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HIGHGATE HOTELS, L.P.,

Plaintiff,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY, ALLIANZ GLOBAL RISKS
US INSURANCE COMPANY, AMERICAN
GUARANTEE AND LIABILITY
INSURANCE COMPANY, ENDURANCE
SPECIALTY INSURANCE COMPANY,
ACE AMERICAN INSURANCE
COMPANY, THE PRINCETON EXCESS
AND SURPLUS LINES INSURANCE
COMPANY, QBE SPECIALTY
INSURANCE COMPANY, MITSUI
SUMITOMO INSURANCE COMPANY OF
AMERICA, and HOMELAND INSURANCE
COMPANY OF NEW YORK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
Docket No.

Civil Action

**COMPLAINT and
DEMAND FOR JURY TRIAL**

COMPLAINT

Plaintiff Highgate Hotels, L.P. (“Highgate” or “Plaintiff”), files this Complaint against Defendants Liberty Mutual Fire Insurance Company (“Liberty Mutual”), Allianz Global Risks US Insurance Company (“Allianz”), American Guarantee and Liability Insurance Company (“American Guarantee”), Endurance Specialty Insurance Company (“Endurance”), ACE American Insurance Company (“ACE”), The Princeton Excess and Surplus Lines Insurance

Company (“Princeton”), QBE Specialty Insurance Company (“QBE”), Mitsui Sumitomo Insurance Company of America (“Mitsui”) and Homeland Insurance Company of New York (“Homeland”) (collectively “Defendants”), and in support of its claims states the following on information and belief based on reasonable investigation and discovery, except where specifically identified as being based on personal knowledge:

INTRODUCTION

1. On personal knowledge, Highgate is limited partnership operating as a real estate investment and hospitality management company. Highgate operates and/or has an interest in more than 100 facilities across fifteen states, Puerto Rico and the District of Columbia.

2. On personal knowledge, at all relevant times, Highgate operated and/or had an interest in these 18 properties across six states:

- a. the Mosaic Beverly Hills and Maison 140 Beverly Hills (California);
- b. the Hilton Garden Inn Waikiki and the Park Shore Waikiki (Hawaii);
- c. the Inn of Chicago (Illinois);
- d. the Newbury Boston, f/k/a Taj Boston Hotel and the Moxy Boston (Massachusetts);
- e. the Westin Las Vegas and the OYO Hotel & Casino Las Vegas (Nevada); and
- f. the Park Central NY, the WestHouse, the NYMA Hotel, the Casa Tua Hotel, the Stewart Hotel (Formerly Affinia Manhattan NYC), the Hotel @ 5th, the Hotel @ New York City, the Hotel @ Times Square, and the OYO Times Square (New York).¹

¹ Highgate’s operation and/or interest in the NYMA Hotel and Hotel @ 5th ended in or about November 2020.

3. To protect its business operations and interests at hotel properties throughout the country, Highgate purchased a program of commercial property insurance coverage collectively issued by the Defendants. As part of this program of insurance, all Defendants agreed to indemnify Highgate for business losses on a proportional basis subject to common terms and conditions set forth in a master policy form issued separately, but identically, by each Defendant. These terms and conditions applicable to all Defendants' coverage obligations are set forth in Liberty Mutual Policy No. MJ2-L9L-512384-049, a true and correct copy of which is attached as **Exhibit A**. For ease of reference, Highgate will refer to the Defendants' common insuring obligations under these identical terms and conditions as arising under the "Policy."

4. Under the Policy, Defendants are responsible for receiving and managing claims and loss notices, responding to questions about insurance and coverage and paying claims for covered losses.

5. The Policy is a bilateral contract: Highgate agreed to pay premiums to Defendants in exchange for Defendants' promises of coverage for all risks of loss except those specifically and unambiguously excluded.

6. Highgate reasonably expected that claims for loss of business income arising from any necessary suspension of operations would be paid unless specifically and unambiguously excluded.

7. Along with this business income coverage, Highgate also had in effect "Extra Expense" coverage under which Defendants promised to pay for necessary expenses Highgate incurred in order to continue as nearly as practicable the normal operation of its businesses.

8. Additionally, the Policy provides “Civil Authority” coverage under which Defendants promised to pay for loss of business income sustained when the action of a civil authority prohibits or limits access or use of insured premises.

9. The Policy also provides “Ingress/Egress” coverage under which Defendants promised to pay for loss of business income sustained when ingress to or egress from real or personal property is impaired.

10. Indeed, the Policy even provides “Contagious Disease” coverage under which Defendants promised to pay for loss of business income sustained associated with the actual or suspected presence of a communicable disease.

11. The Policy further covers Highgate for “Cancellation of Bookings” or losses incurred because of the inability to accept, or cancellation of, bookings at its insured premises.

12. Finally, the Policy too affords Highgate “Attraction Properties” coverage, which is coverage for losses incurred as the result of the loss of third party property in the vicinity of Highgate’s insured premises, which draws or attracts customers to Highgate’s operations.

13. At all times material hereto, Highgate duly complied with its obligations under the Policy, and timely paid its requisite premiums.

THE PARTIES

14. On personal knowledge, Highgate is a limited partnership organized under the laws of, and existing in, the State of Delaware, with a principal place of business located at 545 East John Carpenter Freeway, Suite 1400, Irving, Texas 75062. As discussed *infra*, Highgate brings these claims individually and on behalf of those client entities for which it controls, manages or operates property insured under the Policy.

15. Defendant Liberty Mutual Fire Insurance Company is a corporation organized under the laws of, and existing in, the Commonwealth of Massachusetts, with its principal place of business located at 175 Berkeley Street, Boston, Massachusetts, 02116.

16. Defendant Allianz Global Risks US Insurance Company is a corporation organized under the laws of, and existing in, the State of California, with a principal place of business located at 225 West Washington Street, Suite 1800, Chicago, Illinois 60606.

17. Defendant American Guarantee and Liability Insurance Company is a corporation organized under the laws of, and existing in, the State of New York, with a principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196.

18. Defendant Endurance American Specialty Insurance Company is a corporation organized under the laws of, and existing in, the State of Delaware, with a principal place of business located at 4 Manhattanville Road, Purchase, New York 10577.

19. Defendant ACE American Insurance Company is a corporation organized under the laws of, and existing in, the Commonwealth of Pennsylvania, with a principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 19106.

20. Defendant The Princeton Excess & Surplus Lines Insurance Company is a corporation organized under the laws of, and existing in, the State of Delaware, with a principal place of business located at 555 College Road East, Princeton, New Jersey 08543.

21. Defendant QBE Specialty Insurance Company is a corporation organized under the laws of, and existing in, the State of North Dakota, with a principal place of business located at One QBE Way, Sun Prairie, Wisconsin 53596.

22. Defendant Mitsui Sumitomo Insurance Company of American is a corporation organized under the laws of, and existing in, the State of New York, with a principal place of business located at 15 Independence Boulevard, Warren, New Jersey 07059.

23. Defendant Homeland Insurance Company of New York is a corporation organized under the laws of, and existing in, the State of New York, with a principal place of business located at 605 Highway 169 North, Suite 800, Plymouth, Minnesota 55441.

24. Defendants, jointly and severally, issued and subscribed to the Policy insuring Highgate under the terms and conditions described, *infra*.

JURISDICTION AND VENUE

25. This Court has personal jurisdiction over the Defendants under the terms of the Policy, which require the Defendants to consent to, and cooperate with, establishing jurisdiction in any court Highgate chooses. Additionally, Defendants regularly conduct, engage in, and/or carry on business in New Jersey. Defendants also purposefully availed themselves of the opportunity of conducting activities in the State of New Jersey by marketing their insurance policies and services within New Jersey, and intentionally developing relationships with brokers, agents, and customers within New Jersey to insure property within New Jersey.

26. Venue is likewise proper in this Vicinage under the terms of the Policy, which require the Defendants to consent to, and cooperate with, establishing venue in any court Highgate chooses. Additionally, venue lies in this Vicinage pursuant to R. 4:3-2(a) because all of the Defendants actually do business in Bergen County.

