

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

MADISON SQUARE GARDEN SPORTS CORP.,
MSG SPORTS, LLC, MSG NYK HOLDINGS,
LLC, KNICKS HOLDINGS, LLC, NEW YORK
KNICKS, LLC, WESTCHESTER KNICKS, LLC,
KNICKS GAMING, LLC, MSG NYR
HOLDINGS, LLC, RANGERS HOLDINGS, LLC,
NEW YORK RANGERS, LLC, HARTFORD
WOLFPACK, LLC, MSG TRAINING CENTER,
LLC, MSG ESPORTS, LLC, MSG CLG, LLC,
CLG ESPORTS HOLDINGS, LLC, CLG
ESPORTS, LLC, MADISON SQUARE GARDEN
ENTERTAINMENT CORP., MSG
ENTERTAINMENT GROUP, LLC, MSG
NATIONAL PROPERTIES, LLC, RADIO CITY
PRODUCTIONS LLC, THE GRAND TOUR,
LLC, MSG BEACON, LLC, MSG CHICAGO,
LLC, MSG ARENA HOLDINGS, LLC, MSG
ARENA, LLC, MSG ENTERTAINMENT
HOLDINGS, LLC, MSG LAS VEGAS, LLC,
MSG SPHERE STUDIOS, LLC, MSG TG, LLC,
MSG IMMERSIVE VENTURES, LLC,
OBSCURA DIGITAL, LLC, MSG AIRCRAFT
LEASING, LLC, MSG FLIGHT OPERATIONS,
LLC, MSG AVIATION, LLC, and MSG
VENTURES, LLC,

Plaintiffs,

v.

FACTORY MUTUAL INSURANCE COMPANY,
AIG SPECIALTY INSURANCE COMPANY,
ALLIANZ GLOBAL CORPORATE AND
SPECIALTY SE and ASSICURAZIONI
GENERALI SPA (UK BRANCH),

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Madison Square Garden Sports Corp. (“MSGs”), MSG Sports, LLC, MSG

NYK Holdings, LLC, Knicks Holdings, LLC, New York Knicks, LLC, Westchester Knicks,

LLC, Knicks Gaming, LLC, MSG NYR Holdings, LLC, Rangers Holdings, LLC, New York Rangers, LLC, Hartford Wolfpack, LLC, MSG Training Center, LLC, MSG Esports, LLC, MSG CLG, LLC, CLG Esports Holdings, LLC, CLG Esports, LLC, Madison Square Garden Entertainment Corp. (“MSGE”), MSG Entertainment Group, LLC, MSG National Properties, LLC, Radio City Productions LLC, The Grand Tour, LLC, MSG Beacon, LLC, MSG Chicago, LLC, MSG Arena Holdings, LLC, MSG Arena, LLC, MSG Entertainment Holdings, LLC, MSG Las Vegas, LLC, MSG Sphere Studios, LLC, MSG TG, LLC, MSG Immersive Ventures, LLC, Obscura Digital, LLC, MSG Aircraft Leasing, LLC, MSG Flight Operations, LLC, MSG Aviation, LLC, and MSG Ventures, LLC (collectively, the “MSG Insureds”), as and for their complaint against Factory Mutual Insurance Company (“Factory Mutual”), AIG Specialty Insurance Company (“AIG”); Allianz Global Corporate and Specialty SE (“Allianz”), and Assicurazioni Generali SpA (UK Branch) (“Generali”) (collectively, the “Insurers”), allege as follows:

NATURE OF THIS LAWSUIT

1. Madison Square Garden needs no introduction. “The Garden” is widely known as “the world’s most famous arena” and has been a mainstay of New York City since the 1870’s. In addition to being the home of the New York Knicks of the National Basketball Association (the “Knicks”) and the New York Rangers of the National Hockey League (the “Rangers”), The Garden hosts Presidents, Popes, political conventions, charity benefits, and notable entertainers.
2. MSGE is a world leader in live experiences with a portfolio of venues and brands that are as commonly recognized as The Garden itself. In addition to The Garden, these venues and brands include the Beacon Theatre, Radio City Music Hall (which features the *Christmas Spectacular Starring the Radio City Rockettes*), the Radio City Rockettes and the Hulu Theater

at Madison Square Garden. The venues also include the Chicago Theatre in Illinois, and until May 1, 2020, The Forum in Inglewood, California. Other California locations include a 48,500 square-foot studio and production facility in Burbank that was originally home to the *Tonight Show with Johnny Carson*.

3. MSGS owns the Knicks, the Rangers, the Westchester Knicks (the developmental G-League affiliate of the Knicks), the Hartford Wolfpack (the player development team for the Rangers), Knicks Gaming (an esports franchise that competes in the NBA 2K League), and the Madison Square Garden Training Center in Greenburgh, New York. MSGS also has a controlling interest in Counter Logic Gaming (a North American esports organization), and operates the CLG Performance Center in Los Angeles, California.

4. Given their worldwide brands and nationwide operations (including offices and support facilities around the country), MSGE and MSGS, with the other MSG Insureds, purchased broad, “all risk” property insurance from the Insurers against losses in the event one or more occurrences interfered with their operations or precluded or disrupted the sports and entertainment events scheduled at their locations. Even though a standard-form “**Exclusion Of Loss Due To Virus Or Bacteria**” has been utilized by the insurance industry for nearly 15 years, and various forms of pandemic exclusions exist, the Insurers elected *not* to include any of these exclusions in the policies they sold to the MSG Insureds.

5. The MSG Insureds suffered, and continue to suffer, substantial financial losses because of SARS-CoV-2, COVID-19, the subsequent actions and orders of government authorities, the need to comply with guidance from the Centers for Disease Control and Prevention, and the need to mitigate their losses and damage.

6. All told, the seats were completely empty for almost one year and the MSG Insureds are only now permitted to welcome back a limited number of fans. In addition to their ongoing revenue loss, the MSG Insureds have incurred and will continue to incur significant costs to ensure the health and safety of their employees, fans, and everyone associated with or who walks into an insured location. These mitigation efforts are necessary, expensive, and should be covered by the broad insurance sold by the Insurers to the MSG Insureds.

7. The MSG Insureds turned to the Insurers for the insurance the Insurers promised to provide and that the MSG Insureds reasonably expected to receive in exchange for the millions of dollars in premiums they paid for this coverage. Instead of honoring their obligations, the Insurers have paid nothing for the MSG Insureds' losses, thereby depriving the MSG Insureds of the coverage to which they are entitled under their policies.

8. The MSG Insureds are informed and believe, and on that basis allege, that the Insurers have taken, and are taking, a similar position with other insureds, having adopted corporate-wide positions that deprive the MSG Insureds and their thousands of other insureds of hundreds of millions of dollars of promised insurance. The MSG Insureds are informed and believe, and on that basis allege, that the Insurers have done so, and are doing so, to protect their financial interests at the expense of their insureds' interests and with conscious disregard and disdain for the rights, interests, and reasonable expectations of their insureds, including the MSG Insureds.

9. The Insurers' conduct constitutes a breach of the insurance policies, violates the implied covenant of good faith and fair dealing, and represents bad faith. By this lawsuit, the MSG Insureds seek recovery for the damages, including consequential damages, that they

continue to suffer. The MSG Insureds also seek declaratory relief confirming that the Insurers must honor the terms of their policies.

THE PARTIES

10. MSGS is a foreign business corporation organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

11. MSG Sports, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

12. MSG NYK Holdings, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

13. Knicks Holdings, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

14. New York Knicks, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

15. Westchester Knicks, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

16. Knicks Gaming, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

17. MSG NYR Holdings, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

18. Rangers Holdings, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

19. New York Rangers, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

20. Hartford Wolfpack, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

21. MSG Training Center, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York and has its principal place of business in the State, County and City of New York.

22. MSG Esports, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

23. MSG CLG, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

24. CLG Esports Holdings, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

25. CLG Esports, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

26. MSGE is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

27. MSG Entertainment Group, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

28. MSG National Properties, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

29. Radio City Productions LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

30. The Grand Tour, LLC is a domestic limited liability company organized and existing under the laws of the State of New York and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

31. MSG Beacon, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

32. MSG Chicago, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

33. MSG Arena Holdings, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

34. MSG Arena, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

35. MSG Entertainment Holdings, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

36. MSG Las Vegas, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

37. MSG Sphere Studios, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

38. MSG TG, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

39. MSG Immersive Ventures, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

40. Obscura Digital, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

41. MSG Aircraft Leasing, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

42. MSG Flight Operations, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

43. MSG Aviation, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in the State, County and City of New York.

44. MSG Ventures, LLC is a foreign limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with its principal place of business in Nassau County in the State of New York.

