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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ROCKLAND FUNDING, L.L.C. d/b/a/
WESTBROOK PARTNERS,

CIVIL DIVISION

CASE NO.

Plaintiff,

v.

ACE AMERICAN INSURANCE
COMPANY; CONTINENTAL
CASUALTY COMPANY; ENDURANCE
AMERICAN SPECIALTY INSURANCE;
EVEREST INDEMNITY INSURANCE
COMPANY; and STARR SURPLUS
LINES INSURANCE COMPANY,

Defendants.

_____ /

**COMPLAINT FOR DECLARATORY RELIEF
AND DAMAGES FOR BREACH OF CONTRACT**

The above-captioned Plaintiff (“Plaintiff” or “Westbrook”) by and through its undersigned counsel, hereby make this Complaint for declaratory relief and damages for breach of contract against its “All Risks” insurers, the above-captioned Defendants (“Defendant Insurers”), who provided insurance coverage to Westbrook expressly designed to respond to the types of losses occasioned by pandemic conditions. This action is necessitated by Defendant Insurers’ failure to indemnify Plaintiff against tens of millions of dollars in losses caused by the SARS-CoV-2 virus and the COVID-19 pandemic, despite coverage clearly available under the various policies (the “Policies”) issued by Defendant Insurers to cover precisely these types of losses. For its complaint, Westbrook alleges as follows:

INTRODUCTION

1. Westbrook is a fully integrated real estate investment management company that operates and manages office, multi-family residential, hotel, retail, industrial and single-family residential development properties throughout the United States. Its properties include some of the premier hotels in the United States, including marquis properties in New York, Miami, Washington D.C., San Francisco, Seattle, and Boston.

2. Beginning in March of 2020, Plaintiff was forced to close or significantly curtail operations at many of the properties it operates and manages due to numerous occurrences involving direct physical loss and damage to property stemming from the COVID-19 pandemic and localized conditions relating to the SARS-CoV-2 virus. Across the United States and around the world, prospective patrons and tenants were under government orders to stay at home or “shelter in place,” preventing them from staying, shopping, working, and patronizing dining and beverage offerings at Westbrook-operated properties.

3. Despite Westbrook’s best efforts to navigate the pandemic, many of its properties have incurred direct physical loss of property and direct physical damage to property (including actual adverse physical alteration of covered property) caused by the SARS-CoV-2 virus and/or COVID-19, as well as losses from resulting suspensions and/or interruption of business activities.

4. More specifically, Plaintiff has incurred substantial losses caused by the actual presence at its properties and/or third-party locations, including, but not limited to, attractions near Westbrook’s properties, of the communicable disease (“COVID-19” or the “disease”) and/or the underlying virus, SARS-CoV-2.

5. Westbrook has incurred additional losses resulting from the *threat* posed to property and persons at its properties and/or third-party locations by the physical prevalence of the SARS-CoV-2 virus and COVID-19 in the communities in which Westbrook or its business

partners (including, but not limited to, customers and suppliers) do business. The threat of the SARS-CoV-2 virus spreading to Westbrook and nearby non-Westbrook properties has rendered many of Plaintiff's properties, at least temporarily, unreasonably dangerous and/or unfit for their intended purposes until safe occupancy and operation can be assured through the undertaking of extraordinary remedial or preventative measures.

6. These threats also resulted in an unprecedented number of governmental orders requiring, at various times and in various locations, shutdowns, lockdowns, building closures, quarantines, travel restrictions, and operating restrictions, all of which substantially impacted, continue to impact, and will impact for the foreseeable future, the operations and activities of Westbrook, its patrons, and its business partners. All of the different orders that resulted in losses to Westbrook were caused by pandemic conditions, including direct physical damage to property (including adverse physical alteration of such property) of the type covered under its policies and within five miles of the affected covered locations.

7. The harms to Westbrook include direct physical loss and direct physical damage to its properties that have been adversely altered by the virus or that have been rendered unreasonably dangerous and/or unfit for their intended purpose; substantial time-element losses due to partial or complete property closures, government-ordered suspensions of travel and business activities, and other interruptions due to the actual and/or the threatened presence of the virus and/or resulting disease; substantial extra expenses, logistical costs and expediting costs to safely resume or continue operations; substantial claims preparation costs; and other losses incurred across numerous Westbrook properties and locations throughout the United States.

8. The harms to Westbrook also include Contingent Time Element losses resulting from direct physical loss or damage of the type insured under its policies (including adverse

physical alteration of such property) to property of the type insured under its policies at locations of Westbrook's direct suppliers and customers, resulting in substantial loss of business to the various Westbrook properties for which coverage is sought, as well as Attraction location losses arising from direct physical loss or damage to property (including adverse physical alteration of such property) of the kind covered under this policy at nearby locations that attract customers to Westbrook's properties.

9. The harms to Westbrook also include loss and extra expense resulting from business interruption due to the prevention of ingress and egress directly resulting from physical damage of the type insured under its policies (including adverse physical alteration of such property) to kinds of property not excluded by the Policies.

10. Westbrook is continuing to experience physical loss or damage to its properties and interruption of its business as the pandemic continues. While Westbrook is continuing to assess the losses incurred by its businesses as of the date of this filing, the impact to date is believed to exceed \$200 million in direct physical loss or damage to property and in lost business income that would not have occurred but for the pandemic.

11. Westbrook fortunately had the foresight to purchase broad insurance protection against the potentially catastrophic risks posed by events such as a pandemic. For premiums totaling more than \$5 million, Plaintiff procured broad "All Risks" coverage under policies issued by the Defendant Insurers (the "Policies"), precisely to insure against the losses Westbrook has incurred and continues to incur.

12. The Policies, in the form delivered to Westbrook by each of the Defendant Insurers, are being filed simultaneously herewith and are incorporated herein by reference. The versions of the Policies delivered to Westbrook by each of the Defendant Insurers and filed with the Court are

subject to confirmation for accuracy and completeness during the discovery process (including, but not limited to, determination whether the Policies include appropriate state-specific endorsements, whether they must be conformed to comply with applicable state-specific requirements, and whether they faithfully reflect the agreement between the parties as to the scope of coverage and exclusions). Westbrook reserves all rights in that regard.

