

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X

GENTING AMERICAS INC., GENTING NEW YORK  
LLC, RESORTS WORLD MIAMI LLC, AND RESORTS  
WORLD OMNI LLC,

Plaintiffs,

-against-

AMERICAN INTERNATIONAL GROUP UK LIMITED,  
ACE AMERICAN INSURANCE COMPANY, ALLIANZ  
GLOBAL RISKS US INSURANCE COMPANY, ARCH  
SPECIALTY INSURANCE COMPANY, ASPEN  
SPECIALTY INSURANCE COMPANY, CERTAIN  
UNDERWRITERS AT LLOYD’S LONDON  
SUBSCRIBING TO POLICY NUMBER  
B0509BOWPN1900646, CERTAIN UNDERWRITERS  
AT LLOYD’S LONDON SUBSCRIBING TO POLICY  
NUMBER B0509BOWPN1900918, COLONY  
INSURANCE COMPANY, EVANSTON INSURANCE  
COMPANY, EVEREST INDEMNITY INSURANCE  
COMPANY, FIRST SPECIALTY INSURANCE  
CORPORATION, GREAT LAKES INSURANCE SE,  
HALLMARK SPECIALTY INSURANCE COMPANY,  
INTERSTATE FIRE & CASUALTY COMPANY and  
LANDMARK AMERICAN INSURANCE COMPANY,

Defendants.

-----X

Plaintiffs Genting Americas Inc., Genting New York LLC, Resorts World Miami LLC,  
and Resorts World OMNI LLC (“Genting”)<sup>1</sup> for their Complaint for breach of contract,  
declaratory judgment and damages against Defendants American International Group UK Limited,

Index No. 704595/2021

**COMPLAINT**

**JURY TRIAL**  
**DEMANDED**

<sup>1</sup> Plaintiffs are Named Insureds under the insurance policies at issue in this action. Genting New York LLC operates Resorts World Casino New York City. Resorts World Miami LLC owns and operates the Boulevard Shops in Miami, Florida. Resorts World OMNI LLC owns and operates the Hilton Miami Downtown. Genting Americas Inc. owns Genting New York LLC, Resorts World Miami LLC, and Resorts World OMNI LLC.

ACE American Insurance Company, Allianz Global Risks US Insurance Company (“Allianz”), Arch Specialty Insurance Company, Aspen Specialty Insurance Company, Certain Underwriters at Lloyd’s London Subscribing to Policy Number B0509BOWPN1900646,<sup>2</sup> Certain Underwriters at Lloyd’s London Subscribing to Policy Number B0509BOWPN1900918,<sup>3</sup> Colony Insurance Company, Evanston Insurance Company (“Evanston”), Everest Indemnity Insurance Company, First Specialty Insurance Corporation, Great Lakes Insurance SE, Hallmark Specialty Insurance Company, Interstate Fire & Casualty Company and Landmark American Insurance Company (collectively, the “Defendant Insurers” or the “Insurers”), alleges as follows:

### NATURE OF THE ACTION AND RELIEF SOUGHT

1. Genting owns and operates several properties, including: (a) the only casino in New York City, Resorts World Casino New York City (“Resorts World Casino”), located in Queens, New York; and (b) the Hilton Miami Downtown (the “Hilton Miami”), located in Miami, Florida. Resorts World Casino and the Hilton Miami shall be referred to herein as the “Resorts.” Genting suffered insured physical loss, damage or destruction to property and time element losses including, by way of example only, those time element losses covered under the interruption by gaming commission, goodwill and public relationships, civil authority, contingent time element and extended period of liability provisions, as well as losses associated with its efforts to protect and preserve insured property.

---

<sup>2</sup> With respect to the primary \$25M layer: Lloyd’s Underwriter Syndicate No. 1414 ASC (6%), Axis Specialty Europe SE, LIRMA A9505 (4%), Lloyd’s Underwriter Syndicate No. 2987 BRIT (4%), Lloyd’s Underwriter Syndicate No. 3334 HAM (4%), Lloyd’s Underwriter Syndicate No. 0033 HIS (5%). With respect to the excess layer \$25M x \$25M: Lloyd’s Underwriter Syndicate No. 1274 AUL (5%), Lloyd’s Underwriter Syndicate No. 1200 AMA (7.5%), Lloyd’s Underwriter Syndicate No. 4020 ARK (5%), Lloyd’s Underwriter Syndicate No. 1945 SII (3%), and Lloyd’s Underwriter Syndicate No. 1967 WRB (4.5%). With respect to the excess layer \$100M x \$100M: Lloyd’s Underwriter Syndicate No. 0382 HDU (5%), and Houston Casualty Company (UK Branch), LIRMA H5100 (5%).

<sup>3</sup> Lloyd’s Underwriter Syndicate No. 3902 NOA (5%).

2. This action arises out of the Defendant Insurers' refusal to acknowledge coverage for and to pay Genting's losses arising from the SARS-CoV-2 virus (the "Coronavirus") and the disease it causes, Coronavirus Disease 2019 ("COVID-19") and the direct physical loss, damage or destruction to property and business interruption they caused under a program of "all-risk" commercial property insurance policies that the Defendant Insurers sold to Genting (the "Policies") that adopt a master policy form (the "Policy") with total combined limits of \$500 million, effective December 10, 2019 to December 10, 2020.

3. The Policies cover "all risk of direct physical loss, damage or destruction to" property "except as hereinafter excluded."

4. The phrase "all risk of direct physical loss, damage or destruction to" property is not defined or limited in the Policy. In plain English, "all risk of direct physical loss, damage or destruction to" to property denotes at least the following meanings: (1) physical damage to that property; (2) the structural alteration of that property; (3) the interaction of an external physical substance or force with the property, including its attachment to the surface of that property, rendering the property unfit, unsafe or uninhabitable for normal use or otherwise negatively affecting the property's usability; or (4) the loss of use or the loss of functional use, whether in whole or in part, of that property.

5. Virus, communicable disease and pandemics are not excluded causes of loss under the Policy. Indeed, the Policy expressly includes coverage for business interruption by infectious or contagious disease. Importantly and significantly, the Policy also provides full limits coverage for any order by the applicable Gaming Commission that interrupts Genting's operations – no matter the cause – under an "Interruption by Gaming Commission" endorsement.

6. The Defendant Insurers collected over \$13 million in premiums from Genting and

when Genting, like so many other New York and national businesses facing the greatest crisis in their history, turned to the Defendant Insurers to honor their coverage obligations under the Policies, the Defendant Insurers shirked their obligations, denied coverage and abandoned Genting and their other insureds in their hour of greatest need. In so doing, the Defendant Insurers placed their own financial interests above that of their own policyholders.

7. Specifically, the Policy, per Endorsement No. 5, provides coverage for “Interruption by Gaming Commission.” This affords coverage to Genting for any “time element” (that is, business interruption) loss “sustained during the period of time when access to real or personal property is prevented or the operation of a ‘location’ is interrupted or reduced due to any Gaming Commission’s commission laws, regulations or intervention[.]” (the “Interruption by Gaming Commission Coverage”) (emphasis added). This coverage is subject to the full limit of \$500 million.

8. The Interruption by Gaming Commission Coverage is triggered by a commission law, regulation or even a mere intervention by any Gaming Commission that either: (a) interrupts or reduces the operation of the insured casino property; or (b) prevents access to the insured casino property. Contrary to the Defendant Insurers’ position, the Interruption by Gaming Commission Coverage does not require any physical loss, damage or destruction to property to be triggered. Indeed, all that is required to trigger this coverage is a commission law, regulation, or intervention by the Gaming Commission that interrupts or reduces the operation of the insured casino property, or prevents access to the property.

9. Starting in March 2020, Genting was subject to New York Gaming Commission (the “Gaming Commission”) orders that prevented access to its property and reduced and interrupted its operations – yet Defendant Insurers have failed to acknowledge its coverage

obligations under the Interruption by Gaming Commission Coverage.

10. What is more, Genting's losses trigger a significant number of other coverages under the Policy – yet still, no coverage has been provided.

11. While Genting's Hilton Miami does not have a casino, it too suffered insured losses under the Policy.

12. Defendant Insurers have failed to pay Genting's claim. They have stretched out their purported "adjustment" of Genting's claim and refused to make a final coverage determination – all the while leaving Genting without the protective umbrella of the insurance coverage it paid the carriers over \$13 million in premiums to obtain. It is for these reasons that the Defendant Insurers have forced Genting to seek relief from this Court.

13. The toll of the Coronavirus and the COVID-19 pandemic on lives, property, and businesses in New York, Florida, the United States and around the world has been unprecedented and is among the worst public health and economic catastrophes of the last 100 years.

14. Indeed, to date COVID-19 has killed over 45,000 New Yorkers,<sup>4</sup> over 28,000 Floridians,<sup>5</sup> over 500,000 Americans,<sup>6</sup> and is now the third-leading cause of death in this country, surpassed only by heart disease and cancer.<sup>7</sup> At its peak, over 4,000 Americans were perishing per day from COVID-19.<sup>8</sup> Thousands of Americans are still dying daily, with surges of cases

---

<sup>4</sup> *New York Coronavirus Map and Case Count*, N.Y. TIMES, updated Feb. 13, 2021, <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html> (last visited Feb. 13, 2021).

<sup>5</sup> *Florida Coronavirus Map and Case Count*, N.Y. TIMES, updated Feb. 12, 2021, <https://www.nytimes.com/interactive/2020/us/florida-coronavirus-cases.html> (last visited Feb. 12, 2021).

<sup>6</sup> *Coronavirus Disease 2019 (COVID-19)*, CDC, updated Feb. 22, 2021, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Feb. 22, 2021).

<sup>7</sup> Gary Stix and Youyou Zhou, *COVID-19 Is Now the Third Leading Cause of Death in the U.S.*, SCI. AM., Oct. 8, 2020, <https://www.scientificamerican.com/article/covid-19-is-now-the-third-leading-cause-of-death-in-the-u-s1/> (last visited Feb. 12, 2021).

<sup>8</sup> Eugene Garcia, Lisa Marie Pane and Thalia Beaty, *U.S. tops 4,000 daily deaths from coronavirus for 1<sup>st</sup> time*, AP

occurring throughout the United States.<sup>9</sup>

15. The physical loss, damage or destruction to property and the economic devastation wrought by the Coronavirus and COVID-19 on Genting and the whole world, is unprecedented. The Coronavirus and the COVID-19 pandemic could result in net losses starting at \$3.2 trillion and reaching as much as \$4.8 trillion in U.S. real gross domestic product over two years.<sup>10</sup>

16. The impact of the Coronavirus and COVID-19 on New York is also devastating. As of February 6, 2021, New York has reported over 1.4 million COVID-19 cases, including 44,992 deaths.<sup>11</sup> Over a third of the New York's case count (655,228 cases) and over 60% of the deaths (28,021 deaths) arose in New York City, one of the hardest hit locations in the United States.<sup>12</sup> Even amidst the tragedy that befell New York City as a whole, Queens, the home of Resorts World Casino, stands out – Queens has reported the most cases, and second highest number of deaths, of any of the New York City boroughs.<sup>13</sup> Despite having the highest number of cases, Queens had the lowest number of hospital beds per capita, resulting in dire situations for

---

NEWS, Jan. 9, 2021, <https://apnews.com/article/us-coronavirus-death-4000-daily-16c1f136921c7e98ec83289942322ee4> (last visited Feb. 12, 2021).

<sup>9</sup> Coronavirus in the U.S.: Latest Map and Case Count, N.Y. TIMES, updated Feb. 12, 2021, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited Feb. 12, 2021); Johns Hopkins Medicine, *Coronavirus Second Wave? Why Cases Increase*, updated Nov. 17, 2020, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus> (last visited Feb. 17, 2021).

<sup>10</sup> Emily Gersema, *Business closures and partial reopenings due to COVID-19 could cost the U.S. trillions*, USC News (Nov. 30, 2020), <https://news.usc.edu/178979/business-closures-covid-19-pandemic-united-states-gdp-losses/#:~:text=The%20COVID%2D19%20pandemic%20could,years%2C%20a%20USC%20study%20finds> (last visited Feb. 17, 2021).

<sup>11</sup> *Supra*, note 3.

<sup>12</sup> *New York City Coronavirus Map and Case Count*, N.Y. TIMES, updated Feb. 12, 2021, <https://www.nytimes.com/interactive/2020/nyregion/new-york-city-coronavirus-cases.html> (last visited Feb. 12, 2021).

<sup>13</sup> *Number of cases of coronavirus (COVID-19) In New York State as of February 11, 2021, by county*, STATISTA, <https://www.statista.com/statistics/1109360/coronavirus-covid19-cases-number-new-york-by-county/> (last visited Feb. 12, 2021).

patients and area hospitals.<sup>14</sup>

17. COVID-19 has also devastated Florida and Miami-Dade County where the Hilton Miami is located. As of February 10, 2021, Florida has reported 1,806,797 cases and 28,831 deaths since the beginning of the pandemic.<sup>15</sup> Miami-Dade County has been the epicenter of the pandemic in Florida, and one of the hardest hit areas in the nation. By December 2020, Miami-Dade's then 230,000 plus COVID-19 cases accounted for a staggering one-fifth of Florida's one million cases.<sup>16</sup> Miami-Dade has experienced the seventh most deaths in the United States.<sup>17</sup>

18. Both Florida and New York have been devastated economically as demonstrated by employment figures. From February through December 2020, there was a net loss of over one million jobs in New York – an overall loss of 10.7% of jobs across all industries.<sup>18</sup> Job losses in Florida are also massive, with a net loss of almost 460,000 jobs, or 5.1% of all Florida jobs. *Id.*

19. Moreover, New York and Florida are expected to suffer substantial tax revenue declines as a result of the Coronavirus and COVID-19. Specifically, in 2021, New York is expected to have a \$13.3 billion shortfall in tax revenue, with that number ballooning to \$16 billion in 2022.<sup>19</sup> In Florida, the projected shortfall in tax revenue is \$1.9 billion in 2020, soaring to \$3.4

---

<sup>14</sup> *Why Surviving the Virus Might Come Down to Which Hospital Admits You*, N.Y. TIMES, updated Dec. 25, 2020, <https://www.nytimes.com/2020/07/01/nyregion/Coronavirus-hospitals.html> (last visited Feb. 17, 2021).

<sup>15</sup> *Supra*, note 5.

<sup>16</sup> *How Miami-Dade became the COVID epicenter of Florida and what happened month-by-month*, MIAMI HERALD, Dec. 3, 2020, <https://www.miamiherald.com/news/coronavirus/article247480940.html> (last visited Feb. 12, 2021).

<sup>17</sup> *COVID-19 United States Cases by County*, Johns Hopkins University of Medicine Coronavirus Resource Center, <https://coronavirus.jhu.edu/us-map> (last visited Feb. 12, 2021).

<sup>18</sup> Michael Ettlinger and Jordan Hensley, *COVID-19 Economic Crisis: By State*, UNIV. OF N.H. CARSEY SCH. OF PUB. POLICY, Jan. 27, 2021, <https://carsey.unh.edu/COVID-19-Economic-Impact-By-State> (last visited Feb. 12, 2021).