FACTUAL BACKGROUND

The Policy

27. The Policy has an effective period of December 1, 2019, to October 1, 2020.
28. The Policy affords \$600 million in total insurance coverage for, among other things, business interruption and extra expense losses, of which each Defendants is responsible for its proportional, sequential share of liability as follows: (a) Liberty Mutual - \$180 million; (b) Allianz - \$90 million; (c) American Guarantee - \$90 million; (d) Endurance - \$7.5 million; (e) ACE - \$2.5 million; (f) Princeton - \$20 million; (g) QBE - \$120 million; (h) Homeland - \$60 million; and (i) Mitsui - \$60 million.
29. The “insured” is broadly defined by the Policy to include:
- Highgate Hotels, LP and any subsidiary, affiliated, associated, or allied company, corporation, firm, organization, and the Insured’s interest in partnerships and/or joint ventures, and/or any owned (wholly or partially) or controlled company(ies) or any client entity whose assets or portion of assets are controlled or managed by the Insured and where the Insured maintains an interest, as now or hereafter constituted or acquired; and any other party or interest that is required by contract or agreement; all hereafter referred to as the “Insured.”
30. Under this definition of “insured”, Policy coverage extends to, among other things, Highgate’s: (1) subsidiary, affiliated, associated or allied companies; (2) wholly or partially owned companies; (3) client entities whose assets Highgate controls or manages; and (4) interests in those client assets or portions of assets it controls or manages.
31. Under this definition of “insured”, Highgate is empowered to tender and prosecute claims for coverage under the Policy, both in its own right and on behalf of those entities for which it controls or manages insured property, or shares an interest in the operation of such insured property.

32. The Policy provides coverage on an “all risk” rather than specified peril basis. In an all-risk insurance policy, all risks of loss are covered unless they are specifically excluded.

33. More specifically, pursuant to Section 7, the Policy provides coverage for loss due to the necessary interruption of business:

7. Coverage

This policy insures the interest of the Insured in the following:

B. Business Interruption – Gross Earnings

1. Loss due to the necessary interruption of business conducted by the Insured, including all interdependencies between or among companies owned or operated by the Insured resulting from loss or damage insured herein and occurring during the term of this policy to real and/or personal property described in Clause 7.A.

34. Section 7 of the Policy further states that losses will be adjusted on the basis of actual loss sustained:

2. Such loss shall be adjusted on the basis of the actual loss sustained by the Insured, consisting of the net profit which is prevented from being earned including ordinary payroll and payroll;

And

all charges and other expenses (including soft costs) to the extent that these must necessarily continue during the interruption of business, but only to the extent to which such charges and expenses would have been incurred had no loss occurred.

35. For the purposes of ascertaining the full value of its insured claim, the Policy provides that Highgate and its client entities may properly point to their past business experiences and likely future performance in calculating the amount of net profits, charges and expenses to be indemnified:

3. In determining the amount of net profit, charges, and expenses insured hereunder for the purposes of ascertaining the amount of the actual loss sustained, due consideration shall be given to the experience of the business before the date of the loss or damage and to the probable experience thereafter had no loss occurred.

36. In addition to business interruption losses, the Policy affords coverage for additional or extraordinary expenses incurred in order to mitigate or offset any suspensions of operations:

D. Extra Expense

1. Extra Expense incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following loss or damage insured herein and occurring during the term of this policy to real and/or personal property as described in Clause 7.A.
2. The term Extra Expense, as used herein, is defined as the excess (if any) 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 loss or damage occurred, including soft costs.

37. As a complement to this business interruption and extra expense coverage, the Policy also indemnifies contingent business interruption and extra expense losses – that is, losses to business caused by the unavailability of third party property, goods or services.

8. Extensions of Coverage

- A. This policy insures loss resulting from or caused by loss or damage insured herein to the following:

1. Contingent Business Interruption/Contingent Extra Expense:

Property, including Attraction Properties, that directly or indirectly prevents a supplier (including suppliers of any tier) of goods and/or services to the Insured from rendering their goods and/or services, or property that prevents customers (including

customers of any tier) of goods and/or services from the Insured from accepting the Insured's goods and/or services.

38. Under the Policy, the Defendants also promised to pay for losses incurred due to the actions of civil authorities if access to property is impaired by order or action of civil or military authority:

8. Extensions of Coverage

B. Interruption by Civil or Military Authority

This policy is extended to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6, access to property is impaired by order or action of civil or military authority.

39. Similarly, the Policy provides "Ingress/Egress" coverage whenever an insured incurs losses because its access to and from insured premises is restricted or limited:

8. Extensions of Coverage

C. Ingress/Egress

This policy is extended to insure loss sustained during the period of time when, as a result of loss, damage or an event not excluded in Clause 6, ingress to or egress from real or personal property is impaired.

40. The Policy also contains an extension of coverage specific to "contagious diseases" wherein Defendants promised to pay for losses incurred due to the actual or suspected presence of, among other things, a virus, which results in a partial or total closure of insured premises at the direction of a public authority:

8. Extensions of Coverage

D. Contagious Diseases

1. This policy covers the following loss if, directly resulting from the actual or suspected presence of a communicable

disease, the Insured's premises are totally or partially closed at the direction of The National Center for Disease Control and/or the applicable state, city or municipal department of public health ("Public Authority Order"):

41. Notably, this Policy extension provides coverage for actual loss of business income and extra expense resulting from the suspension of operations, including the cancellation of, or inability to accept, bookings for accommodations, and even a loss of potential customers:

D. Contagious Diseases

1. This policy covers the following loss ...

c. The actual loss sustained by the Insured of business income or gross profits, as defined and covered elsewhere in this Policy, and the extra expense incurred by the Insured, as defined and covered elsewhere in this Policy, resulting from the suspension of the Insured's operations during the Communicable Disease Period of Recovery, including cancellation of or inability to accept bookings for accommodations and/or a cessation or diminution of trade due to a loss of potential customers.

The Communicable Disease Period of Recovery shall commence when the Public Authority Order is promulgated and shall end the earlier of:

- i. when, with the exercise of due diligence and dispatch, the insured location can resume normal business operations following the lifting of the Public Authority Order, meaning the condition of operations that would have existed had no Public Authority Order been promulgated; or
- ii. one year after the Public Authority Order is promulgated.

42. Indeed, the Policy also contemplates generic coverage for losses incurred as the result of cancellation of or inability to accept bookings:

8. Extensions of Coverage

H. Cancellation of Bookings

1. This Policy covers the Actual Loss Sustained by the Insured resulting from cancellation of or inability to accept bookings and revenues for accommodations during the Period of Restoration directly resulting from ...
 - d. the complete or partial closure of the insured location by order of a public authority directly resulting from the actual and not suspected existence or threat of hazardous conditions at the insured location.

43. Finally, the Policy obligates Defendants to pay for loss incurred due to the loss of third-party property that attracts business to insured premises:

8. Extensions of Coverage

K. Attraction Properties

This policy will pay the actual business income loss sustained by the Insured and extra expense caused by direct physical loss or damage caused by a covered cause of loss to property of the type insured under this Policy that attracts business to a covered location, provided that such property is within the distance from the covered location as shown in Clause 3. Limits of Liability under Attraction Property (hereinafter, the attraction property).

44. The Business Income and Extra Expense, Contingent Business Interruption/Contingent Extra Expense, Civil Authority, Ingress/Egress, Contagious Disease, Cancellation of Bookings and Attraction Properties coverages are separate, independent and not mutually exclusive of one another. As a result, Highgate could theoretically recover under any one of these coverages or all of these coverages at the same time.

The Coronavirus Pandemic

45. On December 31, 2019, the World Health Organization (“WHO”) reported people in China were becoming sick due to a mysterious form of pneumonia.

46. On January 11, 2020, China reported its first death from the mysterious form of pneumonia.

47. On January 21, 2020, the first confirmed case of the mysterious form of pneumonia was reported in the United States.

48. On January 30, 2020, for only the sixth time in its history, the WHO declared the outbreak of the mysterious form of pneumonia a Public Health Emergency of International Concern.

49. On February 29, 2020, the first death caused by this pneumonia – now known as COVID-19 – was reported in the United States.

50. On March 13, 2020, President Donald Trump declared the outbreak of COVID-19 to be a national emergency.

51. As of March 17, 2020, COVID-19 was reported to be present in every state in the United States.

52. As of March 26, 2020, the United States had more confirmed cases of COVID-19 than any other country in the world.

53. COVID-19 is a life-threatening upper respiratory infection caused by the novel, highly contagious SARS-CoV-2 virus that has rapidly spread, and continues to spread, across the United States. It is a physically present, human pathogen, and can be present outside the human body in viral fluid particles. According to the Centers for Disease Control and Prevention (“CDC”), everyone is at risk of contracting COVID-19.

54. COVID-19 is spread by a number of methods, including “community spread,” meaning that some people have been infected and it is not known how or where they became exposed. Public health authorities, including the CDC, have reported significant ongoing community spread of the virus including instances of community spread in all 50 states.

