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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

EMERALD HOLDING, INC.,

Plaintiff,

v.

W.R. BERKLEY SYNDICATE
LIMITED and GREAT LAKES
INSURANCE SE,

Defendants.

CASE NO. 8:21-CV-00340

COMPLAINT FOR:

- 1) DECLARATORY RELIEF**
- 2) BREACH OF CONTRACT**
- 3) BAD FAITH**

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This case is about Emerald Holding, Inc.’s (“Emerald”) event
3 cancellation policy insurers improperly and unreasonably delaying and reducing
4 millions of dollars of payments owed for Emerald’s events that have been
5 cancelled, postponed or otherwise impacted in 2020 and 2021 by the COVID-19
6 pandemic.

7 2. Emerald is a leading operator of business-to-business trade show
8 events across the United States. Each of Emerald’s events is held at least
9 annually, with certain franchises offering multiple editions per year. To protect
10 its core business, Emerald purchases broad event cancellation insurance coverage
11 years in advance, including policies for 2020 and 2021 which are at issue here,
12 and expressly including coverage for an outbreak of communicable disease like
13 the current pandemic.

14 3. Coverage under these policies for pandemic-caused cancellations and
15 other impacts is not in question – and the defendant insurers already have paid
16 over \$100 million of what is owed for cancelled events.

17 4. But another \$100 million or more also is already owed. At first, the
18 defendant insurers promptly adjusted and paid claims for the first cancelled
19 events in early 2020. However, the insurers have since shifted tactics and have
20 been going to greater and greater lengths to slow down payments – for example,
21 by pretending they have not received information, needlessly prolonging
22 investigations, raising new and unreasonable issues, pulling authority from
23 experienced claims adjusters and switching to new adjusters more focused on
24 delay, refusing basic requests, and other frustrating and improper tactics. The
25 insurers have now also improperly denied coverage for several events, saying
26 they should not have been cancelled, even though cancellation was unavoidable
27 with the ongoing pandemic.
28

1 5. Meanwhile, Emerald has been working diligently and doing
2 everything within its power to avoid cancellations and to mitigate its losses — for
3 example, by postponing events where feasible, substantially reducing and
4 recovering costs and expenses, exploring and implementing alternatives where
5 possible, and other proactive measures in good faith. The result has been tens of
6 millions of dollars of loss reductions and avoidances.

7 6. Moreover, Emerald also has put in enormous effort over the past 11
8 months to work cooperatively with the defendant insurers and their adjusters, to
9 provide needed information, and to consider and/or adopt any useful proposals.
10 Numerous people at Emerald have had nearly full-time jobs responding to insurer
11 requests, liaising with the insurers and their adjusters, and working to obtain
12 payments. All while Emerald has a business to operate and protect under
13 extremely challenging pandemic conditions.

14 7. Nonetheless, as the pandemic continued and claims have accrued,
15 instead of staying partners with Emerald, the insurers have become increasingly
16 non-responsive, obstructive, and clearly focused only on their own interests to try
17 to delay or reduce further payments. They know Emerald’s claims are
18 legitimately covered, and they know many tens of millions of dollars in much
19 needed coverage payments are already long overdue, including payments for
20 some events as far back as March and April 2020. The insurers just want to hold
21 on to the money.

22 8. The insurers’ tactics and massive payment arrearages have begun to
23 significantly prejudice Emerald. As a result, Emerald has been forced to bring
24 this action to enforce its coverage rights and obtain the money it is owed.

25 9. This action seeks a declaratory judgment and awards of damages for
26 breach of contract and bad faith against W.R. Berkley Syndicate Limited and
27 Great Lakes Insurance SE, who are the insurers and subscribers to the Lloyd’s of
28 London event cancellation policies at issue (collectively, “Underwriters.”)

THE PARTIES

1
2 10. Plaintiff Emerald Holding, Inc. is a corporation incorporated under the
3 laws of the State of Delaware. Its principal place of business when the policies
4 were issued was in California, at 31910 Del Obispo Street, San Juan Capistrano,
5 CA, 92675.¹ Since mid-2020, Emerald’s corporate headquarters has moved to
6 New York city, while maintaining a significant office in San Juan Capistrano.

