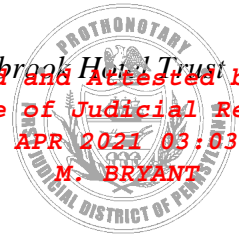


THE AXELROD FIRM, PC
By: SHERYL L. AXELROD, ESQUIRE
ID No. 70959
By: LISA J. SAVITT, ESQUIRE
ID No. 40557
Telephone: 267.918.4526/202.441.0245
The Beasley Building
1125 Walnut Street
Philadelphia, PA 19107
Fax: 215.238.1779
saxelrod@theaxelrodfirm.com
lsavitt@theaxelrodfirm.com

Attorneys for Plaintiff ~~Pebblebrook Hotel Trust~~

**Filed and Attested by the
Office of Judicial Records
30 APR 2021 03:03 pm
M. BRYANT**



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PEBBLEBROOK HOTEL TRUST :
4747 Bethesda Avenue, Suite 1100 :
Bethesda, MD 20814, :
Plaintiff, :
v. :
ALLIED WORLD ASSURANCE COMPANY :
(U.S.) INC. :
251 Little Falls Drive :
Wilmington, DE 19808; :
ARCH SPECIALTY INSURANCE COMPANY :
Harborside 3 :
210 Hudson Street, Suite 300 :
Jersey City, NJ 07311-1107; :
ASPEN INSURANCE UK LIMITED :
30 Fenchurch Street :
London EC3M 3BD :
United Kingdom; :
ATEGRITY SPECIALTY INSURANCE :
COMPANY :
Corporation Center :
1209 Orange Street :
Wilmington, DE 19801; :
COLONY INSURANCE COMPANY :
8720 Stony Point Parkway, Suite 400 :
Richmond, VA 23235; :

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
COMMERCE PROGRAM**

CIVIL ACTION

___ TERM, 2021

NO. _____

JURY TRIAL DEMANDED

CRUM & FORSTER SPECIALTY INSURANCE
COMPANY

305 Madison Avenue
Morristown, NJ 07962;

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY

1209 Orange Street
Wilmington, DE 19801;

ENDURANCE WORLDWIDE INSURANCE
LIMITED

1st Floor, 3 Minister Court Mincing Lane
London EC3R 7BB
United Kingdom;

EVANSTON INSURANCE COMPANY

10275 W. Higgins Road, Suite 750
Rosemond, IL 60018;

EVEREST INDEMNITY INSURANCE
COMPANY

251 Little Falls Drive
Wilmington, DE 19808;

FIRST SPECIALTY INSURANCE
CORPORATION

237 East High Street
Jefferson City, MO 65101-3206;

HALLMARK SPECIALTY INSURANCE
COMPANY

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

HDI GLOBAL INSURANCE COMPANY

161 North Clark Street, 48th Floor
Chicago, IL 60601;

HOMELAND INSURANCE COMPANY OF NEW
YORK

1000 Woodbury Road, Suite 403
Woodbury, NY 11797;

HOUSTON CASUALTY COMPANY :
13403 Northwest Freeway :
Houston, TX 77040-2401; :
 :
INTERSTATE FIRE & CASUALTY COMPANY :
225 West Washington Street, Suite 1800 :
Chicago, IL 60606-3484; :
 :
JAMES RIVER INSURANCE COMPANY :
52 East Gay Street :
Columbus, OH 43215; :
 :
LANDMARK AMERICAN INSURANCE :
COMPANY :
c/o Nixon Peabody, LLP :
900 Elm Street :
Manchester, NH 03101; :
 :
LEXINGTON INSURANCE COMPANY :
251 Little Falls Drive :
Wilmington, DE 19808; :
 :
MAXUM INDEMNITY COMPANY :
One Hartford Plaza :
Hartford, CT 06155-0001; :
 :
MITSUI SUMITOMO INSURANCE COMPANY :
OF AMERICA :
560 Lexington Avenue, 20th Floor :
New York, NY 10022-6828; :
 :
NATIONAL FIRE & MARINE INSURANCE :
COMPANY D/B/A BERKSHIRE HATHAWAY :
SPECIALTY INSURANCE :
1314 Douglas Street, Suite 1400 :
Omaha, NE 68102-1944; :
 :
PRINCETON EXCESS AND SURPLUS LINES :
INSURANCE COMPANY :
251 Little Falls Drive :
Wilmington, DE 19808; :
 :
QBE SPECIALTY INSURANCE COMPANY :
314 East Thayer Avenue :
Bismarck, ND 58501-4018; :

SCOTTSDALE INSURANCE COMPANY :
 One West Nationwide Boulevard :
 Columbus, OH 43215-2220; :
 :
 STARR SURPLUS LINES INSURANCE :
 COMPANY :
 8401 N. Central Expressway, Suite 515 :
 Dallas, TX 75225; :
 :
 WESTCHESTER SURPLUS LINES INSURANCE :
 COMPANY :
 11575 Great Oaks Way, Suite 200 :
 Alpharetta, GA 30022; :
 :
 WESTERN WORLD INSURANCE COMPANY :
 300 Kimball Drive, Suite 500 :
 Parsippany, NJ 07054; :
 :
 and :
 :
 CERTAIN UNDERWRITERS AT LLOYD'S, :
 LONDON SUBSCRIBING TO POLICY NOS. :
 UP1900075, UP1900076, UP1900077, UP1901626, :
 UP19001627, UP1901725, and VPC-CN-0001770- :
 01 :
 One Lime Street :
 London EC3M 7HA :
 United Kingdom; :
 :
 Defendants. :
 ----- X

NOTICE TO DEFEND

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 OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT 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, GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION
1339 CHESTNUT STREET, 2ND FLOOR
PHILADELPHIA, PA 19107
215-238-6333

AVISO

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTOS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VEINTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACE FALTA AGENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECCIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TO MARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMAS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE Y REQUIRER QUE USTED CUMOLA CON TODAS LAS PROVISIONES DE ESTA DEMAND. USTED PUEDE PERDER DINERO O SUS PROPIEDADES A OSTROS DERECHOS IMPORTANTES PARA USTED.

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

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION
1339 CHESTNUT STREET, 2ND FLOOR
PHILADELPHIA, PA 19107

(215) 238-6333

COMPLAINT

Pebblebrook Hotel Trust (“Pebblebrook”) files this Complaint against its insurers (“Defendant Insurers”), seeking Declaratory Relief, Equitable Relief, and Damages for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing, alleging the following:

1. This action arises out of Defendant Insurers’ unjustified failure to meet their obligations under “all risks” insurance policies that Defendant Insurers sold to Pebblebrook.

2. Pebblebrook has suffered losses totaling more than \$50,000 to date due to the presence of SARS-CoV-2 and COVID-19 on and around Pebblebrook’s insured properties.

3. Pebblebrook provided timely notice of these losses to Defendant Insurers and sought coverage under the policies.

4. Despite Defendant Insurers’ intention to deny coverage from the outset, Defendant Insurers still engaged in a dilatory and unreasonable insurance claims examination and handling process.

5. Defendant Insurers still refuse to recognize coverage under the policies sold to Pebblebrook, contravening their contractual duties as bargained for between the parties and depriving Pebblebrook of the coverage it reasonably expected.

6. Under established principles of insurance law, Pebblebrook is entitled to payment under the policy for business income losses and expenses covered under the policy.

I. PARTIES

7. Pebblebrook is a publicly traded real estate investment trust (“REIT”) that acquires and invests in upscale, full-service hotels and resorts located across the United States. Pebblebrook was formed pursuant to Maryland REIT Law and has a principal place of business in Maryland.

8. Among Pebblebrook's insured properties is the Sofitel Philadelphia at Rittenhouse Square.

9. Upon information and belief, Allied World Assurance Company (U.S.) Inc. ("Allied World") is an insurance company incorporated in Delaware with its principal place of business in Massachusetts. Allied World issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number 0307-5439-1A.

10. Upon information and belief, Arch Specialty Insurance Company ("Arch") is an insurance company incorporated in Nebraska with its principal place of business in New Jersey. Arch issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number ESP0044776-08.

11. Upon information and belief, Aspen Insurance UK Limited ("Aspen") is an insurance company located in the United Kingdom. Aspen issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number PR008EY19.