55. COVID-19 is also spread through droplets of different sizes, which can be deposited on surfaces or objects.

56. More specifically, the CDC has reported that a person can be become infected with COVID-19 by touching a surface or object (like a table, floor, wall, furniture, desk, countertop, touch screen or chair) that has the virus on it, and then touching their own mouth, nose or eyes. COVID-19 can and does live on and/or remains capable of being transmitted and active on inert physical surfaces.

57. The incubation period for COVID-19 ranges from 2 to 14 days. Current evidence shows that the first death from COVID-19 occurred as early as February 6, 2020—weeks earlier than initially reported, suggesting that the virus had been circulated in the United States far longer than previously assumed.

58. In a March 4, 2020 research letter published by the Journal of the American Medical Association, scientists from the National Centre for Infectious Disease and the DSO National Laboratories, both in Singapore, found novel coronavirus in the majority of uncleaned hospital rooms that had previously been occupied by patients infected with COVID-19. The researchers concluded that the spread of “SARS-CoV-2 through respiratory droplets and fecal shedding suggests the environment as a potential medium of transmission and supports the need for strict adherence to environmental and hand hygiene.”

59. Similarly, a CDC posting from March 27, 2020, reported that SARS-CoV-2 was identified on surfaces of the cabins aboard the Diamond Princess cruise ship 17 days after the cabins were vacated, but before they were disinfected. Numerous other scientific studies and articles have identified the persistence of coronavirus on doorknobs, toilets, faucets and other high touch points.

60. In the April 16, 2020 edition of the New England Journal of Medicine, researchers from UCLA, Princeton University, the National Institute of Allergy and Infectious Diseases and the CDC reported a scientific study comparing the Aerosol and Surface Stability of SARS-CoV-2 to an earlier coronavirus, SARS-CoV-1. The study reported that the novel coronavirus also persisted up to 72 hours on plastic and stainless steel.

61. Another challenge posed by the novel coronavirus is that it is possible for a person to be asymptotically infected with COVID-19. As such, seemingly healthy people also unknowingly spread the virus via speaking, breathing, and touching objects.

62. In fact, a large percentage of persons who have tested positive for COVID-19 have showed no symptoms prior to testing. The former director of the CDC, Dr. Robert Redfield, has stated that “we have pretty much confirmed that a significant number of individuals that are infected actually remain asymptomatic. That may be as many as 25%. That’s important, because now you have individuals that may not have any symptoms that can contribute to transmission, and we have learned that in fact they do contribute to transmission.”

63. While infected droplets and particles carrying COVID-19 may not be visible to the naked eye, they are physical objects which travel to other objects and cause harm. Habitable surfaces on which COVID-19 has been shown to survive, and therefore cause infection, include, but are not limited to, stainless steel, plastic, wood, paper, glass, ceramic, cardboard, and cloth.

64. To reduce the spread of the disease, the CDC has recommended that businesses clean and disinfect all surfaces, prioritizing the most frequently touched surfaces.

65. The presence of COVID-19 has also caused civil authorities throughout the country to issue orders requiring the suspension of business at a wide range of establishments, including civil authorities with jurisdiction over all of Plaintiff's insured premises.

66. In short, COVID-19 has been transmitted by way of human contact with surfaces and items of physical property at all properties Highgate operates or otherwise has an interest in. These surfaces and items have been physically altered because of their contamination by the novel coronavirus that causes COVID-19.

67. COVID-19 has also been transmitted by human to human contact and interaction at all properties Highgate operates or otherwise has an interest in.

68. COVID-19 has also been transmitted by way of human contact with airborne COVID-19 particles emitted into the air at all properties Highgate operates or otherwise has an interest in.

The COVID-19 Shutdown Orders

69. Effective March 19, 2020, Highgate was forced to suspend, limit or otherwise modify business operation for all of its properties located in California by Executive Order issued by the Governor of the State of California, which required all nonessential businesses to close.² The Governor's Order also required "all individuals living in the State of California to stay home or at their place of residence."

70. Effective March 19, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Pennsylvania by Executive Order

² See **Exhibit B**, March 19, 2020 State of California Executive Order.

issued by the Governor of the Commonwealth of Pennsylvania.³ The Governor’s Order closed all non “life sustaining business regardless of whether the business is open to members of the public.”

71. Effective March 20, 2020, Highgate was forced to suspend, limit or otherwise modify business operation for all of its properties located in Illinois by Executive Order issued by the Governor of the State of Illinois, which required all individuals currently living within the State of Illinois to “stay at home or at their place of residence” with exceptions only for essential activities, essential government functions, and essential businesses and operations.⁴

72. Effective March 20, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in New York by Executive Order issued by the Governor of the State of New York.⁵ The Governor’s Order placed New York State on pause and closed “all non-essential businesses.”

73. Effective March 21, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in New Jersey by Executive Order issued by the Governor of the State of New Jersey.⁶ The Governor’s Order required all “New Jersey residents to stay at home except for necessary travel and order[ed] all non-essential businesses close until further notice.”

74. Effective March 22, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in the State of Louisiana by Executive Order issued by the Governor of the State of Louisiana.⁷ The Governor’s Order premised on the power to control “ingress and egress to and from a disaster area, the movement of persons within

³ See **Exhibit C**, March 19, 2020 Commonwealth of Pennsylvania Executive Order.

⁴ See **Exhibit D**, March 20, 2020 State of Illinois Executive Order.

⁵ See **Exhibit E**, March 20, 2020 State of New York Executive Order.

⁶ See **Exhibit F**, March 21, 2020 State of New Jersey Executive Order.

⁷ See **Exhibit G**, March 22, 2020 State of Louisiana Executive Order.

the area, and the occupancy of premises therein” in a public health emergency placed all individuals under a general stay at home order and closed all non-essential businesses.

75. Effective March 23, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Massachusetts by Executive Order issued by the Governor of the Commonwealth of Massachusetts, which ordered all non-essential businesses closed.⁸ The Governor’s Order required “limiting activities outside the home” and closed “all non-essential businesses.”

76. Effective March 23, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Hawaii by Executive Order issued by the Governor of the State of Hawaii, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.⁹ The Governor’s Order required “all persons within the State of Hawaii to stay at home or in their place of residence.”

77. Effective March 26, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Puerto Rico by Executive Order issued by the Governor of the Territory of Puerto Rico, which stated that “all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.”¹⁰ The Governor’s Order closed all non-essential businesses, ordered people to avoid local travel and instituted a curfew.

78. Effective March 28, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Alaska by Executive Order issued by

⁸ See **Exhibit H**, March 23, 2020 Commonwealth of Massachusetts Executive Order.

⁹ See **Exhibit I**, March 23, 2020 State of Hawaii Executive Order.

¹⁰ See **Exhibit J**, March 26, 2020 Territory of Puerto Rico Executive Order.

the Governor of the State of Alaska, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.¹¹ The Governor’s Order banned all “unnecessary travel” and closed “all non-essential businesses.”

79. Effective March 28, 2020, Highgate was forced to suspend, limit or otherwise modify business operation for all of its properties located in Rhode Island by Executive Order issued by the Governor of the State of Rhode Island, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.¹² The Governor’s Order banned all “unnecessary travel” and closed all non-critical businesses.

80. Effective March 30, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Virginia by Executive Order issued by the Governor of the Commonwealth of Virginia, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.¹³ The Governor’s Order required “all individuals in Virginia” to “remain at their place of residence.”

81. Effective March 30, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Maryland by Executive Order issued by the Governor of the State of Maryland, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and

¹¹ See **Exhibit K**, March 27, 2020 State of Alaska Executive Order.

¹² See **Exhibit L**, March 28, 2020 State of Rhode Island Executive Order.

¹³ See **Exhibit M**, March 30, 2020 Commonwealth of Virginia Executive Order.

operations.¹⁴ The Governor’s Order required businesses deemed essential to make “every effort to scale down operations in order to reduce the number of required staff and to limit interactions with customers.”

82. Effective March 30, 2020, Highgate was forced to suspend, limit or otherwise modify business operation for all of its properties located in Arizona by Executive Order issued by the Governor of the State of Arizona, which stated that all nonessential businesses must cease operations.¹⁵ The Governor’s order instituted a “‘Stay home, Stay healthy, Stay connected’ policy that promotes physical distancing.”

83. Effective March 31, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Texas by Executive Order issued by the Governor of the State of Texas, which minimized non-essential business activities.¹⁶ The Governor’s order required people to minimize “in-person contact except when necessary to obtain essential services”.

84. Effective April 1, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Nevada by Executive Order issued by the Governor of the State of Nevada, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.¹⁷ The Governor’s Order required individuals in Nevada to “stay in their residences.”

85. Effective April 1, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Florida by Executive Order issued by the

¹⁴ See **Exhibit N**, March 30, 2020 State of Maryland Executive Order.

