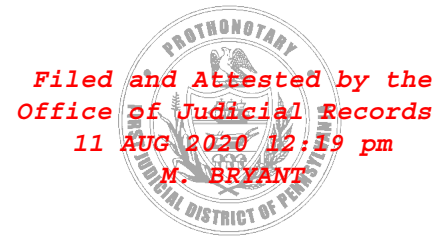


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ATTORNEYS FOR PLAINTIFFS

CHESTNUT HILL COMPLEX	:	COURT OF COMMON PLEAS
CORPORATION; AND	:	PHILADELPHIA COUNTY
GLENGARRY PROPERTIES, LP	:	
8221-8235 Germantown Avenue	:	
Philadelphia, Pennsylvania, 19118	:	
	:	
	:	
PLAINTIFFS,	:	AUGUST TERM, 2020
	:	
V.	:	
	:	
	:	CIVIL ACTION NO.
	:	
ERIE INSURANCE EXCHANGE	:	
100 Erie Insurance Place	:	
Erie Pennsylvania, 16530	:	
	:	
	:	
DEFENDANT.	:	JURY TRIAL DEMANDED

COMPLAINT - CIVIL ACTION
NOTICE TO PLEAD

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street
Philadelphia, PA 19107 (215) 238-6300

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACIÓN DE LICENCIADOS DE FILADELFA
Servicio De Referencia E Información Legal
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	:	CIVIL ACTION NO.
ERIE INSURANCE EXCHANGE	:	
	:	
DEFENDANT.	:	JURY TRIAL DEMANDED

PLAINTIFFS' COMPLAINT

Plaintiffs, Chestnut Hill Complex Corporation and Glengarry Properties LP, by way of Complaint, bring this action against Defendant, Erie Insurance Exchange, and allege as follows:

NATURE OF THE CASE

1. Plaintiffs own and/or operate the property located at 8221-8235 Germantown Avenue, Philadelphia, Pennsylvania, which contains a hotel, restaurants, farmers' market, a beauty salon and a post office.

2. To protect the business from property damage and the loss of income in the event of a sudden suspension of operations for reasons outside of its control, Plaintiffs purchased commercial multiple peril insurance from Defendant, including specialty property coverage. A copy of the policy is attached as Exhibit 1.

3. Plaintiffs' insurance policy is an "all-risk" policy that provides coverage for all non-excluded business losses.

4. The policy expressly includes "Income Protection" coverage, also referred to as Business Income coverage, which promises to pay for loss due to the necessary suspension of operations following loss to property and "Civil Authority" coverage which promises to pay for losses caused by a civil or governmental authority that prohibits access to the covered property.

5. The policy also provides Extra Expense coverage which promises to pay for expenses incurred to minimize losses during the suspension of business operations.

6. Between March 16 and March 21, 2020, Plaintiffs and Plaintiffs' tenants were forced to suspend or reduce business operations following an order from Pennsylvania Governor Tom Wolf mandating the closure of all non-life sustaining businesses in the Commonwealth in an effort to protect the public from the global pandemic caused by COVID-19, a highly contagious respiratory virus that has upended daily life and infected more than 2,000,000 people throughout the United States.

7. Having faithfully paid the policy premiums, Plaintiffs made a claim for business interruption, civil authority and/or extra expense coverage to recoup substantial, ongoing financial losses directly attributed to a series of COVID-19 closure orders.

8. By letter dated July 23, 2020, Defendant wrongfully denied Plaintiffs' claim. The letter is attached as Exhibit 2.

9. Through this action, Plaintiffs seeks a declaratory judgment pursuant to 42 Pa.C.S. §7531 *et. seq.* that the subject policy covers Plaintiffs' financial losses. Plaintiffs further seek damages for breach of contract on the basis that Defendant's denial of coverage runs afoul of the language of the policy and/or the public policy of this Commonwealth.

THE PARTIES

10. Plaintiff, Chestnut Hill Complex Corporation, is a Pennsylvania corporation, with a principal place of business at 8221-8235 Germantown Avenue, Philadelphia, Pennsylvania.

11. Plaintiff, Glengarry Properties, LP, is a Pennsylvania limited partnership, with a principal place of business at 8221-8235 Germantown Avenue, Philadelphia, Pennsylvania.

12. Defendant, Erie Insurance Exchange (hereinafter “Defendant”), is a Pennsylvania corporation with a principal place of business at 100 Erie Insurance Place, Erie, Pennsylvania.

