accepted Plaintiff 47th Street Management's policy premiums with no intention of providing any coverage under the policy.

67. Upon information and belief, Zurich has similarly preemptively and summarily denied coverage for the claims of other hard-hit businesses nationwide, using the ongoing pandemic as an excuse to avoid making payments under its policy contracts. Zurich's denial letter to Plaintiffs relied on plainly inapplicable exclusions for virus, pollution, loss of market, loss of use, and governmental action.

68. Zurich's denial of coverage is wrongful. By its express terms, Zurich's civil authority and dependent property coverage does not require direct physical loss to the insured premises. Moreover, any alleged direct physical loss requirement in the other coverages is satisfied by the loss of access to and lost functionality of property, as well as damage to the properties themselves. Zurich cannot meet its burden to show that exclusions for virus, pollution, loss of market, loss of use, or governmental action apply.

69. Zurich is obligated to pay Plaintiff 47th Street Management's losses under the terms of the Zurich Policy. Indeed, without the payment to which it is entitled, Triumph will continue to suffer immediate and irreparable harm to its business. In fact, numerous hotels in New York City have already announced they will be unable to reopen due to the devastating impact of the pandemic on their businesses.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**(By All Plaintiffs Except 47th Street Management Against Defendant Hartford)
Breach of Contract**

70. Plaintiffs¹⁶ reallege and incorporate by reference herein each allegation contained in Paragraphs 1 through 46 and 58-63 above.

71. The Hartford Policy constitutes a valid and enforceable contract between Plaintiffs and Defendant Hartford. Plaintiffs provided prompt notice of their losses under the Hartford Policy, and performed all obligations required of them under the Hartford Policy unless otherwise excused.

72. Defendant Hartford has duties under the Hartford Policy, the law, and insurance industry custom and practice to, among other things, pay Plaintiffs' property and business income losses, as more fully discussed above. Defendant was likewise obligated to conduct a thorough investigation of all bases that might support Plaintiffs' claim for coverage. Defendant breached its duties under the Hartford Policy by, among other things: (i) denying coverage for Plaintiffs' property and business income losses; (ii) asserting grounds to avoid or limit coverage that it knew are not supported by, and are contrary to, the terms of the Hartford Policy, the law, industry custom and practice, the parties' course of dealings, and the facts; (iii) failing to conduct an adequate investigation and asserting grounds to avoid coverage based on that inadequate investigation; (iv) failing to fully inquire into possible bases that might support coverage; and (v) giving greater consideration to its own interests than to Plaintiffs' interests.

¹⁶ For purposes of the First, Second, Third, and Fourth Causes of Action of this Complaint, the term "Plaintiffs" refers only to Plaintiffs Triumph Hotels, Iroquois Hotel L.L.C., Washington Jefferson Hotel L.L.C., Belleclaire Hotel L.L.C., Nesbit Hotel LLC, Tribeca Hotel LLC, and West Broadway Reade LLC, and excludes Plaintiff 47th Street Management.

73. As a direct and proximate result of Defendant's breach of contract, Plaintiffs have suffered, and continue to suffer, millions of dollars in damages, in an amount far in excess of the Court's jurisdictional limits.

SECOND CAUSE OF ACTION

**(By All Plaintiffs Except 47th Street Management Against Defendant Hartford)
Breach of the Implied Covenant of Good Faith and Fair Dealing**

74. Plaintiffs reallege and incorporate by reference herein each allegation contained in Paragraphs 1 through 46, 58-63, and 70-73 above.

75. Under New York law, the Hartford Policy includes an implied covenant of good faith and fair dealing. New York law also delineates standards for good faith and fair dealing in New York Insurance Law §2601(a).

76. In breach of the implied covenant of good faith and fair dealing, Defendant Hartford did the things and committed the acts alleged above for the purpose of consciously withholding from Plaintiffs the rights and benefits to which they are entitled under the Hartford Policy, and without considering Plaintiffs' interests at least to the same extent as its own interests.

77. Plaintiffs have suffered consequential damages as a direct and proximate result of Defendant's acts, including but not limited to pre-judgment interest, attorneys' fees, and costs incurred in enforcing Plaintiffs' rights under the Hartford Policy. Consequential damages were reasonably contemplated by the parties at the time they entered into the Hartford Policy.

THIRD CAUSE OF ACTION

**(By All Plaintiffs Except 47th Street Management Against Defendant Hartford)
Declaratory Relief**

78. Plaintiffs reallege and incorporate by reference herein each allegation contained in Paragraphs 1 through 46, 58-63, and 70-77 above.

79. As set forth above, an actual and justiciable controversy exists between Plaintiffs, on the one hand, and Defendant, on the other hand.