13. The Policies provide coverage designed to address the principal economic consequence of pandemics: lockdowns, building closures, and other interruptions triggered by the threat that off-site prevalence of the virus will spread to uninfected properties that could become disease vectors if permitted to operate “as usual” during the pandemic. The Policies thus specifically address the principal economic harm arising from the highly unusual event of pandemic-caused interruptions to business, by providing coverage for losses resulting from the *threat* that the off-site virus will spread to insured Westbrook properties.

14. The Policies’ coverage for *threat*-based interruptions to business (as opposed to, or in addition to, interruptions resulting from the *actual or suspected* on-site presence of the SARS-CoV-2 virus) has been triggered here, as many Westbrook or nearby non-Westbrook properties experienced, for example, closures that were instituted as a response to the threat that local outbreaks of COVID-19 within five (5) miles of Plaintiff’s covered properties could spread to hotels, offices, and residential buildings, such as Westbrook’s and/or those of third parties.

15. Befitting the top dollar Westbrook paid for best-in-class insurance coverage, the Policies provide many other broad protections against a wide range of pandemic-related losses, including direct loss and damage to property and associated time-element loss, losses due to government-ordered shutdown, losses due to impaired ingress to or egress from Westbrook properties, contingent time element losses, extra expenses and logistical costs to remain in business

despite pandemic conditions, claims preparation costs, losses directly resulting from any communicable disease confirmed to be at Westbrook locations, and other forms of coverage.

16. In total, the Policies provides coverage of up to \$500 million per occurrence for precisely the types of losses incurred by Westbrook and at issue in this action.

17. Even though Westbrook's past and ongoing losses fall within the Policies' coverages, Defendant Insurers have denied coverage to Plaintiff, in whole or in part.

18. Those denials cause Westbrook to conclude that an actual controversy exists between the Parties concerning Plaintiff's right to coverage for its COVID-19 related losses.

19. As a consequence of Defendant Insurers' failure to honor their coverage obligations under the Policies, Westbrook is now compelled to file this lawsuit for damages, declaratory relief, and other relief.

PARTIES

20. Plaintiff Rockland Funding, LLC d/b/a/ Westbrook Partners is a Delaware limited liability company with its principal place of business at 7121 Fairway Drive, Suite 410, Palm Beach Gardens, FL 33418.

21. Upon information and belief, Defendant ACE American Insurance Company ("ACE American") is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. ACE American provides insurance products and services throughout the United States, including in Florida.

22. Upon information and belief, Defendant Continental Casualty Company ("CNA") is an Illinois corporation with its principal place of business in Chicago, Illinois. CNA provides insurance products and services throughout the United States, including in Florida.

23. Upon information and belief, Defendant Endurance American Specialty Insurance Company ("Sompo") is a Delaware corporation with its principal place of business in Wilmington,

Delaware. Sompo provides insurance products and services throughout the United States, including in Florida.

24. Upon information and belief, Defendant Everest Indemnity Insurance Company (“Everest”) is a Delaware corporation with its principal place of business in Liberty Corner, New Jersey. Everest provides insurance products and services throughout the United States, including in Florida.

25. Upon information and belief, Defendant Starr Surplus Lines Insurance Company (“Starr”) is a Texas corporation with its principal place of business in New York, New York. Starr provides insurance products and services throughout the United States, including in Florida.

JURISDICTION AND VENUE

26. Pursuant to Florida Rules of Civil Practice and Procedure §§ 48.193(1)(a) and 48.193(2), this Court has jurisdiction over the parties and this matter because the Defendant Insurers: (i) operate, conduct, engage in, or do business within the State of Florida, (ii) contracted to insure a person, property, or risk located within the State of Florida at the time of contracting, (iii) breached a contract in the State of Florida by failing to perform acts required by the contract to be performed in the State of Florida, and/or (iv) engage in substantial and not isolated activity in the State of Florida. The value of Plaintiff’s claim exceeds the required amount.

27. Venue is proper in Palm Beach County under Florida Rules of Civil Practice and Procedure §§ 47.011 and 47.051 because it is where the cause of action accrued.

FACTUAL BACKGROUND

A. WESTBROOK

28. Westbrook is a leading real estate investment management company that operates and manages a number of the premier properties in the United States, including office buildings,

multi-family residential buildings, hotels, retail space, industrial buildings, and single-family residential development properties.

29. Westbrook manages and operates properties across the United States, including but not limited to, the Ritz Carlton hotels in New York, Boston, and Washington D.C., Four Seasons hotels in Miami and San Francisco and a Hilton in Seattle. Many of the properties Westbrook manages and operates offer restaurants and other dining options for patrons.

30. Westbrook manages and/or operates properties in Florida, New York, California, Washington State, Massachusetts, Washington D.C., Maryland, and Virginia.

B. THE POLICIES

1. ACE American

31. ACE American provided coverage to Westbrook under Policy No. MAUD37870006 005 (the “ACE American Policy”) for the period August 1, 2019 to August 1, 2020. *See* ACE American Policy, filed simultaneously with the clerk at Exhibit A, at 3. The terms and conditions of the ACE American Policy, as delivered by ACE American to Westbrook, are subject to confirmation during discovery as to accuracy and completeness (including, *e.g.*, with respect to state-specific endorsements and with respect to fidelity with the parties’ agreement as to terms and conditions), and Westbrook reserves all rights with respect to the contents of the ACE American Policy.

32. The ACE American Policy “covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located at an Insured location or within 1,000 feet thereof.”¹ *See* ACE American Policy at 3.

¹ All quotations from the ACE American Policy retain emphasis therein, including capitalized and bolded terms, unless otherwise noted. All other emphasis in quoted material is noted.

