

**IN THE DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

WEST FLAGLER ASSOCIATES, LTD.
D/B/A MAGIC CITY CASINO AND
FLAGLER DOG TRACK,

Plaintiff,

v.

AXA XL INSURANCE GROUP,
INDIAN HARBOR INSURANCE COMPANY,
HALLMARK SPECIALTY INSURANCE COMPANY, and
ATEGRITY SPECIALTY INSURANCE COMPANY,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff West Flagler Associates, Ltd. d/b/a/ Magic City Casino and Flagler Dog Track (“Magic City” or “Plaintiff”), for its complaint against Defendants, AXA XL Insurance Group (“AXA”) and Indian Harbor Insurance Company (“Indian Harbor”) (together, the “AXA Insurers”), Hallmark Specialty Insurance Company (“Hallmark”), and Ategrity Specialty Insurance Company (“Ategrity”) (collectively, “Defendants”),¹ hereby alleges the following:

INTRODUCTION

1. This is an action for declaratory judgment and breach of contract arising out of Plaintiff Magic City’s claim for insurance coverage under several “all risk” property insurance

¹ Magic City has also made claims with several other insurers from which it has yet to receive denials, including Great Lakes Insurance Co. and AmWINS Special Risk Underwriters, LLC. Should these insurers also refuse to provide coverage for Plaintiff’s business interruption losses, Plaintiff intends to amend this complaint to add these insurance companies as additional defendants.

policies sold by the Defendants to Plaintiff that insurance Plaintiff's properties, business operations, and potential liability in connection with Plaintiff's business operations.

2. Plaintiff is a business that purchased Defendants' insurance policies and made premium payments for policies that, in the event of a catastrophe requiring a shutdown of business operations, would require Defendants to honor their contractual obligation to provide coverage. In March 2020, such a catastrophe took place when Plaintiff was forced to close its business due to the COVID-19 pandemic. Despite agreeing to cover Plaintiff's property against all risks of physical loss or physical damage and Plaintiff's resulting business interruption loss, Defendants have wrongfully denied coverage.

THE PARTIES

3. Magic City is a corporation organized under Florida law with its principal place of business at 401 N.W. 38th Court, Miami, FL 33126. Magic City operates an entertainment complex in Miami, Florida which offers gaming, dog racing, jai alai, dining, shopping, and live entertainment.

4. AXA is a Bermuda corporation with its principal place of business in Stamford, Connecticut.

5. Indian Harbor is a corporation organized under Delaware law with its principal place of business in Stamford, Connecticut. Indian Harbor is a wholly-owned subsidiary of AXA.

6. Hallmark is a corporation organized under Nevada law with its principal place of business in Dallas, Texas.

7. Ategrity is a corporation organized under Delaware law with its principal place of business in Scottsdale, Arizona.

JURISDICTION AND VENUE

8. Defendants are insurance companies engaged in the business of selling insurance contracts to commercial entities such as Plaintiff in south Florida. At all times material, Defendants engaged in substantial and not isolated activity on a continuous and systematic basis in the state of Florida by issuing and selling insurance policies in Florida and by contracting to insure property located in Florida.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different States.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claim occurred in this district and/or a substantial party of the property that is the subject of the action is situated in this district.

11. This Court has personal jurisdiction over Defendant because Plaintiff's claims arise out of, among other things, Defendant conducting, engaging in, and/or carrying on business in Florida; Defendant breaching a contract in this state by failing to perform acts required by contract to be performed in this state; and Defendant contracting to insure property in Florida. Defendant also purposefully availed themselves of the opportunity of conducting activities in the state of Florida by marketing their insurance policies and services within the state, and intentionally developing relationships with brokers, agents, and customers within the state to insure property within the state, all of which resulted in the policy at issue in this action.

FACTUAL BACKGROUND

A. Magic City Purchases Insurance Coverage from the Defendants.

12. Plaintiff has five separate “layers” of insurance coverage that correspond to seven separate insurance companies.

13. The first layer of insurance coverage consists of two insurance policies: one with the AXA Insurers and a second with Endurance American Specialty Insurance Company (“Endurance”).

14. Magic City does not bring any claims against Endurance because, unlike the insurance policies at issue in this complaint, Magic City’s insurance policy with Endurance contains a “communicable disease exclusion” that applies to exclude losses caused directly or indirectly from viruses.