7 11. On information and belief, Lloyd’s of London is comprised of
8 syndicates of underwriters and London market company underwriters that share
9 liability as subscribers under insurance policies. A typical Lloyd’s of London
10 policy will have multiple subscribers which collectively are responsible for 100
11 percent of the coverage provided by the policy.

12 12. Defendant W. R. Berkley Syndicate Limited, on information and
13 belief sometimes also referred to as Lloyd’s Underwriter Syndicate No. 1967
14 WRB, is one of the two insurer subscribers to the event cancellation policies at
15 issue in this action, and is thereby obligated to provide the insurance afforded by
16 the policies. In particular, W. R. Berkley Syndicate Limited is a subscriber for
17 39.5% of Policy No. PACES1800071 and 39.5% of Policy No. PACES1900032,
18 as also set forth in those policies. W. R. Berkley Syndicate Limited also is
19 designated lead underwriter for Policy No. PACES1800071 and Policy No.
20 PACES1900032.

21 13. On information and belief, at all times relevant to this complaint, W.
22 R. Berkley Syndicate Limited was authorized to transact and did, in fact, transact
23 the business of insurance in the State of California.

24
25
26 ¹ Plaintiff was previously known as Emerald Expositions Inc. On February 3,
27 2020, the company filed a Certificate of Amendment to its Certificate of
28 Incorporation with the Secretary of State of the State of Delaware to change its
name to “Emerald Holding, Inc.,” effective 12:01 a.m. Eastern Standard Time on
February 14, 2020.

1 14. On information and belief, all of the members of W. R. Berkley
2 Syndicate Limited are United Kingdom residents or United Kingdom companies
3 with principal places of business in the United Kingdom.

4 15. Defendant Great Lakes Insurance SE, on information and belief a
5 wholly-owned subsidiary of Munich Re, is the other insurer subscriber to the
6 event cancellation policies at issue and is thereby obligated to provide the
7 insurance afforded by the policies. In particular, Great Lakes Insurance SE is a
8 subscribed for 60.5% of Policy No. PACES1800071 and 60.5% of Policy No.
9 PACES1900032.

10 16. On information and belief, at all times relevant to this complaint,
11 Great Lakes Insurance SE was authorized to transact and did, in fact, transact the
12 business of insurance in the State of California.

13 17. On information and belief, Defendant Great Lakes Insurance SE is a
14 foreign company organized under the laws of the United Kingdom, and maintains
15 its principal place of business in London.

16 **JURISDICTION AND VENUE**

17 18. This complaint has an independent basis of jurisdiction due to the
18 complete diversity of the parties, and because the amount in controversy set forth
19 in this complaint exceeds \$75,000, exclusive of costs. *See* 28 U.S.C. § 1332.

20 19. Venue is proper in this District under 28 U.S.C. §1391 because
21 jurisdiction is based only upon diversity of citizenship, and a substantial part of
22 the events giving rise to this claim occurred in this District.

23 20. Underwriters also have contractually agreed to submit to the
24 jurisdiction of this Court. In particular, each policy at issue provides that “It is
25 agreed that in the event of the failure of underwriters hereon to pay any amount
26 claimed to be due hereunder, the underwriters hereunder, at the request of the
27 Named Insured, will submit to the jurisdiction of any Court of competent
28 jurisdiction within the United States.”

1 **GENERAL ALEGATIONS**

2 **Emerald’s Business**

3 21. Emerald operates across multiple sectors and runs approximately 55
4 business-to-business trade shows, as well as other face-to-face events across the
5 United States.

6 22. Emerald’s shows are frequently the largest and most well-attended in
7 their respective industry verticals. Emerald’s trade show attendees use the shows
8 to fulfill procurement needs, source new suppliers, reconnect with existing
9 suppliers, identify trends, learn about new products and network with industry
10 peers, and Emerald’s portfolio of trade shows is well-balanced and diversified
11 across both industry sectors and customers.

12 23. Emerald generates the vast majority of its revenue through the live
13 events that it operates.

14 24. A portion of Emerald’s revenue also is generated from other
15 marketing services, including digital media and print publications that
16 complement Emerald’s events in the industry sectors it serves. These other
17 services also allow Emerald to remain in close contact with, and market to, its
18 existing event audiences throughout the year.