12. Upon information and belief, Ategrity Specialty Insurance Company ("Ategrity") is an insurance company incorporated in Delaware with its principal place of business in Arizona. Ategrity issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number 01-B-XP-P00000414-0.

13. Upon information and belief, Colony Insurance Company ("Colony") is an insurance company incorporated in Virginia with its principal place of business in Texas. Colony issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number XP180286-1.

14. Upon information and belief, Crum & Forster Specialty Insurance Company ("C&F") is an insurance company incorporated in Delaware with its principal place of business in

New Jersey. C&F issued multiple all-risk insurance policies covering Pebblebrook and at issue in the lawsuit, policy numbers SRS-100239, SRS-100240, and PPP-910520.

15. Upon information and belief, Endurance American Specialty Insurance Company (“Endurance American”) is an insurance company incorporated in Delaware with its principal place of business in New York. Endurance American issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number ESP30000346502.

16. Upon information and belief, Endurance Worldwide Insurance Ltd. (“Endurance Worldwide”) is an insurance company located in the United Kingdom. Endurance Worldwide issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number UP1901725.

17. Upon information and belief, Evanston Insurance Company (“Evanston”) is an insurance company incorporated in Illinois with its principal place of business in Illinois. Evanston issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number MKLV10XP003359.

18. Upon information and belief, Everest Indemnity Insurance Company (“Everest”) is an insurance company incorporated in Delaware with its principal place of business in New Jersey. Everest issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number CA3X001388-191.

19. Upon information and belief, First Specialty Insurance Corporation (“First Specialty”) is an insurance company incorporated in Missouri with its principal place of business in Missouri. First Specialty issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number ESP 2004084 00.

20. Upon information and belief, Hallmark Specialty Insurance Company (“Hallmark”) is an insurance company incorporated in Arizona with its principal place of business in Texas. Hallmark issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number 73PRX19A0FE.

21. Upon information and belief, HDI Global Insurance Company (“HDI Global”) is an insurance company incorporated in Illinois with its principal place of business in Illinois. HDI Global issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number CPXD5579500.

22. Upon information and belief, Homeland Insurance Company of New York (“Homeland”) is an insurance company incorporated in New York with its principal place of business in Massachusetts. Homeland issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number 795009996.

23. Upon information and belief, Houston Casualty Company (“Houston Casualty”) is an insurance company incorporated in Texas with its principal place of business in Texas. Houston Casualty issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number UP1900075.

24. Upon information and belief, Interstate Fire & Casualty Company (“Interstate”) is an insurance company incorporated in Illinois with its principal place of business in Illinois. Interstate issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number VRX-CN-0001770-01.

25. Upon information and belief, James River Insurance Company (“James River”) is an insurance company incorporated in Ohio with its principal place of business in Virginia. James

River issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number 00092304-0.

26. Upon information and belief, Landmark American Insurance Company (“Landmark”) is an insurance company incorporated in New Hampshire with its principal place of business in Georgia. Landmark issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number LHD908586.

27. Upon information and belief, Lexington Insurance Company (“Lexington”) is an insurance company incorporated in Delaware with its principal place of business in Massachusetts. Lexington issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number 011144835.

28. Upon information and belief, Maxum Indemnity Company (“Maxum”) is an insurance company incorporated in Connecticut with its principal place of business in Georgia. Maxum issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number MSP-6034708-01.

29. Upon information and belief, Mitsui Sumitomo Insurance Company of America (“Mitsui”) is an insurance company incorporated in New York with its principal place of business in New Jersey. Mitsui issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number EXP7000678.

30. Upon information and belief, National Fire & Marine Insurance Company d/b/a Berkshire Hathaway Specialty Insurance (“Berkshire”) is an insurance company incorporated in Nebraska with its principal place of business in Nebraska. Berkshire issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number 42-PRP-000004-07.

31. Upon information and belief, Princeton Excess and Surplus Lines Insurance Company (“Princeton”) is an insurance company incorporated in Delaware with its principal place of business in New Jersey. Princeton issued multiple all-risk insurance policies covering Pebblebrook and at issue in the lawsuit, policy numbers 3VA3PP0000401-00, 3VA3PP0000402-00, 3VA3PP0000403-00, 78-A3-XP-0000577-00.

32. Upon information and belief, QBE Specialty Insurance Company (“QBE”) is an insurance company incorporated in North Dakota with its principal place of business in Wisconsin. QBE issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number ASRU000374-00.

33. Upon information and belief, Scottsdale Insurance Company (“Scottsdale”) is an insurance company incorporated in Ohio with its principal place of business in Arizona. Scottsdale issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number FXS0001126.

34. Upon information and belief, Starr Surplus Lines Insurance Company (“Starr”) is an insurance company incorporated in Texas with its principal place of business in New York. Starr issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number SLSTPTY11189919.

35. Upon information and belief, Westchester Surplus Lines Insurance Company (“Westchester”) is an insurance company incorporated in Georgia with its principal place of business in Georgia. Westchester issued an all-risk insurance policy covering Pebblebrook and at issue in the lawsuit, policy number D38116083 004.

36. Upon information and belief, Western World Insurance Company (“Western World”) is an insurance company incorporated in New Hampshire with its principal place of

business in New Jersey. Western World issued two all-risk insurance policies covering Pebblebrook and at issue in the lawsuit, policy numbers SSC0000234 and SSC0000235.

37. Upon information and belief, Defendants Certain Underwriters at Lloyd's, London subscribing to Policies Nos. UP1900075, UP1900076, UP1900077, UP1901626, UP19001627, UP1901725, and VPC-CN-0001770-01 ("Underwriters") are organized under the laws of United Kingdom with their principal place of business in the United Kingdom.

II. JURISDICTION AND VENUE

38. This Court has jurisdiction over this matter per 42 Pa. C.S. § 931(a).

39. This Court has personal jurisdiction over Defendant Insurers, including under 42 Pa. C.S. § 5322(a)(6), because Defendant Insurers contracted to insure Pebblebrook in Pennsylvania and to insure Pebblebrook's property and Pebblebrook's risk in Pennsylvania.

40. Venue is proper in this Court per Pa. R. Civ. P. 2179. This county is the location in which the following occurred: (a) a part of the occurrences that this dispute arises out of, (b) the cause of action arose, and (c) Pebblebrook regularly conducts business in this county. In addition, this county is where part of the insured property is located. And, upon information and belief, Defendant Insurers regularly conduct business in this county.

III. FACTUAL BACKGROUND

A. The Policies

41. Defendant Insurers sold insurance policies to Pebblebrook covering "all risks of direct physical loss of or damage occurring during the policy period." (Master Policy, Ex. A.)

42. Altogether, these policies form an insurance tower comprised of multiple layers of coverage with each insurer assuming responsibility for a portion of coverage. Insurers can decide to limit their coverage to a portion of a single layer or broaden their coverage across multiple layers.

43. The policies are subject to certain common provisions in the Master Policy. (Ex. A.)

44. The Master Policy covers Pebblebrook and “any subsidiary, associated, allied or affiliated company, corporation, firm, organization, partnership, Joint Venture, Limited Liability Company or individual, whether wholly or partially owned or controlled by the Insured, where the Insured maintains an interest, or where the Insured is required to provide insurance, as now exist or are hereafter constituted or acquired, and any other party in interest that is required by contract or other agreement to be named.” (Ex. A.)

45. The Master Policy has an effective term date of June 1, 2019 through June 1, 2020. (Ex. A.)

46. Defendant Insurers were responsible, either collectively or individually, for drafting the Master Policy.

47. Pebblebrook did not contribute to or participate in drafting the language of the Master Policy.

48. Pebblebrook paid a substantial premium of \$12,222,925.66 for this coverage. Defendant Insurers calculated Pebblebrook’s premiums based in material part on the revenue Defendant Insurers expected Pebblebrook to generate with fully functioning and operational locations.

49. The Master Policy provides business interruption coverage for “loss resulting from complete or partial interruption of business conducted by the Insured including all interdependent loss of earnings between or among companies owned or operated by the Insured caused by physical loss, damage, or destruction by any of the perils covered herein during the term of this policy to real and personal property as covered herein.” (Ex. A.)