15. On or about April 29, 2019, Plaintiff obtained the AXA Insurers’ policy (the “AXA Policy”), a property insurance policy issued and underwritten by the AXA Insurers. The insured premises under the policy is 401 NW 28th Court, Miami, FL 33126, where Plaintiff operates its entertainment complex. A copy of the AXA Policy is attached as Exhibit A.

16. The second layer of insurance coverage consists of two insurance policies: one with the Markel Service, Inc. (“Markel”) and Evanston Insurance Company (“Evanston” (together, the “Markel Insurers”) and a second with Great Lakes Insurance Co. (“Great Lakes”).

17. Magic City does not bring any claims against the Markel Insurers because, unlike the insurance policies at issue in this complaint, Magic City’s insurance policy with the Markel Insurers contains an exclusion for “Organic Pathogens” that applies to exclude losses caused directly or indirectly from a “virus.”

18. Although Plaintiff has provided Great Lakes with a notice of loss, it has not yet received any answer from Great Lakes as to whether it will be providing coverage for the claims described in this complaint. Plaintiff reserves the right to amend the complaint to add Great Lakes as an additional defendant should it also refuse to provide coverage.

19. The third layer of insurance coverage consists of two insurance policies: one with Hallmark and a second with Ategrity.

20. On or about April 29, 2019, Plaintiff obtained Hallmark's insurance policy (the "Hallmark Policy"), a property insurance policy issued and underwritten by Hallmark. The insured premises under the policy is 401 NW 28th Court, Miami, FL 33126, where Plaintiff operates its entertainment complex. A copy of the Hallmark Policy is attached as Exhibit B.

21. On or about April 29, 2019, Plaintiff obtained Ategrity's insurance policy (the "Ategrity Policy"), a property insurance policy issued and underwritten by Ategrity. The insured premises under the policy is 401 NW 28th Court, Miami, FL 33126, where Plaintiff operates its entertainment complex. A copy of the Ategrity Policy is attached as Exhibit C.

22. The fourth layer of insurance coverage is provided by AmWINS Special Risk Underwriters, LLC ("AmWINS"). Although Plaintiff has provided AmWINS with a notice of loss, it has not yet received any answer from AmWINS as to whether it will be providing coverage for the claims described in this complaint. Plaintiff reserves the right to amend the complaint to add Great Lakes as an additional defendant should it also refuse to provide coverage.

23. The fifth layer of insurance coverage is provided by Arch Specialty Insurance Company ("Arch"). Magic City does not bring any claims against Arch because, unlike the insurance policies at issue in this complaint, Magic City's insurance policy with Arch contains an

exclusion for “loss due to virus or bacteria” that applies to exclude losses caused by or resulting from any virus.

24. Together, this complaint refers to the AXA Policy, the Hallmark Policy, and the Ategrity Policy as “the Policies.”

25. The Policies are all-risk insurance policies. In an all-risk insurance policy, all risks of loss are covered unless that are specifically excluded.

26. In accordance with the all-risk nature of the Policies, the AXA Insurers, Hallmark, and Ategrity agreed to pay for all losses resulting from direct physical loss or damage insured by the Policies at the insured premises. *See* Ex. A, § V (“The POLICY insures TIME ELEMENT loss, during the **Period of Liability** directly resulting from direct physical loss or damage insured by this POLICY to INSURED PROPERTY at INSURED LOCATION(S)”; Ex. B (same); Ex. C (indicating the policy is “all risk”).

27. All three Policies contain an identical section providing for coverage resulting from an “Order of Civil or Military Authority.” The Policies state:

This POLICY is extended to insure loss of **Gross Earnings, Rental Insurance, and Extra Expense** incurred by the Insured due the necessary interruption of the Insured’s business, provided that:

- a. the interruption directly results from an order a civil or military authority that prohibits partial or total access to INSURED LOCATION(S); and
- b. the order referenced above is caused by direct physical loss or damage insured by the POLICY to property of the type insured.

28. All three Policies also contain an identical section providing for Ingress/Egress coverage, as follows:

This POLICY is extended to insure loss of **Gross Earnings, Rental Insurance, and Extra Expense** incurred by the Insured due to the necessary interruption of the Insured’s business, provided that:

- a. the interruption directly results from the prevention of direct ingress to or direct egress from INSURED LOCATION(S), whether or not INSURED PROPERTY at such INSURED LOCATION(S) is damaged; and
- b. the prevention above is caused by direct physical loss or damage insured by this POLICY to any property, including property excluded under **Property Not Insured**.