45. The MSG Insureds are informed and believe, and on that basis allege, that Factory Mutual is incorporated under the laws of the State of Rhode Island and has its principal place of business in Johnston, Rhode Island. It transacts business in the State, County, and City of New York.

46. Factory Mutual is a member of the FM Global group of insurance companies (“FM Global”). FM Global makes various representations on behalf of its member companies on its website. Factory Mutual and the other FM Global insurance companies purport to be “different.” FM Global states on its website, “We work closely with you *before, during, and after* a loss—no matter where in the world that loss occurs.¹ FM Global promises that its member companies provide “coverage based on the realities of your business and your particular property risk management challenges.”²

47. FM Global also represents, “If you need the ability to scale policy options to fit your actual properties and exposures, you’ll appreciate our Business Interruption Coverage. It protects against loss of income following a disaster, wherever you operate, or however indirect your connection to the loss.” *Id.*

48. The MSG Insureds are informed and believe, and on that basis allege, that despite these promises and assurances, Factory Mutual never intended to honor its contractual obligations with respect to losses associated with the pandemic.

¹ <https://www.fmglobal.com/about-us/why-fm-global> (emphasis in original).

² <https://www.fmglobal.com/products-and-services/our-approach>.

49. The MSG Insureds are informed and believe, and on that basis allege, that AIG is incorporated under the laws of the State of Illinois, with its principal place of business in New York. AIG is a member of the American International Group, Inc. (“American International”). AIG transacts business in the State, County, and City of New York.

50. American International makes various representations on behalf of AIG and its other member companies on its website. Specifically, American International offers the following “Claims Promise:”

AIG helps clients reduce and manage risks through the use of global claims data, fraud trend analysis, market leading insights, and a dedicated professional network of specialist adjusters.

A proactive partnership with the customer is key to resolving claims quickly, understanding potential risks, and learning ways to avoid a loss.³

51. American International also states that it is the “industry standard” for claims handling:

Through advanced data and analytics, innovative technology, and a keen focus on helping our clients maintain business continuity AIG’s Property Claims Promise has been an industry standard when it comes to handling some of the largest, most complex property claims.⁴

52. American International also promises that its member companies will support their insureds after a loss:

AIG brings you global property insurance solutions, deep industry knowledge, and local expertise. We’ll help you keep your business running after natural disasters, equipment failures, acts of terror, and more. Our experienced team of underwriters, risk engineers, and

³ <https://www.aig.com/business/business-claims/claims-capabilities>.

⁴ *Id.*

claims adjusters provide expert consultation to help empower you to keep moving forward – whatever the circumstances.⁵

53. American International echoed its purported concern for its insureds in an April 2020 news release:

Brian Duperreault, AIG’s Chief Executive Officer, said: “In the face of COVID-19, an unprecedented global catastrophe, our colleagues have shown great resilience and remain focused on what we do, which is helping our clients manage risk, especially in difficult times. It has been heartbreaking to watch this humanitarian crisis unfold over the last few months.”⁶

54. The MSG Insureds are informed and believe, and on that basis allege, that despite these promises and assurances, AIG never intended to honor its contractual obligations with respect to losses associated with the pandemic. On a first-quarter earnings call in May 2020, Peter Zaffino, the President and Global Chief Operating Officer of American International and CEO of its general insurance division, reportedly said that “AIG is not expecting to pay business interruption on most of its property policies.”⁷

55. According to Mr. Zaffino, the two grounds on which American International’s member companies would deny these claims were the inclusion in a policy of a “virus exclusion” and the requirement of “direct physical loss or damage”:

The “overwhelming majority” of AIG’s business interruption policies contain a virus exclusion “and otherwise require a showing that the virus caused direct physical loss or damage that was the cause of the business interruption.”⁸

⁵ <https://www.aig.com/business/insurance/property>.

⁶ <https://aig.gcs-web.com/node/45206/pdf>.

⁷ <https://www.businessinsurance.com/article/20200505/NEWS06/912334409/AIG-expects-wide-industry-COVID-losses-cuts-insurtech-unit-American-Internation>.

⁸ *Id.*

However, neither the 2006 “**Exclusion Of Loss Due To Virus Or Bacteria**” nor the “direct physical loss or damage” language is found in the policy that AIG sold to MSG.

56. The MSG Insureds are informed and believe, and on that basis allege, that Allianz is a German insurance company with its principal place of business in Munich, Germany. Allianz transacts business in the State, County and City of New York.

57. Allianz touts itself as providing “a comprehensive range of corporate and specialty business insurance solutions tailored to risks and opportunities in your industry sector.”⁹ This is particularly so in the field of “entertainment insurance,” as to which Allianz claims its “Entertainment insurance team is a well-established market leader.”¹⁰

58. Allianz promises to provide “Comprehensive All Risks property insurance,” which includes the establishment of a “business interruption task force” and allows the insured to gain access to a network of over 200 expert risk consultants around the globe. And in the event of a claim, we’ll use our local resources and claims-handling experience to make sure you receive a fast and decisive solution. That way, you can resume your business operations with minimal delay.¹¹

59. Allianz recognizes that “[b]usinesses are facing an increasing number of disruptive scenarios as the nature of business interruption risk evolves . . . [and that m]any of these scenarios can occur *without physical damage* but with high financial losses.” Thus, it “should be well-planned for”—a service that Allianz claims to provide.¹²

⁹ <https://www.agcs.allianz.com/solutions.html>.

¹⁰ <https://www.agcs.allianz.com/solutions/entertainment-insurance.html>.

¹¹ https://www.agcs.allianz.com/solutions/property-insurance.html#tabpar_8053_0Tab.

¹² <https://www.agcs.allianz.com/solutions/business-interruption.html> (emphasis added).

60. The MSG Insureds are informed and believe, and on that basis allege, that despite these promises and assurances, Allianz never intended to honor its contractual obligations with respect to losses associated with the pandemic.

61. The MSG Insureds are informed and believe, and on that basis allege, that Generali is an Italian insurance company with its principal place of business in Trieste, Italy. The MSG Insureds are further informed and believe, and on that basis allege, that Generali US Branch is and has been the United States representative of Generali since 1935, is domiciled in the State of New York, and transacts business in the State, County, and City of New York.

62. Generali touts itself as a “leading insurance player and asset manager at global level, is fully committed in the fight against COVID-19.”¹³ The MSG Insureds are informed and believe, and on that basis allege, that Generali never intended to honor its contractual obligations with respect to losses associated with the pandemic.

JURISDICTION AND VENUE

63. This Court has jurisdiction over this action under Judiciary Law § 140-b.

64. This Court has jurisdiction over the Insurers pursuant to CPLR § 301 because the Insurers were, at all relevant times, authorized to transact business in the State of New York and/or conducted continuous and substantial business in the State of New York.

65. This Court also has jurisdiction over the Insurers pursuant to CPLR § 302 because the Insurers transacted business in the State of New York and/or contracted to supply services within the State of New York and this action arises from such transactions and/or contracts.

¹³ <https://www.generali.com/media/News/covid-19-emergency>.

66. Venue is proper in this county pursuant to CPLR § 503 because it is where a substantial part of the events or omissions giving rise to the claim occurred, and the MSG Insureds' principal offices are located in New York, New York.

THE INSURERS' KNOWLEDGE OF THE RISK OF PANDEMICS

67. The Insurers were repeatedly warned over the years of the potential impact of pandemics. In fact, there were many publicly available reports about the risks of pandemics and what insurers should do—in the months and years before the outbreak of the COVID-19 pandemic.

68. One insurance industry repository shows the “tip of the iceberg” about how much information was available to the Insurers regarding the risk of pandemics. The Insurance Library Association of Boston, founded in 1887, describes itself as “the leading resource for and provider of literature, information services, and quality professional education for the insurance industry and related interests.”¹⁴ The Association states on its website:

The past 20 years [have] seen the rise of a number of pandemics. Slate recently published an article on what has been learned about treating them in that time. We thought it might be apt for us to take a look back and see what the insurance industry has learned as well.¹⁵

69. The Association lists more than 20 articles, reports, and white papers available to insurers from early 2007 through 2018. One white paper warned in 2009 of a pandemic's consequences to the insurance industry:

It is highly unlikely that the insurance industry would have the financial reserves to meet the worldwide claims arising out of a pandemic of this size.¹⁶

¹⁴ <https://insurancelibrary.org/about/>.

¹⁵ <http://insurancelibrary.org/pandemics-and-insurance/>.

¹⁶ Allan Manning, *White Paper on Infectious Disease Cover* (updated 2009).