50. The Master Policy defines “perils insured against” as “all risks of direct physical loss of or damage to property described herein including general average, salvage, and all other charges on shipments covered hereunder, except as hereinafter excluded.” (Ex. A (emphasis in original).)

51. The Master Policy does not define the term “all risks.”

52. As used in the Master Policy, the terms “physical loss,” “damage,” and “destruction” all have separate, distinct, and independent meanings from one another. None are defined.

53. When undefined, the phrase “physical loss of or damage” is susceptible to more than one reasonable interpretation.

54. When the undefined phrase “physical loss of or damage” is susceptible to more than one reasonable interpretation, it should be interpreted against the drafter.

55. When undefined, the phrase “physical loss, damage, or destruction” is susceptible to more than one reasonable interpretation.

56. When the undefined phrase “physical loss, damage, or destruction” is susceptible to more than one reasonable interpretation, it should be interpreted against the drafter.

57. Some dictionary definitions of “loss” include:

- a. “Deprivation.” Loss, Merriam-Webster,
<https://www.merriamwebster.com/dictionary/loss;>
- b. “[D]ecrease in amount, magnitude, or degree.” Loss, Merriam-Webster,
<https://www.merriam-webster.com/dictionary/loss;>
- c. “The fact that you no longer have something or have less of something.” Loss, Cambridge Dictionary,
<https://dictionary.cambridge.org/us/dictionary/english/loss?q=Loss;>
- d. “Having less than before.” Loss, Macmillan Dictionary,
<https://www.macmillandictionary.com/us/dictionary/american/loss;>

- e. “[T]he state of no longer having something or as much of something.” Loss, Oxford Advanced Learner’s Dictionary, <https://www.oxfordlearnersdictionaries.com/us/definition/english/loss?q=loss>.

58. At minimum, Pebblebrook suffered “deprivation,” “decrease,” or “having less” of its covered property due to the COVID-19 pandemic.

59. Nothing in the Master Policy specifies or suggests structural damage or structural alteration to a Pebblebrook Location as a prerequisite or condition to coverage.

60. In fact, the term “structural” appears only once in the Master Policy in reference to “Demolition and Increased Cost of Construction.”

61. The Master Policy covers Pebblebrook’s interest in “all real and personal property owned, used, leased or intended for use by the Insured or in which the Insured may have an insurable interest, or for which the Insured may be responsible for the insurance, or real or personal property hereafter constructed, erected, installed, or acquired including while in course of construction, erection, installation, and assembly including Improvements and Betterments.”

62. Pebblebrook has suffered direct physical loss of and damage to its insured properties and business interruption and other losses covered under the Master Policy.

B. COVID-19 Pandemic

63. SARS-CoV-2 is a virus that causes COVID-19, a disease that attacks the respiratory system and causes other harm to humans. SARS-CoV-2 and COVID-19 are collectively referred to herein as COVID-19.

64. COVID-19 is harmful to humans and property, highly contagious, and deadly.

65. On January 30, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a Public Health Emergency of International Concern.

66. On March 11, 2020, the WHO declared COVID-19 to be a pandemic.

67. A pandemic is an outbreak of a disease that affects a wide geographic area and infects an exceptionally high proportion of the population.

68. As a declared pandemic, COVID-19 is present globally, including in all Pebblebrook locations.

69. On March 13, 2020, the President of the United States declared a nationwide emergency in response to COVID-19.

70. In a decision dated April 13, 2020, the Supreme Court of Pennsylvania recognized the pandemic as a “natural disaster” under Pennsylvania’s Emergency Management Services Code, 35 Pa.C.S. § 7102 (the “Emergency Code”), that triggered the Governor’s powers under 35 Pa.C.S. § 7301, entitled “General authority of Governor.” *Friends of Devito v. Wolf*, 227 A.3d 872, 888 (Pa. 2020). The Emergency Code specifically and expressly authorizes the Pennsylvania Governor to declare a disaster emergency and thereafter to control the ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein. *Id.* at 886.

71. The Emergency Code defines “natural disaster” as “[a]ny hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion or ***other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.***” The Supreme Court of Pennsylvania in *Friends of Devito* held that the COVID-19 pandemic qualified as a “natural disaster” because it involves, among other things, “substantial damage to property” 227 A.3d at 889.

72. According to the WHO, COVID-19 has infected over 138,411,980 people and caused more than 2,974,642 deaths as of April 16, 2021. *See* WHO, *WHO Coronavirus Disease*

(*COVID-19 Dashboard*, <https://covid19.who.int/> (last visited on April 16, 2021; website updated regularly).

73. According to the Centers for Disease Control and Prevention (“CDC”), as of April 16, 2021, COVID-19 has infected more than 31,231,869 people and caused more than 561,356 deaths in the United States. *See CDC, Coronavirus Disease 2019 (COVID-19): United States COVID-19 Cases and Deaths by State*, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited on April 16, 2021; website updated regularly).

74. The CDC estimated that infection rates for COVID-19 are likely at least ten times higher than reported.

75. In addition, the CDC has estimated that approximately 40% of COVID-19 positive individuals remain asymptomatic.

76. The incubation period for COVID-19, which is the time between exposure and the onset of symptoms, can be up to fourteen days. During the incubation period, or “pre-symptomatic” period, infected persons can be contagious, and disease transmission can occur before the infected person shows any symptoms or has any reason to believe he or she has become infected.

77. In a “Situation Report” released by the WHO, it reported that the virus can be transmitted through symptomatic transmission, pre-symptomatic transmission, or asymptomatic transmission.

78. Infected persons “shed” the virus (*i.e.*, pose a risk of viral transmission) before, during, and after their illness.

79. In fact, scientists have reason to believe that infected people are the most contagious *before* they experience symptoms, during the “incubation” or “pre-symptomatic” period.

80. Pre-symptomatic persons carry the greatest viral-load (*i.e.*, the amount of virus in a person's nose, throat, and lungs) among all infected persons, meaning their ability to transmit COVID-19 is greater than symptomatic persons.

C. COVID-19 Is a Risk That Causes Physical Loss of and Damage to Property

81. COVID-19 causes physical and tangible alteration to property, and the presence of COVID-19 amounts to physical loss of and damage to property.

82. According to the CDC, COVID-19 can spread several ways.

83. First, COVID-19 spreads via airborne transmission when an uninfected person inhales droplets of the saliva or nasal discharge of an infected person.

84. Clouds of droplets of saliva or nasal discharge of an infected person, which may be released by a cough, a sneeze, or loud speech, can linger in the air for minutes or hours, and can affect persons, personal and real property, and indoor air within real property.

85. Second, smaller droplets, known as aerosols, can linger in the air for hours, infecting people further away from the infected person and even after the infected person has left the premises. This kind of spread is referred to as aerosol or airborne transmission.

86. Aerosol droplets can be pulled into air circulation systems and spread to other areas in a building.

87. Indeed, scientists recommend the use of HEPA and other specialized air filtration systems to remediate the presence of airborne SARS-CoV-2 in buildings.

88. In other words, *physical alteration of property may be necessary to render it safe from COVID-19 and to return the property to a safe and useable state.*

89. Third, respiratory droplets can also land on surfaces and objects. Surfaces, once physically affected by COVID-19, are referred to as "fomites."

90. Fomites consist of both porous and nonporous surfaces or objects that can become infected with a virus and serve as vehicles of transmission.

91. A person can get COVID-19 by touching a surface or object that has the virus on it and then touching his or her own mouth, nose, or eyes.

92. Based on (a) a study from National Institutes of Health, CDC, University of California at Los Angeles, and Princeton University scientists in the New England Journal of Medicine, (b) a study by the Commonwealth Scientific and Industrial Research Organisation (CSIRO), (c) a study in the Journal of Hospital Infection, and (d) a CDC report on Public Health Responses to COVID-19 Outbreaks, COVID-19 can remain viable on various objects, surfaces, or materials for a period of up to 28 days.

93. COVID-19 can be introduced to fomites by direct physical contact with such particles, contact with soiled hands, shoes, or clothing, contact with aerosolized COVID-19 (large droplet spread) released while breathing, talking, sneezing, or coughing, or contact with airborne COVID-19 that settles after disturbance of a surface damaged by COVID-19 (*e.g.*, shaking a tablecloth at a restaurant).

94. Once an object or surface is detrimentally affected, impaired, altered, or damaged by COVID-19, transfer of COVID-19 may readily occur between inanimate and animate objects, or vice versa, and between two separate surfaces.