29. The Policies utilize, in part, policy forms and language published by the Insurance Services Office, Inc. (“ISO”), which publishes policy forms for use by the insurance industry—as evidenced by the ISO copyright designation at the bottom of some pages of the Policies.

30. Despite the fact that, prior to the effective date of the Policies, ISO published and made available for use a standard virus exclusion form, Defendants chose *not* to include the ISO standard virus exclusion form in the Policies. This stands in stark contrast to insurers, such as Arch, who did utilize the standard virus exclusion form, or adopted other exclusions that specifically excluded losses caused by a virus.

31. The Policies do not contain any exclusion which would apply to allow Defendants to completely deny coverage for losses caused by COVID-19 and related actions of civil authorities taken in response to COVID-19.

32. Because the Policies are all-risk policies and do not exclude Plaintiff’s losses, Plaintiff’s losses are covered up to the applicable limits of insurance.

B. The COVID-19 Pandemic

33. COVID-19 is a novel coronavirus that originated in Wuhan, China at the end of 2019 and rapidly spread around the world, infecting millions of people, including over 2.15 million Americans. Over 135,000 Americans have died due to COVID-19.

34. COVID-19 is a physical substance that can cause lethal illness. COVID-19 can be present outside the body in viral fluid particles. COVID-19 is highly contagious and easily communicable through droplets in the air and on surfaces.

35. The scientific community, and those personally affected by the virus, recognize COVID-19 as a cause of real physical loss and damage. Contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces within the Insured Property.

36. COVID-19 remains capable of being transmitted on a variety of inert physical surfaces for various periods of time. For example, reports issued by the National Institute of Health (“NIH”) indicates that COVID-19 remains stable and transmittable in airborne aerosols for up to three hours, on copper for up to four hours, on cardboard for up to 24 hours, and on plastic and stainless steel for up to two to three days. Moreover, the COVID-19 pandemic has been exacerbated by the fact that the virus physically infects and stays on surfaces of some objects or materials for up to 28 days.

37. The Center for Disease Control (“CDC”) has issued guidance recommending people not to gather in groups larger than 10. Pursuant to CDC guidelines, people face increased danger of contracting COVID-19 in places where people congregate and are in close proximity to one another, and especially in indoor environments.

38. COVID-19 has been transmitted in a variety of ways, including transmission (a) by way of human contact with surfaces and items of physical property; (b) by human to human contact and interaction, including places like bars and restaurants, retail stores, and hair and beauty salons, and the like; and (c) through airborne particles emitted into the air and even recirculated through air conditioning units.

39. The presence of COVID-19 particles renders physical property unsafe and impairs its value, usefulness, and/or normal function, causing direct physical harm to property and resulting in direct physical loss and physical damage to property.

40. The presence of COVID-19 particles and/or the presence of persons infected with COVID-19 or carrying COVID-19 particles at premises renders the premises unsafe, thereby impairing the premises' value, usefulness, and/or normal function, and resulting in direct physical loss to and of the premises and property.

C. The Covered Cause of Loss

41. The presence of COVID-19 has 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 Plaintiff's business (the "Closure Orders").

42. As of the date this complaint is filed, Florida had over 350,000 total positive cases of COVID-19, and nearly 5,000 deaths.

43. In response to the public health emergency caused by the COVID-19 pandemic, civil authorities across the United States, including the civil authorities with jurisdiction over Plaintiff in Florida, have issued Closure Order restricting and prohibiting access to Plaintiff's insured property and the insured properties of other putative class members.

44. In Florida, between March 1, 2020 and June 17, 2020, Governor DeSantis issued dozens of executive orders concerning COVID-19. In a piecemeal fashion, different sectors of the Florida economy were gradually closed. See <https://www.flgov.com/covid-19-executive-orders/>.

45. On March 1, 2020, the Florida Department of Health was ordered to issue a Public Health Emergency due to COVID-19.

46. On March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a Florida State of Emergency due to COVID-19.

47. In south Florida, local orders were even stricter than those issued by the State and often were issued earlier. For example, Miami-Dade County was an early advocate for stricter measures, issuing orders on March 16 and 17, 2020 which required congregate meal sites, community centers, food service establishments, movie theaters, playhouses, and general gathering places to close. The Governor issued Executive Order 20-70 on March 17, 2020 ordering Broward and Palm Beach counties to enact corresponding closures. Within the following week, Miami-Dade, Broward, and Palm Beach Counties would enact a variety of measures intended to make people stay at home and close all non-essential retail and commercial establishments.