80. Defendant disputes it has a duty to pay Plaintiffs' property and business income losses under the Hartford Policy.

81. Plaintiffs seek a judicial declaration as to their rights and Defendant's obligations under the Hartford Policy, confirming, among other things: (a) Defendant cannot meet its burden to show the "direct physical loss of or direct physical damage to" requirement bars coverage; (b) Defendant cannot meet its burden to show the purported virus exclusion bars coverage; and (c) Defendant cannot meet its burden to show purported exclusions for pollution, loss of market, and/or loss of use bar coverage.

FOURTH CAUSE OF ACTION

**(By All Plaintiffs Except 47th Street Management Against Defendant Hartford)
Deceptive Business Practices – Violation of General Business Law §349**

82. Plaintiffs reallege and incorporate by reference herein each allegation contained in Paragraphs 1 through 46, 58-63, and 70-81 above.

83. Defendant Hartford at all times relevant herein acted in bad faith and injured Plaintiffs through its pattern of deceptive conduct.

84. New York Insurance Law § 2601 prohibits an insurer from engaging in "unfair claim settlement practices," including: "(1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;" "(4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear . . . ;" and "(5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them."

85. Defendant Hartford’s deceptive acts and practices include, without limitation, (i) knowingly misrepresenting to Plaintiffs that their policies do not provide coverage for the claims; (ii) refusing to attempt good faith settlement of Plaintiffs’ Claim; and (iii) forcing Plaintiffs to institute suit to recover under their Policies.

86. Plaintiffs are informed and believe that Defendant Hartford has taken the same or similar improper coverage positions with respect to the same standard-form insurance policy language it uses in insurance policies sold to many other policyholders in New York and elsewhere.

87. Defendant Hartford’s conduct constitutes deceptive acts and practices in violation of New York General Business Law § 349. Defendant Hartford’s conduct was knowing, reckless, and willful.

88. Defendant Hartford’s conduct has damaged Plaintiffs, entitling them to compensatory, consequential, and punitive damages, as well as prejudgment interest and attorneys’ fees and costs, against Defendant Hartford, in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

**(By Plaintiffs 47th Street Management and Triumph Hotels Against Defendant Zurich)
Breach of Contract**

89. Plaintiffs¹⁷ reallege and incorporate by reference herein each allegation contained in Paragraphs 1 through 34, 47-57, and 64-69 above.

90. The Zurich Policy constitutes a valid and enforceable contract between Plaintiffs and Defendant Zurich. Plaintiffs provided prompt notice of their losses under the Zurich Policy,

¹⁷ For purposes of the Fifth, Sixth, Seventh, and Eighth Causes of Action of this Complaint, “Plaintiffs” refers to Plaintiffs 47th Street Management and Triumph Hotels.

and performed all obligations required of them under the Zurich Policy unless otherwise excused.

91. Defendant Zurich had duties under the Zurich Policy, the law, and insurance industry custom and practice to, among other things, pay Plaintiffs' property and business income losses, as more fully discussed above. Defendant was likewise obligated to conduct a thorough investigation of all bases that might support Plaintiffs' claim for coverage. Defendant breached its duties under the Zurich Policy by, among other things: (i) denying coverage for Plaintiffs' property and business income losses; (ii) asserting grounds to avoid or limit coverage it knew were not supported by, and are contrary to, the terms of the Zurich Policy, the law, industry custom and practice, the parties' course of dealings, and the facts; (iii) failing to conduct an adequate investigation and asserting grounds to avoid coverage based on that inadequate investigation; (iv) failing to fully inquire into possible bases that might support coverage; and (v) giving greater consideration to its own interests than to Plaintiffs' interests.

92. As a direct and proximate result of Defendant's breach of contract, Plaintiffs have suffered, and continue to suffer, damages in an amount in excess of the Court's jurisdictional limits.

SIXTH CAUSE OF ACTION

(By Plaintiffs 47th Street Management and Triumph Hotels Against Defendant Zurich) Breach of the Implied Covenant of Good Faith and Fair Dealing

93. Plaintiffs reallege and incorporate by reference herein each allegation contained in Paragraphs 1 through 34, 47-57, 64-69, and 89-92 above.

94. Under New York law, the Zurich Policy includes an implied covenant of good faith and fair dealing. New York law also delineates standards for good faith and fair dealing in New York Insurance Law §2601(a).

95. In breach of the implied covenant of good faith and fair dealing, Defendant did the things and committed the acts alleged above for the purpose of consciously withholding from Plaintiffs the rights and benefits to which they are entitled under the Zurich Policy, and without considering Plaintiffs' interests at least to the same extent as Defendant considered its own interests.

96. Plaintiffs have suffered consequential damages as a direct and proximate result of Defendant's acts, including but not limited to pre-judgment interest, attorneys' fees, and costs incurred in enforcing Plaintiffs' rights under the Zurich Policy. Consequential damages were reasonably contemplated by the parties at the time they entered into the Zurich Policy.