95. Results from studies also suggest that individuals can become infected with COVID-19 through indirect contact with surfaces or objects used by an infected person, regardless of whether they were symptomatic.

96. The actual presence and the prospective presence of COVID-19 cause direct physical loss of and damage to property by, *inter alia*, transforming or rendering the property

unsafe to human health, thereby depriving Pebblebrook of the usage, functionality and reliability of its property.

97. As a pandemic, the presence of COVID-19 is, by definition, worldwide and COVID-19 is presumed to be present everywhere, including in all the insured sites of the Pebblebrook.

98. The ubiquitous presence of COVID-19 is also confirmed by statistics. Because COVID-19 is a pandemic and is statistically certain to be carried by a number of individuals who visit Pebblebrook locations daily, COVID-19 is continually reintroduced to the air and surfaces of the locations.

99. Under normal operating conditions, there is no effective way to permanently repair or remediate the loss or damage caused by COVID-19 to commercial properties like the Pebblebrook locations because continued use of that property results in continual reintroduction of COVID-19 to the property.

100. Short of complete closure of the Pebblebrook locations, implementation of strict administrative and operational controls that, among other things, limit the number of persons present are the only effective ways to repair or remediate the physical loss or damage caused by COVID-19 and protect against further loss or damage from COVID-19.

101. Mere cleaning and disinfecting of the property and the indoor air does not repair or remediate the actual physical and tangible alteration to property caused by COVID-19, nor does it transform the property from its unsafe, hazardous and potentially deadly condition.

102. This is particularly the case with property accessible to the public, where removal of COVID-19 from the property does not repair or remediate the physical damage and tangible alteration to property due to the continuous reintroduction of COVID-19 to the property.

103. Pebblebrook locations were obligated to continue operating to the best of their reasonable ability in order to mitigate business income loss. In doing so, Pebblebrook locations incorporated both administrative and engineering controls to aid in mitigation of the physical loss or damage caused by COVID-19. These controls include but are not limited to reduction in building capacity, the installation of temporary barriers, use of increased efficiency HVAC filters, and the creation and installation of plastic dividers throughout Pebblebrook locations. Pebblebrook regularly supplements these controls and others to add additional mitigation protocols and to follow current regulations and guidance issued by the CDC.

104. Even under the foregoing and other controls, Pebblebrook locations continued to sustain physical loss and damage caused by COVID-19.

105. COVID-19 physically harms property, causes a physical, tangible alteration, and seriously and detrimentally affects, impairs, damages, or alters its value, usefulness, or normal function, rendering the property nonfunctional for its normal occupancy or use.

106. The presence of COVID-19 physically alters property and its existence on objects or surfaces renders them unsafe or unusable for their normal use.

107. The presence of COVID-19, a noxious substance, in the air at a property renders the property unusable, uninhabitable, or unfit for its normal occupancy or use.

108. As discussed in further detail below governmental authorities around the country have issued orders during the COVID-19 pandemic expressly acknowledging that COVID-19 causes physical loss of and damage to property.

109. COVID-19 has caused physical loss of and damage to Pebblebrook's properties and surrounding properties.

110. COVID-19 has caused a risk of physical loss of and damage to Pebblebrook's properties.

D. COVID-19's Presence at Pebblebrook Properties

111. Beginning in or around March 2020, COVID-19 caused a distinct, demonstrable, physical change and/or tangible alteration to Pebblebrook locations and property that Pebblebrook locations depend upon to conduct their normal business operations.

112. There have been approximately 200 confirmed COVID-19 diagnoses among individuals working on or staying at Pebblebrook properties.

113. It is a statistical certainty that additional employees of the hotel management companies, invitees, and guests have had COVID-19 beyond those that have reported suspected or confirmed cases.

114. Pebblebrook's properties are highly trafficked locations, visited by thousands of individuals from locations all around the county and the world.

115. Statistical modeling confirms beyond any reasonable doubt and to a high degree of statistical certainty that COVID-19 was and continues to be present at Pebblebrook locations.

116. Pebblebrook had 760,788 occupied rooms throughout its properties from March 2020 to present.

117. Applying even a conservative estimate of the CDC statistics summarized above, it is evident that thousands of individuals with COVID-19 infections visited Pebblebrook properties during that period.

118. Because the CDC has estimated that actual infection rates were likely ten times higher than reported rates, it is more likely than not that higher numbers of workers, invitees, and guests at Pebblebrook had COVID-19 in addition to those that have been reported as suspected or confirmed case.

119. Given the absence of commercially-available tests for surface and aerosol presence of COVID-19 and the overall shortage of testing kits for humans, however, positive human test results are not and cannot be the only means of proving the presence of COVID-19.

120. The ubiquitous nature of the pandemic also confirms that COVID-19 has been present at Pebblebrook locations.

121. COVID-19 has caused physical loss of and damage to property at Pebblebrook's locations and constitutes a risk of physical loss of and damage to Pebblebrook's locations covered under the Master Policy.

122. Because of the physical loss of and damage to property caused by COVID-19, Pebblebrook locations shut down or partially limited operations. The operations remained closed or limited until it was clear that it was safe to reopen for workers, invitees, and guests, consistent with adherence to strict and rigorous protocols and health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

E. The Insurance Industry Specifically Knew of the Risks and Dangers of the Pandemic

123. Insurers were repeatedly warned, and have been aware for years, of the potential impact of pandemics. In fact, there were many publicly available reports about the risk of pandemics – and what insurers should do – in the months and years before the COVID-19 pandemic. For example:

- a. In 2015, the Center for Insurance Policy and Research held an event titled “The Risk of Pandemics to the Insurance Industry” to explore the risk of pandemics to the health, life and property and casualty industries. Among the “key takeaways” was the potential for “business continuity/business interruption/extra expense loss,” meaning “Insurance companies must properly implement appropriate planning and response protocols before and during the event.” *The Risk of Pandemics to the Insurance Industry: Lessons*

Learned from the 2015 CIPR Symposium Applicable to COVID-19 (Apr., 15, 2020).

- b. One article noted in March 2018: “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.” AIR, *What the 1918 Flu Pandemic Can Teach Today’s Insurers* (Mar. 29, 2018), <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/> (last visited April 8, 2021).
- c. The Insurance Library Association of Boston (founded 1887) lists on its website at least 15 articles, reports, and white papers available to insurers from early 2007 through 2018.¹ For example, an article published in 2014 stated that pandemics “can have a significant impact on life and health insurance portfolios, and, depending on contract terms, could also affect other lines such as workers’ compensation, business interruption, travel and event cancellation and disability insurance.” Nita Madhav, *Travel Sickness: Pandemic Risk Models Show Diseases Move More Quickly and with Greater Impact in our Connected World*, 115 *Best’s Review* 8 (Dec. 1, 2014).

124. Moreover, over the course of decades, courts have held that the presence of a hazardous substance at or on a property, including the airspace inside buildings, constitutes property damage. Many courts have also held that the closure of property due to imminent risk of physical loss or damage or danger to inhabitants constitutes physical loss of property. Insurers have been and continue to be aware of these court decisions.

F. State and Local Governments Issued Orders Restricting Activities in Response to the Physical Loss of and Damage to Property Caused by COVID-19

125. COVID-19 physically affects, causes loss of, and damages property on which it is present and can infect individuals who are exposed to that property.

¹ Ins. Library, *Pandemics and Insurance* (Feb. 7, 2020), <https://insurancelibrary.org/2020/02/07/pandemics-and-insurance/> (last visited April 8, 2021) (“The past 20 years has 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.”)

126. Beginning in March of 2020, federal, state, and local governments imposed unprecedented directives through governmental orders restricting activities and travel directly because of that physical loss of and damage to property and to minimize the spread of COVID-19 by reducing the likelihood of an individual's exposure to damaged property (the "Government Orders").

127. In Massachusetts, for example, Governor Baker declared a state of emergency on March 10, 2020 due to the threat posed by COVID-19 and for the "preservation of public and private property." (COVID-19 Order No. 13.) The Commissioner of Public Health, charged with implementing the Order, ordered hotels to close unless operators "could continue to provide other, lodging-related services through remote means that do not require workers, customers, or the public to enter or appear at any brick-and-mortar lodging premises." (Mass. Dept. of Pub. Health, Mar. 31, 2020.)