70. Indeed, in March 2018, 18 months before the Insurers sold the MSG Insureds the policies at issue, one article stated:

Even with today's technology, a modern severe pandemic would cause substantive direct financial losses to the insurance community. In addition, indirect losses would be severe, most notably on the asset side of the balance sheet.¹⁷

71. The Insurers also have known, or should have known, for decades that their policies could be held to insure losses from the presence of a hazardous substance, such as a virus inside a building or in its airspace, or because a building could not be used for its intended purposes or function because of a virus. As the Insurers have known, or should have known, for decades many courts have held that the presence of a hazardous substance in property, including the airspace, surfaces and personal property inside buildings, constitutes property damage and that there may be "physical loss" to property even if the property is not tangibly damaged. As the Insurers have known, or should have known, the many decisions include the following:

- *Pepsico, Inc. v. Winterthur International America Insurance Co.*, 24 A.D.3d 743, 744, 806 N.Y.S.2d 709 (N.Y. App. Div. 2005): rejecting insurer's contention that products altered because of faulty ingredients were not physically damaged under an all-risk property policy.
- *JGB Vegas Retail Lessee, LLC v. Starr Surplus Lines Insurance Co.*, 2020 WL 7190023, at *3 (Nev. Dist. Ct. Nov. 30, 2020): denying insurer's motion to dismiss because the insured included allegations that SARS-CoV-2 "spreads through infected droplets that 'are physical objects that attach to and cause harm

¹⁷ "What the 1918 Flu Pandemic Can Teach Today's Insurers," *AIR* (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/>.

to other objects' based on its ability to 'survive on surfaces' and then infect other people," along with the actual presence within one mile from the insured physical premises.

- *Wakefern Food Corp. v. Liberty Mutual Fire Insurance Co.*, 968 A.2d 724, 734-5 (N.J. App. Div. 2009): holding that the electrical grid was 'physically damaged' when it was "incapable of performing [its] essential function of providing electricity", further noting that "the undefined term 'physical damage' was ambiguous" and that "[s]ince 'physical' can mean more than material alteration or damage, it was incumbent on the insurer to clearly and specifically rule out coverage in the circumstances where it was not to be provided."
- *Arbeiter v. Cambridge Mutual Fire Insurance Co.*, 1996 WL 1250616, at *2 (Mass. Super. Ct. Mar. 15, 1996): presence of oil fumes in building constituted "physical loss" to building.
- *Essex Insurance Co. v. BloomSouth Flooring Corp.*, 562 F.2d 399, 406 (1st Cir. 2009): odor from carpet and adhesive "can constitute physical injury to property."
- *Farmers Insurance Co. v. Trutanich*, 123 Or. App. 6, 9-11 (1993): "[T]he odor produced by the methamphetamine lab had infiltrated the house. The cost of removing the odor is a direct physical loss."
- *Gregory Packaging, Inc. v. Travelers Property Casualty Co.*, 2014 WL 6675934 (D.N.J. Nov. 25, 2014): closure of facility because of accidentally released ammonia; while "structural alteration provides the most obvious sign of physical

damage, . . . property can sustain physical loss or damage without experiencing structural alteration.”

- *Hughes v. Potomac Ins. Co.*, 199 Cal. App. 2d 239, 248-49 (1962): The insurer “would deny that any loss or damage had occurred unless some tangible injury to the physical structure itself could be detected. Common sense requires that a policy should not be so interpreted in the absence of a provision specifically limiting coverage in this manner.”
- *Matzner v. Seacoast Insurance Co.*, 1998 WL 566658 (Mass. Super. Ct. Aug. 12, 1998): building with unsafe levels of carbon monoxide sustained direct physical loss.
- *Mellin v. North Security Insurance Co.*, 167 N.H. 544, 550-51 (2015): cat urine odor inside condominium constitutes direct physical loss; “physical loss may include not only tangible changes to the insured property, but also changes that are perceived by a sense of smell and that exist in the absence of structural damage.”
- *Oregon Shakespeare Festival Ass’n v. Great American Insurance Co.*, 2016 WL 3267247, at *9 (D. Ore. June 7, 2016): “smoke infiltration in theatre caused direct property loss or damage by causing the property to be uninhabitable and unusable for its intended purpose.”
- *Port Authority of New York & New Jersey v. Affiliated FM Insurance Co.*, 311 F.3d 226, 236 (3d Cir. 2002): property sustained a direct physical loss because it was rendered uninhabitable by the presence of asbestos fibers.

- *Western Fire Insurance Co. v. First Presbyterian Church*, 165 Colo. 34, 39-40 (1968): direct physical loss when gasoline permeated church building making it dangerous to use.

72. Thus, the Insurers have known, or should have known, for decades that their policies would be called upon to pay substantial amounts, including to the MSG Insureds, for losses associated with viruses, the diseases they cause, and pandemics.

73. Given the potential liability that insurers faced under their policies for losses from pandemics, shortly after the outbreak of SARS in 2003, the insurance industry undertook to draft exclusions applicable to losses from viruses and bacteria. In 2006, the Insurance Services Office (“ISO”), the insurance industry’s drafting organization, considered the need to draft an exclusion that would bar coverage for certain losses caused by a virus.¹⁸

74. On July 6, 2006, ISO prepared a circular that included a standard “**Exclusion Of Loss Due To Virus Or Bacteria**” as part of its filing with state insurance regulators.¹⁹ ISO explicitly recognized that viruses could cause property damage and business interruption:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example,

¹⁸ “ISO is a non-profit trade association that provides rating, statistical, and actuarial policy forms and related drafting services to approximately 3,000 nationwide property or casualty insurers. Policy forms developed by ISO are approved by its constituent insurance carriers and then submitted to state agencies for review. Most carriers use the basic ISO forms, at least as the starting point for their general liability policies.” *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645, 671 n.13 (1995).

¹⁹ See ISO Circular, “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” (July 6, 2006), <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf>.

interior building surfaces), and business interruption (time element) losses.²⁰

75. ISO introduced the insurance industry's standard-form endorsement that it entitled "**Exclusion Of Loss Due To Virus Or Bacteria**" endorsement (form CP 01 40 07 06 and, in certain jurisdictions, form CP 01 75 07 06). A true and correct copy of this endorsement is attached hereto as Exhibit A and incorporated herein by reference. Thus, the Insurers had the "**Exclusion Of Loss Due To Virus Or Bacteria**" endorsement approved for use and available to them throughout the United States for 13 years before they sold the insurance policies at issue here to the MSG Insureds.

76. However, even though the Insurers knew they could be liable for losses from viruses and pandemics if they did not include the "**Exclusion Of Loss Due To Virus Or Bacteria**" endorsement in their policies, the Insurers sold the policies here to the MSG Insureds without such an exclusion. Therefore, the Insurers did not intend to (and did not) exclude such coverage and should have anticipated that they would be liable once the MSG Insureds asked the Insurers to pay for their losses.

THE PROPERTY INSURANCE POLICIES

77. The Insurers sold the MSG Insureds property insurance policies in effect for the period of November 16, 2019, to November 16, 2020 (collectively the "Policies"). The Policies are all-risk property insurance policies that protect the MSG Insureds and all other insureds thereunder against all losses not conspicuously, plainly, and clearly excluded. In fact, the Insurers knew from decades of uniform court decisions from around the country that any exclusion needed to be conspicuous, plain, and clear, employing unmistakable and understandable language and that if they elected not to use such language, the purported

²⁰ *Id.*

exclusions would not be enforceable against the MSG Insureds. The decisions putting them on such notice include *Steven v. Fidelity & Casualty Co. of New York*, 58 Cal. 2d 862, 877-78 (1962), and *Westview Associates v. Guaranty National Insurance Co.*, 95 N.Y.2d 334, 340 (2000).

78. Among other things, the Policies insure the MSG Insureds and the other insureds against “all risks of physical loss or damage” to insured real and personal property and economic losses suffered from such physical loss or damage, from orders of civil authorities, from interference with ingress or egress, and extra expense incurred for, among other things, steps taken to prevent or reduce loss.

79. The Policies insure the MSG Insureds, including MSGE’s and MSGS’s subsidiaries and MSGE’s and MSGS’s interests in partnerships and joint ventures in which either has management control or ownership, as constituted or acquired.

A. The Factory Mutual Policy

80. Factory Mutual sold the MSG Insureds “Master Global Insuring Policy” number 1059943, for the period November 16, 2019, to November 16, 2020 (the “FM Policy”). A true and correct copy of the FM Policy is attached hereto as Exhibit B and incorporated herein by reference. The FM Policy provides 50% of the total insurance, or \$900,000,000 in limits per occurrence.