<sup>19</sup> *States Grappling With Hit to Tax Collections*, Center on Budget and Policy Priorities (last updated Nov. 6, 2020), <https://www.cbpp.org/research/state-budget-and-tax/states-grappling-with-hit-to-tax-collections> (last visited Feb. 12, 2021).

billion in 2021. *Id.*

20. A January 15, 2021 analysis by the Center for New York Affairs found that New York City lost 572,000 jobs, constituting 12.2% of the total, between the February 2020 peak of employment and November of 2020.<sup>20</sup> Queens was hit particularly hard; more than a third of Queens residents surveyed reported that they or someone in their household had lost their job due to the pandemic – more than double what was reported during the Great Recession.<sup>21</sup>

21. Miami-Dade County's economy has fared no better than New York City and Queens. The county experienced a total economic impact of \$3.36 billion in losses as a result of reduced hotel and restaurant sales revenues.<sup>22</sup> The Miami-Dade County hotel industry specifically experienced \$1.3 billion in losses in direct spending.<sup>23</sup> The reduction in hotel and restaurant revenue accounted for losses of \$53.2 million in county taxes, \$111.1 million in state taxes, and approximately \$264 million in federal taxes.<sup>24</sup> Miami-Dade County citizens felt the impact on more personal levels as well. The Miami-Dade County unemployment rate hit 8.1% in August 2020, and displaced restaurant and hotel industry workers accounted for \$1.2 billion in lost wages.<sup>25</sup>

22. In April of 2020, the Wall Street Journal predicted casino companies to lose a

---

<sup>20</sup> James Parrott, *NYC Labor market indicators register Covid-19's ill economic effects*, Center for New York City Affairs, Jan. 15, 2021, <http://www.centernyc.org/reports-briefs/2021/1/14/nyc-labor-market-indicators-register-covid-19s-ill-economic-effects> (last visited Feb. 12, 2021).

<sup>21</sup> Irene Lew, *The Pandemic Economy: COVID-19 Fallout Continues to Hit Low-Income New Yorkers the Hardest*, Community Service Society, Nov. 19, 2020, <https://www.cssny.org/news/entry/pandemic-economy-covid-fallout-low-income-new-yorkers#3> (last visited Feb. 12, 2021).

<sup>22</sup> Eric Beckman, Jinlin Zhao, Twila-Mae Logan, Michael Cheng, & Tianyu Pan, *Economic Impact of COVID-19 on the Hospitality Industry in Miami-Dade County – March through August of 2020*, <https://hospitality.fiu.edu/docs/Economic-Impact-Covid19.pdf> (last visited Feb. 12, 2021).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*



staggering \$39 billion in the following 12 to 18 months.<sup>26</sup>

23. In early March 2020, Governor Andrew Cuomo announced the first presumptive positive cases of COVID-19 in the state.<sup>27</sup> On March 14, Governor Cuomo announced the first death in the state of New York.<sup>28</sup> By mid-March 2020, the Coronavirus and COVID-19 was spreading rapidly throughout the area, with numerous new infections and deaths reported daily, and caused the closure of businesses and cancellation of events.<sup>29</sup>

24. New York City, which receives thousands of international travelers daily, rapidly became an epicenter for COVID-19 outbreaks. By April 10, 2020, New York had more COVID-19 cases than any other *country* besides the United States.<sup>30</sup> The New York epidemic had particularly devastating consequences for New York's elderly population, persons of color, the economically disadvantaged and those with underlying health conditions.<sup>31</sup>

25. COVID-19 also spread rapidly through Miami-Dade County, taking only slightly longer to reach disastrous levels. In early March 2020, Governor Ron DeSantis announced that

---

<sup>26</sup> *In Las Vegas, Coronavirus Job Losses Could Double Those of 2007-2009 Recession*, WALL ST. J., April 9, 2020, <https://www.wsj.com/articles/in-las-vegas-coronavirus-job-losses-could-double-those-of-2007-09-recession-11586433601> (last visited Feb. 12, 2021).

<sup>27</sup> *Governor Cuomo Issues Statement Regarding Novel Coronavirus in New York*, governor.ny.gov, <https://www.governor.ny.gov/news/governor-cuomo-issues-statement-regarding-novel-coronavirus-new-york> (last visited Feb. 12, 2021).

<sup>28</sup> *Governor Cuomo Announces New York's First Death From COVID-19*, TIME, <https://time.com/5803182/new-york-coronavirus-death/> (last visited Feb. 12, 2021).

<sup>29</sup> Jennifer Vazquez, Tom Shea, Maya Rajamani, Brian Price and Kiki Intarasuwan, *Timeline: Tracking the Spread of COVID-19 in Tri-State*, NBC New York, updated Dec. 18, 2020, <https://www.nbcnewyork.com/news/local/timeline-tracking-the-spread-of-covid-19-in-tri-state/2313123/> (last visited Feb. 17, 2021).

<sup>30</sup> Alexandra Kerr, *Historical Timeline of COVID-19 in New York City*, Investopedia (Oct. 6, 2020), <https://www.investopedia.com/historical-timeline-of-covid-19-in-new-york-city-5071986> (last visited Feb. 12, 2021).

<sup>31</sup> *Covid-19 Outbreak – New York City, February 29-June 1, 2020*, Morbidity and Mortality Weekly Report, CDC (Nov. 20, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a2.htm> (last visited Feb. 12, 2021).

the first two Floridians tested positive for the Coronavirus.<sup>32</sup> One had recently traveled to Italy, and the other had contact with someone that tested positive outside the state. On March 5, 2020, two patients that tested positive for the Coronavirus died in Florida; both had recently traveled internationally. *Id.* By the end of March, Miami-Dade had seen its first 2,123 cases and seven deaths.<sup>33</sup>

26. In April 2020, despite the issuance of numerous government orders designed to slow the spread, “cases and deaths skyrocket[ed] from March, with 9,647 more cases and 347 new deaths reported in April.” *Id.* Despite large increases in subsequent months, there was hope for a return to normalcy which “was stopped in its tracks as July played out” and Miami-Dade hit a peak of 80,505 new cases. *Id.* By December 2, 2020, Miami-Dade recorded more cases than 27 states, including Massachusetts and Washington, that have populations double that of Miami-Dade, and more deaths than that experienced in 29 states. *Id.*

27. The Coronavirus and COVID-19 have decimated lives and businesses, causing widespread direct physical loss, damage or destruction to property in New York and Florida. The Coronavirus and COVID-19 have devastated Genting’s property and business by causing direct physical loss, damage or destruction to its property.

28. Genting experienced direct physical loss, damage or destruction to its property in at least three ways: (1) over 45 Genting employees tested positive for COVID-19 and, thus, through the certain or virtually certain presence of COVID-19 and/or the Coronavirus throughout

---

<sup>32</sup> Adrienne Cutway, *Timeline: The spread of coronavirus in Florida*, Click Orlando (Sept. 25, 2020), <https://www.clickorlando.com/news/local/2020/03/20/timeline-the-spread-of-coronavirus-in-florida/> (last visited Feb. 12, 2021).

<sup>33</sup> Devoun Cetoute, *How Miami-Dade became the COVID epicenter of Florida and what happened month-by-month*, MIAMI HERALD, Dec. 3, 2020, <https://www.miamiherald.com/news/coronavirus/article247480940.html> (last visited Feb. 12, 2021).

the Resorts in the air or on surfaces (whether in droplet nuclei, aerosols, droplets or otherwise); (2) through the need to modify physical behaviors through the use of social distancing, avoiding confined indoor spaces, and avoiding congregating in the same physical area as others, in order to reduce or minimize the potential for viral transmission; and (3) through the need to mitigate the threat or actual physical presence of the Coronavirus on door-handles, carpeting, bedding, gaming tables, slot machines, currency, chips, dice, restroom faucets, elevator buttons, tables, linens, silverware, surfaces, in heating and air conditioning systems, and in or on any other of the multitude of places the Coronavirus has been or could be found.

29. Genting also experienced covered loss through Interruption by Gaming Commission Orders and other state and local governmental orders that, at varying points in time from March 2020 to the present, either shut down or drastically limited Genting's use of its property, causing Genting to lose the total or partial normal use and function of its property.

30. The presence of the Coronavirus in the air and on surfaces made Genting's facilities uninhabitable, unsafe, and unfit for their normal and intended uses – just as if asbestos, ammonia, fumes or a salmonella outbreak was in the air or on surfaces of the premises. As a result, they had to operate at a limited capacity or close entirely.

31. Due to the certain or virtually certain presence of COVID-19 and/or the Coronavirus throughout the Resorts in the air or on surfaces (whether in droplet nuclei, aerosols, droplets or otherwise) and due to the Interruption by Gaming Commission Orders, Resorts World Casino closed on March 16, 2020. While it was re-opened on September 9, 2020, this interruption caused scheduling and staffing disruptions, and even after re-opening, Resorts World Casino operated with extensive and costly health and safety protocols and numerous modifications to its property, as well as severe operational, capacity and social distancing limitations such as: (a) a

25% occupancy limit; (b) an early closure time of 10:00 pm beginning on November 13, 2020; and (c) a ban on indoor dining from December 14, 2020 to February 11, 2021.

32. Genting's Hilton Miami has also had its operations devastated by the Coronavirus and COVID-19. Particularly, it had to suspend room service on March 17, 2020 (which is still suspended) and shutter its indoor dining operations on March 17, 2020 (Brisa), March 19, 2020 (Starbucks) and March 22, 2020 (Bar 1601), and could not re-open those services until July 1, 2020.

33. In response to the Coronavirus and COVID-19, Genting implemented a 21-point safety plan in which it undertook herculean efforts and incurred massive expenses, covered as Extra Expense under the Policy, to make Resorts World Casino as safe as possible, to protect its employees and customers, to resume and continue operating as close to normal (meaning, the way Resorts World Casino ran and performed prior to the emergence of the Coronavirus and COVID-19), and to ameliorate, as much as possible, the ongoing direct physical loss, damage or destruction to Genting's property caused by the Coronavirus and COVID-19.

34. Some of the key protocols Genting implemented as part of its 21-point safety plan included:

- limiting entry to the main building to only three entrances;
- conducting temperature checks of all guests and team members entering the building and denying entry to any person with a temperature of over 100.4 degrees Fahrenheit;
- requiring all guests to wear face masks while on the property;
- purchasing and installing over 200 hand sanitizing stations;
- providing and making available sanitizing wipes throughout the property;

- implementing enhanced cleaning procedures and regularly deploying cleaning team members to high-touch areas for cleaning and disinfecting;
- implementing social distancing measures, including modifying the gaming floor, erecting temporary physical distancing panels, incorporating signage and digital signage, broadcasting announcements to remind guests to maintain social distancing and closing areas of the property where social distancing is not a feasible option;
- training all Genting team members on COVID-19 safety and sanitation protocols and providing them with a COVID-19 Sanitation and Social Well-Being Plan information packet that highlights operational protocol. Team members were trained in: (a) physical distancing, (b) personal hygiene, (c) proper use of PPE, (d) disinfecting and sanitizing workstations, (d) the proper use of chemicals, (e) uniform cleanliness, and (f) detection of COVID-19 symptoms;
- requiring team members to complete a mandatory daily COVID-19 health screening form;
- requiring team members to wear masks and, when necessary, face shields and gloves;
- upgrading all HVAC filters to the MERV15 filter to ensure optimal air quality;
- closing every other seat or position in electronic table games to maintain social distancing, requiring each guest to sanitize their hands before the start of play and erecting physical distancing panels on select games;
- closing every other window at the cashier to maintain social distancing, installing plexiglass panels at all cashier windows as a protective barrier between team

members and guests, utilizing floor markers to queue guests six feet apart and placing signage asking guests to wait to be called by the next open cashier; and

- operating food and beverage outlets with a reduced seating capacity, setting floor markers and signage, enforcing guest occupancy limits to allow for physical distancing, installing physical distancing panels on countertops to separate servers from guests and closing self-service operations.

35. Genting implemented many of the same training and cleaning protocols and safety enhancements at the Hilton Miami – all at great expense.

36. Besides implementing training and safety measures, Genting invested significant funds to procure PPE, cleaning products, air filters, physical barriers and signage so that it could continue operating as close to normal as possible and to lessen the risk of continued direct physical loss, damage or destruction to property caused by the Coronavirus and COVID-19.

37. To that end, Genting has spent over \$2.6 million for PPE and other safety items for Resorts World Casino including social distancing panels, sanitizing wipes, cleaners, MERV 15 filters for the HVAC system, thermometers, alcohol wipes, divider posts, face shields, forehead thermometers, gloves, hand sanitizer, masks and mobile sanitation stations. Genting made these same types of investments at its Hilton Miami property.

38. Continuing to this very day, Genting has taken all of these steps so that Resorts World Casino remains safe, providing employment and entertainment for New Yorkers – the lifeblood of its business.

39. Despite complying with all required safety precautions, Genting has not escaped the spread of COVID-19. To date, over 45 Genting employees (in New York and Florida) have reported that they contracted COVID-19.

40. The diagnosis of dozens of Genting's employees with COVID-19 is direct proof that the Coronavirus and COVID-19 were and are present on Genting's premises.

41. To help alleviate some of the devastating impact of the Coronavirus and COVID-19, Genting turned to the Defendant Insurers, to whom Genting has paid over \$13 million in premiums in exchange for \$500 million in property damage and time element (also known as business interruption) coverage. The Defendant Insurers, however, declined to fulfill their obligations to Genting under the Policies.

42. Particularly, Genting submitted a claim for direct physical loss, damage or destruction to its property and business interruption, and other covered losses arising from the Coronavirus and COVID-19, but the Defendant Insurers have refused to provide coverage or even properly investigate Genting's losses. Despite being notified of Genting's claim, to date, the Defendant Insurers, with the exception of Hallmark, have never formally denied the claim or made any final coverage determination.

43. The two insurers with a one-year suit limitation in its policy, Allianz and Evanston, have ignored Genting's request to extend the one-year deadline for Genting to sue for coverage, forcing Genting to file this action to preserve and pursue its coverage rights.

44. Genting seeks damages for breach of contract against the Defendant Insurers for their failure to honor their obligations to Genting under the Policies.

45. Genting also seeks a judgment declaring the scope of the Defendant Insurers' obligation to pay Genting's losses under the Policies they sold to Genting.

**THE PARTIES**

46. Genting New York LLC is a limited liability company formed under the laws of New York with its principal place of business in the County of Queens – in Jamaica, New York.

47. Genting New York LLC's sole member is Genting North America Holdings LLC, whose sole member is Genting Americas Inc.

48. Genting Americas Inc. is a corporation formed under the laws of Delaware with its principal place of business in Jamaica, New York.

49. Resorts World Miami LLC is a limited liability company formed under the laws of Delaware with its principal place of business in Miami, Florida.

50. Resorts World Miami LLC's sole member is Genting Florida LLC, whose sole member is Genting Americas Inc.

51. Resorts World Omni LLC is a limited liability company formed under the laws of Delaware with its principal place of business in Miami, Florida.

52. Resorts World Omni LLC's sole member is Hill Crest LLC, whose sole member is Genting Florida LLC, whose sole member is Genting Americas Inc.

53. Upon information and belief, ACE American Insurance Company ("ACE") is a corporation formed under the laws of Pennsylvania with its principal place of Pennsylvania.

54. Upon information and belief, American International Group UK Limited, which, through its division known as Lex London ("Lex London"), is a corporation formed under the laws of the United Kingdom with its principal place of business in the United Kingdom.

55. Upon information and belief, Allianz is a corporation formed under the laws of Illinois with its principal place of business in Illinois.

56. Upon information and belief, Arch Specialty Insurance Company ("Arch") is a



corporation formed under the laws of Missouri with its principal place of business in New Jersey.