128. The Mayor of Philadelphia, in issuing an emergency order prohibiting non-essential business operations, noted "COVID-19 may remain viable for hours to days on surfaces made from a variety of materials located in businesses and other places, thus contaminating certain property and places. (Order No. 2, Mar. 22, 2020.)

129. In Washington, on March 23, 2020, Governor Inslee issued an executive order recognizing a "public disaster affecting . . . property," ordering non-essential businesses to cease operations, and prohibiting essential businesses from operating unless subject to strict social distancing and sanitation measures. (Proclamation 20-05.)

130. Pebblebrook has property in these jurisdictions, as well as in many other locations across the country, all of which were adversely impacted by COVID-19 and/or issued government-

mandated restrictions requiring Pebblebrook to completely or partially shut down for extended periods of time.

131. The geographic diversity of the Government Orders confirms the consensus among civil authorities in the United States that COVID-19 causes physical loss of and damage to property.²

132. To mitigate losses and to comply with applicable Government Orders, Pebblebrook locations shut down or limited operations.

133. Pebblebrook locations remained closed or subject to limited operations until it was clear that it was safe to reopen for workers, invitees, and guests, consistent with health and safety guidelines.

134. The hotel management companies operating Pebblebrook's locations follow the guidelines, directives, and orders issued by relevant governmental and health authorities to limit the spread of COVID-19, which provide, *inter alia*, for enhanced cleaning protocols, social distancing, and the use of certain personal protective equipment.

135. Separate and apart from the loss and damage COVID-19 has caused and continues to cause to property, including Pebblebrook locations, the Government Orders have limited, restricted, or prohibited partial or total access to Pebblebrook locations by, among other things, (a) requiring businesses deemed "non-essential" to close; (b) requiring businesses, after reopening, to

² See also Declaration of Emergency Directive 016, Gov. of Nevada (Apr. 20, 2020) (the "ability of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time, renders some property unusable and contributes to contamination, damage, and property loss."); Executive Order No. 2020-21, Mayor of the City of Atlanta, at p. 3 (Mar. 23, 2020) ("based upon the advice of the CDC and of the Georgia infectious disease clinicians the extreme likelihood of destruction of life or property within the territorial jurisdictional limits of the City of Atlanta due to the unusual condition of the COVID-19 Pandemic has increased significantly"); Stay Home, Work Safe Order; County Judge Lina Hidalgo, Director, Homeland Security Emergency Management, Harris County, Texas, at p. 2 (Mar. 24, 2020) ("COVID-19 virus causes physical loss or damage due to its ability to attach to surfaces for prolonged periods of time").

make tangible alterations to their property and operations; and (c) requiring businesses, after reopening, to restrict customers from patronizing those businesses.

136. The Government Orders affected Pebblebrook in several ways.

137. First, the Government Orders caused physical loss to property, including Pebblebrook locations, by depriving Pebblebrook of physical possession of insured property.

138. Second, and independently, the Government Orders affected Pebblebrook as a consequence of their issuance as a direct result of physical damage to property caused by the presence of COVID-19, including the distinct, demonstrable, physical change and/or tangible alteration to property caused by COVID-19.

139. The distinct, demonstrable, physical change and/or tangible alteration to property that directly caused the issuance of the Government Orders includes, among other things, the ability of COVID-19 to attach to surfaces for prolonged periods, remain viable in indoor air, and render property unsafe for normal use, and the loss of functionality and/or reliability of property caused by COVID-19 when it transforms air and property into a dangerous and potentially deadly instrumentality.

140. Numerous Government Orders remain in effect and continue to require the suspension of business operations for non-essential businesses.

141. As a business that relies on materials and customers from next door, to across the country and around the world, Pebblebrook is subject to and has been adversely affected by these various Government Orders.

142. The Government Orders, the damage caused by COVID-19, and the transmission of COVID-19 have had a devastating effect on Pebblebrook's business.

143. As a result of the COVID-19 pandemic and the Government Orders, the management companies operating Pebblebrook's locations were required to implement the use of personal protective equipment (PPE) and other administrative and operational controls at Pebblebrook locations. These controls entail, among other things, physical alterations to insured property to repair and remediate the damage caused by COVID-19 and mitigate further damage, resulting in a limitation on business operations at Pebblebrook locations.

144. Pebblebrook locations also have been forced to operate under the strict implementation of administrative and operational controls that limit the number of persons at the property in order protect against further loss or damage from COVID-19.

145. The Government Orders have caused and are continuing to prohibit or hinder access to Pebblebrook's property.

146. The Government Orders continue to deny Pebblebrook the safe, functional and reliable insured use of its property.

147. Even when hotel management companies were permitted to operate Pebblebrook locations, the loss of and damage to property affected business. Indeed, Pebblebrook locations lost the full range of rights and advantages of their business property. For example, Pebblebrook locations have had to limit the number of customers at their properties, purchase more sanitization products, reduce operational hours, institute "no contact" procedures, provide PPE to employees of the hotel management companies and customers, and implement other operational and physical controls in order to safeguard against the hazards caused by COVID-19.

148. Persons infected with COVID-19 were present at Pebblebrook locations prior to the closures of Pebblebrook locations.

149. Even with the reopening and loosening of restrictions in certain jurisdictions, operations at Pebblebrook locations have not yet returned to pre-loss levels.

G. Pebblebrook’s Claim Triggers the Master Policy

150. To insure against losses from unexpected and unprecedented circumstances like these, Pebblebrook purchased business interruption coverage as part of all-risk commercial property insurance Master Policy from Defendant Insurers.

151. The Master Policy covers property “against all risks of direct physical loss of or damage ... to property.”

152. The Master Policy includes business interruption coverage, which insures against “the loss resulting from complete or partial interruption of business conducted by the Insured ... caused by physical loss, damage, or destruction by any of the perils covered.”

153. The Master Policy also includes extra expense coverage, which covers “the necessary extra expense, as hereinafter defined, incurred by the Insured caused by loss, damage, or destruction by any of the perils covered herein during the term of this policy to real and personal property as covered herein.”

154. Extra expense is defined as “the excess (if any) of the total cost(s) incurred during the period of restoration, chargeable to the operation of the Insured’s business, over and above the total cost(s) that would have normally have been incurred to conduct the business during the same period had no loss or damage occurred.”

155. The Master Policy defines the “Period of Restoration” as “the length of time for which loss may be claimed, and shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this policy....”

156. The Master Policy further provides that “[t]he Period of Restoration shall include such additional length of time to restore the Insured’s business to the condition that would have

existed had no loss occurred, commencing with the later of the following dates: i) the date on which the liability of the Company for loss or damage would otherwise terminate; or ii) the date on which repair, replacement, or rebuilding of such part of the property as has been damaged is actually completed; terminating no more than 365 days from said later commencement date.”

157. In addition, the Master Policy covers “soft costs, as hereinafter defined, incurred by the Insured caused by loss, damage, or destruction by any of the perils covered herein during the term of this policy to property under construction as covered herein.”

158. Soft costs are defined as “i) Additional interest costs on money used to finance construction or repair; ii) Additional real estate and property taxes incurred for the period of time that construction extends beyond the projected completion date; iii) Additional legal, and accounting fees; and iv) Additional advertising and promotional expenses which become necessary as a result of an insured loss.”

159. The Master Policy includes various Extensions of Time Element Coverage to insure “against loss resulting from damage to or destruction by the perils insured against....”

160. The Master Policy provides an Extension of Time Element Coverage for Contingent Business Interruption. This extension covers “[t]he property of a direct supplier or a direct receiver of goods and/or services to or from the Insured; such supplier or receiver shall not be an Insured under this policy. Coverage includes loss or damage to real and personal property not owned or operated by the Insured, located within one (1) mile of the Insured premises and which attracts business within the one (1) mile distance limitation.”

161. The Master Policy provides an extension of Time Element Coverage for Interruption by Civil or Military Authority. This extension covers “the actual loss sustained for a period not to exceed sixty (60) consecutive days and five (5) miles when, as a result of a peril

insured against, access to real or personal property is impaired or hindered by order of civil or military authority irrespective of whether the property of the Insured shall have been damaged.”