19 **The Event Cancellation Insurance Policies**

20 25. Due to the nature of its live trade show business, Emerald purchased
21 the broad event cancellation policies issued by defendant Underwriters.

22 26. Underwriters issued to Emerald two policies relevant to this action:
23 Convention Cancellation Insurance Policy No. PACES1800071, with a policy
24 period of at least April 24, 2018 to December 31, 2020 (the “2020 Policy”) and
25 Convention Cancellation Insurance Policy No. PACES1900032, with a policy
26
27
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1 period of at least March 25, 2019 to December 31, 2021 (the “2021 Policy”)
2 (collectively, the “Policies.”)²

3 27. Given the annual recurring nature of Emerald’s events, and the long-
4 term planning involved for the events, each of the Policies was underwritten,
5 bound and issued almost two years in advance of the relevant year of events.
6 That is, the policy commencing on April 24, 2018 covers the events that were
7 scheduled for calendar year 2020. The policy commencing March 25, 2019
8 covers the events that were scheduled for calendar year 2021.

9 28. At all relevant times the required premiums have been fully paid for
10 the Policies and the Policies have been in full force and effect.

11 29. The Policies identify the covered events and, where available, for each
12 event, the amount of covered revenue. The Policies also contain provisions
13 allowing Emerald to add newly launched or acquired events throughout the
14 course of the Policies, and allowing Emerald to ask for additional coverage,
15 should there be an increase in the expected revenue for a covered event.

16 30. As to the covered events for 2020 and 2021, the Policies cover losses
17 from, among other things, the cancellation, curtailment, postponement, removal
18 to alternative premises, abandonment, or enforced reduced attendance of an
19 event.

20 31. The Policies refer to “Cancellation, Curtailment, Postponement,
21 Removal to Alternative Premises, or Abandonment” as “the inability of the
22 Named Insured to open or commence, keep open, or otherwise maintain the
23 Event in whole or in part for its original published duration or scope.”
24

25
26 ² The Policies and their terms are incorporated into the allegations of this
27 Complaint by reference, but have not been attached due to their volume and
28 because they also contain certain proprietary event-specific information.
Underwriters have full copies of the Policies, and copies can be provided to the
Court upon request.

1 32. The Policies refer to “Enforced Reduced Attendance” as “the enforced
2 inability of Participants to attend the Event solely and directly as a result of the
3 same specific cause, which is beyond their control and is not otherwise
4 excluded.”

5 33. The Policies expressly provide within their coverage pandemic-caused
6 cancellations and other losses, for example, providing that “in consideration of
7 the premium paid, it is hereby noted and agreed with effect from inception, this
8 insurance is extended to cover your irrecoverable expenses and loss of net profit,
9 as insured under this policy, arising from an outbreak of communicable disease.”

10 34. Most of the coverages under the Policies are subject to total aggregate
11 limits. Those limits are \$191,124,000 for the 2020 Policy and \$191,472,824 for
12 the 2021 Policy.

13 35. The Policies also provide certain relevant coverages in addition to the
14 policy limits, such as coverage for remedial actions to minimize the extent of any
15 loss and coverage for certain additional promotional and marketing expenses.

16 **Emerald’s Cancellations and Other Losses**

17 36. Beginning in early 2020, the widespread outbreak of COVID-19
18 forced the cancellation of numerous trade show events.

19 37. As the dramatic impacts of the pandemic have continued into 2021,
20 Emerald has continued to be compelled to cancel most of its events.

21 38. To every extent feasible, and at great effort, Emerald has attempted to
22 mitigate its losses and avoid cancellations.

23 39. For example, when possible, Emerald has postponed many events.
24 However, given the duration of the ongoing pandemic and given the annual and
25 seasonal nature of the events, postponements did not provide for any meaningful
26 mitigation for the 2020 events, which nearly all had to be cancelled from March
27 2020 forward. Postponements of some early season 2021 events may
28 significantly reduce the number of cancelled events in 2021, depending on what

1 the future holds, but cancellation already has been unavoidable for a number of
2 2021 events.

3 40. Likewise, Emerald has gone to great effort to obtain forgiveness,
4 reduction or forbearance of cost commitments for impacted events. And, when
5 possible, Emerald has attempted to make event cancellation or postponement
6 decisions sufficiently in advance to maximize cost avoidance. The result has
7 been to greatly reduce Emerald's expense-related losses, by tens of millions of
8 dollars.