33. The ACE American Policy provides broad coverage, with ACE American agreeing to provide numerous coverages implicated by Westbrook's pandemic-related losses, including, but not limited to, Direct Property Loss or Damage, Time Element Losses, Losses due to orders of Civil Authority, Losses due to Impairment of Ingress or Egress, Contingent Time Element Losses, Contingent Property Damage, Protection and Preservation of Property Coverage, Decontamination Costs, Expediting Costs and Extra Expense, Rental and Leasehold Coverages, Tenant Relocation/Move-Out/Move-Back Coverage, and Professional Fees incurred in preparing its claims. *See generally* ACE American Policy.

34. The ACE American Policy provides coverage to Westbrook's insured locations nationwide. *See* ACE American Policy at 3.

2. CNA

35. CNA provided coverage to Westbrook under Policy No. 6072927273 (the "CNA Policy") for the period August 1, 2019 to August 1, 2020. *See* CNA Policy, filed simultaneously with the clerk at Exhibit B, at 3. The terms and conditions of the CNA Policy, as delivered by CNA to Westbrook, are subject to confirmation during discovery as to accuracy and completeness (including, *e.g.*, with respect to state-specific endorsements and with respect to fidelity with the parties' agreement as to terms and conditions), and Westbrook reserves all rights with respect to the contents of the CNA Policy.

36. The CNA 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."² *See* CNA Policy at 3.

² All quotations from the CNA Policy retain emphasis therein, including capitalized and bolded terms, unless otherwise noted. All other emphasis in quoted material is noted.

37. The CNA Policy provides broad coverage, with CNA agreeing to provide numerous coverages implicated by Westbrook's pandemic-related losses, including, but not limited to, Direct Property Loss or Damage, Time Element Losses, Losses due to orders of Civil Authority, Losses due to Impairment of Ingress or Egress, Cancellation Coverage, Contingent Time Element Losses, Contingent Property Damage, Protection and Preservation of Property Coverage, Closings Due to Death or Disease, Decontamination Costs, Expediting Costs and Extra Expense, Attraction Property Coverage, Rental and Leasehold Coverages, Tenant Relocation/Move-Out/Move-Back Coverage, and Professional Fees incurred in preparing its claims. *See generally* CNA Policy.

38. The CNA Policy provides coverage to Westbrook's insured locations in the United States and Canada. *See* CNA Policy at 3.

3. Sompo

39. Sompo provided coverage to Westbrook under Policy No. GPR10009654403 (the "Sompo Policy") for the period August 1, 2019 to August 1, 2020. *See* Sompo Policy, filed simultaneously with the clerk at Exhibit C, at 3. The terms and conditions of the Sompo Policy, as delivered by Sompo to Westbrook, are subject to confirmation during discovery as to accuracy and completeness (including, *e.g.*, with respect to state-specific endorsements and with respect to fidelity with the parties' agreement as to terms and conditions), and Westbrook reserves all rights with respect to the contents of the Sompo Policy.

40. The Sompo 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."³ *See* Sompo Policy at 3.

³ All quotations from the Sompo Policy retain emphasis therein, including capitalized and bolded terms, unless otherwise noted. All other emphasis in quoted material is noted.

41. The Sompo Policy provides broad coverage, with Sompo agreeing to provide numerous coverages implicated by Westbrook's pandemic-related losses, including, but not limited to, Direct Property Loss or Damage, Time Element Losses, Losses due to orders of Civil Authority, Losses due to Impairment of Ingress or Egress, Contingent Time Element Losses, Protection and Preservation of Property Coverage, Attraction Property Coverage, Rental and Leasehold Coverages, Expediting Costs and Extra Expense, and Professional Fees incurred in preparing its claims. *See generally* Sompo Policy.

42. The Sompo Policy provides coverage to Westbrook's insured locations in the United States and Canada. *See* Sompo Policy at 3.

4. Everest

43. Everest provided coverage to Westbrook under Policy No. RP5CF00086-191 (the "Everest Policy") for the period August 1, 2019 to August 1, 2020. *See* Everest Policy, filed simultaneously with the clerk at Exhibit D, at 3. The terms and conditions of the Everest Policy, as delivered by Everest to Westbrook, are subject to confirmation during discovery as to accuracy and completeness (including, *e.g.*, with respect to state-specific endorsements and with respect to fidelity with the parties' agreement as to terms and conditions), and Westbrook reserves all rights with respect to the contents of the Everest Policy.

44. The Everest 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."⁴ *See* Everest Policy at 3.

⁴ All quotations from the Everest Policy retain emphasis therein, including capitalized and bolded terms, unless otherwise noted. All other emphasis in quoted material is noted.

45. The Everest Policy provides broad coverage, with Everest agreeing to provide numerous coverages implicated by Westbrook's pandemic-related losses, including, but not limited to, Direct Property Loss or Damage, Time Element Losses, Losses due to orders of Civil Authority, Losses due to Impairment of Ingress or Egress, Cancellation Coverage, Contingent Time Element Losses, Contingent Property Damage, Closings Due to Death or Disease, Decontamination Costs, Protection and Preservation of Property Coverage, Attraction Property Coverage, Rental and Leasehold Coverages, Tenant Relocation/Move-Out/Move-Back Coverage, Expediting Costs and Extra Expense, and Professional Fees incurred in preparing its claims. *See generally* Everest Policy.

46. The Everest Policy provides coverage to Westbrook's insured locations in the United States and Canada. *See* Everest Policy at 3.

5. Starr

47. Starr provided coverage to Westbrook under Policy No. SLSTPTY11214119 (the "Starr Policy") for the period August 1, 2019 to August 1, 2020. *See* Starr Policy, filed simultaneously with the clerk at Exhibit E, at 3. The terms and conditions of the Starr Policy, as delivered by Starr to Westbrook, are subject to confirmation during discovery as to accuracy and completeness (including, *e.g.*, with respect to state-specific endorsements and with respect to fidelity with the parties' agreement as to terms and conditions), and Westbrook reserves all rights with respect to the contents of the Starr Policy.