48. On March 24, 2020, Governor DeSantis issued Executive Order 20-83, directing the State Surgeon General and State Health Officer to issue public health advisories urging high-risk populations to stay home due to COVID-19, urging against all social or recreational gatherings of 10 or more people, and advising those who can work remotely to do so.

49. On March 30, 2020 Governor DeSantis issued Executive Order 20-89, placing additional restrictions on public access to non-essential retail and commercial establishments in Miami-Dade, Broward, Palm Beach, and Monroe Counties.

50. On April 1, 2020, Governor DeSantis issued Executive Order 20-91, requiring high-risk individuals to stay at home and ordering all persons in Florida to limit their movement and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.

51. On April 29, 2020, Governor DeSantis issued Executive Order 20-112, establishing a plan for the Phase 1 reopening of Florida. Pursuant to this order, which went into effect on May

4, 2020, there was some easing of restrictions on businesses restricted by previous executive orders, such as the Plaintiff's business; however, various measures continued in place which placed a limit on the income that the business could generate.

52. Closure Orders entered by municipal and county governments throughout Florida recognize that COVID-19 poses a threat to the loss of property. Closure Orders containing statements recognizing that COVID-19 causes business income loss and loss of property and property damage have been issued by many Florida counties, including Broward, Escambia, Gadsden, Hillsborough, Martin, Orange, Osceola, Pinellas, St. Lucie, and Walton Counties. *See* Broward Cnty. Admin.'s Emergency Order 20-01 ("this Emergency Order is necessary because of the propensity of the virus to spread person to person and also because the virus is *physically causing property damage* due to its proclivity to attach to surfaces for prolonged periods of time"); Escambia Cnty. Res. 2020-37 ("COVID-19 and infection diseases have the capacity to pose a significant, imminent, and dangerous threat to the health, safety, and welfare of the inhabitants of Escambia County, Florida, visitors and tourists to Escambia County, Florida, as well as to their real and personal property . . . the COVID-19 virus has the propensity to attach to surfaces for prolonged periods of time, thus causing property damage and continuing the spread of the virus.") (emphasis added); Gadsden Cnty. Res. 2020-014 ("there is reason to believe that COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing increased infections to persons, and property loss and damage in certain circumstances.") (emphasis added); Hillsborough Cnty. Exec. Order dated March 27, 2020 (stating COVID-19 is "creating property or business income loss and damage"); Martin Cnty. Emergency Order 20-04 (stating COVID-19 is "creating property or business income

loss and damage”); Orange Cnty. Emergency Exec. Order No. 2020-01 (declaring a state of emergency “to protect the health, welfare, and safety of the people and *property* within Orange County”); Orange Cnty. Emergency Exec. Order No. 2012-12 (stating that “COVID-19 is spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to *attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing increased infections to persons*”); Osceola Cnty. Emergency Order No. 2 (stating COVID-19 causes a “serious threat to life and property within the County”) (emphasis added); Pinellas Cnty. Res. 20-20 (stating COVID-19 causes “property loss and damage”); St. Lucie Cnty. Order dated March 31, 2020 (“COVID-19 is causing property damage and business income loss due to its proclivity to attach to surfaces for prolonged periods of time and thereby creating a dangerous physical condition; and [a]s a governmental civil authority action, it is necessary to impose the regulations and restrictions set forth herein in response to the dangerous physical conditions that currently exist and to stop the COVID-19 virus from spreading.”); Walton Cnty. Resolution 2020-10 (“the novel coronavirus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.”).