9 41. Emerald also has carefully explored hosting modified versions of
10 events, splitting events, consolidating events, moving events, and nearly every
11 other practical possibility to minimize its losses.

12 42. As a result of all these efforts, Emerald's relevant losses in 2020 are
13 substantially below the 2020 Policy limits, which easily could not have been the
14 case. Similarly, while tens of millions in losses for cancelled and postponed
15 events have already accrued for early-year 2021 events, those losses could easily
16 be much higher, but for Emerald's persistent efforts to postpone numerous events
17 and do whatever it reasonably can to reduce its losses and minimize its claims.

18 **Emerald's Coverage Claims, Underwriters' Acknowledgement of Coverage**
19 **and the Commencement of Payments**

20 43. Emerald timely provided notice under the Policies of the impact of the
21 pandemic and began submitting claims as events were impacted. These
22 submissions began with events in early 2020 and then continued with events
23 throughout the remainder of 2020, and more recently have included various
24 events in 2021. Taken together, all coverage claims under the Policies
25 concerning 2020 and 2021 events will be referred to as the "Coverage Claims."

26 44. Underwriters responded, starting in early 2020, by acknowledging the
27 claims, appointing loss adjusters who are very experienced with claims under
28 these types of Lloyd's of London event cancellation policies at a company called

1 Premier Insurance Services (“Premier”), and working with Emerald and its
2 broker Marsh McLennan (“Marsh”) to obtain event-specific information that will
3 allow for processing and payment of each Coverage Claim submission.

4 45. The process was smooth at first, as it should be, and the initial
5 submissions were promptly accepted, adjusted and paid nearly in full.

6 46. For example, the first full event cancellation claim submission was for
7 the March 22, 2020 ASD event. Claim specifics were submitted on April 10,
8 2020, through Marsh, with a loss total of over \$20 million for the event after
9 mitigation efforts. Just over a month later, Underwriters issued an initial interim
10 payment of approximate 67% of that event claim. Several weeks later,
11 Underwriters paid over 25% more of the claim. Meanwhile, during that time,
12 through back-and-forth between Emerald, Marsh, Premier and the Underwriters,
13 the submission amount was adjusted to account for some additional cost
14 payments and mitigations for a net decrease to the claim of a few hundred
15 thousand dollars in additional savings. The result was that within about 90 days
16 of the original March ASD event cancellation submission, Emerald received loss
17 payments for almost 95% of the submission.

18 47. Then, a couple months later, in early September 2020, and about 5
19 months after the submission, Underwriters and Emerald agreed to a final
20 additional coverage payment for the ASD event cancellation that would result in
21 about 99% payment of the submitted loss for that event.

22 48. No big complaints there.³ That is how the Policies are *supposed* to
23 work and how the claims are *supposed* to be adjusted and paid. Clearly, the
24 Underwriters understand that, and understand what their obligations for these
25 claims are supposed to be in terms of timing and amount of payment.
26

27
28 ³ Although the final payment for the ASD event was promised in September 2020,
the Underwriters still have not paid this additional amount.

1 **Losses Mount And Underwriters Start Misbehaving In Order To Delay**
2 **Payment**

3 49. However, Underwriters' behavior towards the Coverage Claims
4 quickly deteriorated. As the pandemic raged on and more events had to be
5 cancelled, Underwriters started engaging in delay tactics to hold on to their
6 money.

7 50. The cancellation claim submissions started taking longer and longer
8 for Underwriters to process, and Underwriters started taking longer and longer to
9 pay anything, and when they did issue payment, it was for smaller and smaller
10 percentages of the covered claims.

11 51. For example, Emerald provided its second batch of claim submissions
12 to the Underwriters on April 30, 2020. This second batch of submissions
13 consisted of seven cancelled events that were scheduled between March and June
14 2020. The total submission amount was over \$40 million. The Premier adjusters
15 reviewed these submissions and provided payment recommendations to
16 Underwriters on a similar timeline to the ASD event. But this time, the initial
17 payment from Underwriters took 75 days, instead of 45 days, and then further
18 payments were stalled by even longer.