162. The Master Policy provides an Extension of Time Element Coverage for Ingress/Egress. This extension covers “the actual loss sustained for a period not to exceed sixty (60) consecutive days and five (5) miles when, as a result of a peril insured against, ingress to or egress from real or personal property is thereby impaired or hindered irrespective of whether the property of the Insured shall have been damaged.”

163. The Master Policy provides an Extension of Time Element Coverage for Special Perils Business Interruption. This extension covers “loss as ensured hereunder when there is an interruption or interference with the business of the insured as consequence of: i) Infectious or contagious disease manifested by any person while on the premises of the insured.... No extensions of coverage granted by this clause shall be restricted by operation of any exclusions contained within the contents of this policy.”

164. The Master Policy contains numerous different coverage parts, many of which provide coverage.

165. Unless otherwise stated in the Master Policy, coverage parts are not mutually exclusive.

166. Thus, a policyholder’s loss may trigger several different coverage parts and provide multiple pathways to coverage under the Master Policy.

167. Pebblebrook paid a substantial premium for this broad insurance coverage and reasonably expected coverage for the losses described in this Complaint.

168. Pebblebrook incurred substantial covered loss and expense as a result of the risks of physical loss or damage identified above. The coverages triggered include the following.

1. COVID-19 Triggered the Master Policy’s “All Risks” Coverage

169. The presence of COVID-19 is a “risk of direct physical loss of or damage to” property, triggering the Master Policy’s “all risks” coverage.

170. COVID-19 has been present on Pebblebrook locations.

171. The presence of COVID-19 has caused direct physical loss of and damage to Pebblebrook locations.

172. Pebblebrook submitted its claim under the Master Policy as a result of suffering losses and expenses in relation to COVID-19 covered by the Master Policy.

173. In addition, or alternatively, various Government Orders concerning COVID-19 are a “risk[] of direct physical loss of or damage to” property that is not excluded or limited, and they trigger the Master Policy’s “all risks” coverage.

174. Because those Government Orders resulted in direct loss of or damage to Pebblebrook’s property, including loss of use of that property, they are a “risk[] of direct physical loss of or damage to” property.

175. Defendant Insurers denied or effectively denied coverage for Pebblebrook’s claim and did so in bad faith based on apparent systematic deceptive and misleading practices designed to avoid or minimize payments for covered COVID-19 claims.

2. COVID-19 Triggered the Master Policy’s Business Interruption Coverage

176. The Master Policy affords coverage for Pebblebrook’s “Business Interruption” loss.

177. The presence of COVID-19 has caused Pebblebrook to suffer Business Interruption loss due to physical loss, damage, or destruction by a peril covered under the Master Policy.

178. COVID-19 is a peril insured against that causes risks of direct physical loss of or damage to property as covered under the Master Policy.

179. COVID-19 causes physical loss, damage, or destruction due to the impact that the presence of COVID-19 has on property.

180. In addition, or in the alternative, COVID-19 has caused Pebblebrook to suffer Business Interruption loss due to the various state and local Government Orders that limited, restricted, or prohibited partial or total access to the Pebblebrook locations as a result of direct physical loss, damage, or destruction of the type insured under the Master Policy.

181. Such loss triggers coverage under the Master Policy's Business Interruption coverage.

3. COVID-19 Triggered the Master Policy's Extra Expense Coverage

182. The Master Policy affords coverage for Extra Expense.

183. Pebblebrook incurred excess costs while conducting its business during the period of time for which it may claim the loss caused by the presence of COVID-19.

184. These costs were caused by the loss, damage, or destruction due to COVID-19, a peril insured against under the Master Policy.

185. These costs include, but are not limited to, the implementation of safety procedures to avoid continued loss and damage to property, the costs of removing COVID-19 from Pebblebrook locations, and the purchase and installation of equipment to prevent the introduction or reintroduction of COVID-19 to Pebblebrook locations.

186. Such costs trigger coverage under the Master Policy's Extra Expense coverage.

4. COVID-19 Triggered the Master Policy's Soft Costs Coverage

187. The Master Policy affords coverage for Soft Costs.

188. Pebblebrook incurred additional legal and accounting fees, as well as additional advertising and promotional expenses, as a result of the loss, damage, or destruction caused by COVID-19.

189. Such costs trigger coverage under the Master Policy's Soft Costs coverage.

5. COVID-19 Triggered the Master Policy's Extension of Time Element Coverage for Contingent Business Interruption

190. The Master Policy affords coverage for Time Element Coverage for Contingent Business Interruption.

191. COVID-19 caused loss or damage to real and personal property of direct suppliers and direct receivers of goods and services to and from Pebblebrook. Such real and personal property is not owned or operated by Pebblebrook, and the property was located within one mile of Pebblebrook locations and attracts business to Pebblebrook.

192. Such loss triggers coverage under the Master Policy's Time Element Coverage for Contingent Business Interruption.

6. COVID-19 Triggered the Master Policy's Extension of Time Element Coverage for Interruption by Civil or Military Authority

193. The Master Policy affords coverage for Time Element Coverage for Interruption by Civil or Military Authority.

194. Due to the presence of COVID-19 at and within five miles of Pebblebrook locations, state and local governments issued orders of civil authority that impaired or hindered access to Pebblebrook's real and personal property. For example:

- a. Los Angeles, California: Viceroy Santa Monica is located less than five miles from Loyola Marymount University ("LMU"), where three community members were confirmed to have tested positive for COVID-19 as of March 12, 2020.
- b. Boston, Massachusetts: Hyatt Regency Boston Harbor is located less than five miles from the Boston Marriott Long Wharf, which hosted a conference on February 26 and 27, 2020 and caused nearly 100 people from the conference to fall ill while subsequently causing as many as 330,000 COVID-19 cases worldwide.

- c. San Francisco, California: Argonaut Hotel is located less than five miles from the Multi-Service Center South homeless shelter, which reported over 90 cases of COVID-19 as of April 13, 2020.

195. Pebblebrook suffered loss as a result of those state and local Government Orders.

196. Such loss triggers coverage under the Master Policy's Time Element Coverage for Interruption by Civil or Military Authority.

7. COVID-19 Triggered the Master Policy's Extension of Time Element Coverage for Ingress/Egress

197. The Master Policy affords coverage for Time Element Coverage for Ingress/Egress.

198. Due to the presence of COVID-19 at and within five miles of Pebblebrook locations, ingress to and egress to real and personal property was impaired or hindered.

199. Pebblebrook suffered loss as a result of those state and local Government Orders.

200. Such loss triggers coverage under the Master Policy's Time Element Coverage for Ingress/Egress.

8. COVID-19 Triggered the Master Policy's Extension of Time Element Coverage for Special Perils Business Interruption

201. The Master Policy affords coverage for Time Element Coverage for Special Perils Business Interruption.

202. The Master Policy's Time Element Coverage for Special Perils Business Interruption insures "loss as insured hereunder when there is an interruption or interference with the business of the insured as consequence of ... [i]nfectious or contagious disease manifested by any person while on the premises of the insured."

203. The term "disease" is not defined in the Master Policy. The term, therefore, must be afforded its plain and ordinary meaning.

204. One definition of "disease" is "a condition . . . typically manifested by distinguishing signs and symptoms." See <https://www.merriam-webster.com/dictionary/disease>.

205. By definition, therefore, a “disease” is intangible.

206. Because “disease” is intangible, the Master Policy’s coverage for the “loss as insured hereunder when there is an interruption or interference with the business of the insured as consequence of ... [i]nfectious or contagious disease manifested by any person while on the premises of the insured” necessarily pertains to the disease’s causative agent and subsequent impact.

207. COVID-19 is an infectious or contagious disease as contemplated in the Special Perils Business Interruption extension.

208. COVID-19 has been manifested by persons while on Pebblebrook’s properties.

209. The manifestation of COVID-19 in persons on Pebblebrook’s properties has caused loss due to an interruption or interference with Pebblebrook’s business.

210. Such loss triggers coverage under the Master Policy’s Time Element Coverage for Special Perils Business Interruption.

9. Alternatively, the Master Policy Is Ambiguous and Coverage Is Triggered

211. The Master Policy unambiguously covers Pebblebrook’s claim for losses. However, Defendant Insurers have refused to acknowledge that COVID-19 or the Government Orders constitute non-excluded causes of loss that have and will continue to cause physical loss of or damage to property.