¹⁵ See **Exhibit O**, March 30, 2020 State of Arizona Executive Order.

¹⁶ See **Exhibit P**, March 31, 2020 State of Texas Executive Order.

¹⁷ See **Exhibit Q**, April 1, 2020 State of Nevada Executive Order.

Governor of the State of Florida, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.¹⁸ The Governor’s Order limited the “movement” and “personal interactions outside the home” of “all persons in Florida.”

86. Effective April 1, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in the District of Columbia by Order issued by the Mayor of the District of Columbia, which stated that “all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.¹⁹ The Mayor’s Order closed all non-essential businesses, and ordered people to “stay at their place of residence”.

87. Effective April 3, 2020, Highgate was forced to suspend, limit or otherwise modify business operations for all of its properties located in Georgia by Executive Order issued by the Governor of the State of Georgia, which stated that all individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations.²⁰ The Governor’s Order required all individuals to “shelter in place in their homes and residences.”

88. As a result of these government orders, and other, similar orders issued by various other state and local authorities, Highgate suffered, and continues to suffer, significant and injurious losses and expenses directly related to the suspension of its businesses operations and inability to physically use the properties insured by the Policy.

¹⁸ See **Exhibit R**, April 1, 2020 State of Florida Executive Order.

¹⁹ See **Exhibit S**, March 30, 2020 District of Columbia Executive Order.

²⁰ See **Exhibit T**, April 2, 2020 State of Georgia Executive Order.

Highgate's Covered Loss

89. As a result of the COVID-19 pandemic, Highgate's employees, customers, and/or vendors: (a) were exposed to the coronavirus; (b) tested positive for the coronavirus and/or COVID-19; (c) were otherwise diagnosed as infected with the coronavirus and/or having COVID-19; (d) exhibited symptoms consistent with infection by the coronavirus and/or having COVID-19; and/or (e) were instructed by civil authorities and/or their medical providers to self-isolate, quarantine, and/or suspend normal business operations at the insured premises.

90. As a result of the COVID-19 pandemic, Highgate's insured premises, properties and facilities were contaminated with the coronavirus and/or could no longer be accessed, used or operated due to orders of civil authorities issued in response to the coronavirus and COVID-19.

91. Likewise, during the COVID-19 pandemic, property in the immediate area of Highgate's insured premises, properties and facilities: (a) were exposed to the coronavirus, (b) were contaminated by the coronavirus; and/or (c) could no longer be used or operated as intended due to orders of civil authorities issued in response to the coronavirus and COVID-19.

92. The presence of the coronavirus and COVID-19 further caused civil authorities throughout the country, including all of the states and territories where Highgate operates and/or has an interest its insured locations, to issue orders requiring the suspension, limitation or modification of business and/or use of commercial property.

93. These Civil Authority Orders include, but are not limited to, the following:

- a. March 19, 2020 Executive Order issued by the Governor of the State of California requiring "all individuals living in the State of California to stay home or at their place of residence";
- b. March 19, 2020 Executive Order issued by the Governor of the Commonwealth of Pennsylvania closing all non "life sustaining business regardless of whether the business is open to members of the public";

- c. March 20, 2020 Executive Order issued by the Governor of the State of Illinois requiring all individuals currently living within the State of Illinois to “stay at home or at their place of residence”;
- d. March 20, 2020 Executive Order issued by the Governor of the State of New York placing New York state on “pause” and closing “all non-essential businesses”;
- e. March 21, 2020, Executive Order issued by the Governor of the State of New Jersey ordering all New Jersey residents to stay at home except for necessary travel and ordering all non-essential businesses close until further notice;
- f. March 22, 2020, Executive Order issued by the Governor of the State of Louisiana premised on the power to control “ingress and egress to and from a disaster area. the movement of persons within the area. and the occupancy of premises therein” in a public health emergency, placing all individuals in Louisiana under a general stay at home order and closed all non-essential businesses;
- g. March 23, 2020 Executive Order issued by the Governor of the State of Hawaii requiring “all persons within the State of Hawaii to stay at home or in their place of residence”;
- h. March 23, 2020 Executive Order issued by the Governor of the Commonwealth of Massachusetts “limiting activities outside the home” and closing “all non-essential businesses”;
- i. March 26, 2020 Executive Order issued by the Governor of the Territory of Puerto Rico closing all non-essential businesses to” and ordering people to avoid local travel and issuing a curfew;
- j. March 27, 2020 Executive Order issued by the Governor of the State of Alaska issuing a ban on “unnecessary travel” and “closing all non-essential businesses”;
- k. March 28, 2020, Executive Order issued by the Governor of the State of Rhode Island banning all “unnecessary travel” and closing all non-critical businesses;
- l. March 30, 2020 Executive Order issued by the Governor of the State of Arizona instituting “‘Stay home, Stay healthy, Stay connected’ policy that promotes physical distancing”;

- m. March 30, 2020 Executive Order issued by the Governor of the State of Virginia requiring “all individuals in Virginia to remain at their place of residence”;
- n. March 30, 2020 Executive Order issued by the Governor of the State of Maryland requiring every Maryland resident to “stay at home” unless for an essential reason, and allowing only “essential businesses to remain open”;
- o. March 30, 2020, Order issued by the Mayor of the District of Columbia, requiring all individuals “stay at home”;
- p. March 31, 2020, Executive Order issued by the Governor of the State of Texas, minimizing non-essential business activities, and requiring people to minimize “in-person contact except when necessary to obtain essential services”;
- q. April 1, 2020 Executive Order issued by the Governor of the State of Florida limiting the “movement” and “personal interactions outside the home” of “all persons in Florida” to only those necessary to obtain essential services;
- r. April 1, 2020 Executive Order issued by the Governor of the State of Nevada directing residents to “stay in their residences”; and
- s. April 2, 2020, Executive Order issued by the Governor of the State of Georgia, requiring all individuals to “shelter in place in their homes and residences”.

94. As a result of the foregoing, Highgate and/or its affiliates suffered a suspension, limitation or alteration of normal business operations, sustained losses of business income and incurred extra expenses.

95. These losses and expenses have continued through the date of filing of this action.

96. These losses and expenses are not excluded from coverage under the Policy, and because the Policy is an all risk policy, Highgate is entitled to payment for these losses and expenses.

97. The Policy obligated Defendants to provide coverage for, and to pay, business income losses and extra expense losses resulting from the necessary interruption of Highgate’s

operations, including interruptions resulting from actions of civil authorities, the impairment of ingress and egress to Highgate's properties, and the actual or suspected presence of a contagious disease on insured premises. Accordingly, Highgate provided each of the Defendants with Notice of Loss on or about March 19-20, 2020.

98. In response, on February 16, 2021, Defendants reneged on these obligations and wrongfully failed to fulfill its contractual obligation to provide coverage for, and pay, Highgate's business income losses and extra expense losses resulting from the interruption of Highgate's and/or its affiliates' operations, including interruptions resulting from actions of civil authorities, the impairment of ingress and egress to insured properties, and the actual or suspected presence of a contagious disease on insured premises. Defendants' actions in failing to accept Highgate's claims were a blatant disregard for the contractual rights of Highgate resulting in a material breach of Defendants' duties and obligation owed under the Policy, depriving Highgate of the benefit of its bargain and causing it serious financial damages.

CAUSES OF ACTION

COUNT I:

DECLARATORY JUDGMENT

(Business Interruption and Extra Expense Coverage)

99. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

100. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for insured losses.

101. In the Policy, Defendants promised to pay for losses of gross earnings and extra expenses incurred as a result of perils not excluded under the Policy. Specifically, Defendants

promised to pay for losses of gross earnings sustained as a result of a “necessary interruption of business conducted by the Insured ...”

102. Highgate and its insured client entities suffered loss of their insured premises as described *supra*, resulting in interruptions or suspensions of business operations. These necessary suspensions and interruptions have caused them to suffer losses of gross earnings and incur extra expenses.

103. These necessary suspensions and interruptions, and the losses resulting therefrom, triggered business interruption and extra expense coverage under the Policy.

104. Highgate has complied with all applicable provisions of the Policy, including the payment of premiums and notification of losses.

105. Defendants, without justification, have refused to indemnify these losses of gross earnings and extra expenses.

106. Highgate seeks a judicial declaration that the Policy provides coverage for the losses of gross earnings and extra expense incurred due to the “necessary interruption of business conducted by [Highgate]” attributable to the facts described *supra*.