19 52. Subsequent submissions batches received even slower attention
20 towards payment, regardless of whether Underwriters had received adjustment
21 reports from Premier. On the 3rd and 4th batches of event cancellation
22 submissions, which were provided in May 2020, Underwriters took about 120
23 days to issue initial payments, and this time those payments were for lower
24 percentages than earlier submissions. After that, there were a number of
25 submissions that did not receive any initial payment for many, many months.
26 There are still, to this day, numerous 2020 cancelled covered events where no
27 initial payment has been received.

28 53. Notwithstanding Underwriters' delays in making payments, Emerald

1 continued to do its job on mitigating losses, submitting claims, and following up
2 with prompt responses to Underwriter and adjuster requests. Throughout the
3 summer and fall of 2020, Emerald continued to provide an event-by-event
4 breakdown of cancellations and postponements, outlining its careful
5 consideration of alternatives and possible mitigation measures in light of market
6 research, participant surveys, ongoing and projected government restrictions, and
7 local and national pandemic status information.

8 **Underwriters Start Reassigning And Derailing The Adjustment Process**

9 54. By October 2020, Underwriters had not only slowed down payment to
10 a crawl, but they then slowed down claim adjustment to a crawl by engaging
11 attorneys at the Troutman Pepper firm to essentially take over the claims-
12 handling function from Premier.

13 55. Though outwardly maintaining to be outside coverage counsel, on
14 information and belief, Troutman Pepper began assuming the adjusting role, by
15 taking over authority from Premier, reviewing the claims, instructing Premier on
16 what to ask and say to Emerald and Marsh, and instructing Premier on what it
17 should say (or not say) in its reports to Underwriters, providing coverage
18 responses, and ultimately making the claim-adjustment and payment
19 recommendations and decisions for Emerald's Coverage Claims.

20 56. On information and belief, based on the subsequent claims
21 communications and handling, one of the primary functions of these new
22 adjusters was to further slow things down, question everything, and further
23 reduce and delay payment on covered claims.

24 57. Indeed, despite Underwriter's express statements that they were
25 relying on Premier to assess the value of each claim, on information and belief,
26 around this time, Underwriters began routinely reducing or ignoring the amount
27 that Premier recommended should be paid to Emerald.

28 58. Around this same time Underwriters, through these new adjusters,

1 began asserting various other new improper bases for delaying, withholding or
2 denying coverage.

3 59. For example, for many of the cancelled 2020 events, Underwriters
4 suddenly refused to use the expected revenue amounts underwritten into the 2020
5 Policy and on which the 20220 Policy premium had been based. For some
6 events, Underwriters simply reduced the covered revenue amount without any
7 notification or explanation to Emerald. For about 10 other events, Underwriters
8 refused to make any payment until Emerald provided additional substantiation to
9 prove the revenue estimate that was already agreed by Underwriters and part of
10 the policy.

11 60. As another example, these new adjusters said they were unilaterally
12 imposing new claims “protocols” and reporting requirements not agreed to by
13 Emerald and not required by the Policies, and in some instances at odds with the
14 terms of the Policies. Subsequently, the new adjusters would use those self-
15 serving “protocols” to contend that Emerald had not yet done what they asked.
16 The veiled purpose of these additional protocols was obviously to provide a basis
17 on which Underwriters could try to further delay or avoid payments on the
18 covered claims.

19 61. Underwriters, through these new adjusters, would also start pretending
20 they did not receive sufficient information in advance of a cancellation or
21 postponement, and that they might have been prejudiced from exercising a right
22 to salvage the event. These arguments were being raised by Underwriters despite
23 repeatedly having been given ample opportunity to propose viable alternatives to
24 cancellation, but never having done so for any event. Indeed, to the contrary, the
25 Underwriters have repeatedly expressly deferred to Emerald’s expertise in
26 knowing when a cancellation is unavoidable or when mitigation measures make
27 sense based on the event-specific requirements and considerations.
28

1 **Underwriters Start Denying Some Claims By Baselessly Contending That**
2 **Cancellation Was Avoidable, While There Was No Viable Alternative**

3 62. Recently, Underwriters, through the new adjusters, have gone so far
4 as to deny coverage for three events in late 2020 by groundlessly contending that
5 the events should not have been cancelled, and based on an improper
6 interpretation of the Policies that, unless there is an order legally prohibiting an
7 event from going forward, cancellation was avoidable, and so there is no
8 coverage.