81. Well before selling the MSG Insureds the FM Policy, FM Global made broad representations to the public and to its actual and potential insureds about the FM Global Advantage® policy that is included in the FM Policy. One of the things FM Global represented was that its FM Global Advantage® policy **added extended** coverage for business interruption losses stemming from a “communicable disease”:

The all-risk FM Global Advantage® policy, backed by large, stable capacity, is a superior insurance product designed to help your business remain resilient. With our standard policy, you'll find unrivaled value in our expanded cyber coverage to support your reliance on off-premises data or "cloud" services, as well as **coverage for business interruption loss and costs to clean up your facility if it shuts down due to the presence of communicable disease.** At the same time, you'll benefit from simplified coverage for miscellaneous-type property, which improves your contract certainty and maximizes risk transfer.²¹

82. Starting in 2016, FM Global advertised the "Global Advantage policy" it sold to the MSG Insureds as being

streamlined and enhanced—bringing simplified direction of coverage for miscellaneous-type property while introducing meaningful and broad-based expansions of coverage. In short, the policy provides more coverage and greater contract certainty.²²

83. FM Global also specifically touted and the MSG Insureds specifically relied on the "enhancements" provided by the Communicable Disease coverage.²³ FM Global promised that the added business interruption coverage ("Interruption by Communicable Disease") will be available "while you are shut down and as your business recovers."²⁴

84. However, FM Global did not, and does not, inform potential insureds that the Communicable Disease coverages, including the Interruption by Communicable Disease coverage, are both subject to sublimits representing a miniscule fraction of the total coverage purchased. In the case of the MSG Insureds, the total coverage is subject to a \$2,000,000 sublimit (only 1.11% of the total policy limits) for the Communicable Disease Response and

²¹ <https://www.fmglobal.com/products-and-services/products/the-fm-global-advantage-all-risk-policy> (emphasis added).

²² "FM Global Advantage Policy, 2016 Summary of Enhancements," Form P15210d (12/2015).

²³ FM Global, "Communicable Disease, 2016 Enhancements," Form P15210v (01/2016).

²⁴ *Id.*

Interruption by Communicable Disease coverages. This is the antithesis of an “expansion” or an “enhancement,” particularly when the MSG Insureds paid more in premiums than the maximum amount that Factory Mutual now says is available to them.

85. Factory Mutual also is contending that this “additional” “extension” of coverage actually *takes away* coverage otherwise afforded by the FM Policy by limiting the available coverage to the Communicable Disease sublimit. In fact, Factory Mutual knew when it sold the FM Policy to the MSG Insureds that \$1,000,000 in Interruption by Communicable Disease coverage would be woefully insufficient to weather losses associated with a pandemic “while they are shut down and while their business recovers.”

86. The “Named Insured” is defined in the FM Policy in pertinent part as “The Madison Square Garden Company, MSG Sports & Entertainment, LLC, MSG Las Vegas, LLC and any subsidiary” and “any partnership or joint venture in which” any of those entities “has management control or ownership as now constituted or hereafter acquired, as the respective interest of each may appear.” *Id.*, Declarations, 1. Named Insured and Mailing Address.

87. The FM Policy states: “Loss, if any, will be adjusted with and payable to” any of the aforementioned entities “or as may be directed” by any of those entities. *Id.*, 6. Loss Adjustment/Payable.

B. The AIG Policy

88. AIG sold the MSG Insureds “Master Global Insuring Policy” number 025032736, for the period November 16, 2019, to November 16, 2020 (the “AIG Policy”). A true and correct copy of the AIG Policy is attached hereto as Exhibit C and incorporated herein by reference. The AIG Policy provides 24% of the total insurance, or \$432,000,000 in limits per

occurrence. The FM Policy and AIG Policy (together, the “Master Policies”) are substantially similar, with one pertinent distinction discussed below.

89. The “Named Insured” is defined in the AIG Policy in pertinent part as “The Madison Square Garden Company, MSG Sports & Entertainment, LLC, MSG Las Vegas, LLC and any subsidiary” and “any partnership or joint venture in which” any of those entities “has management control or ownership as now constituted or hereafter is acquired, as the respective interest of each may appear.” *Id.*, 1. Named Insured and Mailing Address.

90. The AIG Policy further provides that: “Loss, if any, will be adjusted with and payable to” any of the aforementioned entities “or as may be directed” by any of those entities. *Id.*, 6. Loss Adjustment/Payable.

C. The Terms of the Master Policies

91. The Master Policies state in part:

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy.

Id., Declarations.

92. Although, as noted below, words in bold face type are expressly defined in the Master Policies, the Master Policies fail to define the phrase “direct physical loss or damage.” Nor do they require that “physical loss or damage” be visible to the naked human eye or cause structural damage to a building.

93. In addition to covering the MSG Insureds’ “Real Property” itself in the event of property damage (*id.*, the Property Damage coverage), the Master Policies broadly cover “Personal Property,” including property owned by the MSG Insureds and their officers and employees and the MSG Insureds’ improvements and betterments in their leased premises.

94. The Master Policies also provide various “Other Additional Coverages.” They include, by way of example, “the actual costs incurred by the Insured” to gather and produce the information required as part of the claim adjudication process. *Id.*, E. Claims Preparation Costs.

95. They also include coverage intended to reimburse the MSG Insureds “the reasonable and necessary costs incurred” relative to the “actual not suspected presence of **communicable disease**.”²⁵ *Id.*, F. Communicable Disease Response.

96. The Master Policies define **communicable disease** in pertinent part as “disease which is transmissible from human to human by direct or indirect contact with an affected individual or the individual’s discharges.” *Id.*, General Provisions, ¶ 13 Definitions.

97. The Master Policies also insure for the costs incurred by the MSG Insureds to mitigate their losses and damage. This includes “actions to temporarily protect or preserve insured property” from “actual” or “immediately impending, insured physical loss or damage.” *Id.*, U. Protection and Preservation of Property.

98. The Master Policies also provide Time Element insurance, which allows the MSG Insureds, at their option, to recover either “GROSS EARNINGS and EXTENDED PERIOD OF LIABILITY” or “GROSS PROFIT” (as those phrases are defined in the Master Policies) as a result of physical loss or damage to insured property. *Id.*, Time Element, 2. Time Element Coverages.

99. The Master Policies obligate the Insurers to insure the “reasonable and necessary extra costs incurred” to “temporarily continue as nearly **normal** as practicable the conduct of the

²⁵ Words or phrases in bold font in the Master Policies indicate that they are defined therein. Words or phrases in all capital letters indicate a reference to the title of another section of the Master Policies.

Insured's business" and to temporarily use other property or facilities to conduct that business.
Id., Extra Expense.

100. The Master Policies also include certain "Supply Chain Time Element Coverage Extensions," including "Civil or Military Authority" coverage. *Id.*, Civil or Military Authority. These coverage extensions apply when "an order of civil or military authority limits, restricts or prohibits partial or total access to an insured **location** provided such order is the direct result of physical damage of the type insured at the insured **location** or within five" miles of it. *Id.*

101. FM Global has represented that "[t]he decision to limit, restrict or prohibit access to your location, thereby triggering coverage, can be made by an officer of your company." FM Global, "Communicable Disease, 2016 Enhancements."

102. The Master Policies also provide "Contingent Time Element Extended" coverage. *Id.* This coverage insures "the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured at **contingent time element locations** located within the TERRITORY of this Policy." *Id.*, B. Contingent Time Element Extended.

103. **Contingent time element locations** include "any **location**" or any company that is "a direct customer, supplier, contract manufacturer or contract service provider" to an MSG Insured or to an insured **location**. *Id.*, General Provisions, 13. Definitions.

104. The Master Policies' "Ingress/Egress" coverage extension insures "the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY due to the necessary interruption of the Insured's business due to partial or total physical prevention of ingress to or egress from an insured **location**, whether or not the premises

or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured to property of the type insured.” *Id.*, C. Ingress/Egress.

105. The Master Policies also extend coverage for “Interruption by Communicable Disease.” More specifically, the Master Policies insure against Loss and Extra Expense incurred:

If a location owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**[.]

Id., E. Interruption by Communicable Disease.

106. The Master Policies do not contain the “**Exclusion Of Loss Due To Virus Or Bacteria**” endorsement. Nor do they contain any exclusion relative to a pandemic or any other exclusion that conspicuously, plainly, clearly, and unambiguously applies to the losses claimed by the MSG Insureds for the damages that they have suffered and continue to suffer.