107. An actual case or controversy exists between Highgate and Defendants regarding Defendants’ obligations to reimburse Highgate and its client entities for the full amounts of these lost gross earnings and extra expenses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Highgate requests that this Court enter judgment declaring that the Policy provides coverage for losses of gross earnings and extra expenses attributable the “necessary interruption of business conducted by the Insured” under the facts and circumstances alleged in this Complaint.

COUNT II:
BREACH OF CONTRACT
(Business Interruption and Extra Expense Coverage)

108. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

109. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for insured losses.

110. In the Policy, Defendants promised to pay for losses of gross earnings and extra expenses incurred as a result of perils not excluded under the Policy. Specifically, Defendants promised to pay for losses of gross earnings sustained as a result of a “necessary interruption of business conducted by the Insured”

111. Highgate and its insured client entities suffered loss of their insured premises as described *supra*, resulting in interruptions or suspensions of business operations. These necessary suspensions and interruptions have caused them to suffer losses of gross earnings and incur extra expenses.

112. These necessary suspensions and interruptions, and the losses resulting therefrom, triggered business interruption and extra expense coverage under the Policy.

113. Highgate has complied with all applicable provisions of the Policy, including the payment of premiums and notification of losses.

114. Defendants, without justification, have refused to indemnify losses of gross earnings and extra expenses.

115. Defendants, without justification and in bad faith, have refused performance under the Policy by failing to pay for these losses and expenses. Accordingly, Defendants are in breach of the Policy.

116. As a result of Defendants' breaches of the Policy, Highgate and its insured client entities have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Highgate seeks compensatory damages for loss of gross earnings and extra expenses resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

COUNT III:
BAD FAITH BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING
(Business Interruption and Extra Expense Coverage)

117. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

118. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

119. In the Policy, Defendants promised to pay for Highgate and its insured client entities' losses of gross earnings and extra expense sustained as a result of perils not excluded under the Policy. Specifically, Defendants promised to pay for losses of gross earnings sustained as a result of a "necessary interruption of business conducted by the Insured ..."

120. Highgate and its insured client entities suffered loss of their insured premises as described *supra*, resulting in interruptions or suspensions of business operations. These necessary suspensions and interruptions have caused them to suffer losses of gross earnings and incur extra expenses.

121. The losses of gross earnings and extra expense submitted were direct and foreseeable losses under the Policy, and they were all caused by, and/or related to, dangerous conditions at, and injuries to, insured premises. As a result of these conditions, insured premises

were rendered unusable and/or uninhabitable, thus mandating a necessary interruption of business operations.

122. Highgate has complied with all applicable provisions of its Policy, including payment of premiums and notification of losses.

123. The actions of the Defendants give rise to an independent cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Highgate and its insured client entities were covered under the Policy, and the Defendants have breached the terms of said Policy by refusing to pay business interruption and extra expense coverage. Defendants' actions in breaching the terms of the Policy were in bad faith, have proximately caused damages, and the damages were reasonably foreseeable to the Defendants.

124. It appears that the Defendants' conduct occurred because they placed their own financial interests before its insureds' financial interests.

125. Further, the actions of the Defendants in refusing to pay business interruption and extra expense coverage were done so without any legitimate basis or arguable reason, and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

126. Implied in the Policy is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendants' conduct as aforesaid breached the duty of good faith and fair dealing which gives rise to the tort of bad faith for the breach of contract.

127. Defendants, at all times relevant hereto, owed a duty to exercise good faith and an obligation to deal fairly with their insureds; however, Defendants' refusal to pay business interruption and extra expense coverage constitutes a bad faith breach of contract and was wholly made with only the Defendants' best interests in mind and in total disregard of the contractual rights of Highgate and its insured client entities.

128. Defendants' bad faith material breach(es) of the Policy have resulted in actual and substantial damages to Highgate and its insured client entities, depriving them of the benefit of their bargain, and represent – in addition to warranting contractual damages, incidental damages and consequential damages – an independent tort entitling them to punitive damages in an amount which will punish the Defendants for their intentional, grossly negligent, and/or reckless conduct, as well as to deter Defendants and others from similar misconduct in the future.

WHEREFORE, Highgate seeks compensatory damages, contractual damages, incidental damages, consequential damages and punitive damages resulting from Defendants' bad faith breach(es) of the Policy.

COUNT IV:
DECLARATORY JUDGMENT
(Contingent Business Interruption and Extra Expense Coverage)

129. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

130. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for insured losses.

131. In the Policy, Defendants promised to pay for contingent business interruption and extra expense losses. Specifically, Defendants promised to pay for losses to third-party property, including Attraction Properties, “that prevents customers (including customers of any tier) of goods and/or services [] from accepting [] goods and/or services.”

132. Highgate suffered interruptions or suspensions of business operations at insured premises because of the unavailability of third-party property, goods or services as described *supra*. These suspensions and interruptions have caused Highgate and its insured client entities to suffer contingent business interruption and extra expense losses.

133. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

134. Defendants, without justification, have refused to provide coverage for these losses.

135. Highgate seeks a declaratory judgment that its Policy provides coverage for contingent business interruption and extra expense losses – that is, losses to business caused by the unavailability of third-party property, goods or services attributable to the facts set forth above.

136. An actual case or controversy exists between Highgate and Defendants regarding Defendants' obligations to reimburse Highgate and its insured client entities for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Highgate requests that this Court enter judgment declaring that the Policy provides coverage for contingent business interruption and extra expense losses under the facts and circumstances alleged in this Complaint.

COUNT V:
BREACH OF CONTRACT
(Contingent Business Interruption and Extra Expense Coverage)

137. Highgate incorporates by reference and re-alleges each and every paragraph 1 through 98, as though fully set forth herein.

138. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for insured losses.

139. In the Policy, Defendants promised to pay for contingent business interruption and extra expense losses. Specifically, Defendants promised to pay for losses to third-party property, including Attraction Properties, “that prevents customers (including customers of any tier) of goods and/or services [] from accepting [] goods and/or services.”

140. Highgate and its insured client entities suffered interruptions or suspensions of business operations at insured premises because of the unavailability of third-party property, goods or services as described *supra*. These suspensions and interruptions have caused them to suffer contingent business interruption and extra expense losses.

141. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

142. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these contingent losses and expenses. Accordingly, Defendants are in breach of the Policy.

143. As a result of Defendants' breaches of the Policy, Highgate and its insured client entities have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Highgate seeks compensatory damages for contingent business interruption and contingent extra expense resulting from Defendants' breaches of the Policy and seeks all other relief deemed appropriate by this Court.

COUNT VI:
BAD FAITH BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING
(Contingent Business Interruption and Extra Expense Coverage)

144. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

145. The Policy is an insurance contract under which Defendants were paid premiums in exchange for their promises to pay for insured losses.

146. In the Policy, Defendants promised to pay for contingent business interruption and extra expense losses. Specifically, Defendants promised to pay for losses to third-party property,

including Attraction Properties, “that prevents customers (including customers of any tier) of goods and/or services [] from accepting [] goods and/or services.”

147. Highgate and its insured client entities suffered contingent business interruption and extra expense losses due to the necessary interruption of business operations at insured premises related to the unavailability of third party property, goods or services. These losses therefore triggered contingent business interruption and contingent extra expense coverage under the Policy.

148. The contingent business interruption and extra expense losses submitted by Highgate were direct and foreseeable losses under the Policy, and they were all caused by, and/or related to, dangerous conditions at, and injuries to, third-party property. As a result of these conditions, business operations were suspended, limited and/or modified.

149. Highgate has complied with all applicable provisions of its Policy, including payment of premiums and notification of losses.

150. The actions of the Defendants give rise to an independent cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Highgate and its client entities were covered under the Policy, and the Defendants have breached the terms of said Policy by refusing to pay contingent business interruption and extra expense coverage. Defendants’ actions in breaching the terms of the Policy were in bad faith, have proximately caused damages to Highgate and its insured client entities, and the damages were reasonably foreseeable to the Defendants.

151. It appears that the Defendants’ conduct occurred because they placed their own financial interests before its insureds’ financial interests.

152. Further, the actions of the Defendants in refusing to pay contingent business interruption and extra expense coverage were done so without any legitimate basis or arguable reason, and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

153. Implied in the Policy is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendants' conduct as aforesaid breached the duty of good faith and fair dealing which gives rise to the tort of bad faith for the breach of contract.

154. Defendants, at all times relevant hereto, owed their insureds a duty to exercise good faith and an obligation to deal fairly; however, Defendants' refusal to pay contingent business interruption and extra expense coverage constitutes a bad faith breach of contract and was wholly made with only the Defendants' best interests in mind and in total disregard of the contractual rights of their insureds.