9 63. As further evidence that Underwriters are simply now taking whatever
10 position escapes paying coverage, they subsequently refused to agree to the
11 cancellation of an event in Long Beach, California, a location where gatherings
12 were, in fact, legally prohibited.

13 64. Likewise, while Underwriters contend that the denied events could
14 have gone forward in some reduced or alternative form, they have not indicated
15 what that form was, and have not provided any adjustment or payment as to the
16 losses that would still have resulted if such a hypothetical event had taken place.
17 Indeed, that is because the losses would have been even greater if such a
18 hypothetical event had been attempted. But rather than doing any such analysis,
19 or actually having proposed any concrete alternative for a specific event, the new
20 adjusters simply indicated that Underwriters were denying the claim.

21 **Underwriters Start Improperly Withholding Payments For Outstanding 2020**
22 **Coverage Claims Based On Alleged Reserve For “Indirect Cost” Savings**

23 65. Underwriters, through their new adjusters, also have recently started
24 contending, without any reasonable or justifiable basis, that there were about \$30
25 million of corporate-level SG&A savings in 2020 that need to be credited as an
26 offset to covered event cancellations.

27 66. However, an interpretation of the Policies that the Underwriters get
28 credited corporate overhead savings is directly contrary to the language of the

1 Policies, which expressly limits relevant expenses to “expenses ... to hold
2 events.” That is, for each event the relevant expenses must be tied to holding that
3 event. There is no reference to so-called “indirect costs” or “overhead” anywhere
4 in the Policies.

5 67. Because it is not relevant to coverage, corporate overhead was not
6 included in the event-by-event financial calculations used by Underwriters, the
7 brokers, and Emerald in the underwriting of the Policies, or in the associated
8 event schedules attached to the Policies.

9 68. Nor have such expenses been included in the claim submissions for
10 the various events. Rather, Emerald has stuck to the applicable principle that the
11 relevant expenses are those incurred “to hold events.”

12 69. Second, Emerald has provided extensive and detailed information to
13 Underwriters showing the corporate-level savings for 2020, explaining each
14 category of savings and how it does not relate to holding events. Yet, despite
15 clearly having no basis for a continued withholding of tens of millions of dollars
16 on this alleged issue, Underwriters have refused to change their position or
17 reduce the withholding.

18 70. Instead, Underwriters have continued to delay by contending they do
19 not have enough information and by giving Emerald more make-work tasks such
20 as demanding voluminous additional irrelevant documents.

21 **Underwriters Are Improperly Trying To Coerce Emerald To Change The**
22 **2021 Policy Terms**

23 71. Stuck having issued Emerald the 2021 Policy back in 2019 that will
24 now provide another year of coverage for Emerald’s pandemic event
25 cancellations, Underwriters improperly have been trying to force Emerald into
26 agreeing to modify the 2021 Policy terms to reduce the promised coverage.

27 72. Specifically, Underwriters, through the new adjusters, have been
28 insisting that there will be no payment on any claim under the 2021 Policy until

1 Emerald agrees to an endorsement with “updated” revenue amounts for the 2021
2 events.

3 73. For example, in various letters from the new adjusters, they have
4 asserted that “the events that will be covered under the 2021 Policy, and the
5 amount of coverage provided for these events, cannot be determined with finality
6 until: (i) Emerald provides [Underwriters] with a schedule of events for 2021 that
7 Emerald actually expects to stage and provides budgets for those events that
8 reflect the realities of the impacts of COVID-19; and (ii) the schedule and
9 budgets are accepted by [Underwriters] via an endorsement attached to the 2021
10 Policy.”

11 74. However, the pandemic already is impacting what might be able to
12 take place in 2021, which is the whole point of the Policies and of having
13 coverage based on the pre-pandemic expected revenues. So Underwriters are
14 effectively trying to gut the 2021 Policy of that coverage, by modifying the pre-
15 pandemic revenues to become mid-pandemic revenue numbers.

16 75. Rather, the 2021 Policy is in full force and effect as is, providing
17 coverage for the anticipated revenues at the time of underwriting, as is reflected
18 in the 2021 Policy that was legally bound in March 2019, timestamped by the
19 two Underwriters at 4:30 p.m. on March 25, 2019 and 5:02 p.m. on March 26,
20 2019 respectively.