107. The Insurers decided in selling their policies to the MSG Insureds *not* to use the “**Exclusion Of Loss Due To Virus Or Bacteria**” endorsement, which would have been prominently identified on their Policies’ declaration pages as a virus exclusion, and would be a separate endorsement clearly entitled as a virus exclusion. Instead, the MSG Insureds have now learned that the Insurers decided to use an unnamed exclusion in the same small print as most of their Policies that purports to bar coverage for “contamination” claims. *Id.*, Property Damage ¶ 3(D) Exclusions. This exclusion purports to bar coverage for “**contamination**, and any cost due to **contamination**[.]” *Id.* However, the Insurers did not define “contamination” in the exclusion, nor give any indication in the exclusion itself that coverage for “viruses” is expressly

excluded. Nothing in this exclusion would inform a reasonable person that it somehow could be construed to deny coverage for losses associated with SARS-CoV-2 or COVID-19.

108. The only way for an insured to discover that “virus” somehow fell within the scope of the contamination exclusion would be for the insured to search the rest of the policy. If an insured did so, it might find a definition of “contamination” more than 50 pages later. That definition states that **contamination** is “any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.” *Id.*, Definitions.

109. This form of an exclusion referring generically to “virus” without being in an exclusion properly identified and referenced as a “Virus Exclusion” has been referred to by academic commentators as a “hidden virus exclusion.”²⁶ It is the opposite of the conspicuous, plain, and clear exclusion required by governing law in order to deny coverage. Therefore, it is not enforceable against the MSG Insureds even if it otherwise applied to limit coverage. Furthermore, its application to bar coverage for the MSG Insureds’ losses would be contrary to public policy, would result in an unjust forfeiture of coverage for the MSG Insureds, and would result in unjust enrichment to the Insurers, rewarding them for hiding the exclusion rather than using the more conspicuous, plainer, and clearer “**Exclusion Of Loss Due To Virus Or Bacteria**” endorsement.

110. The AIG Policy (and only the AIG Policy) has an endorsement that replaces the hidden virus exclusion with a “POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT,” which also does not exclude coverage for the MSG Insured’s

²⁶ <https://cclt.law.upenn.edu/category/litigation-strategy/>.

losses. This endorsement purports to exclude “loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of CONTAMINANTS OR POLLUTANTS,” to exclude certain losses from asbestos, dioxin, and polychlorinated biphenyls, and to exclude expenses associated with “debris removal.” Ex. C End. #006.

111. AIG’s POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT defines “CONTAMINANTS OR POLLUTANTS” to include a “solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste[.]” *Id.*

112. Neither SARS-CoV-2 nor the disease it causes, COVID-19, is a “solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste[.]”

113. AIG’s POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT also purports to exclude “bacteria, virus, or hazardous substances *as listed in* the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency.” *Id.* (emphasis added). Neither SARS-CoV-2 nor the disease it causes, COVID-19, is “listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act [and have not been] designated by the U.S. Environmental Protection Agency.”

114. Instead, like most pollution exclusions, AIG’s POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT purports to bar coverage for damage that is truly environmental in nature, such as where the damage stems from

pollution of the air, water or land. By its plain terms, and as those terms are commonly and reasonably understood, AIG's POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT does not apply to SARS-CoV-2 or the disease it causes, COVID-19, and does not exclude any of the MSG Insureds' losses.

115. Additionally, AIG's POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT is nowhere near as conspicuous, plain, and clear as the 2006 ISO Virus Exclusion Endorsement that AIG could have used. Unlike the 2006 ISO Virus Exclusion Endorsement, AIG's POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT does not specifically, clearly and unambiguously exclude coverage for SARS-CoV-2, does not alert an insured to the fact that AIG will contend it applies to viruses spread in the usual fashion that viruses spread, and does not mention "virus" in its title or include it in all capital letters, larger font, or bold face print. AIG's POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT does not, and would not, lead a reasonable person to conclude that it excludes losses such as those suffered by the MSG Insureds. Therefore, it is not enforceable against the MSG Insureds to bar their recovery of losses associated with COVID-19.

D. The Allianz Policy

116. Allianz sold the MSG Insureds a "Contract of Insurance" identified by Unique Market Reference No. B080117918U19, for the period November 16, 2019, to November 16, 2020 (the "Allianz Policy"). A true and correct copy of the Allianz Policy is attached hereto as Exhibit D and incorporated herein by reference. The Allianz Policy provides 16.5% of the total insurance, or \$297,000,000 in limits per occurrence. *Id.*

117. The Allianz Policy is “subject to the same terms, conditions, limitations and exclusions as more fully defined” in the FM Policy. *Id.*

E. The Generali Policy

118. Generali sold the MSG Insureds a “Contract of Insurance” identified by Unique Market Reference No. B080118965U10, for the period November 16, 2019, to November 16, 2020 (the “Generali Policy”). A true and correct copy of the Generali Policy is attached hereto as Exhibit E and incorporated herein by reference. The Generali Policy provides 9.5% of the insurance, or \$171,000,000 in limits per occurrence.

119. The Generali Policy is “subject to the same terms, conditions, limitations and exclusions as more fully defined” in the FM Policy. *Id.*

**THE COVID-19 PANDEMIC AND
SUBSEQUENT CIVIL AUTHORITY ORDERS**

120. In December 2019, SARS-CoV-2 and COVID-19 broke out in Wuhan, China. Since then, SARS-CoV-2 and COVID-19 have spread throughout the world, prompting the World Health Organization to declare a global pandemic.

121. According to the World Health Organization,

COVID-19 is caused by the SARS-CoV-2 virus, which spreads between people, mainly when an infected person is in close contact with another person.

The virus can spread from an infected person’s mouth or nose in small liquid particles when they cough, sneeze, speak, sing or breathe heavily. These liquid particles are different sizes, ranging from larger ‘respiratory droplets’ to smaller ‘aerosols’.

Other people can catch COVID-19 when the virus gets into their mouth, nose or eyes, which is more likely to happen when people are in direct or close contact (less than 1 metre apart) with an infected person.

Current evidence suggests that the main way the virus spreads is by respiratory droplets among people who are in close contact with each other.

Aerosol transmission can occur in specific settings, particularly in indoor, crowded and inadequately ventilated spaces, where infected person(s) spend long periods of time with others, such as restaurants, choir practices, fitness classes, nightclubs, offices and/or places of worship. More studies are underway to better understand the conditions in which aerosol transmission is occurring outside of medical facilities where specific medical procedures, called aerosol generating procedures, are conducted.

The virus can also spread after infected people sneeze, cough on, or touch surfaces, or objects, such as tables, doorknobs and handrails. Other people may become infected by touching these contaminated surfaces, then touching their eyes, noses or mouths without having cleaned their hands first.²⁷

122. Various publications report that aerosolized droplets exhaled by normal breathing can travel significant distances and stay suspended in air and infective for 16 hours, until gravity ultimately forces them to the nearest surface.²⁸ Studies report that SARS-CoV-2 can remain on surfaces for at least 28 days.²⁹ These droplets thus physically alter the air and airspace in which they are present and the surfaces of both the real and personal property to which they attach. By doing so, despite taking the most reasonable of precautions and mitigation measures, they can render both real and personal property unusable for its intended purpose and function and may require steps to be taken to minimize their spread, such as physical distancing, regular

²⁷ See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted>.

²⁸ See Leslie Tate, *Virus Survives In Air For Hours*, Tulanian (Fall 2020), <https://tulanian.tulane.edu/fall-2020/virus-survives-in-air-for-hours>.

²⁹ See, e.g., CNBC, *Virus that causes Covid-19 can survive for 28 days on common surfaces, research says* (Oct. 12, 2020), <https://www.cnbc.com/2020/10/12/virus-that-causes-covid-19-can-survive-for-28-days-on-surfaces-research-says.html>; Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles, & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 *Virology J.*, Art. No. 145 (2020), <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

disinfection, air filtration, and further physical alterations, such as installation of physical barriers restricting the movement of the aerosolized droplets.

123. Though microscopic, SARS-CoV-2—like all viruses—is a physical substance. SARS-CoV-2 is highly contagious and mobile. Even with reasonable efforts to slow the spread, it spreads from person to person primarily through fine aerosolized droplets containing the virus. These aerosolized droplets are expelled into the air when infected individuals breathe, talk, sing, cough, or sneeze. Their presence in the air and airspace constitutes a physical alteration to the air and airspace, constituting physical damage.

124. Scientists have likened the ubiquitous aerosolized droplets of the virus to smoke, present in the air long after the source of its dissemination has gone.³⁰ Thus, absent proper safety precautions and protocols, entering a building or other location where SARS-CoV-2 may be physically present in the air can pose an imminent and severe risk to human health.

