

20-140
SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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RAYMOURS FURNITURE COMPANY, INC.

Plaintiff,

-against-

LEXINGTON INSURANCE COMPANY,
ARCH SPECIALTY INSURANCE COMPANY,
ASPEN SPECIALTY INSURANCE COMPANY,
ATEGRITY SPECIALTY INSURANCE COMPANY,
ALLIED WORLD NATIONAL ASSURANCE COMPANY,
EVANSTON INSURANCE COMPANY,
PICC PROPERTY AND CASUALTY COMPANY LIMITED,
STARR SPECIALTY LINES INSURANCE AGENCY,
INTERSTATE FIRE & CASUALTY COMPANY

Defendants.
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Index No.:

SUMMONS

The Plaintiff designates
New York County as the
place of trial.

The basis of venue is
Defendant Starr
Specialties principal place
of business:399 Park
Avenue 8th Floor New
York, NY 10022.

To the above-named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 8, 2020

Defendants' Addresses For Service:
Via Department of Financial Services (All Defendants)

WEG AND MYERS, P.C.
Attorneys for Plaintiff
Federal Plaza
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New York, New York 10007
(212) 227-4210

20-140
SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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RAYMOURS FURNITURE COMPANY, INC.,

Index No.

COMPLAINT

Plaintiff,

-against-

LEXINGTON INSURANCE COMPANY,
ARCH SPECIALTY INSURANCE COMPANY,
ASPEN SPECIALTY INSURANCE COMPANY,
ATEGRITY SPECIALTY INSURANCE COMPANY,
ALLIED WORLD NATIONAL ASSURANCE COMPANY,
EVANSTON INSURANCE COMPANY,
PICC PROPERTY AND CASUALTY COMPANY LIMITED,
STARR SPECIALTY LINES INSURANCE AGENCY,
INTERSTATE FIRE & CASUALTY COMPANY.

Defendant.

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Plaintiff RAYMOURS FURNITURE COMPANY, INC., hereinafter (“Plaintiff”) by its attorneys WEG AND MYERS, P.C., as and for their Complaint herein allege as follows:

INTRODUCTION

1. Plaintiff RAYMOURS FURNITURE COMPANY, INC., (hereinafter referred to as “R&F”) is an American furniture retail chain, based in the Northeastern region of the United States with 138 stores across 7 Northeastern States, 16 of which are located in New York City, and an additional 20 Distribution and Customer Service Centers as well as having a robust online sales presence.

2. Founded in 1947 in Syracuse, New York, R&F has a long history of selling quality furniture throughout the Northeast.

3. R&F is the Northeast's largest furniture retailer and specializes in the sale of high-quality furniture for an affordable price.

4. Many of R&F's patrons have become accustomed to visiting one of the many retail stores throughout the Northeast to view R&F furniture before making a purchase. This has added to R&F's reputation as a retail chain with personalized and professional customer care.

5. As a result, R&F has become readily recognizable for its attractive merchandise throughout the Northeast.

6. Consistent with this philosophy, Plaintiff procured a Program of Insurance in which various insurance companies provided coverage with various limits. These carriers included, Lexington Insurance Company, Policy No. 021565677 (the "Lexington Policy"), Interstate Fire & Casualty Company, Policy Nos. RTX0013519 and S 64 MXF 80516332 (the "Interstate Policies"), Arch Specialty Insurance Company, Policy No. ESP1000305-00 (the "Arch Policy"), Aspen Specialty Insurance Company, Policy No. PR00C4919 (the "Aspen Policy"), Ategrity Specialty Insurance Company, Policy No. 01-B-XP-P00000199-0 (the "Ategrity Policy") and Allied World National Assurance Company, Policy No. 0311-2688-1N (the "AWAC Policy"), Evanston Insurance Company, Policy No. MKLV12XP002912 (the "Evanston Policy"), PICC Property and Casualty Company Limited, Policy No. A028201932010000000072 (the "PICC Policy"), Starr Specialty Lines Insurance Agency, LLC, Policy No. 19SLCFM11053501 (the "Starr Policy"), (collectively, "Defendants").