48. The Starr 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.”⁵ See Starr Policy at 3.

49. The Starr Policy provides broad coverage, with Starr agreeing to provide numerous coverages implicated by Westbrook’s pandemic-related losses, including, but not limited to, Direct Property Loss or Damage, Time Element Losses, Losses due to orders of Civil Authority, Losses due to Impairment of Ingress or Egress, Contingent Time Element Losses, Contingent Property Damage, Closings Due to Death or Disease, Decontamination Costs, Protection and Preservation of Property Coverage, Attraction Property Coverage, Rental and Leasehold Coverages, Tenant Relocation/Move-Out/Move-Back Coverage, Expediting Costs and Extra Expense, and Professional Fees incurred in preparing its claims. See generally Starr Policy.

50. The Starr Policy provides coverage to Westbrook’s insured locations in the United States and Canada. See Starr Policy at 3.

C. **THE SARS-COV-2 VIRUS AND THE COVID-19 GLOBAL PANDEMIC**

51. The SARS-CoV-2 virus was identified in China in late 2019 or January 2020 as the cause of a severe respiratory illness known as COVID-19.

52. In early 2020, the SARS-CoV-2 virus began spreading in the United States and Canada, with broad community spread underway in many states, including, but not limited to, New York, California, Florida, Washington state, and Massachusetts in March 2020.

⁵ All quotations from the Starr Policy retain emphasis therein, including capitalized and bolded terms, unless otherwise noted. All other emphasis in quoted material is noted.

53. The SARS-CoV-2 virus has spread across the globe, resulting in a worldwide pandemic that has caused tens of millions of infections and at least two million deaths, including more than 500,000 in the United States.

54. Governmental authorities and private companies (including Westbrook) and individuals have taken actions in response to the SARS-CoV-2 virus and the COVID-19 pandemic. These actions have included, without limitation:

- a. Governmental orders of various kinds, including:
 - i. Orders restricting or prohibiting travel both internationally and within national borders;
 - ii. Quarantine orders applicable to individuals infected by or potentially exposed to the SARS-CoV-2 virus, whether or not infected or symptomatic;
 - iii. Orders closing or limiting businesses confirmed to have experienced the actual presence of either the SARS-CoV-2 virus or confirmed cases of COVID-19 at their premises;
 - iv. Orders closing businesses or limiting commercial activity at locations without the confirmed or suspected presence of the SARS-CoV-2 virus but without any actual or suspected cases of COVID-19 at their premises, based on their geographic proximity to places where the SARS-CoV-2 virus was confirmed to be present, where cases of COVID-19 occurred, and where property loss or damage has resulted from the presence of the SARS-CoV-2 virus.
- b. Responses of various kinds by private business (including Westbrook), including but not limited to:
 - i. **Remediating or Replacing Physical Property Adversely Altered by the SARS-CoV-2 Virus Adhering to the Property:** Remediation and/or disposal and/or replacement of personal property and real property that had been physically contacted and adversely altered by virus-containing materials (including respiratory particles, phlegm, and other materials) expelled by persons with COVID-19;
 - ii. **Business Shutdowns Due to Either the Virus (SARS-CoV-2) or the Resulting Disease (COVID-19) Being Present at a Location:** When disease outbreaks occur at a facility, or when other

circumstances create a suspicion that the SARS-CoV-2 virus is present, a common and necessary response is to shut down the facility and undertake remedial efforts;

- iii. **Time Element Loss Due to the SARS-CoV-2 Virus and/or COVID-19 Being in the Community (Even if Not at the Business Location):** Suspension of business activities due to business premises being rendered unreasonably dangerous for occupancy and unfit for their ordinary or intended purposes (even in cases in which SARS-CoV-2 virus and/or COVID-19 was neither actually present nor suspected to be present at the business location), due to pandemic conditions and the threat posed by SARS-CoV-2 virus and/or COVID-19 in general geographic proximity (*i.e.*, within five miles) of the business location;
- iv. **Extra Expenses to Remain Operational Even With COVID-19 at the Business Location:** Undertaking out-of-the-ordinary activities and expenses, such as testing, protective equipment, reconfiguration of work spaces for social distancing, reduced or staggered schedules, facilitation of remote work, etc., in order to continue operations at a business location or at replacement locations and to mitigate the effects of shutdowns or slowdowns caused by the actual presence of COVID-19 at a facility;
- v. **Extra Expenses and Expediting Costs to Remain Operational Even With the SARS-CoV-2 Virus and/or COVID-19 Being in the Community (Even if Not at the Business Location):** Undertaking out-of-the-ordinary activities and expenses, such as testing, protective equipment, reconfiguration of public and private spaces for social distancing, reduced or staggered schedules, facilitation of remote work, etc., in order to render properties safe for occupancy and fit for their ordinary purpose or intended purposes (even in cases in which the SARS-CoV-2 virus and/or COVID-19 was neither actually present nor suspected to be present at the business location), due to pandemic conditions and the threat posed by the SARS-CoV-2 virus and/or COVID-19 in geographic proximity to the business location;
- vi. **Professional Fees:** Retention of outside financial and operational experts to document and calculate losses arising from the SARS-CoV-2 virus and/or COVID-19.

D. THE SARS-COV-2 VIRUS HAS PARTICULAR QUALITIES THAT MAKE IT UNIQUELY DANGEROUS TO HUMAN HEALTH AND DEVASTATING TO BUSINESSES AND ECONOMIES

55. The SARS-CoV-2 virus is a respiratory virus that causes COVID-19 (as opposed to its variant, the SARS-CoV-1 virus, which caused the SARS pandemic in the early 2000s). COVID-19 is a dangerous and potentially fatal communicable disease. The SARS-CoV-2 virus can be transmitted by human-to-human contact, airborne viral particles in ambient air, and contact with affected surfaces or objects. According to research published in The Journal of the American Medical Association, a person who sneezes can release a cloud of pathogen-bearing droplets that can span as far as 23 to 27 feet. The United States Centers for Disease Control and Prevention (“CDC”) has stated that the SARS-CoV-2 virus is most likely to spread person-to-person when people are within six feet of each other, but has acknowledged that the virus also may spread from an infected person who is more than six feet away or even who has left a given space.