125. Since January 1, 2020, and as of the date of the filing of this Complaint, there have been at least 114,853,685 confirmed cases of COVID-19 throughout the world, at least 2,554,694 of which have resulted in deaths.³¹

126. There have been more than 1,600,000 confirmed COVID-19 cases in the State of New York alone, as an example, more than 47,000 of which have resulted in deaths. Moreover, due in part to the initial absence of available tests, it is believed that the true number of coronavirus cases is significantly higher than the reported numbers might suggest.³² “Citywide, the percentage of tests with positive results increased from 27% the week of March 8 to a peak of

³⁰ See “Airborne Transmission of SARS-CoV-2,” *Science* (Oct. 16, 2020), available at <https://science.sciencemag.org/content/370/6514/303.2>.

³¹ See <https://covid19.who.int/>.

³² See <https://www.nytimes.com/2020/07/21/health/coronavirus-infections-us.html>.

65% during the week of March 22. The growth of testing rates lagged behind the growth of percent positivity but increased steadily from 86 per 100,000 during the week of March 8 to 1,634 per 100,000 by the week of May 24.”³³

127. The prevalence of SARS-CoV-2 and the lack of availability of widespread testing resulted in governmental authority bans of public events, including those at all of the MSG Insureds’ locations. Even as the virus transmission rate has abated, vaccines have begun to be provided and testing has become more widely available, government authorities have continued to prohibit or limit the hosting of public events at venues and large arenas.

128. Since the outbreak of SARS-Cov-2 and COVID-19, and in response thereto, civil authorities throughout the world issued “stay-at-home” and “shelter in place” orders, travel restrictions, quarantines, and other orders, including orders requiring the suspension of non-essential business operations.

129. To help create a framework for the implementation of such policies in New York, Governor Cuomo issued Executive Order No. 202 on March 7, 2020, declaring a state of emergency in New York.

130. On March 4, 2020, the Knicks hosted the Utah Jazz at The Garden. On March 11, 2020, the game between the Utah Jazz and Oklahoma City Thunder was stopped during pre-game warmups and then officially postponed. Jazz center Rudy Gobert tested positive for COVID-19 that same day. This and other positive tests, as well as subsequent positive antibody tests, confirm the significant likelihood that individuals shedding the COVID-19 virus were present at The Garden on March 4, 2020.

³³ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a2.htm>.

131. Governor Cuomo next issued Executive Order 202.1 on March 12, 2020. This order directed that “[a]ny large gathering of event for which attendance is anticipated to be in excess of five hundred people shall be cancelled or postponed[.]” This Order further provided that “any theater seating five hundred or more attendees for a live performance located in [the City of New York] shall not hold any further performances after 5 pm on March 12, 2020.”

132. On March 16, 2020, New York City Mayor de Blasio issued Emergency Executive Order No. 100 in which he declared that “the virus physically is causing property loss and damage.” In that same Executive Order, the Mayor directed that “all entertainment venues, including those with seating capacity below 500, are hereby closed effective Monday, March 16, 2020 at 8:00 PM. Entertainment venues shall include . . . theatres[.]” Subsequent Executive Orders continued to describe the physical property damage being sustained by New York businesses.

133. Similar state and local civil authority orders and actions resulted in the shutdown of or curtailment of activities at the MSG Insureds’ venues and operations around the country.

134. By March 16, 2020, Westchester County, where certain MSG Insureds have insured property, was the COVID-19 epicenter in the United States. The prevalence of positive tests in Westchester resulted in Governor Cuomo’s creation of a “containment zone” spanning a one-mile radius in the town of New Rochelle. Food and medical supplies were delivered to residents residing in this zone by the National Guard. On March 16, 2020, Westchester County Executive George S. Latimer issued Westchester County Local Emergency Order #1 of 2020 “in order to protect life and property.”

135. The MSG Insureds' New York properties³⁴ were, and continue to be, impacted by a number of civil authority orders and actions, including the following state-wide actions: New York Governor Andrew Cuomo's Executive Order No. 202 declaring a Disaster Emergency in the State of New York, Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13, 202.14, 202.18, 202.31, 202.33, 202.34, 202.35, 202.36, 202.38, 202.39, 202.41, 202.45, 202.47, 202.48, 202.51, and 202.53; and Governor's Executive Order 205 placing quarantine restrictions on travelers arriving in New York.

136. The MSG Insureds' California property³⁵ was impacted by a number of civil authority orders and actions, including the following state-wide actions: Executive Department State of California Executive Order Nos. N-25-20, and N-33-20; the March 16, 2020, guidance issued by the California Department of Public Health titled "Coronavirus Disease 2019 (COVID-19) and Retail Food, Beverage, and Other Related Service Venues"; and the March 19 and May 7, 2020 Orders of the State Public Health Officer issued by the California Department of Public Health.

137. The MSG Insureds' Illinois property³⁶ was, and continues to be, impacted by a number of civil authority orders and actions, including the following state-wide actions: Illinois Governor JB Pritzker's March 9, 2020 Gubernatorial Disaster Proclamation; Illinois Governor Pritzker's Executive Orders 2020-04, 2020-07, 2020-10, 2020-18, 2020-32, 2020-33, and 2020-38.

³⁴ See *id.*, Madison Square Garden (and the Hulu Theater at Madison Square Garden), 3, 4, 8, & 10 Penn Plaza, New York, New York 10121; Radio City Music Hall, 1260 Avenue of the Americas, New York, New York 10020; and The Beacon Theater, 2124 Broadway, New York, New York, 10023.

³⁵ See Ex. B., Schedule of Locations, Appendix A, L.A. Forum, 3900 West Manchester Blvd, Inglewood, California, 90305. See also End. No. 002, The Burbank Studios, 3000 W. Alameda Ave., Burbank, California 91505.

³⁶ See *id.*, Chicago Theatre, 175 North State Street, Chicago, Illinois, 60601.

138. Moreover, on March 20, 2020, Nevada Governor Steve Sisolak signed Directive 003, declaring all non-essential businesses and operations to close.³⁷ After issuing the Directive, Governor Sisolak explained that these drastic shut down measures were necessary in light of “the ability of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time, [which] renders some property unusable” and contributes to “damage ... and property loss.”³⁸

139. These civil authority orders continue to limit, restrict, and prohibit partial or total access to the MSG Insureds’ locations as a result of physical damage of the type insured by the Policies.

140. The civil authority orders required the MSG Insureds to completely or partially suspend their business operations and prohibit access to their venues.

141. Because SARS-CoV-2 causes a distinct, demonstrable, physical alteration to property, it constitutes “physical loss or damage” to property as that phrase is used in the Policies.

142. Additionally, the presence or potential presence of SARS-CoV-2 at, on, and in insured property prevents or impairs the use of the property, thus constituting “physical loss” to property as that phrase is used in the Policies, even if it also did not constitute “damage” to property as that term is used in the Policies.

³⁷ [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20 - COVID-19 Declaration of Emergency Directive 003 \(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-19_Declaration_of_Emergency_Directive_003_(Attachments)/).

³⁸ [https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29 - COVID-19 Declaration of Emergency Directive 016 \(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_(Attachments)/).

143. Commencing on or about March 12, 2020, the MSG Insureds suffered, and continue to suffer, loss and damage covered by the Policies in an amount to be established at trial.

THE INSURERS' BREACHES AND WRONGFUL CONDUCT

144. The MSG Insureds timely notified the Insurers of the MSG Insureds' losses in or about June 2020. However, the MSG Insureds are informed and believe, and on that basis allege, that the Insurers knew that the MSG Insureds were suffering losses before the MSG Insureds formally notified them.

145. In its June 18, 2020, response to the MSG Insureds' notice, Factory Mutual ignored the FM Policy's grant of coverage for "physical loss or damage" and the policy's coverage for such loss or damage and the economic losses resulting from covered "physical loss or damage." Instead, Factory Mutual only referenced the Communicable Disease Response and Interruption by Communicable Disease coverages—the same coverages that it so proudly advertised as "enhancements" and "expansions" of the FM Policy. Even after wrongfully claiming that the MSG Insureds only have up to \$2,000,000 in coverage, Factory Mutual still failed to provide even \$1 in coverage. It effectively denied any obligations under these coverages until and unless "there has been any reported case of COVID-19 at any of the [MSG Insureds'] insured locations."

146. Factory Mutual cited no other bases for limiting or restricting the insurance available to the MSG Insureds.

147. In its July 2020 response to the MSG Insureds' notice, AIG and Generali similarly purported to reserve their right to provide coverage, but only under the Communicable Disease coverage grants. AIG and Generali also falsely asserted that the MSG Insureds "must

demonstrate that there was direct physical loss or damage to property” despite the fact that the Master Policies only require a showing of “physical loss or damage.” Unlike many other property policies, the Policies do not require “direct” physical loss or damage.