53. Closure Orders containing similar statements recognizing that COVID-19 causes business income loss and loss of property and property damage have also been issued many Florida municipalities, including the City of Miami, where Plaintiff’s property is located, and including City of Aventura, City of Coral Springs, Town of Indian Shores, City of Lauderdale Lakes, City of North Miami, City of Oakland Park, City of Sarasota, and City of Venice. *See* City of Miami Decl. of a State of Emergency dated March 26, 2020 (“COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person-to-person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface

to person and causing property loss and damage in certain circumstances”); *see also* City of Aventura Order dated March 24, 2020 (explaining the COVID-19 “virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time”); City of Coral Springs Emergency Order 2020-11 (“COVID-19 attaching to surfaces contaminates the area and therefore also causes property damage . . . the virus physically is causing property damage”); Town of Indian Shores Resolution 05-2020 (“the COVID-19 virus has the propensity to attach to surfaces for prolonged periods of time, thus causing property damage and continuing the spread of the virus.”); City of Lauderdale Lakes Emergency Order 2020-01 (“the virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged periods of time.”); City of North Miami “Safer at Home” Emergency Order (“this Order is given because of the propensity of the virus to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged period of time.”); City of Oakland Park Proclamation 2020-002 (“This Order is given because of the propensity of the virus to spread person to person and also because the virus physically is causing property damage due to its proclivity to attach to surfaces for prolonged period of time.”); City of Sarasota Emergency Order dated May 1, 2020 (“the COVID-19 virus has the propensity to attach to surfaces for prolonged periods of time, thus causing property damage and continuing the spread of the virus”); City of Venice Executive Order 2020-01 (“COVID-19 has the propensity to attach to surfaces for prolonged periods of time, thus causing property damage and continuing the spread of the virus”).

54. Some state courts have already agreed with Plaintiff’s position that physical loss and damage exists resulting in coverage here. *See Friends of DeVito, et. al v. Wolf*, No. 68 MM 2020 (Pa. April 13, 2020). Furthermore, orders issued in states such as New York, Colorado,

Washington, Indiana, New Mexico, North Carolina, Missouri, and Illinois have all recognized that COVID-19 poses a specific threat to property and can cause property loss and damage.

55. The presence of COVID-19 caused direct physical loss of and/or damage to the Insured Property under the Policy by, among other things, damaging the property, denying access to the property, preventing customers and patients from physically occupying the property, causing the property to be physically uninhabitable by customers and patients, causing its function to be nearly eliminated or destroyed, and/or causing a suspension of business operations on the premises.

56. The Closure Orders of civil authorities prohibited access to Plaintiff and other class members' Insured Properties, and the areas immediately surrounding the Insured Properties, in response to dangerous physical conditions resulting from a covered cause of loss.

57. As a result of prevention of direct ingress to and direct egress from the insured property, Plaintiff suffered a necessary interruption in business.

58. As a result of the presence of COVID-19 and the Closure Orders, Plaintiff and other class members sustained a suspension of business operations, sustained losses of business income, and incurred extra expenses. Plaintiff has also sustained business income losses due to direct physical loss or physical damage at the premises of dependent properties.

59. Plaintiff's losses and expenses have continued through the date of filing this action.

60. Plaintiff's losses and expenses are not excluded from coverage under the Policy. Because the Policy is an all-risk policy and Plaintiff has complied with its contractual obligations, Plaintiff is entitled to payment for these losses and expenses.

61. Consistent with the terms and procedures of the Policy, Plaintiff submitted a claim for loss to Defendants under the Policy due to the presence of COVID-19 and the shutdown Civil Authority orders.

62. In violation of the Policy's plain language and its own contractual obligations, Defendants denied Plaintiff's claim and refuse to pay for Plaintiff's losses and expenses.

63. Plaintiff has complied with all conditions precedent to filing this suit.

CAUSES OF ACTION

COUNTS I–III AGAINST THE AXA INSURERS

COUNT I DECLARATORY JUDGMENT

64. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

65. Plaintiff's insurance policy with the AXA Insurers are contracts under which the AXA Insurers were paid premiums in exchange for their promise to pay Plaintiff's losses for claims covered by the AXA Policy.

66. Plaintiff has complied with all applicable provisions of the AXA Policy and/or those provisions have been waived by the AXA Insurers, or the AXA Insurers are estopped from asserting them, and yet the AXA Insurers have abrogated their insurance coverage obligations pursuant to the AXA Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

67. An actual case or controversy exists regarding Plaintiff's rights and the AXA Insurer's obligations under the AXA Policy to reimburse Plaintiff for the full amount of covered losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

68. Pursuant to chapter 86, Florida Statutes, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- a. Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the AXA Insurers' Policy; and
- b. The AXA Insurers are obligated to pay Plaintiff the full amount of the losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT II
BREACH OF CONTRACT**

69. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

70. Plaintiff's insurance policy with the AXA Insurers are contracts under which the AXA Insurers were paid premiums in exchange for their promise to pay Plaintiff's losses for claims covered by the AXA Policy.