JURISDICTION

13. This Court has jurisdiction over this action pursuant to 42 Pa. C.S.A. §5301(a)(2) and is therefore proper in this Court.

14. Venue is proper in this county pursuant to Pa. R.C.P. 1006(a)(1) and Pa. R.C.P. 2179(a)(2) and Pa. R.C.P. 2179(b)(1), as Defendant regularly conducts business in this county.

FACTUAL BACKGROUND

A. PLAINTIFFS’ INSURANCE COVERAGE

15. Defendant entered into a contract of insurance with the Plaintiffs, whereby Plaintiffs agreed to make payments to Defendant in exchange for Defendant’s promise to indemnify the Plaintiffs for losses, including, but not limited to, business income and rental income losses at 8221-8235 Germantown Avenue, Philadelphia, Pennsylvania (the “Covered Property”).

16. Glengarry Properties owns the Covered Property.

17. The Covered Property contains several businesses who are tenants of Glengarry Properties.

18. Chestnut Hill Complex Corporation is a business tenant of Glengarry Properties.

19. The Covered Property is insured under Policy number Q37 0156732 H, issued by Defendant (hereinafter the “Policy”), with a policy period between January 1, 2020 and January 1, 2021.

20. Plaintiffs did not participate in the drafting or negotiation of the words used in the Policy.

21. As the insured, Plaintiffs had no leverage or bargaining power to alter or negotiate the terms of the Policy.

22. The Policy provides (among other things) property, business personal property, business income (income protection) and extra expense, civil authority order, and additional coverages.

23. Plaintiffs faithfully paid the policy premiums and reasonably expected that the business income, extra expense and/or civil authority coverage provided by Defendant would protect against losses in the event that state or local officials ordered the closure of its business due to public safety concerns.

24. The Policy is an all-risk policy.

25. Defendant agreed to “pay for direct physical ‘loss’ of or damage to covered property . . . caused by or resulting from a peril insured against.” Ex. 1, p. 1, Section I.

26. Section II – Perils Insured Against, provides: “This policy insures against direct physical ‘loss’, except ‘loss’ as excluded or limited in this policy.” Ex. 1, Section II. p. 6.

27. “Loss means direct and accidental loss of or damage to covered property.” Ex. 1, Section XI, p. 36.

28. The COVID-19 virus and restrictions on the use of Plaintiffs’ Property are tantamount to “direct and accidental loss of or damage to covered property.”

29. In the Business Income (and Extra Expense) Coverage Section, Defendant agreed to pay for Plaintiffs' actual loss of income and/or rental income sustained "due to partial or total 'interruption of business' resulting directly from 'loss' or damage to property on the premises...." Ex. 1, Section I, Additional Income Protection – Coverage 3, p. 3.

30. The "interruption of business" refers to "the period of time that [the insured's] business is partially or totally suspended...." It begins with the date of loss to covered property and ends on the date the property should be repaired, rebuilt or replaced. Ex. 1, Section XI, p. 36.

31. "Income" means net income (profit or loss) before tax that Plaintiffs would have earned or incurred and necessary continuing operating expenses incurred by the business such as payroll expenses, taxes and rents. Ex. 1, Section XI, p. 36.

32. In the Income Protection Coverage Section, Defendant also agreed to pay necessary expenses that Plaintiffs incurred "due to partial or total 'interruption of business' resulting from 'loss' or damage to property on the premises...." Ex. 1, Section I, Additional Income Protection – Coverage 3, p. 3.

33. "Extra expense" includes expenses to avoid or minimize the interruption of business.

34. In the Civil Authority Coverage Section, Defendant also agreed to pay for the actual loss of income and/or rental income and necessary extra expense that Plaintiffs sustained "caused by action of civil authority that prohibits access to the premises" when "a peril insured against causes damage to property other than property at the premises" within one mile from the Covered Property. Ex. 1, Section I, Additional Coverages – Civil Authority, p. 5.

35. Defendant also agreed to pay for actual loss of income and/or rental income "for an additional 60 days" if Plaintiffs' income and/or rental income after operations resumed was less than

Plaintiffs' income and/or rental income before the loss. Ex. 1, Section I, Additional Coverages – Full Resumption of Operations, p. 5.

36. Defendant also agreed to pay up to \$25,000 for loss of income and/or rental income sustained “due to partial or total ‘interruption of business’ resulting directly from ‘loss’ or damage to building(s)...of ‘dependent properties’ from a peril insured against.” Ex. 1, Section VIII, Contingent Business Interruption, p. 22.