148. Although AIG and Generali referenced the AIG Policy’s Pollution and Contamination Exclusion, neither AIG nor Generali stated how this exclusion bars coverage in whole or in part.

149. The Master Policies’ Property Damage coverage grant does *not* require an “actual not suspected presence of **communicable disease**.” The Master Policies’ Property Damage coverage grant only requires “physical loss or damage,” which the MSG Insureds have sustained and continue to sustain.

150. During the ensuing months, the MSG Insureds communicated with Factory Mutual about its losses. At no time during these months of communications did Factory Mutual state that coverage was not available under any provisions in the FM Policy other than the Communicable Disease Response and Interruption by Communicable Disease coverages or identify any other bases, provisions, or exclusions that could limit the insurance available to the MSG Insureds.

151. On or about February 1, 2021, the MSG Insureds again communicated with Factory Mutual. They stated that they did not agree with Factory Mutual’s assertion that “any coverage would be limited to the coverage for” **communicable disease** and reaffirmed that “coverage is not so limited.”

152. On February 15, 2021, eight months after responding to MSG’s initial notice, Factory Mutual for the first time asserted that (with the potential exception of communicable disease coverages) the MSG Insureds’ claim is barred because its Policy “excludes coverage for

contamination.” The MSG Insureds are informed and believe, and on that basis allege, that Factory Mutual had known at least in March 2020 that it would either honor only a fraction of its contractual obligation or deny coverage for claims such as that asserted by the MSG Insureds here outright. FM Global deliberately concealed that fact and its intent from the MSG Insureds until finally invoking a purported “contamination exclusion” in its February 15, 2021, letter.

153. Factory Mutual’s position that any insurance for the MSG Insureds’ loss is limited to that provided by the communicable disease coverages is wrong, and Factory Mutual knows, or should know, that it is wrong. Factory Mutual affirmatively stated to the MSG Insureds and publicly, for purposes of its communicable diseases coverages, that COVID-19 is a **communicable disease** as defined in the Master Policy. The Master Policy does not exclude **communicable disease** from any of its coverages. Instead, it affirmatively insures loss stemming from a **communicable disease**.

154. As noted, Factory Mutual also ignored multiple applicable coverage grants and only referenced—also for the first time—the Civil or Military Authority coverage in its February 15, 2021, letter. This letter failed to make even a passing reference to any of the other applicable Time Element or Contingent Time Element coverages or coverage extensions. Instead, Factory Mutual purportedly denied any other potential coverage obligation on the false premise that “[t]he presence of COVID-19 at an insured location does not constitute ‘physical damage of the type insured.’”

155. As a result of the actual and/or potential presence of SARS-CoV-2 on and in its properties and the suspensions of its business operations, the MSG Insureds sustained “Property Damage” as defined in the Master Policies.

156. Given the manner in which SARS-CoV-2 lingers in the air and on surfaces, and its manner of transmission, and the government's desire to "flatten the curve," the insured locations were not capable of being used for their essential functions. Accordingly, the civil authority orders substantially impaired the properties, constituting "physical loss or damage" to those properties. They also constitute actions by a civil authority that restricts and/or prohibits total or partial access to the insured locations as a "direct result of physical damage of the type insured" as required to trigger Civil or Military Authority coverage.

157. Although never addressed by any of the Insurers, the MSG Insureds sustained physical loss or damage resulting in a total and/or partial prevention of ingress to or egress from the insured locations, thereby triggering the Ingress/Egress Coverage.

158. Although also never addressed by the Insurers, the MSG Insureds are entitled to reimbursement of the costs incurred in connection with the submission of their coverage claim under the Master Policies' Claims Preparation Costs Coverage.

159. Although also never addressed by the Insurers, the MSG Insureds are entitled to recover, at their option, coverage for Gross Earnings or Gross Profit, and Extended Period of Liability under the Master Policies' Time Element coverage.

160. Although also never addressed by the Insurers, the MSG Insureds are entitled to recover for damages stemming from physical damage to **contingent time element locations** under the Master Policies' Contingent Time Element Extended coverage.

161. Although also never addressed by the Insurers, the MSG Insureds are entitled to recover damages representing the reasonable and necessary expenses incurred to continue their operations to the extent possible under the Master Policies' Extra Expense coverage.

162. Additionally, the closures were necessary to prevent the spread of SARS-CoV-2. The costs and losses associated with the closures therefore constitute reasonable costs incurred to “protect or preserve insured property.” The Insurers are obligated to pay these amounts because the MSG Insureds’ actions, in addition to being required under the common law doctrine of mitigation, are covered because they “prevented immediately impending” further “physical loss or damage.”

163. Although the MSG Insureds sustained losses and damage falling squarely within multiple Master Policy coverage grants, the Insurers failed and refused to acknowledge coverage for those losses and refused to pay any portion of them, including the amounts the MSG Insureds have incurred, and are incurring, to mitigate their otherwise insured losses.

164. Furthermore, the Insurers denied the MSG Insureds’ claim, incorrectly asserting that the losses were not caused by or the result of physical loss or damage or due to the prohibition of access by a civil authority. The Insurers took this position even though all of the localities and states where MSG Insureds have real property issued orders in response to the presence of SARS-CoV-2; even though Westchester County where the MSG Insureds have insured locations was the subject of a military-controlled “containment zone;” even though Mayor de Blasio declared that SARS-CoV-2 was causing property damage, and even though the presence of SARS-CoV-2 on or around real and personal property and in the airspace amounts to “physical loss or damage” to property under the governing rules of insurance policy interpretation.

165. The MSG Insureds are informed and believe, and on that basis allege, that the Insurers contend that even though SARS-CoV-2 caused physical alterations to the air and airspace in which it is present and to the surfaces to which it attaches, these physical alterations

somehow do not constitute “physical loss or damage” as that phrase is used in the Policies, because the physical alterations are not visible to the naked human eye.

166. As pointed out above, the MSG Insureds are informed and believe, and on that basis allege, that the Insurers have known for decades that the presence of hazardous substances, including microscopic substances, on or in real and personal property have been deemed to constitute property damage. Indeed, contrary to the position it has taken in denying coverage, Factory Mutual affirmatively has stated this very point in an action against another insurer. *See Factory Mutual Ins. Co. v. Federal Ins. Co.*, No.: 1:17-cv-00760-GJF-LF (D. N.M. Nov. 19, 2019), Dkt. 127 (contending that another insurer’s argument that mold infestation does not constitute physical loss or damage is “contrary to the facts of this loss and the case law which *broadly* interprets the term ‘physical loss or damage’ in property insurance policies.”).

167. At a minimum, in light of the court decisions cited herein and many others, the Insurers knew that their policy language reasonably could be interpreted to cover losses associated with pandemics and viruses. The MSG Insureds are informed and believe and, on that basis allege, that rather than define “physical loss or damage to property,” the Insurers elected to leave the language as is, knowing that insureds could, and likely would, understand it to mean that virus- and pandemic-associated losses would be insured.

168. The Insurers further compounded the misleading nature of the Policies by omitting a virus exclusion that would have put insureds like the MSG Insureds on possible notice that losses like those associated with the current pandemic might not be insured.

169. To the extent not waived or otherwise excused, the MSG Insureds have complied with the provisions contained in the Policies. Therefore, the MSG Insureds are entitled to all benefits of the insurance provided by the Policies.

FIRST CAUSE OF ACTION
(Breach of Contract against all Insurers)

170. The MSG Insureds reallege and incorporate by reference herein each allegation contained in paragraphs 1 through 169 above.

171. The MSG Insureds performed all obligations required of them under the Policies, except as otherwise excused.

172. The Insurers breached their respective duties under the Policies by, *inter alia*, unreasonably taking the position that the MSG Insureds sustained no “physical loss or damage,” that the MSG Insureds were not entitled to any time element, contingent time element or any other coverage under the Policies; by refusing to acknowledge that the presence of SARS-CoV-2 constitutes “physical loss or damage” to property as that phrase is used in the Policies, and by refusing to acknowledge that the impairment of the use of function of property caused by the actual or potential presence of SARS-CoV-2, the orders of civil authorities, and the need to mitigate constitutes “physical loss” to property as that phrase is used in the Policies.

173. The MSG Insureds have also incurred and continue to incur consequential damages including, but not limited to, ongoing extra expenses and attorneys’ fees due to the Insurers’ wrongful, unjustified and unreasonable failure to issue payment of amounts due, and improper treatment of the claim, all with the result of wrongfully diverting the MSG Insureds from their recovery efforts.