71. In the AXA Policy, the AXA Insurers agreed to cover property against all risks of physical loss or damage not otherwise excluded.

72. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiff's property.

73. The AXA Insurers specifically agreed to insure loss of Gross Earnings, Rental Insurance, and Extra Expense incurred by the Insured due to the necessary interruption of the Insured's business where the interruption directly results from an order of a civil or military authority that prohibits partial or total access to the insured location(s) and the order is caused by direct physical loss or damage insured by the policy to property of the type insured.

74. Plaintiff is entitled to coverage for their loss of Gross Earning, Rental Insurance, and Extra Expense incurred as a result of the Closure Orders entered by civil authorities in the State of Florida, Miami-Dade County, and the City of Miami.

75. No exclusions apply to bar coverage.

76. Plaintiff complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim,

77. Nonetheless, the AXA Insurers unjustifiably refuse to pay for Plaintiff's losses in breach of the AXA Policy.

78. Plaintiff has suffered and continues to suffer damages as a result of the AXA Insurers' breach(es) of the AXA Policy.

79. Plaintiff is entitled to damages as a result of the AXA Insurers' breach in an amount to be determined at trial, including pre- and post-judgment interest and any other cost and relief that this Court deems appropriate.

COUNT III
BREACH OF CONTRACT
(Ingress/Egress)

80. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

81. Plaintiff's insurance policy with the AXA Insurers are contracts under which the AXA Insurers were paid premiums in exchange for their promise to pay Plaintiff's losses for claims covered by the AXA Policy.

82. In the AXA Policy, the AXA Insurers agreed to cover property against all risks of physical loss or damage not otherwise excluded.

83. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiff's property.

84. The AXA Insurers specifically agreed to insure loss of Gross Earnings, Rental Insurance, and Extra Expense incurred by the Insured due to the necessary interruption of the Insured's business where the interruption directly results from the prevention of direct ingress to or direct egress from the insured location(s), whether or not the insured property at such insured locations is damaged, and the prevention is caused by direct physical loss or damage insured by the policy.

85. Plaintiff is entitled to coverage for their loss of Gross Earning, Rental Insurance, and Extra Expense incurred as a result of the prevention of direct ingress to or direct egress from its property.

86. No exclusions apply to bar coverage.

87. Plaintiff complied will all applicable Policy provisions, including paying premiums and providing timely notice of its claim,

88. Nonetheless, the AXA Insurers unjustifiably refuse to pay for Plaintiff's losses in breach of the AXA Policy.

89. Plaintiff has suffered and continue to suffer damages as a result of the AXA Insurers' breach(es) of the AXA Policy.

90. Plaintiff is entitled to damages as a result of the AXA Insurers' breach in an amount to be determined at trial, including pre- and post-judgment interest and any other cost and relief that this Court deems appropriate.

COUNTS IV–VI AGAINST HALLMARK

COUNT IV DECLARATORY JUDGMENT

91. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

92. Plaintiff's insurance policy with Hallmark are contracts under which Hallmark was paid premiums in exchange for their promise to pay Plaintiff's losses for claims covered by the Hallmark Policy.

93. Plaintiff has complied with all applicable provisions of the Hallmark Policy and/or those provisions have been waived by Hallmark, or Hallmark is estopped from asserting them, and yet Hallmark has abrogated its insurance coverage obligations pursuant to the Hallmark Policy's clear and unambiguous terms and have wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

94. An actual case or controversy exists regarding Plaintiff's rights and Hallmark's obligations under the Hallmark Policy to reimburse Plaintiff for the full amount of covered losses incurred by Plaintiff in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

95. Pursuant to chapter 86, Florida Statutes, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- a. Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Hallmark Policy; and
- b. Hallmark is obligated to pay Plaintiff the full amount of the losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

COUNT V
BREACH OF CONTRACT
(Civil Authority)

96. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

97. Plaintiff’s insurance policy with Hallmark is a contract under which Hallmark was paid premiums in exchange for their promise to pay Plaintiff’s losses for claims covered by the Hallmark Policy.

98. In the Hallmark Policy, Hallmark agreed to cover property against all risks of physical loss or damage not otherwise excluded.

99. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiff’s property.