7. All of the Defendants' policies were in full force and effect when the Covid-19 pandemic occurrence giving rise to Plaintiff's insurance claim struck.

8. The effect of this pandemic resulted in the physical loss or damage to the high-volume commercial retail business locations owned and operated by Plaintiff.

9. In response to the physical loss or damage suffered in the vicinity of the Plaintiff's stores, the states of New York, Connecticut, Delaware, Pennsylvania, Massachusetts, Rhode Island and New Jersey issued "orders" which prevented Plaintiff from operating its retail locations.

10. Due to the fact that Plaintiffs had purchased an all-encompassing all-risk policy of insurance from Defendants, none of which contained any applicable exclusions, Plaintiff expected that Defendants, after collecting annual premiums from Plaintiffs in the amount of \$1,887,231.00, would be responsive to Plaintiff's insurance claim during its time of need.

11. Defendants, however, failed to substantively responds to Plaintiff's claim and as a result, has compelled Plaintiff to commence this litigation.

PARTIES

12. At all times hereinafter mentioned, R&F was and is a domestic corporation duly organized and existing under and by virtue of the laws of New York, having its principal place of business in 7248 Morgan Rd Liverpool, NY, 13090-4535.

13. At all times hereinafter mentioned, LEXINGTON INSURANCE COMPANY was and is a foreign corporation duly organized and existing under and by virtue of the laws of Massachusetts, having its principal place of business at 99 High Street Floor 23 Boston, MA 02110.

14. At all times hereinafter mentioned, ARCH SPECIALTY INSURANCE COMPANY was and is a domestic corporation duly organized and existing under and by virtue of the laws of New York, having its principal place of business at 1001 Franklin Avenue Suite 208 Garden City, NY 11530.

15. At all times hereinafter mentioned, ASPEN SPECIALTY INSURANCE COMPANY was and is a foreign corporation duly organized and existing under and by virtue of

the laws of Connecticut, having its principal place of business at 175 Capital Blvd Suite 100 Rocky Hill, CT 06067.

16. At all times hereinafter mentioned, ATEGRITY SPECIALTY INSURANCE COMPANY was and is a foreign corporation duly organized and existing under and by virtue of the laws of Arizona, having its principal place of business at 15990 N. Greenway-Hayden Loop, Suite D-160, Scottsdale, AZ 85260.

17. At all times hereinafter mentioned, ALLIED WORLD NATIONAL ASSURANCE COMPANY was and is a domestic corporation duly organized and existing under and by virtue of the laws of New York, having its principal place of business at 199 Water Street 24th and 29th Floors New York, NY 10038.

18. At all times hereinafter mentioned, EVANSTON INSURANCE COMPANY was and is a foreign corporation duly organized and existing under and by virtue of the laws of Illinois, having its principal place of business at Ten Parkway North, Deerfield, Illinois 60015.

19. At all times hereinafter mentioned, PICC PROPERTY AND CASUALTY COMPANY LIMITED was and is a foreign corporation duly organized and existing under and by virtue of the laws of China, having its principal place of business at China Renbao Caixian Building Bldg 2 Yard 2 Jianguomenwai St Beijing, 100022 China.

20. At all times hereinafter mentioned, STARR SPECIALTY LINES INSURANCE AGENCY was and is a foreign corporation duly organized and existing under and by virtue of the laws of Texas, having its principal place of business at 399 Park Avenue 8th Floor New York, NY 10022.

21. At all times hereinafter mentioned, INTERSTATE FIRE & CASUALTY COMPANY LIMITED was and is a foreign corporation duly organized and existing under and by

virtue of the laws of Illinois, having its principal place of business at 33 West Monroe Street, Chicago, IL 60603.

THE NOVEL CORONAVIRUS AND ITS EFFECTS

22. It is beyond cavil that the world is currently experiencing a global pandemic from a disease caused by a novel coronavirus (specifically, SARS-COV-2) and commonly referred to as Covid-19.

23. From at least as early as December 2019, Covid-19 began spreading, first in China and then, because the disease is highly contagious, rapidly around the globe.

24. On January 30, 2020, the World Health Organization (WHO) declared the Covid-19 outbreak constituted a public health emergency of international concern.