SEVENTH CAUSE OF ACTION

**(By Plaintiffs 47th Street Management and Triumph Hotels Against Defendant Zurich)
Declaratory Relief**

97. Plaintiffs reallege and incorporates by reference herein each allegation contained in Paragraphs 1 through 34, 47-57, 64-69, and 89-96 above.

98. As set forth above, an actual and justiciable controversy exists between Plaintiffs, on the one hand, and Defendant Zurich, on the other hand.

99. Defendant disputes it has a duty to pay Plaintiffs' property and business income losses under the Zurich Policy.

100. Plaintiffs seeks a judicial declaration as to their rights and Defendant's obligations under the Zurich Policy, confirming, among other things: (a) Defendant cannot meet its burden to show the "direct physical loss of or direct physical damage to" requirement bars coverage; (b) Defendant cannot meet its burden to show the purported virus exclusion bars coverage; and (c) Defendant cannot meet its burden to show purported exclusions for pollution, loss of market, loss of use, and governmental action bar coverage.

EIGHTH CAUSE OF ACTION

**(By Plaintiffs 47th Street Management and Triumph Hotels Against Defendant Zurich)
Deceptive Business Practices – Violation of General Business Law §349**

101. Plaintiffs reallege and incorporate by reference herein each allegation contained in Paragraphs 1 through 34, 47-57, 64-69, and 89-100 above.

102. Defendant Zurich at all times relevant herein acted in bad faith and injured Plaintiffs through its pattern of deceptive conduct.

103. New York Insurance Law § 2601 prohibits an insurer from engaging in “unfair claim settlement practices,” including: “(1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;” “(4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear . . . ;” and “(5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.”

104. Defendant Zurich’s deceptive acts and practices include, without limitation: (i) knowingly misrepresenting to Plaintiffs that their policies do not provide coverage for the claims, including relying on standard form virus exclusion language it knows it should be estopped from relying upon; (ii) refusing to attempt good faith settlement of Plaintiffs’ Claim; and (iii) forcing Plaintiffs to institute suit to recover under their Policies.

105. Plaintiffs are informed and believe that Defendant Zurich has taken the same or similar improper coverage positions with respect to the same standard-form insurance policy language it uses in insurance policies sold to many other policyholders in New York and elsewhere.

106. Defendant Zurich's conduct constitutes deceptive acts and practices in violation of New York General Business Law § 349. Defendant Zurich's conduct was knowing, reckless, and willful.

107. Defendant Zurich's conduct has damaged Plaintiffs, entitling them to compensatory, consequential, and punitive damages, as well as prejudgment interest and attorneys' fees and costs, against Defendant Zurich, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants and in favor of Plaintiffs for the following relief:

1. On the First Cause of Action, for entry of judgment against Hartford, and an award of compensatory damages up to policy limits less deductibles in an amount to be proven at trial;
2. On the Second Cause of Action, for entry of judgment against Hartford, and an award of consequential damages in an amount to be proven at trial;
3. On the Third Cause of Action, for a judicial declaration confirming that Defendant Hartford has a duty to pay Plaintiffs' property and business income losses under the Hartford Policy, and that Defendant cannot meet its burden to show (a) the "direct physical loss of or direct physical damage to" requirement bars coverage; (b) the purported virus exclusion bars coverage; and (c) exclusions for pollution, loss of market, and/or loss of use bar coverage;
4. On the Fourth Cause of Action, for entry of judgment against Hartford and an award of actual damages in an amount to be proven at trial plus interest, reasonable attorneys' fees, and punitive damages in an amount sufficient to deter Hartford from engaging in similar deceptive practices with respect to other policyholders;

5. On the Fifth Cause of Action, for entry of judgment against Zurich, and an award of compensatory damages up to policy limits less deductibles in an amount to be proven at trial;

6. On the Sixth Cause of Action, for entry of judgment against Zurich, and an award of consequential damages in an amount to be proven at trial;

7. On the Seventh Cause of Action, for a judicial declaration confirming that Defendant Zurich has a duty to pay Plaintiffs' property and business income losses under the Zurich Policy, and that Defendant cannot meet its burden to show (a) the "direct physical loss of or direct physical damage to" requirement bars coverage; (b) the purported virus exclusion bars coverage; and (c) purported exclusions for pollution, loss of market, loss of use, and/or governmental action bar coverage;

8. On the Eighth Cause of Action, for entry of judgment against Zurich and an award of actual damages in an amount to be proven at trial plus interest, reasonable attorneys' fees, and punitive damages in an amount sufficient to deter Zurich from engaging in similar deceptive practices with respect to other policyholders;

9. For all Causes of Action, pre-judgment and post-judgment interest as permitted by law, attorneys' fees and costs incurred in prosecution of this lawsuit, and any other such relief the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demands a trial by jury in this action.

Dated: New York, New York
August 14, 2020

Respectfully submitted,

KASOWITZ BENSON TORRES LLP

By: /s/ Jack Atkin

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