37. Within the insurance industry, and unknown to Plaintiffs, the word “loss” and the word “damage” have a customary usage more expansive than “loss” and “damage” as used in policy, and “loss” and “damage” includes “contamination”.

38. The words “loss” and/or “damage” are used for different purposes within the policy and have more than one potential meaning.

39. “Loss” and/or “damage” are not synonymous.

40. In this policy “damage” is used with the disjunctive “or” when paired with “loss” and therefore must have a different meaning than “loss”.

41. The words “loss” and “damage” are ambiguous as used by Defendant.

42. The word “damage” should be interpreted to have its normal and ordinary meaning-physical harm that impairs the value, usefulness or normal function of something.¹

43. The COVID-19 virus causes direct physical damage, as well as indirect non-physical damage, as that word is commonly used.

44. The word “loss” should be interpreted to have its normal and ordinary meaning.

45. Loss has been defined as follows:

- a. Loss is the fact of no longer having something or having less of it than before.²

¹ <https://www.lexico.com/definition/damage>

² <https://www.collinsdictionary.com/us/dictionary/english/loss>

- b. Loss is the disadvantage you suffer when a valuable and useful thing is taken away.³
- c. Decrease in amount, magnitude or degree.⁴
- d. The amount of an insured's financial detriment by death or damage that the insurer is liable for.⁵

46. Loss, as that word is commonly used, need neither be direct nor physical.

47. The Income Protection (Business Income), Extra Expense, Dependent Property and Civil Authority provisions of the Policy were triggered by damage and loss caused by COVID-19, the related closure orders issued by local, state and federal authorities, and Plaintiffs' inability to use and/or restricted use of the Covered Property.

B. THE COVID-19 PANDEMIC

48. On March 11, 2020, the World Health Organization officially declared COVID-19 a global pandemic.

49. COVID-19 is a cause of real physical loss and damage to Covered Property.

50. COVID-19 is a physical substance.

51. COVID-19 remains stable and transmittable in aerosols for up to three hours, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel.⁶

52. The ability of the deadly virus to physically infect and remain on surfaces of objects or materials, i.e. "fomites," for up to twenty-eight (28) days has prompted health officials in

³ <https://www.collinsdictionary.com/us/dictionary/english/loss>

⁴ <https://www.merriam-webster.com/dictionary/loss>

⁵ <https://www.merriam-webster.com/dictionary/loss>

⁶ See e.g. <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last accessed May 23, 2020).

countries like China, Italy, France and Spain to disinfect and fumigate public areas before reopening them.

53. To avoid the increased risk of contracting the virus in congregate environments, the U.S. Centers for Disease Control and Prevention (“CDC”) advised against gatherings of more than 10 people.

C. THE COVERED CAUSE OF LOSS

1. Physical Loss

54. Losses due to the COVID-19 pandemic are a Covered Cause of Loss under the Policy.

55. The presence of virus or disease can constitute physical damage to property, as the insurance industry has recognized since at least 2006. When preparing so-called “virus” exclusions to be placed in some policies, but not others, the insurance industry’s drafting arm, Insurance Services Office, Inc. (“ISO”), circulated a statement to state insurance regulators that stated as follows:

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, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage.

56. The COVID-19 pandemic caused direct physical loss of or damage to the Covered Property under the Policy.

57. The COVID-19 pandemic renders the Covered Property unsafe, uninhabitable, or otherwise unfit for its intended use, which constitutes direct physical loss.

58. Plaintiffs' loss of use of the Covered Property also constitutes direct physical loss.

59. Plaintiffs' business income loss coverage within the Policy was triggered.

2. Civil Authority Orders

60. The presence of COVID-19 has prompted civil authorities throughout the country to issue orders mandating the suspension of non-essential businesses across a wide range of industries, including civil authorities with jurisdiction over Plaintiffs' business.

61. On March 6, 2020, Pennsylvania Governor Tom Wolf signed an emergency disaster declaration triggering a public health state of emergency in the Commonwealth due to COVID-19. *See* the Declaration attached as Exhibit 3.

62. On March 16, 2020, the City of Philadelphia announced the closure of all non-essential businesses. Order attached as Exhibit 4.

63. On March 19, 2020, Pennsylvania Governor Tom Wolf issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operations and close all physical locations until further notice. Businesses that were permitted to remain open were required to follow "social distancing practices and other mitigation measures defined by the Centers for Disease Control." *See* the Order attached as Exhibit 5.