57. Upon information and belief, Aspen Specialty Insurance Company (“Aspen”) is a corporation formed under the laws of North Dakota with its principal place of business in Connecticut.

58. Upon information and belief, Certain Underwriters at Lloyd’s London (“Lloyd’s”) subscribing to Policy Number B0509BOWPN1900646, are comprised of various syndicates of unknown citizenship who subscribed to the above-mentioned policy.

59. Upon information and belief, Lloyd’s subscribing to Policy Number B0509BOWPN1900918, are comprised of various syndicates of unknown citizenship who subscribed to the above-mentioned policy.

60. Upon information and belief, Colony Insurance Company (“Colony”) is a corporation formed under the laws of Virginia with its principal place of business in Virginia.

61. Upon information and belief, Evanston is a corporation formed under the laws of Illinois with its principal place of business in Illinois.

62. Upon information and belief, Everest Indemnity Insurance Company (“Everest”) is a corporation formed under the laws of Delaware with its principal place of business in New Jersey.

63. Upon information and belief, First Specialty Insurance Corporation (“First Specialty”) is a corporation formed under the laws of Missouri with its principal place of business in Missouri.

64. Upon information and belief, Great Lakes Insurance SE (“Great Lakes”) is a corporation formed under the laws of Germany with its principal place of business in Germany.

65. Upon information and belief, Hallmark Specialty Insurance Company (“Hallmark”) is a corporation formed under the laws of Oklahoma with its principal place of

business in Texas.

66. Upon information and belief, Interstate Fire & Casualty Company (“Interstate”) is a corporation formed under the laws of Illinois with its principal place of business in Illinois.

67. Upon information and belief, Landmark American Insurance Company (“Landmark”) is a corporation formed under the laws of New Hampshire with its principal place of business in Georgia.

### **JURISDICTION AND VENUE**

68. This Court has general personal jurisdiction over the Defendant Insurers pursuant to CPLR §301, because each of them carries on a continuous and systematic part of its general business within the State of New York, including but not limited to marketing, selling, and issuing insurance policies to New York businesses and insuring property in New York.

69. This Court has specific personal jurisdiction over the Defendant Insurers pursuant to CPLR §302, because the Defendant insurers, through the Policies, contracted to insure property and/or risk located within the State of New York at the time of contracting.

70. Venue is proper in this Court pursuant to CPLR §503, because Genting’s principal offices are located in Queens County.

71. The policy issued to Genting by First Specialty contains a New York choice of law clause and a mandatory choice of forum clause, requiring any litigation over its policy to be conducted in a New York state court with the policy to be interpreted by New York law as follows:

The laws of the State of New York, without regard to any conflicts of laws rules that would cause the application of the laws of any other jurisdiction, shall govern the construction, effect, and interpretation of this insurance agreement.

The parties irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York and to the extent permitted by law the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.

## FACTUAL BACKGROUND

### A. Resorts World Casino

72. Genting owns and operates Resorts World Casino, the only casino in New York City.

73. Located in Queens County, Resorts World Casino hosts over 10 million guests annually. This property provides an unparalleled gaming and entertainment experience while generating over \$2 billion for the State's education system.

74. Genting also provides hundreds of jobs for New Yorkers, and currently employs approximately 822 full-time employees.

75. Due to the effects of the direct physical loss, damage or destruction to its property caused by the Coronavirus and COVID-19, Genting had over 170 furloughed employees as of January 1, 2021.

76. Before the emergence of the Coronavirus and COVID-19, Genting had approximately 1,124 active employees on January 1, 2020 – over 300 more active employees than its approximately 822 active employees as of January 1, 2021.

77. The Resorts World Casino property features three unique levels of gaming, Times Square Casino, Fifth Avenue Casino and Central Park Casino, along with several high-limit rooms for Platinum and Black Card members.

78. Resorts World Casino is within a five (5) miles radius of numerous leader properties – properties that attract guests to the hotel and its restaurants and amenities, and that likewise sustained direct physical loss, damage or destruction to their property as a result of the Coronavirus and/or COVID-19, including JFK Airport.

79. Resorts World Casino is located minutes from JFK Airport and is easily accessible

by the A Train, Q37 bus, and Long Island Railroad to Jamaica Station, with free pick-up service available via a casino shuttle. Genting provides New Yorkers and guests from all over the world with a safe, professional and fun environment for gaming.

80. Resorts World Casino is much more than a casino. It is a pillar of the Queens, New York City and New York State community.

81. Genting's revenues are vital to the public education system in the State of New York, including in Queens. Resorts World Casino's business operations contribute 44% of their revenue to the New York State education fund, totaling almost \$3 billion since its opening.

82. Genting is also highly active in its local Queens community through its Resorts World Gives ("RWG") program, which supports organizations, projects, and programs that create opportunities for economic and social progress. RWG's contributions seek to support established, innovative and efficient non-profit organizations with clearly articulated goals that have proven to be successful at improving the neighborhoods of Queens and the larger New York City community.

83. To ensure that Genting has a maximum positive impact, the RWG program lends its support to organizations addressing a broad range of issues and needs. These include Workforce Development (especially early childhood education), Arts and Culture, Health & Wellness, and Responsible Gaming.

84. RWG also supports educational programming through organizations such as the Boys and Girls Club and the YMCA.

85. RWG donated over \$80,000 to non-profit organizations in 2020, which included \$30,000 to Feed the Frontlines, a coalition of non-profits, hospitals, and city organizations that prepared and sent meals to frontline medical workers at the height of the COVID-19 pandemic; and a \$20,000 donation to the MediSys Health Network, which supported operations and staff at

both Jamaica and Flushing Hospital.

86. RWG's 2020 holiday drive efforts yielded over 15,000 pounds of canned food for local food pantries, \$10,000 for NYC Toys for Tots, and hundreds of coats for New York Cares.

87. Genting offers extensive amenities in addition to its casino and gaming services. The property offers casual and upscale dining and drinking options including a steakhouse known as RW Prime Steakhouse, an Asian noodle restaurant and a food court. It also boasts the premier event space in Queens, including over 50,000 square feet of banquet and meeting space for corporate meetings, galas, and other events.

**B. The Hilton Miami**

88. Genting also owns a luxury hotel in downtown Miami operating under the famous and leading Hilton hotel brand. The hotel is known as the Hilton Miami and is in the heart of Miami.

89. The Hilton Miami is a large hotel, boasting 528 guest rooms, 15 meeting rooms and 43,300 square feet of total event space. Every room features floor-to-ceiling windows, and the rooftop pool and bar boast sunset and skyline views. The hotel also has two restaurants, Brisa Bistro and 1601, a pool bar known as CityVu Pool Bar and, prior to the emergence of the Coronavirus and COVID-19, the hotel offered additional amenities that it can no longer provide, including in-room dining, an executive lounge and an airport shuttle.

90. Located in the heart of downtown Miami and looking out over Biscayne Bay, the Hilton Miami is within a five (5) miles radius of numerous leader properties – properties that attract guests to the hotel and its restaurants and amenities, and that likewise sustained direct physical loss, damage or destruction to their property as a result of the Coronavirus and/or COVID-19. Some of these leader properties within a five (5) mile radius from the hotel include:

- American Airlines Arena;
- Bayside Marketplace;
- Adrienne Arsht Center for the Performing Arts;
- Perez Art Museum;
- The Miami Design District;
- South Beach;
- The Art Deco Historic District in Miami Beach;
- Lincoln Road in Miami Beach (and its many shops and restaurants);
- Port of Miami;
- Ocean Drive in Miami Beach (and its many shops and restaurants); and,
- Downtown Miami (with its many shops and restaurants, including Brickell Avenue).

91. Because of the direct physical loss, damage or destruction to its property and to its many leader properties caused by the Coronavirus and COVID-19, the Miami Hilton's business and employee ranks have been decimated.

92. Before the emergence of the Coronavirus and COVID-19, Genting had approximately 319 active employees on January 1, 2020 – slightly more than double the 168 active employees employed as of January 1, 2021.

93. As a part of its prudent business practices and in recognition of its responsibilities to its employees, its community and its customers, Genting maintains insurance coverage.

94. Genting specifically maintains “all risk” commercial property coverage with the Defendant Insurers, covering not only more commonly occurring risks like fire, but also entirely unanticipated and novel risks that may arise. As described below in greater detail, the Policy

provides coverage for “all risk of direct physical *loss*, damage *or* destruction to” Genting’s and other insured property (such as leader properties that attract business to the Resorts) unless specifically excluded.

### C. The COVID-19 Pandemic

95. COVID-19 is a severe infectious disease caused by the Coronavirus. The Coronavirus causes serious systemic illness and death.<sup>34</sup> To date, there have been over 109 million reported cases of COVID-19 and at least 2.4 million deaths worldwide.<sup>35</sup> COVID-19 has been declared a global pandemic by the World Health Organization (“WHO”),<sup>36</sup> and as such, the disease and its causative virus, the Coronavirus, are presumed to be present or imminently present everywhere.<sup>37</sup>

96. The existence and/or presence of the Coronavirus and COVID-19 is not simply reflected in reported cases or individuals’ positive test results. The Centers for Disease Control and Prevention (“CDC”) estimates that the number of people in the United States who have been infected with COVID-19 is likely to be 10 times higher than the number of reported cases.<sup>38</sup>

---

<sup>34</sup> Tianna Hicklin, *Immune cells for common cold may recognize SARS-COV-2*, NAT. INST. OF HEALTH (Aug. 18, 2020), <https://www.nih.gov/news-events/nih-research-matters/immune-cells-common-cold-may-recognize-sars-cov-2> (last visited Feb. 17, 2021).

<sup>35</sup> Sergio Hernandez, Byron Manley, Henrik Pettersson, *Tracking coronavirus’ global spread*, CNN Health (last updated Feb. 15, 2021), <https://www.cnn.com/interactive/2020/health/coronavirus-maps-and-cases/> (last visited Feb. 15, 2021).

<sup>36</sup> WHO, *WHO Director-General’s opening remarks at the media briefing on COVID-19* (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited Feb. 12, 2021).

<sup>37</sup> See, e.g., Christopher Ingraham, *At the population level, the coronavirus is almost literally everywhere*, WASH. POST, Apr. 1, 2020, <https://www.washingtonpost.com/business/2020/04/01/population-level-coronavirus-is-almost-literally-everywhere/> (last visited Feb. 12, 2021).

<sup>38</sup> Lena H. Sun and Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher than reported*, WASH. POST (June 25, 2020), <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/> (last visited Feb. 17, 2021).

Additionally, at least 40% of people infected with COVID-19 are asymptomatic.<sup>39</sup> COVID-19 also includes a pre-symptomatic incubation period of up to 14 days, during which time infected people can transmit COVID-19 to people and onto surfaces without having experienced symptoms and without realizing that they are infected.<sup>40</sup> Studies have demonstrated that pre-symptomatic individuals have an even greater ability to transmit COVID-19 than other infected people because they carry the greatest “viral load.”<sup>41</sup> The National Academy of Sciences has concluded that “the majority of transmission is attributable to people who are not exhibiting symptoms, either because they are still in the pre-symptomatic stage or the infection is asymptomatic.”<sup>42</sup>

97. As early as February 26, 2020, the CDC advised that COVID-19 was spreading freely without the ability to trace the origin of new infections, also known as community transmission or community spread.

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

99. COVID-19 is highly contagious, uniquely resilient, and potentially deadly. The degree to which an infectious disease is contagious is measured by  $R^0$ , a term that defines how many other people will become infected by one person with that disease. Studies have concluded

---

<sup>39</sup> Ellen Cranley, *40% of people infected with covid-19 are asymptomatic, a new CDC estimate says*, BUS. INSIDER (July 12, 2020), <https://www.businessinsider.com/cdc-estimate-40-percent-infected-with-covid-19-asymptomatic-2020-7> (last visited Feb. 17, 2021).

<sup>40</sup> See WHO, *Coronavirus disease 2019 (COVID-19) Situation Report - 73* (Apr. 2, 2020), <https://apps.who.int/iris/bitstream/handle/10665/331686/nCoVsitrep02Apr2020-eng.pdf?sequence=1&isAllowed=y> (last visited Feb. 17, 2021); Minghui Yang, Liang Li, Ting Huang, Shaxi Li, Mingxia Zhang, Yang, Yujin Jiang, Xiaohe Li, Jing Yuan, and Yingxia Liu, *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, <https://doi.org/10.1164/rccm.202006-2136LE> (last visited Feb. 12, 2021).

<sup>41</sup> See, e.g., Xi He et al., *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 NATURE MED. 672, 674 (Apr. 15, 2020), <https://www.nature.com/articles/s41591-020-0869-5> (last visited Feb. 17, 2021); Lirong Zou, M.Sc., et al., *SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, NEW ENG. J. OF MED. (Mar. 19, 2020).

<sup>42</sup> Meagan C. Fitzpatrick, Alison P. Galvani, Seyed M. Moghadas, Abhishek Pandey, Pratha Sah, Affan Shoukat, and Burton H. Singer, *The implications of silent transmission for the control of COVID-19 outbreaks*, 117 PNAS 30, 17513-15, July 28, 2020 <https://www.pnas.org/content/117/30/17513> (last visited Feb. 12, 2021).



that one person with the Coronavirus will infect up to 5.7 others ( $R^0 \approx 5.7$ ), which is much higher than seasonal influenza for example, where on average, one person will infect only 1.3 others ( $R^0 \approx 1.3$ ).<sup>43</sup>

100. The Coronavirus can remain infectious for “much longer time periods than generally considered possible.”<sup>44</sup> In the *Journal of Virology*, researchers demonstrated that the Coronavirus can survive up to 28 days at room temperature (68°F) on a variety of surfaces including glass, steel, vinyl, plastic, and paper.<sup>45</sup> A CDC report from March 27, 2020, stated that the Coronavirus was identified on surfaces of the cabins on board the Diamond Princess cruise ship 17 days after the cabins were vacated but before they were disinfected.<sup>46</sup> Numerous other scientific studies and articles have identified the persistence of the Coronavirus on doorknobs, toilets, faucets and other high-touch points, as well as on commonly overlooked surfaces such as floors.<sup>47</sup>

101. The WHO states that “[t]he disease spreads primarily from person to person through small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks . . . . People can catch COVID-19 if they breathe in these droplets

---

<sup>43</sup> M. Cevik, C.C.G. Bamford, A. Ho, *COVID-19 pandemic-a focused review for clinicians*, 26 *CLIN MICROBIOL INFECT.* 7, 842-47 (July 2020), [https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X\(20\)30231-7/fulltext](https://www.clinicalmicrobiologyandinfection.com/article/S1198-743X(20)30231-7/fulltext) (last visited Feb. 17, 2021).

<sup>44</sup> Shane Riddell, Sarah Goldie, Andrew Hill, Debbie Eagles & Trevor W. Drew, *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, 17 *VIROLOGY J.* 145 (2020), <https://doi.org/10.1186/s12985-020-01418-7> (last visited Feb. 12, 2021).

<sup>45</sup> *Id.*

<sup>46</sup> Leah F. Moriarty, Mateusz M. Plucinski, Barbara J. Marston, et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020*, 69 *MMWR* 12, 347-352, March 27, 2020 <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm> (last visited Feb. 12, 2021).