155. Defendants' bad faith material breach(es) of the Policy have resulted in actual and substantial damages to Highgate and its insured client entities, depriving them of the benefit of their bargain, and represent – in addition to warranting contractual damages, incidental damages and consequential damages – an independent tort entitling them to punitive damages in an amount which will punish the Defendants for their intentional, grossly negligent, and/or reckless conduct, as well as to deter Defendants and others from similar misconduct in the future.

WHEREFORE, Plaintiff, Highgate seeks compensatory damages, contractual damages, incidental damages, consequential damages, and punitive damages, resulting from Defendants' bad faith breach(es) of the Policy.

COUNT VII:
DECLARATORY JUDGMENT
(Ingress/Egress Coverage)

156. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

157. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

158. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not otherwise excluded under the Policy, ingress to or egress from real or personal property is impaired.

159. Highgate and its insured client entities suffered an actual loss due to the restriction and impairment of the ingress to and/or egress from their insured premises as a result of the facts and circumstances alleged *supra*, and said impairment(s) caused loss and damage to business operations under the Policy.

160. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

161. Defendants, without justification, have refused to provide coverage for these losses.

162. Highgate seeks a judicial declaration that the Policy provides coverage for the loss sustained during the period of time when, as a result of loss, damage or an event not otherwise excluded under the Policy, ingress to or egress from real or personal property was impaired under the facts and circumstances alleged *supra*.

163. An actual case or controversy exists between Highgate and Defendants regarding Defendants' obligations to reimburse Highgate and its insured client entities for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Plaintiff, Highgate request that this Court enter an order declaring that the Policy provides coverage for necessary business interruptions caused by the restriction and impairment of ingress to and/or egress from its insured premises as alleged in this Complaint.

COUNT VIII:
BREACH OF CONTRACT
(Ingress/Egress Coverage)

164. Highgate incorporates by reference and re-alleges each and every paragraph 1 through 98, as though fully set forth herein.

165. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

166. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not otherwise excluded under the Policy, ingress to or egress from real or personal property is impaired.

167. Highgate and its insured client entities suffered an actual loss due to the restriction and impairment of the ingress to and/or egress from their insured premises as a result of the facts and circumstances alleged *supra*, and said impairment(s) caused loss and damage to business operations under the Policy.

168. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

169. Defendants, without justification, have refused to provide coverage for these losses.

170. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by refusing to provide coverage for these losses. Accordingly, Defendant are in breach of the Policy.

171. As a result of Defendants' breaches of the Policy, Highgate and its insured client entities have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Highgate seeks compensatory damages for necessary business interruptions caused by the restriction and impairment of ingress to and/or egress from insured premises resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

COUNT IX:
BAD FAITH BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING
(Ingress/Egress Coverage)

172. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

173. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

174. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not otherwise excluded under the Policy, ingress to or egress from real or personal property is impaired.

175. Highgate and its insured client entities suffered losses due to the necessary interruption of its business operations at insured premises caused by the restriction and impairment of ingress to and/or egress from insured premises under the facts set forth *supra*. These losses therefore triggered ingress/egress coverage under the Policy.

176. The losses submitted by Highgate were direct and foreseeable losses under the Policy, and they were all caused by, and/or related to, the restriction and impairment of ingress to and/or egress from insured premises under the facts set forth *supra*. As a result of these restrictions

and impairments, Highgate and its insured client entities' business operations were suspended and/or limited.

177. Highgate has complied with all applicable provisions of its Policy, including payment of premiums and notification of losses.

178. The actions of the Defendants give rise to an independent cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Highgate and its insured client entities were covered under the Policy, and the Defendants have breached the terms of said Policy by refusing to pay ingress/egress coverage. Defendants' actions in breaching the terms of the Policy were in bad faith, have proximately caused damages to Highgate and its insured client entities, and the damages were reasonably foreseeable to the Defendants.

179. It appears that the Defendants' conduct occurred because they placed their own financial interests before their insureds' financial interests.

180. Further, the actions of the Defendants in refusing to pay ingress/egress coverage were done so without any legitimate basis or arguable reason, and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

181. Implied in the Policy is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendants' conduct as aforesaid breached the duty of good faith and fair dealing which gives rise to the tort of bad faith for the breach of contract.

182. Defendants, at all times relevant hereto, owed their insureds a duty to exercise good faith and an obligation to deal fairly; however, Defendants' refusal to pay ingress/egress coverage constitutes a bad faith breach of contract and was wholly made with only the Defendants' best interests in mind and in total disregard of the contractual rights of their insureds.

183. Defendants' bad faith material breach(es) of the Policy have resulted in actual and substantial damages to Highgate and its insured client entities, depriving them of the benefit of their bargain, and represent – in addition to warranting contractual damages, incidental damages and consequential damages – an independent tort entitling them to punitive damages in an amount which will punish the Defendants for their intentional, grossly negligent, and/or reckless conduct, as well as to deter Defendants and others from similar misconduct in the future.

WHEREFORE, Plaintiff, Highgate seeks compensatory damages, contractual damages, incidental damages, consequential damages, and punitive damages, resulting from Defendants' bad faith breach(es) of the Policy.

COUNT X:
DECLARATORY JUDGMENT
(Contagious Disease Coverage)

184. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

185. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

186. In the Policy, Defendants promised to pay for losses if, directly resulting from the actual or suspected presence of a communicable disease, insured premises are totally or partially closed at the direction of a public authority. Specifically, Defendants promised to pay for actual loss of business income sustained and extra expense incurred by Highgate and its insured client entities under these circumstances, including cancellation of or inability to accept bookings for accommodations and/or a loss of potential customers.

187. Highgate and its insured client entities suffered loss of business income and extra expense due to the actual or suspected presence of a communicable disease and the aforementioned

civil authority orders. These orders directly interrupted or suspended business operations at insured premises, including cancellation of or inability to accept bookings for accommodations, and/or a loss of potential customers. These suspensions, interruptions, cancellations, and loss of potential customers have caused Highgate and its insured client entities to suffer losses of business income and extra expense.

188. Highgate has complied with all applicable provisions of the Policy, including payment of premiums.

189. Defendants, without justification, deny that the Policy provides coverage for these losses.

190. Highgate seeks a Declaratory Judgment that its Policy provides coverage for loss directly resulting from the actual or suspected presence of a communicable disease, COVID-19, and the insured premises being totally or partially closed at the direction of the relevant public authority as a result.

191. An actual case or controversy exists between Highgate and Defendants regarding Defendants' obligations to reimburse their insureds for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Plaintiff, Highgate request that this Court enter a Declaratory Judgment declaring that the Policy provides coverage for losses related to contagious diseases.

COUNT XI:
BREACH OF CONTRACT
(Contagious Disease Coverage)

192. Highgate incorporates by reference and re-alleges each and every paragraph 1 through 98, as though fully set forth herein.

193. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

194. In the Policy, Defendants promised to pay for losses if, directly resulting from the actual or suspected presence of a communicable disease, insured premises are totally or partially closed at the direction of a public authority. Specifically, Defendants promised to pay for actual loss of business income sustained and extra expense incurred by Highgate and its insured client entities under these circumstances, including cancellation of or inability to accept bookings for accommodations and/or a loss of potential customers.

195. Highgate and its insured client entities suffered loss of business income and extra expense due to the actual or suspected presence of a communicable disease and the aforementioned civil authority orders. These orders directly interrupted or suspended business operations at insured premises, including cancellation of or inability to accept bookings for accommodations, and/or a loss of potential customers. These suspensions, interruptions, cancellations, and loss of potential customers have caused Highgate and its insured client entities to suffer losses of business income and extra expense.

196. Highgate has complied with all applicable provisions of the Policy, including payment of premiums.

197. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these losses. Accordingly, Defendants are in breach of the Policy.

198. As a result of Defendants' breaches of the Policy, Highgate and its insured client entities have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Plaintiff, Highgate seeks compensatory damages for losses related to contagious diseases resulting from Defendants' breaches of the Policy and seeks all other relief deemed appropriate by this Court.

COUNT XII:
BAD FAITH BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING
(Contagious Disease Coverage)

199. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

200. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

201. Highgate and its insured client entities suffered losses due to the necessary interruption of its business operations at insured premises caused by, or related to, the actual or suspected presence of contagious or communicable diseases under the facts set forth *supra*. These losses therefore triggered ingress/egress coverage under the Policy.

202. The losses submitted by Highgate were direct and foreseeable losses under the Policy, and they were all caused by, or related to, the actual or suspected presence of contagious or communicable diseases under the facts set forth *supra*. As a result, Highgate and its insured client entities' business operations were suspended and/or limited.

203. Highgate has complied with all applicable provisions of its Policy, including payment of premiums and notification of losses.