21 76. Even worse, Underwriters are trying to leverage Emerald’s financial
22 need for coverage payments to coerce Emerald into agreeing to these prejudicial
23 changes as a pre-requisite to paying *any* coverage under the 2021 Policy. Such
24 tactics are at best bad faith, and may go beyond that.

25 **Emerald Has Been Compelled To File This Action**

26 77. The above allegations are some main examples of Underwriters’
27 improper positions and unreasonable conduct over the past several months with
28 respect to the Coverage Claims.

1 78. In sum, by early 2021 it became clear to Emerald that Underwriters no
2 longer had any intention of properly adjusting and paying the Coverage Claims,
3 nor any intention of working with Emerald in good faith. Rather, Underwriters'
4 primary objective had become to ignore, delay or contest their coverage
5 obligations.

6 79. No matter what Emerald proposed or did with respect to event
7 decisions or requests, Underwriters would say it was wrong or insufficient. No
8 matter what Emerald did to further support and prove up its claims, Underwriters
9 would say it was not good enough and more information was needed.

10 80. Likewise, when Emerald has requested any of the additional
11 coverages provided by the Policies, such as marketing expenses, Underwriters
12 have been dilatory and ultimately non-responsive.

13 81. In all, Underwriters are currently improperly withholding over \$100
14 million in coverage payments due to Emerald under the Policies.

15 **FIRST CAUSE OF ACTION**

16 **(Declaratory Relief)**

17 82. Emerald incorporates the allegations of Paragraphs 1 through 81 of
18 this Complaint, as though fully set forth herein.

19 83. There presently exists an actual justiciable controversy between
20 Emerald, on the one hand, and Underwriters, on the other hand, concerning
21 Underwriters' coverage obligations with respect to the Coverage Claims.

22 84. The controversy between Emerald and Underwriters is ripe for
23 judicial review.

24 85. Accordingly, Emerald seeks a declaration confirming that under the
25 Policies:

26 (a) Emerald is entitled to payment of the amounts of submitted losses for
27 each of the events within the Coverage Claims.

28 (b) Underwriters cannot use corporate overhead savings to reduce the

1 amounts of coverage owed for the Coverage Claims.

2 (c) Underwriters must adjust the Coverage Claims based on the pre-
3 pandemic anticipated revenues.

4 (d) Underwriters cannot require an endorsement to the 2021 Policy as a
5 pre-requisite to paying the Coverage Claims.

6 (e) Underwriters' denials of coverage for events where it has paid no
7 coverage are improper.

8 (f) Underwriters are obligated to provide coverage to Emerald for Future
9 Marketing Expenses with respect to the covered events.

10 (g) Underwriters are obligated to provide timely and regular payments to
11 Emerald for Coverage Claims according to a reasonable protocol determined by
12 the Court.

13 **SECOND CAUSE OF ACTION**

14 **(Breach of Contract)**

15 86. Emerald incorporates the allegations of Paragraphs 1 through 85 of
16 this Complaint, as though fully set forth herein.

17 87. The Policies are valid and enforceable contracts between Emerald and
18 Underwriters.

19 88. The Coverage Claims present covered losses under the terms of the
20 Policies.

21 89. Emerald has performed each and every material obligation imposed
22 upon it by the Policies in order to obtain full coverage for the Coverage Claims,
23 except to the extent such performance was either prevented or excused by
24 Underwriters.

25 90. All other applicable conditions or prerequisites under the Policies
26 obligating Underwriters to acknowledge and pay full coverage for the Coverage
27 Claims have been satisfied.

28 91. Nonetheless, to date, Underwriters have failed to timely provide the

1 coverage owed to Emerald for the Coverage Claims, and have only made
2 payments of portions of some of the Coverage Claims. Some of the Coverage
3 Claims have been denied altogether.

4 92. Also, even for the coverage payments that have been made, most of
5 the payments have not been timely and have been excessively delayed in
6 violation of Underwriters' obligations under the Policies and/or applicable law.

7 93. Underwriters also have failed or refused to provide the additional
8 coverages provided by the Policies, such as Future Marketing Expenses, when
9 they have been requested.