<sup>47</sup> Zhen-Dong Guo, Zhong-Yi Wang, Shou-Feng Zhang, Xiao Li, Lin Li, Chao Li, Yan Cui, Rui-Bin Fu, Yun-Zhu Dong, Xiang-Yang Chi, Meng-Yao Zhang, Kun Liu, Cheng Cao, Bin Liu, Ke Zhang, Yu-Wei Gao, Bing Lu, Wei Chen, *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 *EMERG. INFECT. DIS.* 7, 1583-91 (July 2020), <https://pubmed.ncbi.nlm.nih.gov/32275497/> (last visited Feb. 17, 2021).

from a person infected with the virus . . . . These droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth.”<sup>48</sup>

102. New York and Florida experienced a reported COVID-19 outbreak in March 2020, and Genting and the communities it serves have experienced dramatic increases in the number of cases thereafter. In New York, this dramatic rise peaked with over 12,000 new cases in a single day in April, with Florida subsequently surpassing this record single-day total with over 15,000 new cases in one day in July.<sup>49</sup>

**D. The Coronavirus and COVID-19 Cause Direct Physical Loss, Damage or Destruction to Property**

103. The omnipresence of the Coronavirus and COVID-19 is enabled by multiple modes of viral transmission, including respiratory droplet, airborne, and fomite transmission (i.e., transmission from surfaces and objects).<sup>50</sup> These transmission methods demonstrate that the Coronavirus and/or COVID-19 cause direct physical loss, damage or destruction to property.

104. Respiratory transmission of COVID-19 occurs through exposure to an infected person’s respiratory particles, such as from saliva or mucus.<sup>51</sup> Respiratory transmission of the Coronavirus is commonly divided into droplet (larger particles that have a transmission range of about six feet) and airborne (smaller particles that can remain suspended in the air for prolonged

---

<sup>48</sup> *Q&A on coronaviruses (COVID-19)*, World Health Organization, <https://web.archive.org/web/20200506094904/https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> (last visited Feb. 12, 2021).

<sup>49</sup> K. de Freytas-Tamura, R. Rojas, S. Fink, *Florida Breaks U.S. Coronavirus Record for Most New Cases in a Day*, N.Y. TIMES, updated Sept. 2, 2020, <https://www.nytimes.com/2020/07/12/us/florida-coronavirus-covid-cases.html>? (last visited Feb. 12, 2021).

<sup>50</sup> *See, e.g.*, WHO, *Transmission of SARS-CoV-2: implications for infection prevention precautions* (Jul. 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last visited Feb. 24, 2021).

<sup>51</sup> *Id.*

periods of time) modes of transmission. Though convenient, this binary division is an oversimplification that underscores transmission risk.<sup>52</sup> Humans produce a wide range of particle sizes when coughing, sneezing, talking, singing, or otherwise dispersing droplets, with pathogens predominating in the smallest particles.<sup>53</sup> Respiratory particles produced by the average person can travel almost 20 feet by sneezing.<sup>54</sup> An M.I.T. researcher has found that virus-laden “clouds” containing clusters of droplets can travel 23 to 27 feet.<sup>55</sup>

105. Airborne transmission involves the spread of the infectious agent caused by the dissemination of droplet nuclei (aerosols) from, for example, exhaled breath, that remain infectious when suspended in the air, potentially over long distances and time.<sup>56</sup> These tiny particles can “remain suspended for indefinite periods unless removed by air currents or dilution ventilation.”<sup>57</sup> As a result, the risk of disease transmission increases substantially in enclosed environments, compared to outdoor settings.<sup>58</sup>

---

<sup>52</sup> Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext) (last visited Feb. 17, 2021).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions, Potential Implications for Reducing Transmission of COVID-19*, 323 JAMA 18, 1837-38, Mar. 26, 2020, <https://jamanetwork.com/journals/jama/fullarticle/2763852> (last visited Feb. 12, 2021).

<sup>56</sup> *Id.*; see also Jose-Luis Jimenez, *COVID-19 Is Transmitted Through Aerosols. We Have Enough Evidence, Now It Is Time to Act*, TIME, Aug. 25, 2020, <https://time.com/5883081/covid-19-transmitted-aerosols/> (last visited Feb. 12, 2021); Ramon Padilla & Javier Zarracina, *Coronavirus might spread much farther than 6 feet in the air. CDC says wear a mask in public.*, (last updated Sept. 21, 2020), [www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/](http://www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/) (last visited Feb. 12, 2021); Nan Zhang, Jianjian Wei, Hui-Ling Yen, and Yuguo Li, *Short-range airborne route dominates exposure of respiratory infection during close contact*, 176 BLDG. AND ENV'T (June 2020).

<sup>57</sup> Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, 8 LANCET RESPIRATORY MED. 9, P914-24 (Sept. 1, 2020), [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext) (last visited Feb. 17, 2021).

<sup>58</sup> Muge Cevik, Julia L Marcus, Caroline Buckee, & Tara C Smith, *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Transmission Dynamics Should Inform Policy*, CLINICAL INFECTIOUS DISEASES (2020), <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315> (last visited Feb. 17, 2021).

106. The WHO and the scientific community have studied the spread of the Coronavirus through aerosols in indoor settings via air circulation systems. For example, the CDC published a research letter concluding that a restaurant's air conditioning system triggered the transmission of the Coronavirus, spreading it to people who sat at separate tables downstream of the restaurant's airflow.<sup>59</sup>

107. Additionally, the CDC has stated that "there is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away" and infected people who entered the space shortly after the person with COVID-19 had left.<sup>60</sup> A recently published (February 2021) systematic review of airborne transmission of the Coronavirus corroborated the CDC's concerns and recommended procedures to improve ventilation of indoor air environments to decrease bioaerosol concentration and reduce the Coronavirus' spread.<sup>61</sup>

108. The CDC has recommended "ventilation interventions" to help reduce exposure to the airborne Coronavirus in indoor spaces, including increasing airflow and air filtration (such as with high-efficiency particulate air ("HEPA") fan/filtration systems).<sup>62</sup> These and other remedial

---

<sup>59</sup> Jianyun Lu, Jieni Gu, Kuibiao Li, Conghui Xu, Wenzhe Su, Zhisheng Lai, Deqian Zhou, Chao Yu, Bin Xu, and Zhicong Yang, *COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020*, 26 EMERGING INFECTIOUS DISEASES 7 (July 2020), [https://wwwnc.cdc.gov/eid/article/26/7/20-0764\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article) (last visited Feb. 12, 2021); *see also* Keun-Sang Kwon, Jung-Im Park, Young Joon Park, Don-Myung Jung, Ki-Wahn Ryu, and Ju-Hyung Lee, *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a Restaurant in Korea*, 35 J. KOREAN MED. SCI. 46 (Nov. 2020), <https://doi.org/10.3346/jkms.2020.35.e415> (last visited Feb. 12, 2021).

<sup>60</sup> CDC, *Ways COVID-19 Spreads* (last updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Feb. 17, 2021).

<sup>61</sup> Zahra Noorimotlagh, Neemat Jaafarzadeh, Susana Silva Martínez, & Seyyed Abbas Mirzaee, *A systematic review of possible airborne transmission of the COVID-19 virus (SARS-CoV-2) in the indoor air environment*, 193 ENV'T RSCH. 110612, 1-6 (Feb. 2021), [https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss\\_sd\\_all](https://www.sciencedirect.com/science/article/pii/S0013935120315097?dgcid=rss_sd_all) (last visited Feb. 17, 2021).

<sup>62</sup> CDC, *Ventilation in Buildings* (last updated Feb. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more,with%20SARS%20CoV%2D2> (last visited Feb. 12, 2021).

measures must be implemented, at high cost and extra expense, to reduce the amount of the Coronavirus present in the space and to make property safe for its intended use. These extreme measures demonstrate that the Coronavirus and COVID-19 cause direct physical loss, damage or destruction to interior spaces.

109. COVID-19 may also be transmitted to people from physical objects, materials or surfaces. “Fomites” are physical objects or materials that carry, and are capable of transmitting infectious agents, altering these objects to become vectors of disease.<sup>63</sup> Fomite transmission has been demonstrated as highly efficient for viruses, both from object-to-hand and from hand-to-mouth.<sup>64</sup>

110. The WHO has described fomite transmission as follows:

Respiratory secretions or droplets expelled by infected individuals can contaminate surfaces and objects, creating fomites (contaminated surfaces). **Viable SARS-CoV-2 virus and/or RNA detected by RT-PCR can be found on those surfaces for periods ranging from hours to days**, depending on the ambient environment (including temperature and humidity) and the type of surface, in particular at high concentration in health care facilities where COVID-19 patients were being treated. Therefore, transmission may also occur indirectly through touching surfaces in the immediate environment or objects contaminated with virus from an infected person . . . .<sup>65</sup> (Emphasis added).

111. In addition to studies cited by the WHO,<sup>66</sup> numerous other studies and scientific articles have discussed fomite transmission as a mode of virus transmission, including, but not limited to:

---

<sup>63</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/fomite> (last visited Feb. 12, 2021).

<sup>64</sup> CDC, Jing Cai, Wenjie Sun, Jianping Huang, Michelle Gamber, Jing Wu, Guiqing He, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIONS DISEASES 6 (June 2020), [https://wwwnc.cdc.gov/eid/article/26/6/20-0412\\_article](https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article) (last visited Feb. 12, 2021).

<sup>65</sup> See, e.g., WHO, *Transmission of SARS-CoV-2: implications for infection prevention precautions* (Jul. 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last visited Feb. 24, 2021).

<sup>66</sup> *Id.*

- a. A study of a COVID-19 outbreak published by the CDC identifying elevator buttons and restroom taps as possible causes of the “rapid spread of SARS-CoV-2” in a shopping mall in China.<sup>67</sup>
- b. A National Institutes of Health study published in the *New England Journal of Medicine* finding that the Coronavirus survives up to 4 hours on copper, up to 24 hours on cardboard, and up to 3 days on plastic and stainless steel, and suggesting that people may acquire the virus through the air and after touching contaminated objects.<sup>68</sup>
- c. An American Society for Microbiology article discussing fomite infection as involving both porous and non-porous surfaces, and occurring through a fomite’s contact with bodily secretions, hands, aerosolized virus from talking, sneezing, coughing, etc., or other airborne viral particles that settle after a disturbance of a fomite (e.g., shaking a contaminated blanket).<sup>69</sup> According to the researchers, “[o]nce a fomite is contaminated, the transfer of infectious virus may readily occur between inanimate and animate objects, or vice versa, and between two separate fomites (if brought together).”<sup>70</sup> Generally, frequently touched surfaces can become highly transmissive fomites.<sup>71</sup>
- d. A CDC research letter reporting that the Coronavirus can remain viable on

---

<sup>67</sup> CDC, Jing Cai, Wenjie Sun, Jianping Huang, Michelle Gamber, Jing Wu, Guiqing He, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 EMERGING INFECTIONS DISEASES 6 (June 2020), [https://wwwnc.cdc.gov/eid/article/26/6/20-0412\\_article](https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article) (last visited Feb. 12, 2021).

<sup>68</sup> National Institutes of Health, *New coronavirus stable for hours on surfaces* (Mar. 17, 2020), <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited Feb. 12, 2021).

<sup>69</sup> Stephanie A. Bone and Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral Disease*, 73 APPLIED AND ENVIRONMENTAL MICROBIOLOGY 6, 1687-96 (Mar. 2007) <https://aem.asm.org/content/73/6/1687> (last visited Feb. 12, 2021).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

polystyrene plastic, aluminum, and glass for 96 hours in indoor living spaces.<sup>72</sup>

- e. A *Journal of Hospital Infection* article citing studies revealing that human coronaviruses can persist on inanimate surfaces like metal, glass, or plastic for up to 9 days.<sup>73</sup>

112. Importantly, the Coronavirus has been detected on environmental objects and surfaces from both symptomatic and asymptomatic individuals.<sup>74</sup> Fomites transform the surface of property into a potentially deadly Coronavirus transmission device. A study published in the *Journal of Epidemiology and Infection* demonstrated that after lockdown in the United Kingdom, Coronavirus transmission via fomites may have contributed to as many as 25% of deaths in that region.<sup>75</sup>

113. Accordingly, the presence of the Coronavirus in and on property, including in indoor air, on surfaces, and on objects, causes direct physical loss, damage or destruction to property by causing physical harm to and altering property and otherwise making it incapable of being used for its intended purpose.

---

<sup>72</sup> CDC, Boris Pastorino, Franck Touret, Magali Gilles, Xavier de Lamballerie, and Rémi N. Charrel, *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 EMERGING INFECTIOUS DISEASES 9 (Sept. 2020), [https://wwwnc.cdc.gov/eid/article/26/9/20-1788\\_article](https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article) (last visited Feb. 12, 2021).

<sup>73</sup> G. Kampf, D. Todt, S. Pfaender, E. Steinmann, *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*, J. OF HOSPITAL INFECTION 104, 246-51 (2020), <https://www.journalofhospitalinfection.com/action/showPdf?pii=S0195-6701%2820%2930046-3> (last visited Feb. 12, 2021).

<sup>74</sup> Minghui Yang, Liang Li, Ting Huang, Shaxi Li, Mingxia Zhang, Yang, Yujin Jiang, Xiaohe Li, Jing Yuan, and Yingxia Liu, *SARS-CoV-2 Detected on Environmental Fomites for Both Asymptomatic and Symptomatic Patients with COVID-19*, 203 Am. J. of Respiratory and Critical Care Med. 3, 374-78 <https://doi.org/10.1164/rccm.202006-2136LE> (last visited Feb. 17, 2021).

<sup>75</sup> A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: A mathematical analysis*, 148 EPIDEMIOLOGY & INFECTION e257, 1-7 (2020), <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3> (last visited Feb. 17, 2021).

114. Among other things, the presence of the Coronavirus transforms everyday surfaces and objects into fomites, causing a tangible change of the property into a transmission vehicle for disease from one host to another. The WHO's description of fomite transmission of COVID-19 expressly recognizes this physical alteration of property, describing viral droplets as “**creating** fomites (contaminated surfaces)”<sup>76</sup> (emphasis added). “Creating” involves making or bringing into existence something new<sup>77</sup> – such as something that is in an altered state from what it was before the Coronavirus was present on, in and around the property.

115. The Coronavirus adheres to surfaces and objects, harming and physically changing and physically altering those objects by becoming a part of their surface and making physical contact with them unsafe for their ordinary and customary use. Once the Coronavirus is in, on, or near property, it is easily spread by the air, people and objects, from one area to another, causing additional direct physical loss or damage.

116. Additionally, the presence of the Coronavirus in and on property, including in indoor air, on surfaces, and on objects, renders the property unsafe and unfit for its normal usage. Respiratory particles (including droplets and airborne aerosols) and fomites are physical substances that alter the physical properties of the interiors of buildings to make them unsafe, untenantable and uninhabitable.

117. In addition to being found in air samples,<sup>78</sup> the Coronavirus remains stable in body

---

<sup>76</sup> WHO, *supra*, note 56.

<sup>77</sup> See, e.g., Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/create> (last visited Feb. 12, 2021).

<sup>78</sup> Zhen-Dong Guo, Zhong-Yi Wang, Shou-Feng Zhang, Xiao Li, Lin Li, Chao Li, Yan Cui, Rui-Bin Fu, Yun-Zhu Dong, Xiang-Yang Chi, Meng-Yao Zhang, Kun Liu, Cheng Cao, Bin Liu, Ke Zhang, Yu-Wei Gao, Bing Lu, Wei Chen, *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 EMERG. INFECT. DIS. 7, 1583-91 (July 2020), <https://pubmed.ncbi.nlm.nih.gov/32275497/> (last visited Feb. 17, 2021).



secretions (respiratory, urine, feces), on surfaces, and in sewage, particularly at lower temperatures.<sup>79</sup>

118. A number of studies have demonstrated that the Coronavirus is “much more resilient to cleaning than other respiratory viruses tested.”<sup>80</sup> The measures that must be taken to remove the Coronavirus from property are significant and far beyond ordinary cleaning.