100. Hallmark specifically agreed to insure loss of Gross Earnings, Rental Insurance, and Extra Expense incurred by the Insured due to the necessary interruption of the Insured’s business where the interruption directly results from an order of a civil or military authority that prohibits partial or total access to the insured location(s) and the order is caused by direct physical loss or damage insured by the policy to property of the type insured.

101. Plaintiff is entitled to coverage for its loss of Gross Earning, Rental Insurance, and Extra Expense incurred as a result of the Closure Orders entered by civil authorities in the State of Florida, Miami-Dade County, and the City of Miami.

102. No exclusions apply to bar coverage.

103. Plaintiff complied will all applicable Policy provisions, including paying premiums and providing timely notice of its claim,

104. Nonetheless, Hallmark unjustifiably refuse to pay for Plaintiff’s losses in breach of the Hallmark Policy.

105. Plaintiff has suffered and continue to suffer damages as a result of Hallmark's breach(es) of the Hallmark Policy.

106. Plaintiff is entitled to damages as a result of Hallmark's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other cost and relief that this Court deems appropriate.

COUNT VI
BREACH OF CONTRACT
(Ingress/Egress)

107. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

108. Plaintiff's insurance policy with Hallmark are contracts under which Hallmark was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Hallmark Policy.

109. In the Hallmark Policy, Hallmark agreed to cover property against all risks of physical loss or damage not otherwise excluded.

110. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiff's property.

111. Hallmark specifically agreed to insure loss of Gross Earnings, Rental Insurance, and Extra Expense incurred by the Insured due to the necessary interruption of the Insured's business where the interruption directly results from the prevention of direct ingress to or direct egress from the insured location(s), whether or not the insured property at such insured locations is damaged, and the prevention is caused by direct physical loss or damage insured by the policy.

112. Plaintiff is entitled to coverage for their loss of Gross Earning, Rental Insurance, and Extra Expense incurred as a result of the prevention of direct ingress to or direct egress from its property.

113. No exclusions apply to bar coverage.

114. Plaintiff complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim,

115. Nonetheless, Hallmark unjustifiably refused to pay for Plaintiff's losses in breach of the Hallmark Policy.

116. Plaintiff has suffered and continues to suffer damages as a result of Hallmark's breach(es) of the Hallmark Policy.

117. Plaintiff is entitled to damages as a result of Hallmark's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other cost and relief that this Court deems appropriate.

COUNT VII–IX AGAINST ATEGRITY

COUNT VII DECLARATORY JUDGMENT

118. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

119. Plaintiff's insurance policy with Ategrity is a contract under which Ategrity was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Ategrity Policy.

120. Plaintiff has complied with all applicable provisions of the Ategrity Policy and/or those provisions have been waived by Ategrity, or Ategrity is estopped from asserting them, and yet Ategrity has abrogated its insurance coverage obligations pursuant to the Ategrity Policy's clear and unambiguous terms and has wrongfully and illegally refused to provide coverage to which Plaintiff is entitled.

121. An actual case or controversy exists regarding Plaintiff's rights and Ategrity's obligations under the Ategrity Policy to reimburse Plaintiff for the full amount of covered losses

incurred by Plaintiff in connection with Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

122. Pursuant to chapter 86, Florida Statutes, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- c. Plaintiff's losses incurred in connection with the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic are insured losses under the Ategrity Policy; and
- d. Ategrity is obligated to pay Plaintiff the full amount of the losses incurred and to be incurred in connection with the covered losses related to the Closure Orders and the necessary interruption of their businesses stemming from the COVID-19 pandemic.

**COUNT VIII
BREACH OF CONTRACT
(Civil Authority)**

123. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

124. Plaintiff's insurance policy with Ategrity is a contract under which Ategrity was paid premiums in exchange for their promise to pay Plaintiff's losses for claims covered by the Ategrity Policy.

125. In the Ategrity Policy, Ategrity agreed to cover property against all risks of physical loss or damage not otherwise excluded.

126. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiff's property.

127. Ategrity specifically agreed to insure loss of Gross Earnings, Rental Insurance, and Extra Expense incurred by the Insured due to the necessary interruption of the Insured's business

where the interruption directly results from an order of a civil or military authority that prohibits partial or total access to the insured location(s) and the order is caused by direct physical loss or damage insured by the policy to property of the type insured.

128. Plaintiff is entitled to coverage for its loss of Gross Earning, Rental Insurance, and Extra Expense incurred as a result of the Closure Orders entered by civil authorities in the State of Florida, Miami-Dade County, and the City of Miami.