56. The SARS-CoV-2 virus is uniquely dangerous, for reasons that include the following:

- Many viruses do not cause communicable diseases; SARS-CoV-2 does cause communicable disease.
- Many viruses do not infect humans; SARS-CoV-2 does infect humans.
- Even among viruses that infect humans, many are incapable of direct transmission from human to human; SARS-CoV-2 is capable of human-to-human transmission.
- Even among viruses that transmit between humans, many do not threaten serious illness or any illness at all; SARS-CoV-2 poses a substantial threat of serious illness and even death.
- Even among viruses that can cause serious human illness, many are not contagious until after the carrier has become symptomatic, thus allowing affected individuals to isolate themselves before spreading the virus. By contrast, SARS-CoV-2 has been shown to be transmittable during a pre-symptomatic incubation period of up to 21 days before symptoms appear; even more worrisome, the SARS-CoV-2 virus is transmittable by the

estimated 40% to 70% of human carriers who *never* exhibit any symptoms. Whether or not symptoms of COVID-19 ever appear, human carriers of SARS-CoV-2 are believed to be especially contagious during the “pre-symptomatic incubation” period due to high viral loads coupled with a lack of awareness that they are infected and must isolate.

- Finally, few if any viruses have resulted in the widespread illness, death, loss and damage to property, and economic devastation already wrought by SARS-CoV-2 (and new variants of the virus have evolved during this crisis that appear to be worsening and/or extending the pandemic).

Thus, unique among viruses, SARS-CoV-2 has caused unprecedented levels of illness, death, and global economic calamity.

E. WHEN SARS-COV-2 VIRAL PARTICLES COME IN CONTACT WITH PROPERTY, THAT PROPERTY SUFFERS ACTUAL PHYSICAL DAMAGE (INCLUDING ADVERSE ALTERATION)

57. To understand why the SARS-CoV-2 virus has had such devastating health consequences and also has resulted in so much physical loss and damage to property and so many government-ordered or privately undertaken business shutdowns, one must understand the manner in which the virus interacts with the physical environment and why SARS-CoV-2 triggers the insurance protection provided by the Defendant Insurers for exactly these types of losses.

58. The SARS-CoV-2 virus is expelled from the mouth and/or nose, and it travels within respiratory droplets when humans cough, sneeze, scream, sing, or even speak loudly or breathe heavily.

59. Mouth and nose secretions, including saliva, nasal discharge, and respiratory secretions such as mucus, form an aerosol cloud in the surrounding air. The expelled aqueous droplets contain multiple copies of suspended infectious SARS-CoV-2 viral particles. The mouth- and nose- emitted droplets are approximately spherical in shape and widely vary by size. Scientific literature somewhat arbitrarily divides these droplets into “small” droplets (those less than about 5 microns in diameter) and “large” droplets (those exceeding about 5 microns in diameter).

Because the SARS-CoV-2 viral particle diameter is roughly 100 nanometers (*i.e.*, 0.1 microns) even a 5-micron respiratory droplet can easily accommodate *many thousands* of SARS-CoV-2 viral particles.

60. Droplet *size* is the most important determinant of aerosol behavior, including the length of travel of the expelled respiratory droplets. Large droplets (as defined above) within an aerosol plume are strongly affected by gravity; for example, 50- to 100-micron droplets typically will travel only up to a couple of meters before they fall to the ground or land on another surface. In contrast, small droplets (as defined above) can remain airborne almost indefinitely under most indoor conditions and can travel with air currents long distances. Whatever their size, virus-containing droplets eventually encounter physical objects and surfaces (called fomites) and can settle there.

61. Once expelled from the mouth and/or nose, aqueous droplets, including virus-containing ones, can attach to surfaces. The suspended viral particles can then themselves collide with the surface and nonspecifically adsorb to it (*i.e.*, form a noncovalent chemical bond with the surface). Furthermore, the landed droplet's water will undergo evaporation, and eventually some fraction of the viral particles may end up being deposited onto the surface either directly or indirectly (*i.e.*, through other solids contained in the droplet).

62. There is a distinction between viral particles that are *adsorbed* to a host surface and those simply *deposited* onto it. In the former case, as stated above, there is an actual chemical bond (albeit a relatively weak one) between the viral particle and the surface; in this scenario, the virus particle is relatively hard to detach. In contrast, the deposition entails merely a physical presence of the viral particle on the surface (akin to spilled flour) and is readily reversible; in this instance, the virus is relatively easy to remove from the surface.

63. In addition, there are various intermediate scenarios in between the virus being adsorbed and merely deposited. For example, some endogenous polymeric molecules present in respiratory droplets (such as polysaccharides and proteins) may act as a “bridge” binding the virus to the surface. Also, electrostatic attraction between the surface and the viral particles may play a role in addition to basic gravity. Furthermore, porous objects like fabrics represent a special case because they may entrap viral particles, thus making them hard to access, inactivate, or remove. In this case, the original respiratory droplets are first absorbed by the fabric; once their water subsequently evaporates, the viral particles become embedded and entangled within the bulk of the object.

64. The type of bond that forms between viral particles and physical objects varies depending on the type of object, and often markedly so. The interaction of *both* the virus-containing respiratory aqueous droplets *and* the viral particles themselves with surfaces depends on the nature of the latter. For example, when it adheres to a clean glass (or another hydrophilic) surface, an aqueous droplet spreads out; this increases the droplet’s footprint on the surface and facilitates evaporation of the moisture. In contrast, when an aqueous droplet lands on plastic objects (or other objects with hydrophobic or greasy surfaces), it beads up, thereby minimizing its contact area and diminishing the evaporation. Likewise, the viral particle’s propensity to adsorb to a surface strongly depends on the nature of the latter: in general, one would expect the tendency of the viral particles to adsorb to be more pronounced in the case of hydrophobic, as opposed to hydrophilic, surfaces. Furthermore, whether an adhered (deposited, adsorbed, or in between) viral particle remains stuck to the surface and, if so, whether it retains its infectivity should depend on the properties of the host surface as well.