119. Efficacy of decontaminating agents for viruses is based on a number of factors, including the initial amount of virus present, contact time with the decontaminating agent, dilution, temperature, and pH, among many others. Detergent surfactants are not recommended as single agents, but rather in conjunction with complex disinfectant solutions.<sup>81</sup>

120. Additionally, it can be challenging to accurately determine the efficacy of decontaminating agents. The toxicity of an agent may inhibit the growth of cells used to determine the presence of virus, making it difficult to determine if lower levels of infectious virus are actually still present on treated surfaces.<sup>82</sup>

121. In order to be effective, cleaning and decontamination procedures require strict adherence to protocols not necessarily tested under “real life” or practical conditions, where treated surfaces or objects may not undergo even exposure or adequate contact time.<sup>83</sup> Studies of coronaviruses have demonstrated viral RNA persistence on objects despite cleaning with 70%

---

<sup>79</sup> Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. OF MED. VIROLOGY 11, 2498-510 (June 2020), <https://doi.org/10.1002/jmv.26170> (last visited Feb. 17, 2021).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Muge Cevik, Julia L Marcus, Caroline Buckee, & Tara C Smith, *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Transmission Dynamics Should Inform Policy*, CLINICAL INFECTIOUS DISEASES (2020), <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1442/5910315> (last visited Feb. 17, 2021).

<sup>83</sup> *Id.*

alcohol.<sup>84</sup>

122. When considering disinfection and decontamination, the safety of products and procedures must be considered as well, due to the risks of harmful chemical accumulation, breakdown of treated materials, flammability, and potential for allergen exposure.<sup>85</sup>

123. With respect to textiles, studies have demonstrated that virus can survive on fabrics and be transferred to skin and other surfaces, “suggesting it is biologically plausible that . . . infectious diseases can be transmitted directly through contact with contaminated textiles.”<sup>86</sup> Given the inadequacy of conventional cleaning procedures, disinfection and decontamination measures include, but are not limited to, the use of harsh chemicals to perform deep disinfection, the removal and disposal of porous materials like clothing, cloth and other fabrics, making changes to air filtration systems, and redesigning interior spaces, all performed at great cost and expense to Genting. These measures, among others, demonstrate that the Coronavirus and COVID-19 cause direct physical loss, damage or destruction to property.

124. Many of the surfaces and materials discussed in the studies and articles cited above are used throughout the Resorts and as part of their operations, including plastics, glass, metals and cloth and fabrics such as blankets.

125. Over 45 of Genting’s employees have reported that they had COVID-19. Given the high percentage of asymptomatic cases of COVID-19, it is certain that the actual number of

---

<sup>84</sup> Joon Young Song, Hee Jin Cheong, Min Joo Choi, Ji Ho Jeon, Seong Hee Kang, Eun Ju Jeong, Jin Gu Yoon, Saem Na Lee, Sung Ran Kim, Ji Yun Noh, & Woo Joo Kim, *Viral Shedding and Environmental Cleaning in Middle East Respiratory Syndrome Coronavirus Infection*, 47 INFECTION & CHEMOTHERAPY 4, 252-5 (2015), <https://www.icjournal.org/DOIx.php?id=10.3947/ic.2015.47.4.252> (last visited Feb. 18, 2021).

<sup>85</sup> *Id.*

<sup>86</sup> Lucy Owen and Katie Laird, *The role of textiles as fomites in the healthcare environment: a review of the infection control risk*, 8 PEER J. LIFE AND ENV’T e9790, 1-35 (2020), <https://peerj.com/articles/9790/> (last visited Feb. 17, 2021).

Resorts employees who had contracted COVID-19 was substantially greater than the over 45 employees known to have contracted COVID-19.

126. Commercially available tests are not available to detect the Coronavirus on surfaces, but employees having COVID-19 is direct proof of the actual, certain presence of the Coronavirus on Genting's property, i.e., in, on and around the Resorts.

127. Additionally, given how highly contagious the Coronavirus is, its multiple modes of transmission, the global pervasive status of COVID-19, and the heavy toll on communities in New York and Florida, it is statistically certain or near-certain that many other individuals at or in the vicinity of Genting's properties contracted and carried the Coronavirus. It is also statistically certain or near-certain that the Coronavirus was dispersed continuously into the air and on property in, on and around such properties. This was also the case at a myriad of business and tourist destinations through New York and Florida, including at leader properties.

128. The presence of the Coronavirus and COVID-19 in, on, and near the Resorts therefore caused and continues to cause direct physical loss or damage to Genting's property, resulting in business income loss covered under the Policies.

129. This direct physical loss, damage or destruction to Genting's property required Genting to: (a) close the Resorts and/or sharply limit their occupancy and uses; and (b) undertake costly efforts to protect and preserve property from further damage or loss. Even after the Resorts re-opened, the many remaining restrictions continued to limit operations and require extensive ongoing remediation, all resulting in losses above \$500 million.

**E. The Certain or Virtually Certain Presence of the Coronavirus at the Resorts**

130. The CDC keeps track of known infections by county. Both counties where the Resorts are located have been hotspots and epicenters of COVID-19 infections in their respective

states: (a) Queens County in New York, where Resorts World Casino is located; and (b) Miami-Dade County in Florida, where the Hilton Miami is located.

131. New York City, and New York State, like much of the nation, experienced dramatic COVID-19 outbreaks in mid- and late-March 2020.<sup>87</sup> Indeed, by May 31, 2020, New York State reported over 370,000 COVID-19 cases and over 23,000 COVID-19 related deaths.<sup>88</sup> Around the same time, New York City reported nearly 60,000 COVID-19 cases and over 1,000 COVID-19 related deaths.<sup>89</sup>

132. Florida and its largest city, Miami, were not far behind. By the end of March 2020, Florida reported 6,741 cases and 85 deaths – numbers that would balloon to nearly 30,000 cases and over 800 deaths in April 2020.<sup>90</sup> By mid-July 2020, Florida saw a 7-day average of 11,147 new COVID-19 cases<sup>91</sup> with Miami-Dade County reporting a 14-day average of 2,454 new COVID-19 cases.<sup>92</sup>

133. Genting has been informed that at least 45 of its employees were diagnosed with COVID-19.

134. It is certain that the Coronavirus has been present at both Resorts.

135. The certainty or virtual certainty that the Coronavirus has been present at Genting's

---

<sup>87</sup> Chris Francescani, *Timeline: The first 100 days of New York Gov. Cuomo's COVID-19 response*, ABC News (June 17, 2020), <https://abcnews.go.com/US/News/timeline-100-days-york-gov-andrew-cuomos-covid/story?id=71292880> (last visited Feb. 12, 2021).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Adrienne Cutway, *Timeline: The spread of coronavirus in Florida*, Click Orlando (Sept. 25, 2020), <https://www.clickorlando.com/news/local/2020/03/20/timeline-the-spread-of-coronavirus-in-florida/> (last visited Feb. 12, 2021).

<sup>91</sup> *Florida Coronavirus Map and Case Count*, N.Y. TIMES, updated Feb. 12, 2021, <https://www.nytimes.com/interactive/2020/us/florida-coronavirus-cases.html> (last visited Feb. 12, 2021).

<sup>92</sup> *Tracking Coronavirus in Miami-Dade County, Fla.*, N.Y. TIMES, updated Feb. 12, 2021, [https://www.nytimes.com/interactive/2021/us/miami-dade-florida-covid-cases.html?action=click&module=covid\\_tracking&pgtype=Interactive&region=TableRowLink](https://www.nytimes.com/interactive/2021/us/miami-dade-florida-covid-cases.html?action=click&module=covid_tracking&pgtype=Interactive&region=TableRowLink) (last visited Feb. 12, 2021).

properties as well as at leader properties (the many nearby locations that attract customers) is confirmed by statistical modeling based on the known incidences of infection.<sup>93</sup>

136. This can be confirmed with certainty or near-certainty by statistical modeling based on the known incidences of infection, despite the lack of commercially available tests for fomite or the aerosolized Coronavirus, and despite the shortage of COVID-19 tests that could have otherwise been administered to every individual who was on-site at the relevant times.<sup>94</sup>

137. Early in the course of the Coronavirus and COVID-19, testing was limited, and thus potentially thousands more people were infected than was reported.<sup>95</sup> Concerning the testing that was available at that time, local positivity rates clearly demonstrated the pervasiveness of the Coronavirus throughout New York State, New York City, Florida and Miami-Dade County – where the Resorts are located.

138. Epidemiologists have explained that “the percent positive is a critical measure because it gives us an indication of how widespread infection is in the area where the testing is occurring[.]”<sup>96</sup> The percent positive is a crucial indicator to determine whether a business can safely remain open. The WHO stated that the percent positive should remain below 5% for at least

---

<sup>93</sup> See, e.g., Aroon Chande, Seolha Lee, Mallory Harris, Quan Nguyen, Stephen J. Beckett, Troy Hilley, Clio Andris, & Joshua S. Weitz, *Real-time, interactive website for US-county-level COVID-19 event risk assessment*, 4 NAT. HUMAN BEHAVIOR, 1313-19 (Nov. 9, 2020), <https://doi.org/10.1038/s41562-020-01000-9> (last visited Feb. 12, 2021).

<sup>94</sup> See, e.g., Aroon Chande, Seolha Lee, Mallory Harris, Quan Nguyen, Stephen J. Beckett, Troy Hilley, Clio Andris, & Joshua S. Weitz, *Real-time, interactive website for US-county-level COVID-19 event risk assessment*, 4 NAT. HUMAN BEHAVIOR, 1313-19 (Nov. 9, 2020), <https://doi.org/10.1038/s41562-020-01000-9> (last visited Feb. 12, 2021).

<sup>95</sup> See, e.g., Benedict Carey and James Glanz, *Hidden Outbreaks Spread Through U.S. Cities Far Earlier Than Americans Knew, Estimates Say*, N.Y. TIMES (Apr. 23, 2020), (updated July 6, 2020), [nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html](https://www.nytimes.com/2020/04/23/us/coronavirus-early-outbreaks-cities.html) (last visited Feb. 12, 2021).

<sup>96</sup> David Dowdy and Gypsyamber D’Souza, *COVID-19 Testing: Understanding the “Percent Positive”*, Johns Hopkins Bloomberg School of Public Health Expert Insights (Aug. 10, 2020), <https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html> (last visited Feb. 12, 2021).

two weeks before re-opening.<sup>97</sup>

139. As of March 2020, the positivity rates in New York and Florida, where the Resorts are located, were orders of magnitude higher than 5%:

- **New York City**: The percentage of positive results increased from 27% the week of March 8, 2020, to a 65% during the week of March 22, 2020.<sup>98</sup> New York City reached a maximum of 71% on March 28, 2020.<sup>99</sup>
- **New York State**: As of March 31, 2020, New York State reported a daily positivity rate of 50.4%, a 7-day rolling average of 45.1%, and a 14-day rolling average of 39.5%.<sup>100</sup>
- **Florida**: On March 29, 2020, the 7-day positivity rate for those taking COVID-19 tests in Florida was 10%, with the daily rate equaling 13%.<sup>101</sup>

140. The above positivity rates indicate uncontrolled community spread of the Coronavirus and its certain or virtually certain presence at both Resorts.

141. As discussed in the section below, Genting was subjected to numerous state and government orders that either closed completely or severely restricted their operations, including draconian significant capacity reduction, distancing, disinfection and other restrictions, many of

---

<sup>97</sup> *Id.*

<sup>98</sup> *COVID-19 Outbreak – New York City, February 29-June 1, 2020*, Morbidity and Mortality Weekly Report, CDC (Nov. 20, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6946a2.htm#:~:text=Citywide%2C%20the%20percentage%20of%20tests,the%20week%20of%20March%202022> (last visited Feb. 12, 2021).

<sup>99</sup> George J. Borjas, *Business Closures, Stay-at-Home Restrictions, and COVID-19 Testing Outcomes in New York City*, CDC (Sept. 17, 2020), [https://www.cdc.gov/pcd/issues/2020/20\\_0264.htm](https://www.cdc.gov/pcd/issues/2020/20_0264.htm) (last visited Feb. 12, 2021).

<sup>100</sup> New York State COVID-19 Updates, *Percentage Positive Results by Region Dashboard*, <https://forward.ny.gov/percentage-positive-results-region-dashboard> (last visited Feb. 12, 2021).

<sup>101</sup> *Florida Dept. of Health Updates New COVID-19 Cases, Announces Three New Deaths Related to COVID-19, Morning Update*, FloridaHealth.gov (Mar. 30, 2020), <http://www.floridahealth.gov/newsroom/2020/03/033020-1100-covid19.pr.html> (last visited Feb. 12, 2021).

which continue or have been tightened. Genting was also subject to Gaming Commission mandates that further limited and interfered with its operations.

142. New York and Florida state and local government orders addressed the health and public safety crisis caused by the Coronavirus and COVID-19, prohibiting access to certain businesses and activities.

143. These orders were issued for a number of reasons. These include direct physical loss, damage or destruction to property caused by the Coronavirus and COVID-19; the ability of the Coronavirus and COVID-19 to be transmitted through fomites; and the ability of the Coronavirus to survive on surfaces for days, linger in indoor air, and transform surfaces and air into vehicles of virus transmission, thereby rendering property unsafe for normal use.

**F. New York State Gaming Commission Restricted Access to Genting's Property and Interfered with its Operations**

144. On March 13, 2020, the Gaming Commission imposed attendance limits on casinos and set forth additional limitations relating to the congregation of patrons, including disabling consecutively placed gaming machines and limiting the number of patrons at any given table game.<sup>102</sup>

145. The Gaming Commission also severely restricted attendance at gaming establishments. It cancelled events or gatherings with 500 or more individuals and required that gaming establishments operate at no more than 50 percent maximum capacity.<sup>103</sup>

146. On March 16, 2020, the Gaming Commission issued a letter directing the company to comply with Governor Andrew M. Cuomo's order that "ordered the closure of all commercial

---

<sup>102</sup>*Coronavirus Disease 2019 (COVID-19)*, New York Gaming Commission (March 13, 2020) (annexed hereto as Ex. 1).

<sup>103</sup> *Id.*

casino and video lottery gaming facilities effective 8:00 p.m. tonight and continuing until further notice.”<sup>104</sup> It also mandated that the company coordinate with the Gaming Commission “to ensure your facility will be secured during the period of closure.”<sup>105</sup>

147. As required by the Gaming Commission, Genting ceased operations at Resorts World Casino on March 16, 2020, and was closed to September 9, 2020 – a period of almost six months, forcing Genting to sustain massive financial losses and furlough virtually all its then over 1,100 employees.

148. On November 12, 2020, the Gaming Commission ordered all commercial casino and video lottery gaming facilities within the state to cease operations and close to the public between the hours of 10:00 p.m. and 5:00 a.m.<sup>106</sup> Genting also complied with the November 12, 2020 Gaming Commission order.

149. On February 14, 2021, the State Gaming Commission issued a letter directing that the “closing times for restaurants and bars will be extended from 10:00PM to 11:00PM” but still mandated that facilities be closed “to the public between the hours of 11:00PM and not reopen for gaming activity until 5:00AM the following day.”<sup>107</sup> Genting also complied with the February 14, 2021 Gaming Commission order.