129. No exclusions apply to bar coverage.

130. Plaintiff complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim,

131. Nonetheless, Ategrity unjustifiably refused to pay for Plaintiff's losses in breach of the Ategrity Policy.

132. Plaintiff has suffered and continues to suffer damages as a result of Ategrity's breach(es) of the Ategrity Policy.

133. Plaintiff is entitled to damages as a result of Ategrity's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other cost and relief that this Court deems appropriate.

COUNT IX
BREACH OF CONTRACT
(Ingress/Egress)

134. Plaintiff repeats and realleges Paragraphs 1–63 as if fully set forth herein.

135. Plaintiff's insurance policy with Ategrity is a contract under which Ategrity was paid premiums in exchange for its promise to pay Plaintiff's losses for claims covered by the Ategrity Policy.

136. In the Ategrity Policy, Ategrity agreed to cover property against all risks of physical loss or damage not otherwise excluded.

137. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiff's property.

138. Ategrity specifically agreed to insure loss of Gross Earnings, Rental Insurance, and Extra Expense incurred by the Insured due to the necessary interruption of the Insured's business where the interruption directly results from the prevention of direct ingress to or direct egress from the insured location(s), whether or not the insured property at such insured locations is damaged, and the prevention is caused by direct physical loss or damage insured by the policy.

139. Plaintiff is entitled to coverage for their loss of Gross Earning, Rental Insurance, and Extra Expense incurred as a result of the prevention of direct ingress to or direct egress from its property.

140. No exclusions apply to bar coverage.

141. Plaintiff complied will all applicable Policy provisions, including paying premiums and providing timely notice of its claim,

142. Nonetheless, Ategrity unjustifiably refuse to pay for Plaintiff's losses in breach of the Ategrity Policy.

143. Plaintiff has suffered and continue to suffer damages as a result of Ategrity's breach(es) of the Ategrity Policy.

144. Plaintiff is entitled to damages as a result of Ategrity's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other cost and relief that this Court deems appropriate.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against Defendant as follows:

- a. Entering declaratory judgments in favor of Plaintiff stating (i) that losses resulting from the orders of civil authorities incurred in connection with the Closure Orders and the necessary interruption of its businesses stemming from the COVID-19-pandemic are insured losses under the Policies and (ii) that Defendants are obligated to pay the full amount of the applicable losses incurred and to be incurred related to COVID-19, the Closure Orders and the necessary interruption of Plaintiff's businesses stemming from the COVID-10 pandemic;
- b. For special and consequential damages against Defendants in amount to be proved at trial, in excess of \$75,000;
- c. Pre- and post-judgment interest, as provided by law;
- d. An award of attorney's fees and costs of suit incurred; and
- e. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 20, 2020

Respectfully submitted,

By: /s/ Adam M. Moskowitz

Adam M. Moskowitz

Florida Bar No. 984280

adam@moskowitz-law.com

Adam A. Schwartzbaum

Florida Bar No. 93014

adams@moskowitz-law.com

Howard M. Bushman

Florida Bar No. 0364230
howard@moskowitz-law.com
Joseph M. Kaye
Florida Bar No. 117520
joseph@moskowitz-law.com
THE MOSKOWITZ LAW FIRM, PLLC
2 Alhambra Plaza, Suite 601
Coral Gables, FL 33134
Telephone: (305) 740-1423

William F. "Chip" Merlin, Jr.
cmerlin@MerlinLawGroup.com
New Jersey Bar No. 055182013
Florida Bar No. 364721
Shane Smith
ssmith@MerlinLawGroup.com
Florida Bar No. is 53130
MERLIN LAW GROUP
777 S. Harbour Island Blvd.,
Suite 950
Tampa, FL 33602
Telephone: (813) 229-1000
Facsimile: (813) 229-3692

Rene M. Sigman, Esq.
(*Pro Hac Vice* Admission Pending)
Merlin Law Group
515 Post Oak Blvd., Suite 510
Houston, TX 77027
Office: 713-626-8880
Email: rsigman@MerlinLawGroup.com

Michael Howard Moore, Esq.
(*Pro Hac Vice* Admission Pending)
Business Development
Merlin Law Group
777 S. Harbour Island Blvd.
Suite 950
Tampa, FL 33602
Email: MMoore@merlinlawgroup.com
Tel: (813) 229-1000
Fax: (813) 229-3692