25. Not only is SARS-COV-2 transmitted via human-to-human, but the WHO and scientific studies have confirmed that the virus can remain infectious on objects or surfaces.

26. According to a study documented in the New England Journal of Medicine, Covid-19 was detectable in aerosols for up to 3 hours, up to 4 hours on copper, up to 24 hours on cardboard, and up to 3 days on plastic and stainless steel.¹

27. Indeed, scientific studies suggest that individuals could get Covid-19 through indirect contact with surfaces or objects used by an infected person, regardless of whether the infected person was symptomatic.

28. All of these materials are used and found throughout Plaintiff's stores.

29. By February 25, 2020, the Center for Disease Control ("CDC") warned Americans that the world was on the brink of a global pandemic, effectively dismantling any notion that SARS-COV-2 would not affect the population of the United States.

¹ <https://www.nejm.org/doi/full/10.1056/nejmc2004973>

30. From that point forward, COVID-19 and its damaging consequences received wide spread media attention.

31. As a result of this outbreak the Center for Disease Control began recommending that individuals stay at home and those who are not sick engage in preventive measures such as constant hand washing and the avoidance of activities that would bring them into close proximity of people or surfaces where the virus resides.

32. Given the nature of the Plaintiff's business, the spread of the Covid-19 virus led to significant economic damages.

33. These damages resulted from damage to and from within the Plaintiff's insured premises as well as from premises within the vicinity of the various insured locations.

34. Such damage both existed on surfaces found within the Plaintiff's locations, surrounding premises, as well as in the breathable air circulating within the Plaintiff's locations and surrounding premises.

35. Scientific studies suggest that the virus may remain active on surfaces for times varying from hours to days.

36. Civil authority orders began to be issued by various states and localities where Plaintiff maintains its stores, all of which required those properties to close its doors to the public.

A non-exhaustive list of these orders is presented in **Exhibit "A"** hereto.

37. The basis of these orders were all predicated, in part, on the effect of the presence of SARS-COV2.

38. For example, the following relevant orders were issued by authorities in localities where R&F operated its retail locations:

WHEREAS, on March 7, 2020, New York State Governor Andrew Cuomo declared a State disaster emergency for the entire State of New York to

address the threat that COVID-19 poses to the health and welfare of New York residents and visitors; and

...

WHEREAS, 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 loss and damage; and

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

...

Any large gathering or event for which attendance is anticipated to be in excess of fifty people, or in excess of any number established as the maximum number permitted by an order of the Governor issued pursuant to his powers under section 29-a of the Executive Law, is cancelled or postponed.

Each employer shall reduce the in-person workforce at any work locations by 50% no later than March 20, 2020 at 8:00 p.m., and shall further reduce its in-person workforce to the extent required by any order of the Governor issued pursuant to his powers under section 29-a of the Executive Law.

New York City Emergency Executive Order Nos. 100, 102

WHEREAS, on March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency; and

...

WHEREAS, on March 16, 2020, the Governor of Pennsylvania announced that the Commonwealth of Pennsylvania is imposing mitigation efforts to curtail the spread of COVID-19 uniformly across the Commonwealth, calling upon nonessential businesses (excluding business such as grocery stores and medical facilities) to close beginning at midnight Tuesday March 17, 2020; and

WHEREAS, COVID-19 is easily transmitted, especially in group settings, including by people with no symptoms or mild symptoms who may unknowingly spread the disease to others; and

WHEREAS, COVID-19 may remain viable for hours to days on surfaces made from a variety of materials located in businesses and other places, thus contaminating certain property and places; and

...

NOW, THEREFORE, James F. Kenney, Mayor of the City of Philadelphia, and Dr. Thomas A. Farley, Health Commissioner of the City of Philadelphia, pursuant to all authority granted under the Philadelphia Home Rule Charter, The Philadelphia Code and the Regulations of the Board of Health of the City of Philadelphia, hereby ORDER as follows:

Section 1. Prohibition on Operation of Non-Essential Businesses in Philadelphia

A. No person or entity shall operate a non-essential place of business.

Philadelphia Mayoral Order dated March 17, 2020 (emphasis added).