150. The Interruption by Gaming Commission Orders issued to Genting prevented access to the Resorts, and interrupted and reduced Genting’s operations, causing Genting to lose over \$500 million.

151. The Interruption by Gaming Commission Orders triggered the Policy’s Interruption

---

<sup>104</sup> March 16, 2020 Letter from New York State Gaming Commission (annexed hereto as Ex. 2).

<sup>105</sup> *Id.*

<sup>106</sup> November 12, 2020 Letter from New York State Gaming Commission (annexed hereto as Ex. 3).

<sup>107</sup> February 14, 2021 Letter from New York State Gaming Commission (attached hereto as Ex. 4).



by Gaming Commission Coverage as set forth at Endorsement number 5, and the Defendant Insurers have failed to honor their coverage obligations.

152. These orders were issued, among other reasons, because of direct physical loss, damage or destruction to property caused by the Coronavirus and COVID-19.

**G. New York State and New York City Government Orders Interrupted Genting's Operations – Forcing its Closure and Then Severely Restricting its Operations**

153. On March 16, 2020, the CDC and the national Coronavirus Task Force issued public guidance titled “30 Days to Slow the Spread” of COVID-19, which called for restrictive social distancing measures, such as working from home, avoiding gatherings of more than ten people and staying away from bars and restaurants.<sup>108</sup>

154. State and local governments across the nation recognized the unprecedented and mushrooming outbreaks of COVID-19 and the Coronavirus' catastrophic impact through direct physical loss, damage or destruction. As a consequence, many states issued “State of Emergency” Declarations in early March 2020. New York did so on March 7, 2020, and additional orders suspending or severely limiting business operations where people could potentially contract COVID-19 quickly followed.

155. On March 7, 2020, Governor Cuomo declared a “disaster emergency” in response to the transmission in New York and the threat that COVID-19 “poses to the health and welfare of its residents and visitors.”<sup>109</sup>

156. On March 12, 2020, Governor Cuomo issued an executive order banning all events

---

<sup>108</sup> The President's Coronavirus Guidelines for America, *30 Days to Slow the Spread*, The White House and CDC (Mar. 16, 2020), [https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03.16.20\\_coronavirus-guidance\\_8.5x11\\_315PM.pdf](https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf) (last visited Feb. 17, 2021).

<sup>109</sup> Executive Order No. 202, (March 7, 2020), <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york> (last visited Feb. 17, 2021).

or gatherings of more than 500 people in the state and requiring businesses to operate at less than 50% of their occupancy and seating capacity, severely limiting the operations of large entertainment venues in the state, such as Resorts World Casino (“March 12, 2020 Order”).<sup>110</sup>

157. New York replaced restrictions on casinos and imposed a complete shut-down days later. On March 16, 2020, Governor Cuomo directed “any facility authorized to conduct casino gaming,” to “cease operation effective at 8 pm on March 16, 2020 and until further notice” (the “March 16, 2020 Order”).<sup>111</sup>

158. Subsequent New York State orders imposed a “stay at home” order and directed all non-essential businesses to cease in person operations entirely by March 22, 2020.<sup>112</sup>

159. New York City also issue multiple orders imposing additional restrictions – which, in almost every case, specifically cited the need to mitigate ongoing property damage. For example, on March 16, 2020, Mayor Bill de Blasio directed “all establishments . . . that offer food or drink” to close (except for takeout service) until further notice (the “March 16, 2020 NYC Order”).<sup>113</sup> The March 16, 2020 NYC Order also closed “all entertainment venues,” and gyms. *Id.*

160. The March 16, 2020 NYC Order stated that it was issued “because of the propensity of the virus to spread person to person and also because the virus physically is causing property

---

<sup>110</sup> Executive Order No. 202.1: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (March 12, 2020), <https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency> (last visited Feb. 12, 2021).

<sup>111</sup> Executive Order No. 202.3 (March 16, 2020), <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency> (last visited Feb. 12, 2021).

<sup>112</sup> See Executive Order Nos. 202.6 (March 18, 2020), 202.7 (March 19, 2020), and 202.8 (March 20, 2020), <https://www.governor.ny.gov/executiveorders> (last visited Feb. 12, 2021).

<sup>113</sup> Emergency Executive Order No. 100, Office of the Mayor, City of New York (March 16, 2020), <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf> (last visited Feb. 12, 2021).

**loss and damage.**” *Id.* (Emphasis added).

161. On March 25, 2020, New York City directed all businesses to reduce their in-person workforce “by 100%” except for those providing “essential services or functions”.<sup>114</sup> This order expressly stated that it was issued “because of the propensity of the virus to spread person-to-person and also because the actions taken to prevent such spread have led to property loss and damage.” *Id.*

162. On May 29, 2020 Governor Cuomo announced that New York would enter Phase 1 of re-opening on June 8, 2020.<sup>115</sup> Those businesses entering into Phase 2 were provided a “NY Forward Safety Plan Template”<sup>116</sup> to fill out detailing how its workplace planned to prevent the spread of COVID-19. The Safety Plan Template required businesses to:

- a) “Adhere to hygiene and sanitation requirements from the Centers for Disease Control and Prevention (CDC) and Department of Health (DOH) and maintain cleaning logs on site that document date, time, and scope of cleaning”;
- b) “Conduct regular cleaning and disinfection at least after every shift, daily, or more frequently as needed, and frequent cleaning and disinfection of shared objects (e.g. tools, machinery) and surfaces, as well as high transit areas, such as restrooms and common areas”;

---

<sup>114</sup> Emergency Executive Order No. 103, Office of the Mayor, City of New York (March 25, 2020), <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf> (last visited Feb. 12, 2021).

<sup>115</sup> *Governor Cuomo Announces New York City to Enter Phase 1 of Reopening on June 8 and Five Regions Enter Phase 2 of Reopening Today*, Office of the Governor (May 29, 2020), <https://www.governor.ny.gov/news/governor-cuomo-announces-new-york-city-enter-phase-1-reopening-june-8-and-five-regions-enter> (last visited Feb. 12, 2021).

<sup>116</sup> *NY Forward Safety Plan Template*, New York State Dept. of Health, [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS\\_BusinessReopeningSafetyPlanTemplate.pdf?fbclid=IwAR22Q5iB2pSybVvkyb7ofRsE91jTniDD4FkQhjOiURvWJNvVe91C0f9aTEM](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf?fbclid=IwAR22Q5iB2pSybVvkyb7ofRsE91jTniDD4FkQhjOiURvWJNvVe91C0f9aTEM) (last visited Feb. 12, 2021).

- c) “Have a plan for cleaning, disinfection, and contact tracing in the event of a positive case”; and
- d) “Limit the sharing of objects and discourage touching of shared surfaces; or, when in contact with shared objects or frequently touched areas.”

163. By August 2020, casinos were one of the very few businesses in the state that remained completely shut down.<sup>117</sup> Casinos were finally permitted to open on September 9, 2020, “subject to adherence to Department of Health guidance.”<sup>118</sup> Among other restrictions, casinos reopened subject to a massive and onerous list of requirements that severely restricted Genting’s use of its own casino, including:

- 25% attendance limitation;
- prohibition on food and beverage service;
- prohibition on live performances;
- physical distancing ensured by seating limitations and demarcation of appropriate spacing at counters and at waiting areas;
- installation of physical barriers between dealers and patrons; and,
- air handling and building systems requirements, and enhanced cleaning and disinfection procedures far in excess of normal and customary cleaning and disinfection.<sup>119</sup>

---

<sup>117</sup> *Cuomo Says Update On Reopening NY Casinos Coming This Week*, Syracuse.com (Aug. 30, 2020), <https://www.syracuse.com/coronavirus/2020/08/cuomo-says-update-on-reopening-ny-casinos-coming-this-week.htm> (last visited Feb. 12, 2021).

<sup>118</sup> Executive Order No. 202.60 (September 4, 2020), <https://www.governor.ny.gov/news/no-20260-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency> (last visited Feb. 12, 2021).

<sup>119</sup> *Interim Guidance For Gaming Facilities During The Covid-19 Public Health Emergency*, New York Department of Health (Sept. 4, 2020), [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Casinos\\_Detailed\\_Guidance.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Casinos_Detailed_Guidance.pdf) (last visited Feb. 12, 2021).

164. These “strict safety protocols” remain in place, and the Gaming Commission is “deployed to monitor casinos and ensure strict enforcement of these measures.”<sup>120</sup>

165. Facing another surge in rising COVID-19 cases, on November 12, 2020, Governor Cuomo again closed all “in person” services at bars, restaurants, gyms and casinos from 10:00PM to 5:00AM.<sup>121</sup>

166. In sum, although Resorts World Casino re-opened on September 9, 2020 following an almost six-month closure, to this day it has only and continues continue to suffer catastrophic financial losses from restrictions imposed on its business by the above-cited Gaming Commission and other governmental orders pertaining to casinos.

#### **H. Florida Government Orders And the Severe Restrictions on Genting’s Operations**

167. As COVID-19 spread, Governor Ron DeSantis and Miami-Dade County, the county in which the Hilton Miami is located, issued dozens of COVID-19-related orders restricting or closing businesses and limiting gatherings and travel to Florida.<sup>122</sup> The combined effect of these orders and the direct physical loss, damage or destruction to the Hilton Miami property and its leader properties as a result of the presence of the Coronavirus and COVID-19 on premises caused Genting to sustain massive losses.

168. In early March 2020 Governor DeSantis issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency in response to the state’s

---

<sup>120</sup> *Operating With Restrictions*, New York Forward Business Reopening Lookup Tool, <https://www.businessexpress.ny.gov/app/nyforward/session/> (select Queens and Casinos (without Hotel)) (last visited Feb. 12, 2021).

<sup>121</sup> *Casino.org, New York State Casinos Limit Restaurant and Bar Hours Under New Directive*, (Nov. 12, 2020), <https://www.casino.org/news/new-york-state-casinos-limit-restaurant-and-bar-hours-under-new-directive/> (last visited Feb. 12, 2021).

<sup>122</sup> *COVID-19 Executive Orders*, <https://www.flgov.com/covid-19-executive-orders/> (last visited Feb. 12, 2021); *Emergency Orders*, Miami-Dade County, <https://www.miamidade.gov/global/initiatives/coronavirus/emergency-orders> (last visited Feb. 12, 2021).

first two confirmed COVID-19 cases.<sup>123</sup> On March 9, 2020 Governor DeSantis officially declared a State of Emergency.<sup>124</sup>

169. Throughout March 2020, the Office of the Governor issued Executive Orders placing restrictions on businesses in order to prevent the spread of COVID-19. On March 17, 2020, Governor DeSantis issued Executive Order 20-68, which suspended alcohol sales at bars, pubs and nightclubs and required all restaurants to limit their occupancy to 50% of their maximum occupancy and maintain social distancing between groups.<sup>125</sup> On March 20, 2020, Governor DeSantis suspended food sales at bars and restaurants and closed gyms and fitness centers.<sup>126</sup>

170. Miami-Dade County issued its own, often more restrictive orders, during this same period. Miami-Dade County Mayor Carlos Gimenez declared a State of Emergency on March 19, 2020 (“March 19, 2020 Miami-Dade County Order”), ordering all “non-essential” establishments closed.<sup>127</sup> Miami-Dade County prohibited hotels, motels and short-term vacation rentals from accepting non-essential lodgers as of March 21, 2020.<sup>128</sup>

171. Governor DeSantis also issued several orders imposing restrictions on those traveling to Florida. Specifically, in a series of orders, Governor DeSantis imposed a mandatory 14-day quarantine period on individuals traveling to Florida from areas with “substantial

---

<sup>123</sup>*Executive Order 20-51*, Office of the Governor (Mar. 1, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-51.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-51.pdf) (last visited Feb. 12, 2021).

<sup>124</sup>*Executive Order 20-52*, Office of the Governor (Mar. 9, 2020), <https://www.flgov.com/wp-content/uploads/2020/03/EO-20-52.pdf> (last visited Feb. 12, 2021).

<sup>125</sup>*Executive Order 20-68*, Office of the Governor (Mar. 1, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-68.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-68.pdf) (last visited Feb. 12, 2021).

<sup>126</sup>*Executive Order 20-71*, Office of the Governor (Mar. 20, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-71.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-71.pdf) (last visited Feb. 12, 2021).

<sup>127</sup>*Miami-Dade County Emergency Order 20-91*, Office of the Mayor (Mar. 19, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-91.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91.pdf) (last visited Feb. 12, 2021).

<sup>128</sup>*Emergency Order No. 9-20*, Miami-Dade County (Mar. 21, 2020, amended Mar. 25, 2020), <https://www.miamidade.gov/global/initiatives/coronavirus/emergency-orders/emergency-order-9-20.page> (last visited Feb. 12, 2021).

community spread,” arriving by cruise ship or from international destinations, and prohibited “vacation rentals.”<sup>129</sup>

172. On March 24, 2020, Governor DeSantis advised against all social or recreational gatherings of 10 or more people and urged people to work from home.<sup>130</sup>

173. On March 30, 2020, noting that Miami-Dade County and neighboring Broward and Palm Beach Counties collectively accounted for over 60% of Florida’s identified COVID-19 cases, Governor DeSantis ratified the March 19, 2020 Miami-Dade County Order shutting down non-essential businesses and directed that Broward and Palm Beach Counties adhere to its restrictions, including any subsequent amendments and modifications thereto.<sup>131</sup>

174. On April 1, 2020, Florida issued a “Safer At Home” order, requiring that “all persons in Florida shall limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.”<sup>132</sup>

175. Miami-Dade and other heavily impacted southern counties were excluded from “Phase 1” of Governor DeSantis’s April 29, 2020 order which set forth a re-opening plan.<sup>133</sup> Miami-Dade County entered “Phase 1” as of May 18, 2020.<sup>134</sup> As of May 18, 2020, Miami-Dade

---

<sup>129</sup>*Executive Order Nos. 20-82* (March 24, 2020), *20-86* (March 27, 2020), *20-87* (March 27, 2020), *20-112* (May 4, 2020), Office of the Governor, <https://www.flgov.com/covid-19-executive-orders/> (last visited Feb. 12, 2021).

<sup>130</sup>*Executive Order 20-83 “Emergency Management - COVID-19 - Protective Measures for Vulnerable Populations, Gatherings of Private Citizens and Density of the Workforce*, Office of the Governor (Mar. 20, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-83.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-83.pdf) (last visited Feb. 12, 2021).

<sup>131</sup>*Executive Order 20-89*, Office of the Governor (March 30, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-89.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-89.pdf) (last visited Feb. 12, 2021).

<sup>132</sup>*Executive Order 20-91*, Office of the Governor (Apr. 1, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-91-compressed.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf) (last visited Feb. 12, 2021).

<sup>133</sup>*Executive Order 20-112: Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery*, Office of the Governor (Apr. 29, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-112.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-112.pdf) (last visited Feb. 12, 2021).

<sup>134</sup>*Executive Order 20-122: Broward and Miami-Dade Counties to Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery*, Office of the Governor (May 14, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-122.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-122.pdf) (last visited Feb. 12, 2021).