212. Policy language is considered ambiguous if a policy provision, when read by a reasonably prudent person, is susceptible of more than one meaning. If an ambiguity remains after consideration of extrinsic evidence, the ambiguity is construed against the drafter of the policy.

213. Notwithstanding Defendant Insurers’ refusal to provide coverage under the Master Policy, dozens of courts throughout the United States have already concluded that COVID-19

and/or the Government Orders meet the requirements under similar insurance policies to trigger coverage for losses akin to Pebblebrook's claimed losses and expenses.

214. Thus, for this reason as well, there can be no dispute that Pebblebrook's interpretation of the Master Policy is reasonable and must be read in favor of coverage. At minimum, as court decisions make evident, the Master Policy is reasonably susceptible to multiple interpretations, which requires a finding of coverage for Pebblebrook's claimed losses.

H. No Exclusions Bar Coverage

215. Pebblebrook's losses and expenses, and coverage for such losses and expenses, are not excluded by the Master Policy.

216. If Defendant Insurers wanted to exclude coverage for loss or damage caused directly or indirectly by a communicable disease or pandemic, they could have used an exclusion that clearly and unambiguously did so.

217. Defendant Insurers have added new pandemic and disease exclusions to subsequent policies:

- a. For example, Lexington added a "Communicable Disease Exclusion" stating that Lexington "does not insure any loss, cost, damage or expense, arising out of, attributable to, or occurring concurrently or in any sequence with a **communicable disease**."
- b. Similarly, Princeton added a "Communicable Disease Endorsement" that clarifies Princeton "does not insure any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease."

1. The Policies Contamination Exclusion Does Not Apply

218. McLarens, on behalf of Defendant Insurers, contended in a December 4, 2020 letter to Pebblebrook that the contamination exclusion bars recovery for any loss or damage due to COVID-19.

219. The Master Policy's contamination exclusion, which is a traditional pollution exclusion, requires Defendant Insurers to establish that the presence of any deleterious substance described in the exclusion be due to a "discharge, dispersal, seepage, migration or escape" of such substance.

220. Because COVID-19 is not a pollutant and is naturally occurring and Pebblebrook's claim does not involve any discharge, dispersal, seepage, migration, or escape of pollution, the contamination exclusion cannot apply.

221. In addition, Pebblebrook reasonably understood the contamination exclusion to apply to localized environmental contamination, such as discharge or seepage of hazardous waste or similar environmental pollution liabilities, and not to new diseases like COVID-19, which result in pandemics.

222. At a minimum, the contamination exclusion is ambiguous as applied to claims, like Pebblebrook's, arising from the presence of COVID-19. Under settled principles of insurance law, such ambiguous exclusions must be construed in favor of coverage for Pebblebrook's and against Defendant Insurers.

223. Defendant Insurers cannot meet their heavy burden to prove that the contamination exclusion clearly applies to Pebblebrook's claim and is not subject to any other reasonable interpretation.

224. The contamination exclusion also cannot apply because it conflicts with the Master Policy's affirmative coverage grant for Time Element Coverage for Special Perils Interruption coverage, which expressly covers, among other things, "when there is an interruption or interference with the business of the insured as consequence of: i) Infectious or contagious disease manifested by any person while on the premises of the insured....".

225. Conflicting provisions within the Master Policy cannot be read to negate certain coverages or in ways that render some coverage provisions mere surplusage.

226. COVID-19 is an infectious or contagious disease as that term is used in the Time Element Coverage for Special Perils Interruption coverage.

227. The contamination exclusion cannot apply to bar the affirmative Time Element Coverage for Special Perils Interruption coverage nor can it apply to bar losses premised on the same covered cause of loss (*i.e.*, infectious or contagious disease) accompanied by physical loss or damage because doing so would render the Master Policy's Time Element Coverage for Special Perils Interruption coverage meaningless.

228. To the extent Defendant Insurers contend that the Master Policy's contamination exclusion bars coverage for loss caused by an infectious or contagious disease or some other aspect of Pebblebrook's claim, the Master Policy is, at best, ambiguous because it is susceptible to more than one reasonable interpretation and, therefore, must be construed in favor of coverage.

229. In addition, the insurance industry has known the risks associated with pandemics for more than a century. These risks have been even more pronounced and evident to Defendant Insurers in recent decades due to SARS, Ebola, MERS, H1N1, and Zika.

230. Because such risks are well-known to Defendant Insurers and insurers generally, there are exclusions in common usage in the insurance industry.

231. However, Defendant Insurers, all sophisticated insurers, decided not to include any such exclusions in the Master Policy they sold to Pebblebrook. To the contrary, the Master Policy expressly states that losses from the presence of infectious and contagious diseases are covered.

232. The terms of the "all risks" Master Policy, combined with the absence of any applicable exclusion (despite the existence of commonly used exclusions for losses caused by

viruses, communicable diseases, or pandemics) and conflicting Master Policy language, demonstrate that the Master Policy provides insurance coverage for Pebblebrook's business interruption losses.

233. Because the contamination exclusion is ambiguous, it must be read in favor of Pebblebrook and construed in favor of coverage for the claim.

2. The Master Policy's Loss of Market Exclusion Does Not Apply

234. McLarens contended in its December 4, 2020 letter that the loss of market exclusion might bar recovery for any loss or damage due to COVID-19 without offering any evidence or reasoning for this position.

235. The Master Policy states that it does not insure "Against Loss of Market/Delay of Use."

236. To the extent that the actual or anticipated presence of COVID-19 has caused a loss of market, it has been the result of direct physical loss of or damage to property.

237. The loss of market exclusion cannot apply to bar coverage for business interruption loss resulting from direct physical loss of or damage to property cause by a peril insured against. If the loss of market exclusion applied, it would render all business interruption coverage under the Master Policy meaningless.

238. Defendant Insurers cannot meet their burden to prove that the loss of market exclusion clearly applies to Pebblebrook's claim and is not subject to any other reasonable interpretation.

239. At most, the loss of market exclusion is ambiguous in this context because, among other reasons, it directly conflicts with other coverages in the Master Policy.

240. Because the loss of market exclusion is ambiguous, it must be read in Pebblebrook's favor and construed in favor of coverage for the claim.

3. The Master Policy's Pollution and Contamination Exclusion Does Not Apply

241. McLarens contended in its December 4, 2020 letter that the pollution and contamination exclusion bars recovery for any loss or damage due to COVID-19.

242. The pollution and contamination exclusion endorsement applies to “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, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage Insured by this policy.”

243. The Master Policy defines “CONTAMINANTS or POLLUTANTS” as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including but not limited to, bacteria, fungi, 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. Waste includes materials to be recycled, reclaimed, or reused.”

244. COVID-19 is not a pollutant and is naturally occurring.

245. The presence of COVID-19 is not the result of a release, discharge escape, or dispersal.

246. COVID-19 does not fall within the definition of “CONTAMINANTS or POLLUTANTS,” and it is not found on any of the legislation listed in the exclusion.

247. In addition, Pebblebrook reasonably understood the pollution and contamination exclusion to apply to localized environmental pollution and contamination, such as discharge or seepage of hazardous waste or similar environmental pollution liabilities, and not to new diseases like COVID-19, which result in pandemics.

248. At a minimum, the pollution and contamination exclusion is ambiguous as applied to claims, like Pebblebrook's, arising from the presence of COVID-19. Under settled principles of insurance law, such ambiguous exclusions must be construed in favor of coverage for Pebblebrook and against Defendant Insurers.

249. Defendant Insurers cannot meet their burden to prove that the pollution and contamination exclusion clearly applies to Pebblebrook's claim and is not subject to any other reasonable interpretation.

250. The pollution and contamination exclusion also cannot apply because it conflicts with the Master Policy's affirmative coverage grant for "Time Element Coverage for Special Perils Interruption."

251. The terms of the "all risks" Master Policy, combined with the absence of any applicable exclusion (despite the existence of commonly used exclusions for losses caused by viruses, communicable diseases, or pandemics) and conflicting policy language, demonstrate that the Master Policy provides insurance coverage for Pebblebrook's business interruption losses

252. Because the pollution and contamination exclusion is ambiguous, it must be read in Pebblebrook's favor and construed in favor of coverage for the claim.