39. As a result of these and similar orders, all of which further evidenced the physical loss or damage being suffered by R&F, Plaintiff suffered economic damages by way of lost income.

THE PLAINTIFF'S INSURANCE POLICY AND CLAIM

40. The commencement of this lawsuit resulted from a breach of Plaintiff's insurance contract arising from the failure of the Defendant carriers to provide any payments to Plaintiff for its losses resulting from the global pandemic commonly referred to as coronavirus, beginning on or about March 15, 2020.

41. On or about April 1, 2019, for good and valuable consideration, Plaintiff procured a layered program of property insurance with a collective limit of liability in the amount of \$150 million.

42. The policies of insurance issued by each Defendant Insurer are specified on **Exhibit "B"** attached hereto (the "Relevant Policies").

43. The Relevant Policies provide coverage for, *inter alia*, physical loss or damage, as well as losses of income due to business interruption.

44. Each of the Relevant Policies bear effective dates from April 1, 2019 to April 1, 2020.

45. The Relevant Policies, as part of a layered program of insurance, contain generally consistent terms, with most policies agreeing to conform to the terms of the policy of insurance issued by Defendant Starr, notwithstanding anything to the contrary otherwise stated within a particular policy.

46. Each of the Relevant Policies is an “all risks” policy, meaning that a loss is covered unless a specific exclusion listed in the policy precludes coverage.

47. Without limiting the generality of the foregoing, the Relevant Policies further provide specific coverage grants provided by the Relevant Policies, including both coverage for physical loss or damage to property as well as business interruption.

48. Specifically, the Relevant Policies state:

1. PERILS INSURED AGAINST

This **Policy** insures against all risk of direct physical loss, damage or destruction to property described herein occurring during the term of insurance, except as hereinafter excluded.

...

B. Business Interruption

(1) Loss resulting from necessary interruption of business conducted by the **Insured**, whether total or partial, and caused by direct physical loss, damage, or destruction insured herein during the term of this **Policy** to real and personal property...

...

49. The Relevant Policies also include Business Interruption Time Element Extensions

which state:

G. Time Element Extensions

(2) This **Policy** insures against **Time Element** loss resulting from:

(a) **Interruption by Civil or Military Authority:**

An interruption of business, whether total or partial, during the period of time when, in connection with or following a peril insured against, access to real or personal property is impaired by order or action of civil or military authority.

(b) **Ingress/Egress:**

An interruption of business, whether total or partial, during the period of time when, in connection with or following a peril insured against, ingress to or egress from real or personal property is impaired.

50. No exclusion contained in the Relevant Policies is applicable to the dispute set forth herein.

51. As a result of the Covid-19 pandemic and the civil authority orders that flowed therefrom, Plaintiff experienced a loss in revenue, amongst other losses.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Breach of Contract)

52. Plaintiff repeats and re-alleges paragraphs “1” through “56”, with the same force and effect as if set forth at length herein.

53. The Relevant Policies constituted binding contracts between Plaintiff R&F on the one hand and the Defendant Insurers on the others.

54. Plaintiff complied with all of its obligations under the Relevant Policies, including through timely notification of a loss and the filing of a Sworn Statement in Partial Proof of Loss.

55. To date, the Defendant Insurers have failed to compensate Plaintiff in full for its losses with regard to the Sworn Statement in Partial Proof of Loss submitted to the Defendant Insurers on or about June 29, 2020.

56. Defendant Insurers failure to compensate Plaintiff for its loss constitutes a breach of the Relevant Policies.

57. As a result of the Defendant Insurers' breach of the Relevant Policies, Plaintiff has suffered damages in the amount of \$44,890,533.00 through May 2020, as well as ongoing economic damages.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) On the First Cause of Action, a money judgment against each defendant in the amount of its proportional share of the loss, totaling \$44,890,533.00, plus such additional amounts as may be proven at trial for the same loss;
- (b) Reasonable fees and costs of this action; and
- (c) For such other and further relief as to which this Court deems just and proper.

Dated: New York, New York
October 9, 2020

Yours, etc.,

WEG AND MYERS, P.C.
Attorneys for Plaintiff

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