10 94. Underwriters also have breached the implied covenant of good faith
11 and fair dealing as set forth in the allegations herein and in the Third Cause of
12 Action below.

13 95. As a direct and proximate result of these breaches, Emerald has
14 suffered and continues to suffer damages, comprised of the remaining coverage
15 owed by Underwriters under the Policies for the Coverage Claims, as well as
16 consequential damages from these breaches.

17 **THIRD CAUSE OF ACTION**

18 **(Bad Faith)**

19 96. Emerald incorporates the allegations of Paragraphs 1 through 95 of
20 this Complaint, as though fully set forth herein.

21 97. The Policies contain an implied covenant by Underwriters, and
22 associated duty, that they will act in good faith and deal fairly with Emerald and
23 that they would do nothing to interfere with the rights of Emerald to receive the
24 benefits of the Policies.

25 98. Underwriters' improper efforts to delay, reduce or avoid their
26 obligations with respect to the Coverage Claims is unreasonable and constitutes
27 bad faith.

28 99. This conduct includes, among other things, the numerous improper

1 actions and inactions described throughout this Complaint – such as delaying or
2 refusing payments without explanation or good cause, taking unreasonable
3 positions to avoid or delay coverage obligations, failing to properly and
4 reasonably investigate and adjust coverage, ignoring the determinations of claims
5 adjusters that recommend payment and instead substituting new adjusters focused
6 on delaying or contesting coverage, creating and relying on false obstacles to
7 coverage, and improperly denying claims without reasonable basis.

8 100. In so doing, Underwriters have also improperly put their own
9 financial interests above the interests of their policyholder Emerald, and above
10 their obligations to their policyholder Emerald.

11 101. Underwriters have also done all of this with the clear intention of
12 avoiding or delaying their obligations and of pressuring Emerald to accept less
13 coverage than it is otherwise owed under the Policies. As a result, Underwriters’
14 bad faith conduct was also willful and malicious.

15 102. By these actions and inactions, Underwriters’ have breached the
16 covenants of good faith and fair dealing with respect to the Policies, and have
17 conducted themselves tortiously in bad faith.

18 103. As a direct and proximate result of the above-referenced bad faith,
19 Plaintiff has suffered and will continue to suffer damages. These damages include
20 Emerald’s attorney’s fees in prosecuting this action, as well as other special
21 economic and consequential damages. Consequential damages also were
22 reasonably contemplated by the parties at the time they entered into the Policies
23 with respect to such bad faith conduct.

24
25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Emerald prays for judgment as follows:

27 (a) On the First Cause of Action, for a judicial declaration adopting each
28 of Emerald’s contentions set forth in the above Cause of Action for Declaratory

1 Relief, and providing such further guidance as to the parties' respective rights
2 and obligations under the Policies as useful to fully resolve the parties' disputes
3 regarding the Coverage Claims and the Policies;

4 (b) On the Second Cause of Action, for an order and declaration that
5 Underwriters have breached their obligations to Emerald under the Policies with
6 respect to each of the Coverage Claims, and awarding compensatory damages in
7 the amount of all unpaid portions of the Coverage Claims, and further
8 compensatory and consequential damages amounts to be proven at trial;

9 (c) On the Third Cause of Action, for an order and declaration that
10 Underwriters breached their duty of good faith and fair dealing under the
11 Policies, and awarding compensatory damages in an amount to be proven at trial,
12 including attorney's fees, expenses and costs prosecuting the other causes of
13 action in this lawsuit, and awarding such consequential, exemplary and punitive
14 damages as may be available and appropriate in amounts to be proven at trial.

15 (d) On all Causes of Action, for an award of Emerald's costs of suit
16 incurred herein, for an award of all legally available interest, and for such other
17 and further relief as the Court may deem just and proper.

18
19 Dated: February 22, 2021

HALPERN MAY YBARRA GELBERG LLP

Marc D. Halpern

Susan P. Welch

Gwendolyn M. Toczko

22
23 By: s/ Marc D. Halpern

Marc D. Halpern

24 Attorneys for Plaintiff Emerald Holding, Inc.
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JURY TRIAL DEMAND

Plaintiff Emerald Holding, Inc. demands a trial by jury.

Dated: February 22, 2021

HALPERN MAY YBARRA GELBERG LLP

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