64. On March 22, 2020, Philadelphia Mayor Jim Kenney issued an Emergency Order Temporarily Prohibiting Operation of Non-Essential Business and Congregation of Persons to

Prevent the Spread of 2019 Novel Coronavirus, ordering the closure of all businesses except those previously listed by Governor Wolf as Life-Sustaining Businesses. Order attached as Exhibit 6.

65. On March 23, 2020, Governor Wolf issued a Stay-at-Home Order for residents of Philadelphia, Allegheny, Bucks, Chester, Delaware, Monroe and Montgomery Counties. *See* the Order attached as Exhibit 7

66. On April 1, 2020, Governor Wolf extended the Stay-At-Home Order to the entire Commonwealth of Pennsylvania. *See* the Order attached as Exhibit 8.

67. These Orders, as they related to the closure of all “non-essential businesses”, were due to physical loss and damage of property and evidence awareness on the part of both state and local governments that COVID-19 causes damage vis-à-vis contamination to property. This is particularly true in places such as Plaintiffs’ property and business where the requisite contact and interaction causes a heightened risk of the property becoming contaminated by COVID-19.

68. Plaintiffs’ business income loss was triggered with each restrictive civil authority action and order which prohibited access to the Covered Property.

69. Further, Plaintiffs’ Covered Property suffered “direct physical loss of or damage” due to the Governor of Pennsylvania’s Order (and other local governmental orders) mandating that Plaintiffs and Plaintiffs’ tenants discontinue use of the Covered Property. The Governor’s Order, in and of itself, constitutes a Covered Cause of Loss within the meaning of the Policy.

3. The Virus Exclusion

70. The Policy contains a coverage exclusion for loss or damage caused “[b]y or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease”, (hereinafter, the “Virus Exclusion”). Ex. 1, p. 9.

71. The Virus Exclusion does not preclude coverage for Plaintiffs' claim under the Policy.

72. The insurance industry, through the ISO, and including Defendant, understood that the presence of a virus caused damage to property which would trigger coverage under the business income or Civil Authority coverage forms.

73. Nevertheless, through the ISO, the industry represented to the Insurance Department that there was no coverage for damage caused by viruses under the ISO policies, and therefore, the virus exclusion did not change the policy or reduce coverage. No premium reduction was associated with the addition of the virus exclusion.

74. Plaintiffs did not negotiate for the inclusion of the Virus Exclusion.

75. Plaintiffs did not receive any premium reduction for the inclusion of the Virus Exclusion.

76. Plaintiffs did not receive any benefit or consideration for the inclusion of the Virus Exclusion.

77. Plaintiffs did not receive the benefit of any bargain related to the Virus Exclusion.

78. Defendant received the unilateral benefit of excluding coverage for a risk while also receiving the same or even greater premium for the lesser coverage.

79. A business and/or property owner who was even aware of the virus exclusion would conclude that the exclusion related to liability claims against the insured for transmitting the virus, not property damage claims.

80. To the extent that the governmental orders, in and of themselves, constitute direct physical loss of or damage to Plaintiffs' Covered Property, and/or preclusion of access to the

Covered Property because of a Civil Authority order related to damage to nearby properties, the Virus Exclusion simply does not apply.

81. Defendant should be estopped from enforcing the Virus Exclusion, on principles of regulatory estoppel, as well as general public policy.

82. In 2006, two insurance industry trade groups, Insurance Services Office, Inc. (“ISO”) and the American Association of Insurance Services (“AAIS”), represented hundreds of insurers in a national effort to seek approval from state insurance regulators for the adoption of the Virus Exclusion.

83. In their filings with the various state regulators (including Pennsylvania), on behalf of the insurers, ISO and AAIS represented that the adoption of the Virus Exclusion was only meant to “clarify” that coverage for “disease-causing agents” has never been in effect, and was never intended to be included, in the property policies.

84. Specifically, in its “ISO Circular” dated July 6, 2006 and entitled “New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria,” ISO represented to the state regulatory bodies that:

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage to create sources of recovery for such losses, contrary to policy intent.

85. Similarly, AAIS, in its “Filing Memorandum” in support of the Virus Exclusion, represented:

Property policies have not been, nor were they intended to be, a source of recovery for loss, cost or expense caused by disease-causing agents. With the possibility of a pandemic, there is concern that claims may result in efforts to expand coverage to

create recovery for loss where no coverage was originally intended . . .

This endorsement clarifies that loss, cost, or expense caused by, resulting from, or relating to any virus, bacterium, or other microorganism that causes disease, illness, or physical distress or that is capable of causing disease, illness, or physical distress is excluded...