65. With respect to the retention of the viral particles on the surface, numerous *additional* factors (*i.e.*, those besides the type of the host object) may have a substantial effect: how smooth and clean the surface is, temperature, relative humidity, and airflow (*e.g.*, ventilation).

66. The bond between viral particles and physical objects persists until broken through intervening forces. An effective way to break the bond between the viral particles and a surface they have adhered to is to wash the surface with water containing detergents (*e.g.*, soapy water) or organic solvents, such as alcohol (ethanol). In doing so, energetic rubbing will be more effective in removing the viral particles than gentle flushing. The underlying mechanisms here are that physically deposited viral particles can be washed off and adsorbed ones can be desorbed by such treatments. While some disinfectants, such as aqueous detergents, can both inactivate the virus and remove it from surfaces, some others, like fumigants and ultraviolet light, only inactivate.

67. If left undisturbed, the virus-surface bond will persist. Whether adsorbed or simply physically deposited (and in various intermediate scenarios), viral particles will remain on the surface indefinitely if left undisturbed. Some studies suggest that SARS-CoV-2 can be detected on certain surfaces many weeks after infected persons have departed, with the SARS-CoV-2 virus remaining viable for as long as seven days on a range of common surfaces, including plastic, stainless steel, glass, and wood; other researchers have found viable SARS-CoV-2 samples on glass, stainless steel, and paper currency for up to approximately a month under indoor conditions.

68. Physical objects that have been altered through the formation of a bond with viral particles are dangerous. Humans can become infected by touching, or otherwise coming in contact with, an object to which viral particles have attached for as long as the virus remains infective. In fact, this is one of the three recognized main mechanisms of spreading COVID-19; the other two are a direct transmission from an infected person to people in close proximity via large respiratory

droplets (“person-to-person transmission”; if inhaled, such large droplets deposit primarily in the upper airways of the head and neck) and also an indirect transmission via small aerosol particles traveling over long distances (“airborne transmission”; if inhaled, such small droplets deposit primarily in the lower respiratory tract). When a person touches a surface containing an infectious virus and then his/her mouth, eyes, or nose, the person may become infected. Which of these three disease transmission mechanisms is dominant varies widely and is highly circumstance-specific.

69. Airborne transmission can be exacerbated through HVAC systems that are defective and rendered unreasonably dangerous through the absorption and then redistribution of SARS-CoV-2 viral particles across entire buildings, with studies finding wide dispersion of the SARS-CoV-2 virus and confirmed presence on ceiling vent openings, vent exhaust filters, ductwork and other surfaces more than 50 meters from the original human source.

70. By bonding with, and becoming part of, the property that it comes in contact with, the SARS-CoV-2 virus adversely alters the physical object, as well as the facility or building in which that object is located. Both the object and the building are transformed from safe for occupancy and commercial activity to property that is uninhabitable, unfit for its intended purpose, dangerous and, indeed, potentially deadly. In short, the property is physically damaged. And even the owners of personal property or buildings that are potentially infected or under threat of infection if used or occupied during a pandemic have effectively incurred a loss to property, because – simply put – the personal property or buildings are no longer safe, habitable or fit for their intended purpose until the pandemic conditions have been controlled and ultimately eliminated.

F. THE IMPACT OF THE COVID-19 PANDEMIC ON WESTBROOK'S BUSINESSES

71. As a consequence of the global pandemic, Westbrook has undertaken the activities identified in Paragraph 54(b)(i)-(vi), at substantial cost.

72. Westbrook has incurred substantial loss—including but not limited to loss or damage to property, time-element losses, Extra Expenses and Expediting Costs—as a result of the presence of COVID-19 at various of its properties.

73. Numerous Westbrook properties have incurred covered loss or damage to property, time-element losses due to government or private closures or suspensions of business, loss of ingress or egress, losses due to Cancellation, losses due to Closings Due to Death or Disease, Extra Expenses, and/or Expediting Costs.

74. Westbrook has incurred substantial loss—including but not limited to physical loss or damage to property, time-element losses, Extra Expenses and/or Expediting Costs—even in cases in which the SARS-CoV-2 virus and/or COVID-19 was neither actually present nor suspected to be present at the insured location, due to pandemic conditions and the threat posed by the SARS-CoV-2 virus and/or COVID-19 in general geographic proximity (*i.e.*, within five miles) of the insured location.

75. The Policies provide several different types of coverages applicable or potentially applicable to Westbrook's past, current, and future COVID-19 losses, including, but not limited to, the following.

1. Loss or Damage to Property and Direct Time Element Losses:

76. The Policies provide combined primary coverage of up to \$500 million per occurrence for physical loss or damage to Real Property and/or Personal Property (as defined in the Policies), unless such property is excluded or results from an excluded cause of loss. This

coverage extends to physical loss or damage to covered property caused by the presence of the SARS-CoV-2 virus and/or incidences of COVID-19 at specific Westbrook properties locations.

77. Westbrook has incurred substantial covered losses as a consequence of loss or damage to its property as a result of direct exposure of (and actual adverse physical alteration of) its own covered Real Property and Personal Property. This actual adverse physical alteration of its property as a result of the SARS-CoV-2 virus adhering to the property has resulted in loss due to the adherence of the SARS-CoV-2 virus to physical property and resulting adverse alteration of the property, requiring either remediation or disposal and replacement.

78. The Policies' coverage also extends to physical loss to covered property as a result of the *threat* of SARS-CoV-2 becoming present at Westbrook properties locations and the resulting danger posed by such locations becoming a disease vector for COVID-19. Such *threat of virus* has caused covered loss both at Westbrook properties and those of third parties (such as Westbrook's customers and suppliers).

79. The Policies also covers "Time Element" loss as a result of the SARS-CoV-2-virus-related physical loss or damage described above.