174. The consequential damages resulting from the Insurers’ conduct were within the contemplation of the parties at the time the Policies were sold, as the natural and probable result of a breach of the Policies.

175. The consequential damages resulting from the Insurers’ conduct were foreseen and/or should have been foreseen when the Policies were sold.

176. The MSG Insureds' damages were foreseeable given the purpose and particular circumstances of the property damage and business interruption coverage sold by the Insurers under the Policies.

177. As a direct and proximate result of the Insurers' acts and/or omissions, the MSG Insureds have been damaged and will continue to sustain damage.

178. As a result of the Insurers' breaches, the MSG Insureds request entry of judgment for breach of contract, awarding payment of damages in an amount equal to the amount owed under the Policies and consequential damages, each in amounts to be proven at trial.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing against all Insurers)

179. The MSG Insureds reallege and incorporate by reference herein each allegation contained in paragraphs 1 through 169 and 171 through 177 above.

180. Implied in the Policies is a covenant that the Insurers would act in good faith and deal fairly with the MSG Insureds, that the Insurers would do nothing to interfere with the right of the MSG Insureds to receive benefits due under the Policies, and that the Insurers would give at least the same level of consideration to the interests of the MSG Insureds as they gave to their own interests.

181. The Insurers also had a duty under the Policies, the law in each of the States where the MSG Insureds have insured property, and under insurance industry custom, practice and standards, to conduct a prompt and thorough investigation, including as to all bases that might support the MSG Insureds' claims for insurance coverage before reserving rights to deny, and denying, coverage.

182. Instead of complying with these duties, the Insurers acted in bad faith by, among other things:

- a. failing to conduct a full and thorough investigation of the MSG Insureds' claim for insurance coverage and asserting grounds for denying coverage without conducting such investigation;
- b. wrongfully and unreasonably asserting grounds for denying coverage that the Insurers knew, or should have known, are not supported by, and in fact are contrary to, the terms of the Policies, the law in each of the states where the MSG Insureds have insured property, insurance industry custom and practice, and the facts;
- c. failing to fully inquire into the bases that might support coverage for the MSG Insureds' claim;
- d. failing to conduct an adequate investigation of the losses suffered by the MSG Insureds, and asserting grounds for disputing coverage based on their inadequate investigation;
- e. creating and implementing a course of action to automatically deny coverage for all business interruption claims relating to SARS-CoV-2, COVID-19, and subsequent events;
- f. unreasonably failing and refusing to honor their promises and representations in the Policies;
- g. giving greater consideration to their own interests than it gave to the interests of the MSG Insureds;
- h. compelling the MSG Insureds to file this suit in order to receive the contractual benefits which they bought and paid for; and
- i. otherwise acting as alleged above.

183. In breach of the implied covenant of good faith and fair dealing, the Insurers did the things and committed the acts alleged above for the purpose of consciously withholding from the MSG Insureds the rights and benefits to which they are entitled under the Policies.

184. The Insurers' actions are inconsistent with the reasonable expectations of the MSG Insureds, are contrary to established industry custom and practice, are contrary to the legal requirements in each of the States where the MSG Insureds have insured property, are contrary to the express terms of the Policies, and constitute bad faith.

185. As a direct and proximate result of the Insurers' actions, the MSG Insureds have been damaged in an amount exceeding the Court's jurisdictional limits. To the extent permitted by law, including pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), the MSG Insureds are also entitled to recover all attorneys' fees they reasonably incurred, and continue to incur, in the efforts to obtain the benefits due under the Policies that the Insurers have withheld, and are withholding, in bad faith. The MSG Insureds are also entitled to interest at the maximum legal rate.

186. The MSG Insureds are informed and believe, and on that basis allege, that the Insurers, acting through one or more of their respective officers, directors, or other corporate employees with substantial independent and discretionary authority over significant aspects of its business, performed, authorized, or ratified the bad faith conduct alleged above.

187. The Insurers' conduct exhibits a conscious disregard of the rights of the MSG Insureds, constituting malice. The Insurers engaged in a series of acts designed to deny the MSG Insureds the benefits due under the Policies. Specifically, by acting as alleged above, in light of information, facts, and relevant law to the contrary, the Insurers consciously disregarded the MSG Insureds' respective rights and forced the MSG Insureds to incur substantial financial

losses, thereby inflicting substantial financial damage on the MSG Insureds. The Insurers ignored the MSG Insureds' interests and concerns with the requisite intent to injure within, for example, the meaning of California Civil Code section 3294. Therefore, the MSG Insureds are entitled to recover punitive damages from the Insurers in an amount sufficient to punish and make an example of the Insurers and to deter similar conduct in the future.

188. The MSG Insureds have also incurred and continue to incur consequential damages including, but not limited to, ongoing extra expenses and attorneys' fees due to the Insurers' wrongful, unjustified and unreasonable failure to issue payment of amounts due, and improper treatment of the claim, all with the result of wrongfully diverting the MSG Insureds from their recovery efforts.

189. The consequential damages resulting from the Insurers' bad faith conduct and their breaches of its duty to act in good faith were within the contemplation of the parties at the time the Policies were sold, as the natural and probable result of a breach of the Policies.

190. The consequential damages resulting from the Insurers' bad faith conduct and their breaches of its duty to act in good faith were foreseen and/or should have been foreseen when the Policies were sold.

191. The MSG Insureds' damages were foreseeable given the purpose and particular circumstances of the property damage and business interruption coverage sold by the Insurers under the Policies.

192. As a result of the foregoing, the MSG Insureds request entry of judgment and an award of damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Declaratory Judgment against all Insurers)

193. The MSG Insureds reallege and incorporate by reference herein each allegation contained in paragraphs 1 through 169, 171 through 177 and 180 through 191 above.

194. Pursuant to the terms of the Policies, the Insurers are obligated to pay, up to the limit of liability for each insured premises, for property damage, time element and contingent time element losses, and the other aforementioned coverages under the Policies, none of which are specifically, clearly and unambiguously excluded.

195. The MSG Insureds' losses are covered under multiple coverage grants and are not excluded.

196. The Insurers dispute and deny that they have contractual obligations to cover the MSG Insureds' losses under the Policies.

197. An actual and justiciable controversy has arisen between the MSG Insureds and the Insurers as to the Insurers' obligation to acknowledge the MSG Insureds' covered losses and pay the MSG Insureds under the Policies.

198. The MSG Insureds and the Insurers dispute the meaning, scope and application of key terms and provisions in the Policies, none of which are defined therein.

199. Resolution of these controversies will establish the MSG Insureds' right to recover payments under the Policies as a result of SARS-CoV-2 and COVID-19, and events connected therewith.

200. The MSG Insureds seek a judicial declaration by this Court in accord with their contentions and rejecting the Insurers' contentions and stating that the MSG Insureds' losses are insured under the Policies.

201. A declaration is necessary at this time in order that the parties' dispute may be resolved and that they may be aware of their prospective rights and duties.

PRAYER FOR RELIEF

WHEREFORE, the MSG Insureds pray for relief as follows:

- (a) On the First Cause of Action, for judgment in favor of the MSG Insureds and against the Insurers in an amount to be determined at trial, including compensatory, consequential, extra-contractual and/or punitive damages in an amount to be determined at trial, plus pre- and post-judgment interest;
- (b) On the Second Cause of Action, for judgment in favor of the MSG Insureds and against the Insurers in an amount to be determined at trial, including compensatory, consequential, extra-contractual and/or punitive damages in an amount to be determined at trial, plus pre- and post-judgment interest;
- (c) On the Third Cause of Action, for a declaratory judgment in favor of the MSG Insureds and against the Insurers, in accord with the MSG Insureds' contentions above and declaring that Insurers are required to pay the MSG Insureds up to the limits of the Policies; and
- (d) For such other and further relief as this Court may deem just and proper including, but not limited to, all fees and costs incurred by the MSG Insureds.

DEMAND FOR JURY TRIAL

The MSG Insureds hereby demand a trial by jury on all issues so triable.

Dated: New York, New York
March 5, 2021

PASICH LLP

By: /s/ Jeffrey L. Schulman
Jeffrey L. Schulman
Peter A. Halprin
Stephen Wah
757 Third Avenue, 20th Floor
New York, New York 10017
Telephone: (212) 686-5000
JSchulman@PasichLLP.com
PHalprin@PasichLLP.com
SWah@PasichLLP.com

-and-

Kirk Pasich (*pro hac vice* to be filed)
Christopher T. Pasich (*pro hac vice* to be filed)
10880 Wilshire Boulevard, Suite 2000
Los Angeles, California 90024
Telephone: (424) 313-7850
KPasich@PasichLLP.com
CPasich@PasichLLP.com

Attorneys for Plaintiffs