86. The foregoing representations made by the insurance industry were false.

87. By 2006, the time of the state applications to approve the Virus Exclusion, courts had repeatedly found that property insurance policies covered claims involving disease-causing agents, and had held on numerous occasions that any condition making it impossible to use property for its intended use constituted “physical loss or damage to such property.”

88. Upon information and belief, the insurance department relied on the industry's and Defendant's representation when the department approved the Virus Exclusion for inclusion in standard comprehensive policies without a reduction in premiums to balance a reduction in coverage.

89. The foregoing assertions by the insurance industry (including Defendant), made to obtain regulatory approval of the Virus Exclusion, were misrepresentations and for this reason, among other public policy concerns, Defendant should now be estopped from enforcing the Virus Exclusion to avoid coverage of claims related to the COVID-19 pandemic.

90. In securing approval for the adoption of the Virus Exclusion by misrepresenting to the state regulators that the Virus Exclusion would not change the scope of coverage, Defendant effectively narrowed the scope of the insuring agreement without a commensurate reduction in premiums charged.

91. Under the doctrine of regulatory estoppel, the Court should not permit Defendant to benefit from this type of duplicitous conduct before the state regulators.

92. Upon information and belief, Defendant has denied, or will deny, all claims for coverage under their “all-risk” property damage policies issued by Defendant.

93. Defendant’s denial of lost business income claims left Plaintiffs and similarly situated business without vital coverage acquired to ensure the survival of their business during the suspension of operations.

94. Meanwhile, Defendant receives the benefit of an exclusion for which Plaintiffs and similarly situated insureds received no bargain, reduction of premiums or any benefit whatsoever.

D. IMPACT ON PLAINTIFFS

95. Between March 16 and March 21, 2020, as a direct result of the COVID-19 pandemic and closure Orders referenced herein, Plaintiffs and Plaintiffs’ tenants were forced to close the doors of their non-life sustaining business.

96. Because people -employees and customers- frequent all areas of Plaintiffs’ property, there is an ever-present risk that the Covered Property is contaminated and would continue to be contaminated if the business remained open to the public.

97. Because business is conducted in an enclosed building, the Covered Property is more susceptible to being or becoming contaminated, as respiratory droplets are more likely to remain in the air or infect surfaces within the Covered Property for far longer or with significantly increased frequency as compared to facilities with open-air ventilation.

98. Plaintiffs’ property is highly susceptible to contamination and damage.

99. Plaintiffs’ property is also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the activities of the employees and customers require them to interact in close proximity to the property and to one another.

100. The virus is physically impacting the Covered Property. Any effort by the Defendant to deny the reality that the virus has caused physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger the Plaintiffs and the public.

101. As a direct result of the COVID-19 pandemic and the Closure Orders, Plaintiffs have incurred, and continue to incur, among other things, a substantial loss of business income and additional expenses covered under the Policy.

102. The covered losses incurred by Plaintiffs and owed under the Policy increase daily.

103. Plaintiffs submitted a claim to Defendant under the Policy for its losses.

104. On July 23, 2020, Defendant wrongfully denied Plaintiffs' claim.

105. A declaratory judgment that the Policy provides coverage will ensure that Plaintiffs' reasonable expectations of coverage are met and prevent Plaintiffs from being left without vital coverage acquired to ensure the survival of the business.

106. A declaratory judgment that the Policy provides coverage will also further the public policy of this Commonwealth.

CAUSES OF ACTION

COUNT I **DECLARATORY RELIEF**

107. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

108. The Declaratory Judgments Act, 42 Pa.C.S. §7531 et. seq., provides that a court may “declare the rights, status, and legal relations whether or not further relief is or could be claimed.”

109. The Declaratory Judgments Act may be invoked to interpret the obligations of the parties under an insurance contract. Declaratory relief is intended to minimize the danger of avoidable loss and unnecessary accrual of damages.

110. Plaintiffs request a Declaratory Judgment to affirm that the Policy provides business income coverage because of losses attributable to civil authority actions, and because the denial violates public policy.

111. Plaintiffs further request a Declaratory Judgment that the Exclusion of Loss Due to Virus or Bacteria does not apply to the business income losses incurred by Plaintiffs, and that Defendant is estopped from enforcing the Virus Exclusion.

112. Plaintiffs' interest in the Policy and the declaratory relief sought is direct, substantial, quantifiable, and immediate.