County restaurants and retail sales businesses were permitted to resume indoor service at 25% capacity, while gyms and fitness centers remained closed. *Id.*

176. Hotels were excluded from Phase 1 re-opening as to non-essential lodgers pursuant to a May 15, 2020 order from Miami-Dade County.<sup>135</sup>

177. By May 27, 2020, Miami-Dade permitted hotels and commercial lodging properties to re-open effective June 1, 2020.<sup>136</sup> Re-opening was contingent on compliance with extensive guidelines requiring hotels to:

- a) “Maintain regular housekeeping practices and use EPA-approved cleaning solutions only”;
- b) “Use approved disinfectant to thoroughly clean all high-touch points including telephone, remote control, bathroom sinks, toilets, shower, tubs, hair dryers, desks and mirrors”;
- c) “Wash all bed linens and laundry at high temperatures and in accordance with CDC guidelines”; and
- d) Clean and disinfect “all public spaces to include but not limited to, front desk check-in counters, elevator and elevator buttons, door handles, public bathroom rooms, room keys and locks, escalators and stair handrails, gym equipment, dining surfaces, and seating areas” twice daily.<sup>137</sup>

---

<sup>135</sup>*Emergency Order 23-20*, Miami-Dade County (May 15, 2020),

<https://www.miamidade.gov/global/initiatives/coronavirus/emergency-orders/emergency-order-23-20.page> (last visited Feb. 12, 2021).

<sup>136</sup>*Amendment 1 to Emergency Order 23-20*, Miami-Dade County (May 27, 2020),

<https://www.miamidade.gov/information/library/emergency-order-23-20-amendment-1.pdf> (last visited Feb. 12, 2021).

<sup>137</sup>*Hotels and Accommodations*, Miami Dade County,

<https://www.miamidade.gov/global/initiatives/coronavirus/business/openings-hotels-accommodations.page> (last visited (Feb. 12, 2021).



178. The guidelines also required hotels that maintain restaurant and food services to follow restaurant requirements promulgated by the county.<sup>138</sup> Pursuant to these guidelines, hotels were required to:

- a) “Install high-efficiency air filters and HVAC systems”;
- b) “Install Ultraviolet Germicidal Irradiation (UVGI) in small common areas that cannot be adequately ventilated”;
- c) Maintain “self-dispensing hand sanitizer or handwashing station at the entrance to the restaurant”;
- d) Wash and disinfect in a dishwashing machine “all dishes, silverware, and glassware”;
- e) “Disinfect high-touch surfaces hourly (door handles, cubicle closures, sink levers, manual dispensers, air dryers (if applicable), etc.)”;
- f) “Wash and frequently sanitize items such as ladles, tongs, and condiment holders”; and,
- g) “Tables and chairs must be sanitized mechanically, using an EPA approved disinfectant that is safe for the furniture, after each party's use or, if not used, every 60 minutes.”<sup>139</sup>

179. By September 26, 2020, Miami-Dade County authorized restaurants and clubs to re-open fully, while remaining subject to previously issued requirements and an exhaustive 70-

---

<sup>138</sup>*Restaurants, Bars and Clubs*, Miami Dade County, <https://www.miamidade.gov/global/initiatives/coronavirus/business/openings-restaurants.page> (last visited Feb. 12, 2021).

<sup>139</sup>*Id.*

page handbook published by the county.<sup>140</sup> In order to re-open, restaurants were required to, among other things: (a) post “Stop the Spread” and social responsibility signage; (b) reduce seating to “ensure” social distancing; (c) enhance sanitation of common areas and “frequent touch points”; (d) comprehensively clean and disinfect each night, including “frequent touch points”; (e) install hand sanitizer dispensers; and (f) use reasonable efforts to ensure customers and others on site follow social distancing requirements by, for example, marking floors. *Id.*

180. Genting’s losses in EBITDA (earnings before interest, taxes, depreciation and amortization) as a result of Gaming Commission and other governmental orders which interrupted Genting’s businesses and operations, as well as from the direct physical loss, damage or destruction to its properties and its leader properties exceed \$500 million.

181. Genting timely notified the Defendant Insurers of its losses and has met all conditions and requirements for coverage under the Policy. As set forth herein, the Defendant Insurers have wrongfully refused to provide coverage and instead, have wrongfully stretched out the claim process without making a final coverage determination for almost a full year after receiving notice from Genting.

#### **I. Genting Incurred and Continues to Incur Covered Losses Under the Policy**

182. After almost a six-month closure, Resorts World Casino re-opened on September 9, 2020.

183. The Hilton Miami re-opened to non-essential guests on July 1, 2020.

184. The re-opening of the Resorts further resulted in additional losses to Genting

---

<sup>140</sup> *Amendment No. 1 to Emergency Order 30-20*, Miami-Dade County (Sept. 26, 2020), <https://www.miamidade.gov/information/library/coronavirus-emergency-order-30-20.pdf> (last visited Feb. 12, 2021); Miami-Dade County, *The New Normal Handbook: A Guide for Residents and Commercial Establishments* (Oct. 24, 2020), <https://www.miamidade.gov/information/library/new-normal.pdf> last visited Feb. 12, 2021).

because in order to mitigate and prevent further direct physical loss, damage or destruction to its property and to stay open and continue operating in a safe and compliant matter, Genting has incurred significant costs and extra expenses as a result of restrictions on operations.

185. The direct physical loss, damage or destruction inflicted on the property by the Coronavirus and COVID-19 dramatically changed Genting's operations.

186. In an attempt to protect the health of its customers and employees and to continue to operate as close to normal as possible, Genting implemented numerous onerous and expensive new health, safety, scheduling and hygiene procedures as part of a 21-point safety plan.

187. Some of the key protocols implemented include:

- limiting entry to the main building to only three entrances;
- conducting temperature checks of all guests and team members entering the building and denying entry to any person with a temperature of over 100.4 degrees Fahrenheit;
- requiring all guests to wear face masks while on the property;
- purchasing and installing over 200 hand sanitizing stations;
- providing and making available sanitizing wipes throughout the property;
- implementing enhanced cleaning procedures and regularly deploying cleaning team members to high-touch areas for cleaning and disinfecting;
- implementing social distancing measures, including modifying the gaming floor, erecting temporary physical distancing panels, incorporating signage and digital signage, broadcasting announcements to remind guests to maintain social distancing and closing areas of the property where social distancing is not a feasible option;

- training all Genting team members on COVID-19 safety and sanitation protocols and providing them with a COVID-19 Sanitation and Social Well-Being Plan information packet that highlights operational protocol. Team members were trained in: (a) physical distancing, (b) personal hygiene, (c) proper use of PPE, (d) disinfecting and sanitizing workstations, (d) the proper use of chemicals, (e) uniform cleanliness, and (f) detection of COVID-19 symptoms;
  - requiring team members to complete a mandatory daily COVID-19 health screening form;
  - requiring team members to wear masks and, when necessary, face shields and gloves;
  - upgrading all HVAC filters to the MERV15 filter to ensure optimal air quality;
  - closing every other seat or position in electronic table games to maintain social distancing, requiring each guest to sanitize their hands before the start of play and erecting physical distancing panels on select games;
  - closing every other window at the cashier to maintain social distancing, installing plexiglass panels at all casher windows as a protective barrier between team members and guests, utilizing floor markers to queue guests six feet apart and placing signage asking guests to wait to be called by the next open cashier; and
  - operating food and beverage outlets with a reduced seating capacity, setting floor markers and signage, enforcing guest occupancy limits to allow for physical distancing, installing physical distancing panels on countertops to separate servers from guests and closing self-service operations.
188. Genting implemented many of the same training and cleaning protocols and safety

enhancements at the Hilton Miami – all at great expense.

189. Besides implementing training and safety measures, Genting invested significant funds to procure PPE, cleaning products, air filters, physical barriers and signage so that it could continue operating as close to normal as possible and to lessen the risk of continued direct physical loss, damage or destruction to property caused by the Coronavirus and COVID-19.

190. To that end, Genting has spent over \$2.6 million for PPE and other safety items for Resorts World Casino including social distancing panels, sanitizing wipes, cleaners, MERV 15 filters for the HVAC system, thermometers, alcohol wipes, divider posts, face shields, forehead thermometers, gloves, hand sanitizer, masks and mobile sanitation stations. Genting made these same types of investments at its Hilton Miami property.

**J. The “All Risk” Commercial Property Policy and Potentially Applicable Coverages**

191. Genting purchased a quota share program, to which the Defendant Insurers subscribed – a type of sharing agreement where various insurers share a portion of the risk according to a fixed percentage.

192. Each of the Defendant Insurers issued separate policies with unique market reference and/or policy numbers, setting forth their respective quota shares and adopting the terms of the main Policy.

193. In exchange for a very substantial premium, Lex London sold Genting the Policy, number B0509BOWPN1900918, effective from December 10, 2019 to December 10, 2020 (attached hereto as Ex. 5).<sup>141</sup> Lex London has a 20% quota share of the \$500,000,000 in limits provided by the Policy.

194. Lex London and/or its affiliates drafted the Policy.

---

<sup>141</sup> Unless otherwise noted, capitalized and bolded terms herein are capitalized and bolded in the Policy.

195. Genting did not draft the Policy.

196. The Lex London Policy “insures against all risk of direct physical loss, damage or destruction to property described herein occurring during the term of insurance, except as hereinafter excluded,” and provides coverage for property damage losses, time element and/or business interruption losses, and other losses.

197. The limit of liability is \$500,000,000 per **Occurrence**. The Policy Deductible is \$250,000 for “[a]ll losses, damages or expenses arising out of any one **Occurrence**” and contains other deductibles applicable in specified circumstances.

198. The Policy does not exclude virus or communicable disease as causes of loss. Thus, the entire \$500,000,000 limit of liability is available for Genting’s losses under the Policy.

199. The Policy’s full terms and conditions are set forth therein, but as relevant here, the Policy provides as follows:

**Time Element Coverages**

200. The Policy defines “Time Element” as “Business Interruption, Extra Expense, Rental Value, Royalties, and **Soft Costs** loss as insured under the **Policy** including Time Element Extensions and Provisions related thereto” (the “Business Interruption Coverage”).

201. The Policy covers Business Interruption losses “resulting from necessary interruption of business conducted by the **Insured**, whether total or partial, and caused by direct physical loss, damage, or destruction insured herein.”

202. As set forth herein, the Coronavirus and COVID-19 caused direct physical loss, damage or destruction to property at Genting’s insured locations.

203. The Coronavirus and COVID-19 also rendered such property unfit and unsafe for its normal usages, depriving Genting of its property.

204. Neither the Coronavirus nor COVID-19, or losses therefrom, are excluded under the Policy.

205. The Policy's Business Interruption Coverage insures "Actual Loss Sustained by the **Insured**, consisting of the Net Profit which is thereby prevented from being earned and of all charges and expenses only to the extent that these must necessarily continue during the interruption of business . . ."

206. The Business Interruption Coverage is subject to the Policy's full \$500,000,000 limit of liability.

207. As a result of the presence of the Coronavirus and COVID-19 on premises, Genting has been subject to both total and partial closures beginning in March 2020, and to the extent they have re-opened, they have done so at drastically reduced capacity. As such, Genting has sustained and is sustaining a substantial and covered Business Interruption loss.

208. The Policy includes an Extended Period of Indemnity, providing in relevant part: "The length of time for which loss may be claimed: shall include an Extended Period of Indemnity, not to exceed [365 days], which is the additional length of time to restore the **Insured's** business to the condition that would have existed had no loss occurred . . ."

209. The Policy provides Extra Expense coverage, covering "the excess of the total cost chargeable to the operation of the **Insured's** business over and above the total cost that would normally have been incurred to conduct the business had no direct physical loss, damage or destruction occurred." Extra Expense coverage in the Policy is subject to a \$25,000,000 limit of liability, per **Occurrence**.

210. As set forth herein, Genting incurred Extra Expenses to resume and continue as nearly as practicable to its normal business activities that were otherwise suspended due to direct

physical loss, damage or destruction caused by the Coronavirus and COVID-19, costs associated with altering its property to protect it from further physical loss, damage or destruction, as well as to protect the safety of its occupants, erecting barriers, altering air circulation, reconfiguring indoor spaces, disinfecting surfaces and materials, and providing PPE.

211. The Policy provides Interruption by Gaming Commission Coverage which states: “This **Policy** insures the ‘Time Element’ loss sustained during the period of time when access to real or personal property is prevented or the operation of a ‘location’ is interrupted or reduced due to any Gaming Commission's commission laws, regulations or intervention.”

212. The Policy’s Interruption by Gaming Commission Coverage does not require that the commission laws, regulation or intervention of the Gaming Commission be in response to direct physical loss, damage or destruction of property or any other peril covered under the Policy.

213. Interruption by Gaming Commission Coverage in the Policy is subject to the Policy’s full \$500,000,000 limit of liability.

214. Genting’s access to Resorts World Casino was interrupted and reduced due to the intervention of the New York Gaming Commission as well as the orders of the Governor of New York, as further described herein.

215. The Policy contains a Special Perils endorsement that provides: “Notwithstanding Section 1, Perils Insured Against, this policy is extended to cover loss resulting from interruption of or interference with the business carried on by the Insured in consequence of: (a) Infectious or contagious disease manifested by any person while on the premises of the Insured.”

216. COVID-19 is an infectious disease that manifested in persons on Genting’s premises.

217. The Policy’s Special Perils endorsement also provides: “Notwithstanding Section



1, Perils Insured Against, this policy is extended to cover loss resulting from interruption of or interference with the business carried on by the Insured in consequence of: (d) Closing of the whole or part of the premises of the Insured by order of a competent public authority consequent upon the existence or threat of hazardous conditions either actual or suspected at the premises of the Insured.”

218. COVID-19 is an infectious disease that manifested in persons at properties within 5 miles of Genting’s Resorts, giving rise to the actions of civil authority, as set forth herein. These orders impaired access to the Resorts.

219. Genting has experienced interruption and interference with its business as a result of the presence of the Coronavirus and COVID-19 at the Resorts, including over 45 of Genting’s employees reporting to Genting that they tested positive for COVID-19. Genting’s Resorts were also subject to complete and partial closure due to the threat of actual and suspected presence of hazardous conditions, namely the presence of the Coronavirus and COVID-19.

### **Time Element Extensions**

220. The Policy includes numerous Time Element Extensions that apply to Genting’s losses from the Coronavirus and COVID-19.

221. The Policy provides Interruption by Civil or Military Authority coverage for “Time Element losses resulting from: An interruption of business, whether total or partial, during the period of time when, in connection with or following a peril insured against, access to real or personal property is impaired by order or action of civil or military authority.” The Interruption by Civil or Military Authority coverage in the Policy is subject to a Limit of Liability, per **Occurrence**, of a \$50,000,000 “for up to 60 days Period of Recovery, subject to a 5 mile distance limitation.”

222. The Interruption by Civil or Military Authority provision also states: “The provisions of this paragraph shall extend to include the Time Element extensions of coverage described under subparagraphs... (1) (b), Contingent Business Interruption and Contingent Extra Expense; and (1) (d), Leader Property.” This means that an order of civil or military authority following a peril insured against will trigger these Time Element Extensions (as described in further detail below) to cover Genting’s losses that arise when access to suppliers and attraction/leader properties is impaired by order of civil or military authority.

223. The Coronavirus and COVID-19 caused direct physical loss, damage or destruction to property throughout New York City (including Queens) and Miami, and caused the deprivation of use of such property, including property within 5 miles of the Resorts, giving rise to the actions of civil authority, as set forth herein. These orders impaired access to the Resorts.