204. The actions of the Defendants give rise to an independent cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Highgate and its insured client entities were covered under the Policy, and the Defendants have breached the terms of said

Policy by refusing to pay contagious disease coverage. Defendants' actions in breaching the terms of the Policy were in bad faith, have proximately caused damages to Highgate and its insured client entities, and the damages were reasonably foreseeable to the Defendants.

205. It appears that the Defendants' conduct occurred because they placed their own financial interests before their insureds' financial interests.

206. Further, the actions of the Defendants in refusing to pay contagious disease coverage were done so without any legitimate basis or arguable reason, and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

207. Implied in the Policy is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendants' conduct as aforesaid breached the duty of good faith and fair dealing which gives rise to the tort of bad faith for the breach of contract.

208. Defendants, at all times relevant hereto, owed Highgate and its insured client entities a duty to exercise good faith and an obligation to deal fairly; however, Defendants' refusal to pay contagious disease coverage constitutes a bad faith breach of contract and was wholly made with only the Defendants' best interests in mind and in total disregard of the contractual rights of their insureds.

209. Defendants' bad faith material breach(es) of the Policy have resulted in actual and substantial damages to Highgate and its insured client entities, depriving them of the benefit of their bargain, and represent – in addition to warranting contractual damages, incidental damages and consequential damages – an independent tort entitling them to punitive damages in an amount which will punish the Defendants for their intentional, grossly negligent, and/or reckless conduct, as well as to deter Defendants and others from similar misconduct in the future.

WHEREFORE, Plaintiff, Highgate seeks compensatory damages, contractual damages, incidental damages, consequential damages, and punitive damages, resulting from Defendants' bad faith breach(es) of the Policy.

COUNT XIII:
DECLARATORY JUDGMENT
(Civil Authority Coverage)

210. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

211. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to losses for claims covered by the Policy.

212. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not excluded under the Policy, access to property is impaired by order or action of civil or military authority.

213. Highgate and its insured client entities suffered an actual loss as result of the actions of civil authorities that restricted and impaired access to and use of insured premises, and said restrictions caused business interruption losses under the Policy.

214. Highgate complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

215. Defendants, without justification, have refused to provide coverage for these losses.

216. Highgate seeks a judicial declaration that the Policy provides coverage for the losses sustained and extra expenses incurred as the result of the actions of civil authorities as described *supra*.

217. An actual case or controversy exists between Highgate and Defendants' regarding Defendants' obligations under the Policy to reimburse these losses and extra expenses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Highgate requests that this Court enter an order declaring that the Policy provides civil authority coverage for the losses and extra expenses incurred by Highgate and its insured client entities.

COUNT XIV:
BREACH OF CONTRACT
(Civil Authority Coverage)

218. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

219. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to losses for claims covered by the Policy.

220. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not excluded under the Policy, access to property is impaired by order or action of civil or military authority.

221. Highgate and its insured client entities suffered an actual loss as result of the actions of civil authorities that restricted and impaired access to and use of insured premises, and said restrictions caused business interruption losses under the Policy.

222. Highgate complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

223. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these losses. Accordingly, Defendants are in breach of the Policy.

224. As a result of Defendants' breaches of the Policy, Highgate and its insured client entities have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Highgate seeks damages for business interruption losses caused by the actions of civil authorities resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

**COUNT XV: BAD FAITH BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING**
(Civil Authority Coverage)

225. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

226. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to losses for claims covered by the Policy.

227. In the Policy, Defendants promised to pay for loss sustained during the period of time when, as a result of loss, damage or an event not excluded under the Policy, access to property is impaired by order or action of civil or military authority.

228. The losses submitted by Highgate were direct and foreseeable losses under the Policy, and they were all caused by, or related to, the actions or orders of civil authorities as described *supra*. As a result, business operations were suspended and/or limited.

229. Highgate has complied with all applicable provisions of its Policy, including payment of premiums and notification of losses.

230. The actions of the Defendants give rise to an independent cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Highgate and its insured client entities were covered under the Policy, and the Defendants have breached the terms of said Policy by refusing to pay civil authority coverage. Defendants' actions in breaching the terms of

the Policy were in bad faith, have proximately caused damages to Highgate and its insured client entities, and the damages were reasonably foreseeable to the Defendants.

231. It appears that the Defendants' conduct occurred because they placed their own financial interests before their insureds' financial interests.

232. Further, the actions of the Defendants in refusing to pay civil authority coverage to were done so without any legitimate basis or arguable reason, and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

233. Implied in the Policy is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendants' conduct as aforesaid breached the duty of good faith and fair dealing which gives rise to the tort of bad faith for the breach of contract.

234. Defendants, at all times relevant hereto, owed Highgate and its insured client entities a duty to exercise good faith and an obligation to deal fairly; however, Defendants' refusal to pay civil authority coverage constitutes a bad faith breach of contract and was wholly made with only the Defendants' best interests in mind and in total disregard of the contractual rights of their insureds.

235. Defendants' bad faith material breach(es) of the Policy have resulted in actual and substantial damages to Highgate and its insured client entities, depriving them of the benefit of their bargain, and represent – in addition to warranting contractual damages, incidental damages and consequential damages – an independent tort entitling them to punitive damages in an amount which will punish the Defendants for their intentional, grossly negligent, and/or reckless conduct, as well as to deter Defendants and others from similar misconduct in the future.

WHEREFORE, Plaintiff, Highgate seeks compensatory damages, contractual damages, incidental damages, consequential damages, and punitive damages, resulting from Defendants' bad faith breach(es) of the Policy.

COUNT XVI
DECLARATORY JUDGMENT
(Cancellation of Bookings Coverage)

236. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

237. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

238. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the inability to accept, or cancellation of, bookings at insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained as a result of bookings lost because of a complete or partial closure of the insured premises by order of a public authority.

239. Highgate and its insured client entities suffered actual losses of business income caused by the inability to accept, or cancellation of, bookings at insured premises attributable to closure orders issued by public authorities in the jurisdictions where Highgate operates or otherwise has an interest in insured properties. The inability to accept, or cancellation of, bookings at these insured premises have caused Highgate and its insured client entities to suffer losses of business income and extra expense.

240. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

241. Defendants, without justification, have refused to provide coverage for these losses under the Policy.

242. Highgate seeks a judicial declaration that the Policy provides coverage for the loss it sustained due to the inability to accept, or cancellation of, bookings at its insured premises attributable to closure orders issued by public authorities.

243. An actual case or controversy exists between Highgate and Defendants regarding Defendants' obligations to reimburse for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Highgate requests that this Court enter an order declaring that the Policy provides attraction property coverage for the losses and extra expenses incurred by Highgate and its insured client entities.

COUNT XVII
BREACH OF CONTRACT
(Cancellation of Bookings Coverage)

244. Highgate incorporates by reference and re-alleges each and every paragraph 1 through 98, as though fully set forth herein.

245. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

246. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the inability to accept, or cancellation of, bookings at insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained as a result of bookings lost because of a complete or partial closure of the insured premises by order of a public authority.

247. Highgate and its insured client entities suffered actual losses of business income caused by the inability to accept, or cancellation of, bookings at insured premises attributable to closure orders issued by public authorities in the jurisdictions where Highgate operates or otherwise has an interest its insured properties. The inability to accept, or cancellation of, bookings at these insured premises have caused Highgate and its insured client entities to suffer losses of business income and extra expense.

248. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

249. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these losses. Accordingly, Defendants are in breach of the Policy.

250. As a result of Defendants' breaches of the Policy, Highgate and its insured client entities have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Highgate seeks damages for loss to business income and extra expense caused by the inability to accept, or cancellation of, bookings at its insured properties resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

COUNT XVIII
BAD FAITH BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING
(Cancellation of Bookings Coverage)

251. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

252. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

253. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the inability to accept, or cancellation of, bookings at insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained as a result of bookings lost because of a complete or partial closure of the insured premises by order of a public authority.

254. Highgate and its insured client entities suffered actual losses of business income caused by the inability to accept, or cancellation of, bookings at insured premises attributable to closure orders issued by public authorities in the jurisdictions where Highgate operates or otherwise has an interest its insured properties. The inability to accept, or cancellation of, bookings at these insured premises have caused Highgate and its insured client entities to suffer losses of business income and extra expense.

255. The losses submitted by Highgate were direct and foreseeable losses under the Policy, and they were all caused by, or related to, the inability to accept, or cancellation of, bookings at insured premises as described *supra*. As a result, business operations were suspended and/or limited.

256. Highgate has complied with all applicable provisions of its Policy, including payment of premiums and notification of losses.