80. Westbrook is entitled to recover its covered losses with respect to physical loss or damage to its property, and resulting Time Element losses, up to the limits provided in the Policies.

81. The Defendant Insurers have not paid Westbrook for any of its covered Property Damage or Time Element losses.

2. Losses Due to Orders of Civil Authority:

82. The Policies provide up to 90 days per occurrence for losses resulting from the temporary closure or suspension of activities at Westbrook's insured locations as a result of orders of civil or military authority occasioned by SARS-CoV-2-virus-caused damage to property of the type covered under the Policies near covered locations.

83. Westbrook has incurred substantial covered losses due to Orders of Civil or Military Authority that were entered as a consequence of damage to property of Westbrook and/or to property belonging to third parties. Such damage to property was of the type covered under the Policies (including, without limitation, (a) damage to property caused by communicable disease (*i.e.*, COVID-19), (b) damage to property caused by exposure to the SARS-CoV-2 virus, and (c) damage to property caused by the threat of exposure to the SARS-CoV-2 virus). Such damage to property occurred within five miles of the covered Westbrook properties incurring the covered losses due to the Orders of Civil or Military Authority.

84. Westbrook is entitled to recover its covered Civil or Military Authority losses, up to the limits provided in the Policies.

85. The Defendant Insurers have not paid Westbrook for any of its covered Civil or Military Authority losses.

3. Losses Due to Impairment of Ingress or Egress:

86. The Policies provide up to 90 days for time-element losses due to the prevention of ingress to or egress from covered locations.

87. Due to restrictions on travel or movement occasioned by SARS-CoV-2-virus-caused loss or physical damage to property, Westbrook has incurred substantial covered losses due to Loss of Ingress or Egress as a consequence of COVID-19.

88. Westbrook is entitled to recover its covered Ingress-Egress losses, up to the limits provided in the Policies.

89. The Defendant Insurers have not paid Westbrook for any of its covered Ingress-Egress Losses.

4. Contingent Time-Element Losses:

90. The Policies provide up to \$100 million per occurrence for time-element losses resulting from physical loss or damage of the type insured to property of Westbrook's customers and suppliers.

91. Numerous of Westbrook's customers and suppliers have incurred physical loss or damage of the type covered by the Policies at property of the type insured in the United States and Canada.

92. Westbrook is entitled to recover its covered Contingent Time Element Losses, up to the limits provided in the Policies.

93. The Defendant Insurers have not paid Westbrook for any of its covered Contingent Time Element Losses.

5. Expediting Costs and Extra Expenses:

94. The Policies provide coverage up to the policy limits for Expediting Costs and Extra Expenses incurred by Westbrook to minimize covered losses.

95. Westbrook has incurred substantial covered Expediting Costs and Extra Expenses in order to minimize covered losses relating to COVID-19.

96. Westbrook is entitled to recover its covered Expediting Costs and Extra Expenses incurred to minimize covered losses, up to the limits provided in the Policies.

97. The Defendant Insurers have not paid Westbrook for any of its Expediting Costs and Extra Expenses incurred to minimize covered losses.

6. Attraction Properties

98. The Policies provide coverage up to the policy limits for "loss or damage to real and personal property located at Attraction properties, defined as properties not operated by the

Insured, which attract potential customers to the vicinity of the Insured Locations,” or words substantially to the same effect.

99. Westbrook has incurred substantial losses due to the loss of business as a result of damage to real and personal property located at Attraction properties.

100. Westbrook is entitled to recover its covered Attraction properties losses, up to the limits provided in the Policies.

101. The Defendant Insurers have not paid Westbrook for any of its Attraction properties losses.

7. Other Available Coverages

102. The foregoing is not intended to be an exhaustive list of the various coverages available to Westbrook under the Policies for its pandemic-related losses. Westbrook hereby seeks all available coverages with respect to losses relating to COVID-19, and reserves all rights as to all such coverages.

103. At least some of the Defendant Insurers (including Starr, CNA and Everest) are in the process of adjusting Westbrook claims under coverages for loss due to death or disease and for loss due to cancellation of bookings. Westbrook does not understand these insurers to dispute either coverage for such losses or the amount, but it reserves the right to seek coverage in the full amount of these losses in the event this understanding is not correct.

8. Liberalization of Policies

104. At least some of the losses incurred by Westbrook are insured pursuant to state-specific endorsements and/or state-specific statutes or regulations that modify the terms of some or all of the Policies by operation of law and/or by operation of various conditions requiring compliance with state requirements and/or liberalization of policy terms to reflect state-specific requirements. On information and belief, one or more insurers failed to include required

endorsements reflecting such state-specific requirements that operate to revoke or modify exclusions or otherwise require coverage to be provided for at least some portion of Westbrook's losses.

G. THE DEFENDANT INSURERS HAVE FAILED TO PROVIDE COVERAGE, IN WHOLE OR IN PART, NOTWITHSTANDING WESTBROOK'S COMPLIANCE WITH THE POLICIES AND CLEAR ENTITLEMENT TO COVERAGE

105. Westbrook timely provided notice of loss to the Defendant Insurers on or about March 12, 2020.

106. Westbrook has complied with all terms, conditions and requirements of the Policies or is excused from doing so, as the Defendant Insurers waived or are estopped from enforcing such terms, conditions and requirements of the Policies.

107. Notwithstanding Westbrook's timely compliance, the Defendant Insurers to date have failed to pay Westbrook's claim or any part of the claim.

108. On December 8, 2020, ACE American denied coverage under the ACE American Policy for Westbrook's pandemic-related losses.

109. On January 8, 2021, CNA denied coverage under all coverages provided under the CNA Policy for Westbrook's pandemic-related losses, except for Cancellation Coverage and Closings Due to Death or Disease Coverage.

110. On November 30, 2020, Sompo denied coverage under the Sompo Policy for Westbrook's pandemic related losses.

111. On January 8, 2021, Everest denied coverage under all coverages provided under the Everest Policy for Westbrook's pandemic-related losses, except for Cancellation Coverage and Closings Due to Death or Disease Coverage.