113. An actual controversy has arisen between Plaintiffs and Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policy to reimburse Plaintiffs for its business income loss. Plaintiffs contend and, upon information and belief, Defendant disputes and deny that:

- a. Plaintiffs sustained direct physical loss of or damage to the Covered Property under the Policy;
- b. The Plaintiffs are entitled to coverage for business income loss and extra expense;
- c. The Policy provides business income coverage in the event that COVID-19 directly or indirectly caused a loss and/or damage at the Covered Property or immediate area of the Covered Property;
- d. The closure Orders described herein constitute a prohibition of access to the Covered Property;
- e. The prohibition of access by the closure Orders described herein has specifically prohibited access as defined in the Policy;

- f. The closure Orders described herein trigger coverage;
- g. The Policy provides coverage to Plaintiffs for any current and future closures due to physical loss or damage directly or indirectly resulting from COVID-19 under the Civil Authority Coverage;
- h. The Virus Exclusion is void as against public policy as it pertains to the closure Orders described herein;
- i. The Virus Exclusion does not apply to business income loss or losses from an Order of a civil authority; and
- j. Defendant is estopped from enforcing the Virus Exclusion.

114. Resolution of the duties, responsibilities and obligations of the Parties is necessary as no adequate remedy at law exists and a judicial declaration is required to resolve the dispute and controversy.

COUNT II
BREACH OF CONTRACT - COMPENSATORY RELIEF

115. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

116. At all times relevant hereto, Plaintiffs were insured under the Policy with Defendants.

117. Plaintiffs purchased, elected and paid premiums to Defendant for the property, business income and extra expense, civil authority and additional coverages applicable to the losses claimed in this action.

118. All the information regarding the insureds' business and risks thereof was known to Defendant when the Policy was issued.

119. Plaintiffs are entitled to recover all losses caused by COVID-19 and/or civil authority orders.

120. Defendant was advised of Plaintiffs' claim and demand for coverage under the Policy.

121. Plaintiffs complied with all requirements of the Policy.

122. Defendant is duty bound and obligated to act in good faith towards the insured under the Policy to make fair and reasonable efforts and offers to resolve Plaintiffs' claim.

123. Defendant breached the terms and provisions of the Policy by denying Plaintiffs' claim for all losses caused by COVID-19 and the civil authority orders.

124. The breach of the indemnification obligations under the Policy by Defendant caused Plaintiffs to suffer loss and harm.

125. Defendant is required to pay Plaintiffs all covered losses caused by COVID-19 and civil authority orders including business income, extra expense, contamination civil authority and other coverages under the Policy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment against the Defendant and declare, as a matter of law, the following:

- a. The civil authority orders prohibit access to Plaintiffs' Covered Property;
- b. The civil authority orders prohibit access as defined in the Policy;
- c. The civil authority coverage applies to Plaintiffs due to physical loss or damage at the Covered Property or other premises in the immediate area of the Covered Property;
- d. The Plaintiffs are entitled to coverage for business income loss;
- e. Plaintiffs sustained direct physical loss of or damage to the Covered Property under the Policy;

- f. The Virus Exclusion is void as against public policy as it pertains to the closure Orders described herein;
- g. The Virus Exclusion does not apply to business income loss or losses from an Order of a civil authority;
- h. Defendant is estopped from enforcing the Virus Exclusion;
- i. The inability to use the Covered Property amounts to a physical loss or damage as defined in the Policy;
- j. Defendant's denial of coverage for losses caused by the referenced civil authority orders violates public policy; and
- k. Defendant's denial of coverage for losses caused by the referenced civil authority orders amounts to a breach of contract.

Plaintiffs further seek an Order requiring Defendant to pay Plaintiffs all covered losses caused by loss of access to the Covered Premises, including business income, extra expense, contamination, civil authority and additional coverages under the Policy, and such other relief as the Court deems appropriate.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

ANAPOL WEISS

By: 

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Dated: August 11, 2020

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DEFENDANT.	:	JURY TRIAL DEMANDED

VERIFICATION

I, Ronald Pete, hereby verify that I am authorized to act on behalf of Plaintiffs in the foregoing action. The attached Complaint in Civil Action is based upon information which I have furnished to counsel, and information which has been gathered by counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not mine. I have read the Complaint, and to the extent the statements therein are based upon information I have given counsel, they are true and correct to the best of my knowledge, information and belief. To the extent the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification. I understand that the statements in this Verification are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

By: 
Ronald Pete

DATE: 8-11-2020