257. The actions of the Defendants give rise to an independent cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Highgate and its insured client entities were covered under the Policy, and the Defendants have breached the terms of said Policy by refusing to pay cancellation of bookings coverage. Defendants' actions in breaching the terms of the Policy were in bad faith, have proximately caused damages to Highgate and its insured client entities, and the damages were reasonably foreseeable to the Defendants.

258. It appears that the Defendants' conduct occurred because they placed their own financial interests before their insureds' financial interests.

259. Further, the actions of the Defendants in refusing to pay cancellation of bookings coverage were done so without any legitimate basis or arguable reason, and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

260. Implied in the Policy is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendants' conduct as aforesaid breached the duty of good faith and fair dealing which gives rise to the tort of bad faith for the breach of contract.

261. Defendants, at all times relevant hereto, owed Highgate and its insured client entities a duty to exercise good faith and an obligation to deal fairly; however, Defendants' refusal to pay cancellation of bookings coverage constitutes a bad faith breach of contract and was wholly made with only the Defendants' best interests in mind and in total disregard of the contractual rights of Highgate and its insured client entities.

262. Defendants' bad faith material breach(es) of the Policy have resulted in actual and substantial damages to Highgate and its insured client entities, depriving them of the benefit of their bargain, and represent – in addition to warranting contractual damages, incidental damages and consequential damages – an independent tort entitling them to punitive damages in an amount which will punish the Defendants for their intentional, grossly negligent, and/or reckless conduct, as well as to deter Defendants and others from similar misconduct in the future.

WHEREFORE, Plaintiff, Highgate seeks compensatory damages, contractual damages, incidental damages, consequential damages, and punitive damages, resulting from Defendants' bad faith breach(es) of the Policy.

COUNT XIX:
DECLARATORY JUDGMENT
(Attraction Properties Coverage)

263. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

264. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

265. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the loss of third-party property that attracts business to insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained and extra expense incurred as a result of impairment to third-party property that attracts business to an insured premises.

266. Highgate and its insured client entities suffered a loss to business income and extra expense caused by the impairment of third-party property that attracts business to insured premises, resulting in interruptions or suspensions of business operations at insured premises. These suspensions and interruptions have caused Highgate and its insured client entities to suffer losses of business income and extra expense.

267. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

268. Defendants, without justification, have refused to provide coverage for these losses under the Policy.

269. Highgate seeks a judicial declaration that the Policy provides coverage for the loss it sustained due to loss to third-party property that attracts business to insured premises.

270. An actual case or controversy exists between Highgate and Defendants regarding Defendants' obligations to reimburse for the full amount of these losses. Accordingly, the declaratory judgment sought is justiciable.

WHEREFORE, Highgate requests that this Court enter an order declaring that the Policy provides attraction property coverage for the losses and extra expenses incurred by Highgate and its insured client entities.

COUNT XX:
BREACH OF CONTRACT
(Attraction Properties Coverage)

271. Highgate incorporates by reference and re-alleges each and every paragraph 1 through 98, as though fully set forth herein.

272. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

273. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the loss of third-party property that attracts business to insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained and extra expense incurred as a result of impairment to third-party property that attracts business to an insured premises.

274. Highgate suffered a loss to business income and extra expense caused by the impairment of third-party property that attracts business to insured premises, resulting in interruptions or suspensions of business operations at insured premises. These suspensions and interruptions have caused Highgate and its insured client entities to suffer losses of business income and extra expense.

275. Highgate has complied with all applicable provisions of the Policy, including payment of premiums and notification of losses.

276. Defendants, without justification and in bad faith, have denied coverage and refused performance under the Policy by denying coverage for these losses. Accordingly, Defendants are in breach of the Policy.

277. As a result of Defendants' breaches of the Policy, Highgate and its insured client entities have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Highgate seeks damages for loss to business income and extra expense caused by the impairment of third-party property that attracts business to insured premises resulting from Defendants' breaches of the Policy, and seeks all other relief deemed appropriate by this Court.

COUNT XXI:
BAD FAITH BREACH OF CONTRACT AND
THE DUTY OF GOOD FAITH AND FAIR DEALING
(Attraction Properties Coverage)

278. Highgate incorporates by reference and re-alleges paragraphs 1 through 98, as though fully set forth herein.

279. The Policy is an insurance contract under which Defendants were paid premiums in exchange for promises to pay losses for claims covered by the Policy.

280. In the Policy, Defendants promised to pay for business income loss and extra expense incurred due to the loss of third-party property that attracts business to insured premises. Specifically, Defendants promised to pay for losses of actual business income sustained and extra expense incurred as a result of impairment to third-party property that attracts business to an insured premises.

281. Highgate and its insured client entities suffered a loss to business income and extra expense from the impairment of third-party property that attracts business to insured premises, resulting in interruptions or suspensions of business operations at insured premises.

282. The losses submitted by Highgate were direct and foreseeable losses under the Policy, and they were all caused by, or related to, the impairment of third-party property that attracts customers to insured premises as described *supra*. As a result, business operations were suspended and/or limited.

283. Highgate has complied with all applicable provisions of its Policy, including payment of premiums and notification of losses.

284. The actions of the Defendants give rise to an independent cause of action for bad faith breach of contract and the duty of good faith and fair dealing as Highgate and its insured client entities were covered under the Policy, and the Defendants have breached the terms of said Policy by refusing to pay attraction properties coverage. Defendants' actions in breaching the terms of the Policy were in bad faith, have proximately caused damages to Highgate and its insured client entities, and the damages were reasonably foreseeable to the Defendants.

285. It appears that the Defendants' conduct occurred because they placed their own financial interests before their insureds' financial interests.

286. Further, the actions of the Defendants in refusing to pay attraction properties coverage were done so without any legitimate basis or arguable reason, and constitute intentional and/or malicious conduct or gross negligence and reckless disregard.

287. Implied in the Policy is a duty of good faith and fair dealing with respect to conduct encompassed by contractual relations. Defendants' conduct as aforesaid breached the duty of good faith and fair dealing which gives rise to the tort of bad faith for the breach of contract.

288. Defendants, at all times relevant hereto, owed Highgate and its insured client entities a duty to exercise good faith and an obligation to deal fairly; however, Defendants' refusal to pay attraction properties coverage constitutes a bad faith breach of contract and was wholly made with only the Defendants' best interests in mind and in total disregard of the contractual rights of Highgate and its insured client entities.

289. Defendants' bad faith material breach(es) of the Policy have resulted in actual and substantial damages to Highgate and its insured client entities, depriving them of the benefit of their bargain, and represent – in addition to warranting contractual damages, incidental damages and consequential damages – an independent tort entitling them to punitive damages in an amount which will punish the Defendants for their intentional, grossly negligent, and/or reckless conduct, as well as to deter Defendants and others from similar misconduct in the future.

WHEREFORE, Plaintiff, Highgate seeks compensatory damages, contractual damages, incidental damages, consequential damages, and punitive damages, resulting from Defendants' bad faith breach(es) of the Policy.

PRAYER FOR RELIEF

WHEREFORE, Highgate respectfully requests that this Honorable Court enter judgment in its favor and against Defendants, as follows:

- A. Entering declaratory judgments on Counts I, IV, VII, X, XIII, XVI and XIX in favor of Highgate as follows:
 - i. That all Business Interruption and Extra Expense, Contingent Business Interruption and Extra Expense, Ingress/Egress, Contagious Disease, Civil Authority, Cancellation of Bookings and Attraction Properties losses and expenses sustained and incurred, and to be sustained and incurred, based on

the facts and circumstances set forth above are insured and covered losses and expenses under the Policy; and

- ii. Defendants are obligated to pay for the full amount of the Business Interruption and Extra Expense, Contingent Business Interruption and Extra Expense, Ingress/Egress, Contagious Disease, Civil Authority, Cancellation of Bookings and Attraction Properties losses and expenses sustained and incurred, and to be sustained and incurred, based on the facts and circumstances set forth above are insured and covered losses and expenses under the Policy;
- B. Entering judgments on Counts II, V, VIII, XI, XIV, XVII and XX in favor of Highgate and awarding damages for breach of contract in an amount to be determined at trial;
- C. Entering judgments on Counts III, VI, IX, XII, XV, XVIII and XXI in favor of Highgate and awarding compensatory damages, incidental damages, consequential damages and punitive damages for the Defendants' bad faith material breach(es) in an amount to be determined at trial;
- D. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- E. An order requiring Defendants to pay attorneys' fees, costs of suit and adjustment expenses; and
- E. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

The undersigned hereby demands a trial by jury as to all issues so triable.

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By: /s/James E. Cecchi
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Dated: April 6, 2021

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