112. On January 7, 2021, Starr denied coverage under all coverages provided under the Starr Policy for Westbrook's pandemic-related losses, except for the Closings Due to Death or Disease Coverage.

113. As a consequence, to protect its rights and to obtain the insurance coverage for which it has paid, and that the Defendant Insurers agreed to provide, Westbrook brings this lawsuit.

FIRST CAUSE OF ACTION

Declaratory Relief

114. Westbrook repeats and realleges the allegations in the preceding 113 paragraphs and incorporates herein by reference the Policies filed with the Clerk.

115. Westbrook is entitled to coverage under Policies for its existing and ongoing COVID-19 losses, as described in this Complaint and as to be proven at trial.

116. Based on the coverage positions they have stated, the Defendant Insurers contend otherwise, at least in part.

117. Westbrook seeks the Court's declaration of the parties' rights and duties under the Policies pursuant to Florida Statute Section 86.011 *et seq.* A justiciable controversy exists between Plaintiff and the Defendant Insurers regarding the availability and extent of coverage under the Policies for Westbrook's claims.

118. The controversy between Plaintiff and the Defendant Insurers is ripe for judicial review.

WHEREFORE, Plaintiff seeks a declaration from the Court that:

- a. Each coverage identified in the preceding paragraphs is triggered by Westbrook's claims;
- b. All conditions precedent under the Policies have been satisfied or excused, or the Defendant Insurers have waived or are estopped from enforcing, all conditions precedent under the Policies;

- c. No exclusions in the Policies apply to preclude or limit coverage for Westbrook's claims;
- d. The Defendant Insurers are obligated to cover Westbrook up to the applicable combined limit of liability of the Policies with respect to, *e.g.*, (i) COVID-19-related losses and expenses already sustained by Westbrook businesses to date; and (ii) COVID-19-related losses and expenses to be sustained by Westbrook businesses as the COVID-19 pandemic continues;
- e. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for its real property losses, time element losses, extra expense, and other losses sustained as a result of direct physical loss or damage to property due to the SARS-CoV-2 virus and/or COVID-19;
- f. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for its claims of extra expense incurred to continue business;
- g. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for its claims of time element losses and extra expense as a result of orders of civil or military authority that have limited, restricted, or prohibited access to insured properties as a result of the SARS-CoV-2 virus and/or COVID-19 at insured property or other locations within five miles;
- h. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for its claims of time element losses and extra expense wherever ingress to or egress from insured property has been partially or totally prevented as a result of the SARS-CoV-2 virus and/or COVID-19 at insured property or other locations;
- i. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for its claims for losses and extra expense associated with physical loss or damage to contingent time element locations;
- j. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for its claims for actual loss sustained to prevent loss and costs incurred to temporarily protect against actual or impending physical loss or damage to insured property;
- k. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for its expediting costs and extra expenses;
- l. The Defendant Insurers are obligated under the Policies to indemnify Westbrook for losses due to loss or damage to real and personal property located at Attraction properties.
- m. The threat of physical exposure of property or premises to the SARS-CoV-2 virus that renders property unreasonably dangerous and/or unfit for its

ordinary intended purpose constitutes “direct physical loss or damage” under the Policies; and

- n. Actual or suspected exposure of property to the SARS-CoV-2 virus constitutes “direct physical loss or damage” under the Policies.
- o. Westbrook is entitled to all damages of any nature to which Westbrook may be entitled under contract, in equity or at law, including, but not limited to, pre- and post-judgment interest as provided by law, and an award of fees and costs of suit incurred.

SECOND CAUSE OF ACTION
Breach of Contract

119. Westbrook repeats and realleges the allegations in the paragraphs 1 through 113 and incorporates herein by reference the Policies filed with the Clerk.

120. The Policies are valid and enforceable contracts between Westbrook and the Defendant Insurers, providing All Risks coverage designed to cover the losses occasioned by the COVID-19 pandemic.

121. Westbrook is entitled to coverage, up to the applicable limits of liability, of the losses that it has incurred as a consequence of the COVID-19 pandemic.

122. No terms, conditions or exclusions of the Policies apply to bar or restrict coverage.

123. Westbrook has complied with all applicable provisions of the Policies, including payment of premiums, timely notice, and timely proof of loss or is otherwise excused from compliance therewith.

124. The Defendant Insurers unjustifiably failed to pay for Westbrook’s covered losses.

125. Each Defendant Insurer is in breach of its respective Policy.

126. As a direct and proximate result of the Defendant Insurers’ breach, Westbrook has suffered and continues to suffer substantial and ongoing damages totaling more than \$200 million to date.

WHEREFORE, Westbrook is entitled to damages as a result of the Defendant Insurers' breach, as well as pre-judgment and post-judgment interest and any other costs and relief that this Court deems appropriate, all in an amount to be established at or before trial.

JURY TRIAL DEMAND

Westbrook hereby requests a jury trial as to all triable issues in the above-entitled action.

FISHER POTTER HODAS, PL
515 No. Flagler Drive, Suite 800
West Palm Beach, Florida 33401
Telephone: (561) 832-1005
Fax: (561) 820-9375
eservice@fphlegal.com
Co-Counsel for Plaintiff

By: /s/ Jeffrey D. Fisher
Jeffrey D. Fisher
Florida Bar No. 326941
Gerald F. Richman
Florida Bar No. 66457
Brendon Carrington
Florida Bar No. 1008272

And

LATHAM & WATKINS LLP
Robert J. Gilbert (*pro hac vice application pending*)
Nathan A. Sandals (*pro hac vice application pending*)
200 Clarendon Street
Boston, MA 02116
Phone: (617) 948-6000
Fax: (617) 948-6001

LATHAM & WATKINS LLP
David A. Barrett (*pro hac vice application pending*)
555 Eleventh Street, NW
Washington, DC 20004-1304
Phone: (202) 637-2200
Fax: (202) 637-2201

Attorneys for Plaintiff