4. The Master Policy's Authorities Exclusion Does Not Apply

253. McLarens contended in its December 4, 2020 letter that the authorities exclusion bars recovery for any loss or damage due to Government Orders issued as a result of COVID-19.

254. The Master Policy contains an authorities exclusion that states: “[n]otwithstanding any of the provisions of this policy, the Company shall not be liable for loss, damage, costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any Government Agency, Court or other Authority from any cause whatsoever.”

255. The Government Orders discussed in this Complaint were issued as a direct result of the actual and anticipated presence of COVID-19.

256. Those Government Orders do not fall within the category of orders contemplated in the authorities exclusion.

257. Pebblebrook reasonably understood the authorities exclusion to prevent coverage for Government Orders issued in a punitive manner, not Government Orders of general applicability to the public at large.

258. At a minimum, the authorities exclusion is ambiguous as applied to claims, like Pebblebrook’s, arising from the presence of COVID-19. Under settled principles of insurance law, such ambiguous exclusions must be construed in favor of coverage for Pebblebrook and against Defendant Insurers.

259. Defendant Insurers cannot meet their burden to prove that the authorities exclusion clearly applies to Pebblebrook’s claim and is not subject to any other reasonable interpretation.

260. The authorities exclusion also cannot apply because it conflicts with the Master Policy’s affirmative coverage grant for “Time Element Coverage for Interruption by Civil or Military Authority.”

261. To the extent Defendant Insurers contend that the Master Policy’s authorities exclusion bars coverage for loss caused by Government Orders or some other aspect of

Pebblebrook's claim, the Master Policy is, at best, ambiguous because it is susceptible to more than one reasonable interpretation and, therefore, must be construed in favor of coverage.

I. Defendant Insurers' Denial of Pebblebrook's Claim

262. Pebblebrook turned to Defendant Insurers, reasonably expecting that Defendant Insurers would cover the losses and expenses described in this Complaint.

263. On April 30, 2020, Pebblebrook sent notice of loss to Defendant Insurers on the primary layer, requesting coverage.

264. This notice was timely.

265. On April 30, 2020, McLarens responded to the loss notification on behalf of Defendant Insurers and requested additional information about the claim from Pebblebrook.

266. On May 1, 2020, Pebblebrook sent a Property Loss Notice that provided additional notice of the losses described herein and requested coverage.

267. On June 30, 2020 McLarens sent a reservation of rights on behalf of some of the Defendant Insurers and asked Pebblebrook to respond to additional requests for information.

268. On September 2, 2020, Pebblebrook responded to the requests with details regarding the locations that incurred loss of or damage to property due to the presence of COVID-19.

269. On December 4, 2020, McLarens sent a letter indicating that there was "no coverage under the Interruption, Extra Expense, Contingent Business Interruption, Interruption by Civil or Military Authority, Ingress/Egress, or Sue and Labor provisions of the Policies for the Claim."

270. Pebblebrook performed all of its obligations under the Master Policy, including by notifying Defendant Insurers of a covered cause of loss, and any conditions precedent have occurred or been satisfied, met, waived, excused, or are otherwise inapplicable.

271. Defendant Insurers' denial of coverage for Pebblebrook's claim is improper and their failure to provide coverage is a breach of the Master Policy.

272. Defendant Insurers' conduct during their handling of Pebblebrook's claim constituted bad faith.

IV. CAUSES OF ACTION

COUNT I (Declaratory Judgment)

273. Pebblebrook repeats and realleges the allegations in the preceding paragraphs.

274. Pebblebrook seeks the Court's declaration of the parties' rights and duties under the Master Policy pursuant to the Declaratory Judgments Act, 42 Pa. C.S. §§ 7531-7541.

275. A justiciable controversy exists between Pebblebrook and Defendant Insurers concerning the availability and amount of coverage for Pebblebrook's claims.

276. The controversy between Pebblebrook and Defendant Insurers is ripe for judicial review.

COUNT II (Breach of Contract)

277. Pebblebrook repeats and realleges the allegations in the preceding paragraphs.

278. The Master Policy is a valid and enforceable contract between Pebblebrook and Defendant Insurers.

279. Pebblebrook complied with all applicable Master Policy provisions or Defendant Insurers waived those provisions or are estopped from asserting any purported non-compliance with those provisions.

280. Defendant Insurers breached the Master Policy by improperly denying coverage to Pebblebrook or otherwise repudiating their obligation to cover Pebblebrook's losses and expenses, as expressly required under the Master Policy.

281. Pebblebrook has sustained and continues to sustain damages as a result of Defendant Insurers' breach of the Master Policy.

COUNT III (Bad Faith)

282. Pebblebrook repeats and realleges the allegations in the preceding paragraphs.

283. Defendant Insurers acted in bad faith both in their refusal to provide coverage and in their handling of Pebblebrook's claims.

284. Defendant Insurers did not have a reasonable basis for denying coverage and Defendant Insurers knew or recklessly disregarded their lack of reasonable basis in denying the claim.

285. Defendant Insurers cannot fairly debate that Pebblebrook is entitled to coverage for the claims at issue based on their investigation.

286. Defendant Insurers had no valid reasons to delay processing the claim or to request that Pebblebrook comply with burdensome information requests while planning to deny coverage from the moment they received Pebblebrook's claim.

287. At the outset, Defendant Insurers' initial reaction to Pebblebrook's claim was to press Pebblebrook to respond to premature information requests in an attempt to create time-consuming and costly work to dissuade Pebblebrook from pursuing their claim and that Defendant Insurers were investigating the claim and evaluating coverage in good faith. The unreasonable nature of those tactics is further demonstrated by the fact that, because Defendant Insurers deny that the presence of COVID-19 amounts to physical loss of or damage to property, Defendant Insurers intended to deny coverage regardless of Pebblebrook's responses to those inquiries. For example, Defendant Insurers asked for details regarding individuals infected with COVID who had been at covered locations even though Defendant Insurers planned to deny coverage regardless

of whether any such individuals had or had not been present. Defendant Insurers' actions lacked a reasonable basis, and Defendant Insurers knew or recklessly disregarded its lack of reasonable basis in denying the claim.

288. Pebblebrook has suffered and continues to suffer damages as a result of Defendant Insurers' bad faith.

V. PRAYER FOR RELIEF

289. Pebblebrook request judgment against Defendant Insurers as follows:

- a. A declaration from the Court that (i) the various coverage provisions identified herein are triggered by Pebblebrook's claims; (ii) the Master Policy covers Pebblebrook's claims; (iii) Pebblebrook sustained direct physical loss of or damage to property from a covered cause of loss under the parties' agreement; (iv) Defendant Insurers waived or are estopped from asserting their positions, as described in this Complaint, to bar or limit coverage; (v) no exclusion applies to bar or limit coverage for Pebblebrook's claims; (vi) Defendant Insurers are estopped from asserting an interpretation of the Master Policy in court that is contrary to their original representations and explanation of the Master Policy when they obtained state regulatory approval of the Master Policy; and (vii) any other declaratory relief useful to resolving the dispute between the parties, and Pebblebrook seeks an order requiring Defendant Insurers to provide coverage for Pebblebrook's claims;
- b. An order requiring Defendant Insurers to provide coverage for Pebblebrook's claim;
- c. For damages, including actual, compensatory, consequential, special, exemplary, and punitive, against Defendant Insurers in an amount to be proved at trial;

- d. Pre-judgment, post-judgment, and statutory interest;
- e. An award of attorney's fees and costs of suit incurred; and
- f. For such other and further relief, including any equitable relief, as the Court deems just and proper.

Respectfully submitted,

THE AXELROD FIRM, PC

Date: April 30, 2021

BY: /s/ Sheryl L. Axelrod
SHERYL L. AXELROD, ESQUIRE
The Beasley Building
1125 Walnut Street
Philadelphia, PA 19107
Telephone: 267.918.4526
Fax: 215.238.1779
saxelrod@theaxelrodfirm.com

Date: April 30, 2021

BY: /s/ Lisa J. Savitt
LISA J. SAVITT, ESQUIRE
Identification No. 40557
The Beasley Building
1125 Walnut Street
Philadelphia, PA 19107
Telephone: 202.441.0245
Fax: 215.238.1779
Email: lsavitt@theaxelrodfirm.com

*Attorneys for Plaintiff
Pebblebrook Hotel Trust*