224. The Policy provides Contingent Business Interruption and Contingent Extra Expense coverage for “Time Element losses resulting from: [d]irect physical loss, damage or destruction as insured herein to property of the type insured of any Dependent or Secondary Dependent supplier of goods and/or services that wholly or partially prevents such suppliers from rendering their goods and/or services to the **Insured** or Dependent supplier as the case may be....”

225. The Policy defines Dependent Supplier as: “properties, not owned or operated by the **Insured** from which the **Insured** or others for the account of the **Insured** directly receive goods or services.”

226. The Policy defines Secondary Dependent Supplier as: “properties, not owned or operated by the **Insured** or the Dependent supplier from which a Dependent supplier directly receives goods or services which in turn are used by the Dependent supplier in providing goods or services to the **Insured**.”

227. The Policy provides Leader Property coverage for “Time Element losses resulting from: [d]irect physical loss, damage or destruction as insured herein to property not owned or operated by the **Insured**, located within 5 miles from the **Insured**'s premises, which attracts business to the **Insured**.”

228. In plain English, the Policy provides coverage for Genting’s losses if the properties of Genting’s direct and indirect suppliers, or nearby properties that attract business to the Resorts, suffer direct physical loss, damage or destruction unless expressly excluded under the Policy. The Policy will also cover Genting’s losses if those suppliers or Leader Properties experience impairment of access due to an order of civil or military authority “in connection with or following a peril insured against.” The Policy cover all risks of loss and does not contain any relevant exclusions for Genting’s losses.

229. Among other things, as set forth herein, the Coronavirus and COVID-19 caused direct physical loss, damage or destruction at properties of direct and indirect suppliers and service providers to Genting, and properties that attract customers to the Resorts, including the many business amenities and tourist attractions within a short distance of the Resorts.

230. Additionally, as set forth herein, the Coronavirus and COVID-19 rendered such properties unfit and unsafe for their normal usages, resulting in the deprivation of use of such properties.

231. The Policy provides Decontamination Costs of Insured Property coverage, which provides in relevant part: “If insured property is contaminated as a result of direct physical loss, damage or destruction insured by this **Policy** and there is in force at the time of loss any law or ordinance regulating contamination, including but not limited to the presence of pollution or hazardous material(s), then this **Policy** insures, as a direct result of enforcement of or compliance

with such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance.” This coverage also provides: “With respect to **Time Element** loss insured herein, this **Policy** insures the additional period of time necessary for the decontamination and/or removal of contaminated insured property in a manner to satisfy any law or ordinance regulating contamination . . . .”

232. The Policy provides Ingress/Egress coverage for “Time Element losses resulting from: [a]n interruption of business, whether total or partial, during the period of time when, in connection with or following a peril insured against, ingress to or egress from real or personal property is impaired.”

233. The Coronavirus and COVID-19 caused direct physical loss, damage or destruction to property throughout New York City and Miami where the Resorts are located, and caused the deprivation of use of such property, including property within 5 miles of the Resorts. The areas within a 5-mile radius of the Resorts, like much of the rest of the New York City and Miami, were non-viable destinations in general, thus preventing access to the Resorts.

234. The Policy contains a Sue and Labor clause which states, in relevant part: “In case of actual or imminent direct physical loss, damage or destruction insured by this **Policy**, except imminent direct physical loss, damage or destruction with respect to an **Accident**, it shall, without prejudice to this insurance, be lawful and necessary for the **Insured**, their factors, servants, or assigns to sue, labor and travel for, in and about the defense, the safeguard, and the recovery of property or any part of the property insured hereunder.” The clause further states: “The **Company** shall pay the expenses so incurred including resulting **Time Element** loss.”

235. Genting undertook costly measures necessary to protect it from imminent and further loss, damage or destruction and to protect as much as possible, the health, safety and

welfare of its employees and customers. These measures included, among other things, altering its property to protect it from physical loss, damage or destruction, and taking measures to protect the safety of its employees and customers, such as erecting barriers, altering air circulation, reconfiguring indoor spaces, disinfecting surfaces and materials, and providing PPE to employees. Additionally, during times of low or no occupancy at the Resorts, to mitigate its losses and protect its property, Genting incurred costs associated with security, fire monitoring, elevator maintenance, pest control, utilities, and other maintenance.

236. No policy exclusions apply to Genting's claim.

#### **The Other Program Insurance Policies**

237. The policy issued by Interstate, Policy No. RTX20045819 (the "Interstate Policy"), provides a 10% share of the \$500,000,000 limits of coverage (attached hereto as Ex. 6).

238. The policy issued by Allianz, Policy No. USP00084519 (the "Allianz Policy"), provides a 5% share of the \$500,000,000 limits of coverage (attached hereto as Ex. 7).

239. The policy issued by Everest, Policy No. RP8CF00077-191 (the "Everest Policy"), provides a 15% share of the \$25,000,000 primary layer of coverage (attached hereto as Ex. 8).

240. The policy issued by Lloyd's, Policy No. B0509BOWPN1900646, provides a 20% share of the \$25,000,000 primary layer of coverage, a 25% share of the \$25,000,000 excess of \$25,000,000 layer of coverage, and a 10% share of the \$100,000,000 excess of \$100,000,000 layer of coverage (attached hereto as Ex. 9).

241. The policy by ACE, Policy No. CX D42292965 001 (the "ACE Policy"), provides a 25% share of the \$25,000,000 primary layer of coverage (attached hereto as Ex. 10).

242. The policy issued by First Specialty, Policy No. ESP 2004434 00 (the "First Specialty Policy"), provides a 10% share of the \$10,000,000 primary layer of coverage and a 15%

share of the \$100,000,000 excess of \$100,000,000 layer of coverage (attached hereto as Ex. 11).

243. The policy issued by Arch, Policy No. ESP1001467-00 (the “Arch(1) Policy”), provides a 10% share of the \$40,000,000 excess of \$10,000,000 layer of coverage (attached hereto as Ex. 12).

244. The policy issued by Arch, Policy No. ESP1001466-00 (the “Arch(2) Policy”), provides a 5% share of the \$100,000,000 excess of \$100,000,000 layer of coverage (attached hereto as Ex. 13).

245. The policy issued by Landmark, Policy No. LHD910839 (the “Landmark(1) Policy”), provides a 10% share of the \$75,000,000 excess of \$25,000,000 layer of coverage (attached hereto as Ex. 14).

246. The policy issued by Landmark, Policy No. LHD910841 (the “Landmark(2) Policy”), provides a 30% share of the \$100,000,000 excess of \$100,000,000 layer of coverage (attached hereto as Ex. 15).

247. The policy issued by Great Lakes, Policy No. F03258152019 (the “Great Lakes Policy”), provides a 10% share of the \$75,000,000 excess of \$25,000,000 layer of coverage (attached hereto as Ex. 16).

248. The policy issued by Evanston, Policy No. MKLV13XP002998 (the “Evanston Policy”), provides a 10% share of the \$25,000,000 excess of \$25,000,000 layer of coverage (attached hereto as Ex. 17).

249. The policy issued by Colony, Policy, No. XP190304-0 (the “Colony Policy”), provides a 25% share of the \$50,000,000 excess of \$50,000,000 layer of coverage (attached hereto as Ex. 18).

250. The policy issued by Hallmark, Policy No. 73PRX19A3C9 (the “Hallmark

Policy”), provides a 10% share of the \$50,000,000 excess of \$50,000,000 layer of coverage (attached hereto as Ex. 19).

251. The policy issued by Aspen, Policy No. PX00ETT19 (the “Aspen Policy”), provides a 10% share of the \$50,000,000 excess of \$50,000,000 layer of coverage (attached hereto as Ex. 20).

252. The policy issued by Lloyd’s, Policy No. B0509BOWPN1900918, provides a 5% share of the \$100,000,000 excess of \$100,000,000 layer of coverage (attached hereto as Ex. 21).

253. The policy issued by Chubb Bermuda, Policy No. GENTING01822P (the “Chubb Bermuda Policy”), provides a 65% share of the \$300,000,000 excess of \$200,000,000 layer of coverage. The Chubb Bermuda Policy contains an arbitration clause and, as such, is not included in this action.

**K. Denial of Genting’s Claim By the Defendant Insurers**

254. Genting provided notice of its losses, including on or about March 21, 2020, January 12, 2021 and February 5, 2021.

255. The Policy explicitly provides that “Hank Stein of Crawford and Company” is the assigned adjuster to handle “all claims made against this **Policy**” (the “Assigned Adjuster Provision”). The Policy further states that “[t]his assignment may be changed by mutual consent of the **Insured** and the **Company**.”

256. On June 25, 2020, Genting provided to Mr. Stein information about the losses it incurred at Resorts World Casino (the “June 25, 2020 Letter”).

257. Genting also asked that Mr. Stein provide claim numbers for various Policies, including the Allianz, Arch, Colony, Hallmark, Landmark, First Specialty, Everest, Interstate and Lex London Policies.

258. The June 25, 2020 Letter provided preliminary loss information and explained that the Casino and hotel operations were closed, and Genting anticipated seeking coverage for physical loss or damage and “time element losses including, by way of example only, those time element losses covered under the interruption by gaming commission, goodwill and public relationships, civil authority, contingent time element and extended period of liability, as well as losses associated with our efforts to protect and preserve insured property.”

259. On July 17, 2020, Genting provided to Mr. Stein information about the losses it incurred at the Hilton Miami (the “July 17, 2020 Letter”).

260. Genting also asked that Mr. Stein provide claim numbers for various Policies, including the Allianz, Arch, Colony, Hallmark, Landmark, First Specialty, Everest, Interstate and Lex London Policies.

261. The July 17, 2020 letter explained that Genting experienced physical loss or damage “and time element losses including, by way of example only, those time element losses covered under civil authority, contingent time element and extended period of liability, as well as losses associated with our efforts to protect and preserve insured property.”

262. On July 31, 2020, Mr. Stein issued a reservation of rights letter to Genting regarding Resorts World Casino, citing various policy exclusions. The letter stated, “when seeking coverage for any claimed property damage, the insured must demonstrate that there was direct physical loss or damage to property, and that such physical loss or damage was caused by an insured peril. These requirements also apply to income loss claims, including those involving any government-issued orders. In all instances, the Policies’ manuscript form generally excludes loss or damage from: losses of use; delays; losses of market; and/or the release/dispersal of a virus or other such as-defined ‘Pollutants.’” The letter also requested various financial information.



263. Mr. Stein did not respond to the July 17, 2020 Letter relating to Hilton Miami.

264. Still, Genting asked that Mr. Stein execute a non-disclosure agreement on behalf of the Defendant Insurers.

265. Despite numerous follow-up emails, Mr. Stein still has not returned an executed copy of the nondisclosure agreement.

266. Allianz, Arch, Colony, Landmark, First Specialty, Everest, Interstate and Lex London's effective denial of Genting's Claim without conducting a substantive investigation of such claim constitutes a breach of the duty of good faith and fair dealing an insurer owes to its insured. In so doing, the Defendant Insurers placed their own interests above those of their policyholders.

267. Only one of the Defendant Insurers has issued a coverage letter – Hallmark.

268. On February 8, 2021, Hallmark issued a reservation of rights letter effectively denying coverage (the "Hallmark Denial Letter").

269. The Hallmark Denial Letter erroneously asserts that the first report of loss was submitted on January 12, 2021.

270. Hallmark appears to have assigned a different adjuster than the adjuster set forth in the policy. Hallmark assigned Janet Cross of Effective Claims Management, Inc. The Hallmark Policy does not amend that Assigned Adjuster Provision in the Policy.

271. The Hallmark Denial Letter stated, "it does not appear there has been 'direct physical loss or damage' to any covered property within the meaning of the Hallmark policies."

272. Hallmark leaped to this conclusion despite never visiting any of Genting's locations to verify the accuracy of this assertion.

273. The Hallmark Denial Letter did not make any requests for documentation or

requests for additional information.

274. Hallmark did not conduct any investigation of Genting's losses.

275. Even without Genting providing any information beyond what was stated in its notice correspondence, Hallmark has taken the position that coverage does not appear to be available. The letter makes no reference to COVID-19 or the Coronavirus.

276. Hallmark's denial of Genting's Claim without conducting a substantive investigation of such claim constitutes a breach of the duty of good faith and fair dealing an insurer owes to its insured. In so doing, Hallmark placed its own interests above those of its policyholders.

277. Despite the fact that Mr. Stein indicates that he continues to investigate the claims, Evanston and Allianz have nevertheless refused to extend the one-year deadline under the Policy for Genting to file a coverage action, thus forcing Genting to bring the instant action to preserve its coverage rights.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

278. Genting incorporates the above Paragraphs by reference.

279. This is a claim for relief for declaratory judgment pursuant to CPLR §3001. An actual and justiciable controversy exists between Genting and the Defendant Insurers concerning their respective rights and obligations under the Policies.

280. The issuance of declaratory relief will terminate the controversy between Genting and the Defendant Insurers that gave rise to this action.

281. As such, this Court has the authority to issue a declaratory judgment concerning the respective rights and obligations of Genting and the Defendant Insurers under the Policies.

282. Genting seeks a declaratory judgment declaring that the Policies cover the losses it

has suffered.

283. Genting seeks a declaratory judgment declaring that the Defendant Insurers are responsible for fully and timely paying Genting's Claim.

284. The burden of proof is upon the Defendant Insurers to demonstrate that coverage is limited in any way under the Policies.

## SECOND CAUSE OF ACTION

### (Breach of Contract)

285. Genting incorporates the above Paragraphs by reference.

286. The Policies are valid and enforceable contracts.

287. Genting paid substantial premiums for the Policies and the promises of coverage contained therein, and otherwise performed all of its obligations owed under the Policies or was excused from performance.

288. The Defendant Insurers have effectively denied Genting's Claim and has refused to pay or otherwise honor their promises. In denying coverage for Genting's Claim, the Defendant Insurers breached the contracts (that is, the Policies). As a result, Genting has suffered and continues to suffer damage in an amount to be proven at trial, but currently estimated to exceed \$500 million.

289. The Defendant Insurers have breached the covenant of good faith and fair dealing based on their conduct with respect to Genting, including by failing to investigate Genting's Claim, and their market conduct more generally. As a result, Genting is entitled to consequential damages for the Defendant Insurer's breach of the Policy.

290. Consequential damages for breach of the Policies were reasonably contemplated by the parties when the Defendant Insurers issued the Policies.

**PRAYER FOR RELIEF**

WHEREFORE, Genting respectfully demand judgment against the Defendant Insurers as follows:

- 1) On the First Cause of Action, a declaratory judgment that the losses Genting has suffered are covered by the Policies and that the Defendant Insurers are responsible for fully and timely paying Genting's losses;
- 2) On the Second Cause of Action, for an award of damages in favor of Genting in an amount to be proven at trial, plus pre- and post-judgment interest at the maximum legal rate, attorneys' fees, costs and disbursements for this action; and
- 3) For such other equitable and further relief as this Court deems just and proper.

Dated: New York, New York  
March 1, 2021

/s/ Joseph D. Jean

Joseph D. Jean  
Scott D. Greenspan  
Janine M. Stanisz  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
31 West 52<sup>nd</sup> Street  
New York, New York 10019-6131  
Telephone: (212) 858-1000  
joseph.jean@pillsburylaw.com  
scott.greenspan@pillsburylaw.com  
janine.stanisz@pillsburylaw.com

Attorneys for Plaintiffs Genting Americas Inc.,  
Genting New York LLC, Resorts World Miami  
LLC, and Resorts World OMNI LLC