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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THOR EQUITIES, LLC,	:	Civil Action No.: 20-cv-3380
	:	
	:	<u>COMPLAINT</u>
Plaintiff,	:	
v.	:	<u>JURY TRIAL DEMANDED</u>
	:	
FACTORY MUTUAL INSURANCE COMPANY,	:	
	:	
Defendant.	:	

Plaintiff Thor Equities, LLC (“Thor”), by and through its undersigned attorneys, as and for its Complaint against Factory Mutual Insurance Company (“FM”), alleges as follows:

INTRODUCTION

1. This diversity action for anticipatory breach of contract and declaratory judgment arises out of Thor’s pursuit of—and FM’s failure to provide—insurance coverage for its significant losses arising out of the novel coronavirus outbreak.

2. Thor owns commercial real estate in many of the largest cities in the United States and around the world, and, like virtually every individual or business, it has not been spared by the current pandemic.

3. Fortunately, Thor purchased commercial property insurance from FM in the form of Mutual Corporation Non-Assessable Policy No. 1063282 (the “Policy,” attached hereto as

Exhibit A). In exchange for a significant premium, the Policy provides up to \$750 million in coverage for property damage as well as all manner of business interruption losses Thor could experience. Naturally, the Policy provides coverage for loss of rental income, but in addition to that coverage, the Policy also includes coverage for:

- Loss caused by restriction of access to property, including specifically if caused by an order issued by a civil authority;
- Loss caused by loss or damage to property experienced by Thor's customers or suppliers;
- Loss caused by loss or damage to property near Thor's insured locations that attracts business to Thor's properties;
- Loss caused by delay in startup to properties under construction;
- Loss caused by the actual not suspected presence of communicable disease; and
- Extra expenses incurred to continue business as nearly normal as practicable

4. Thor has experienced losses that fall within all of these coverages. Certain tenants have not paid rent to Thor since they have been shuttered by state and city executive orders deeming the tenants' businesses as "non-essential" during the outbreak. Customers and suppliers have been affected by stay-at-home orders. Thor's hotels and other properties have been affected by the closure of all attraction properties and the virtual disappearance of travel. Several of Thor's construction projects have been shut down.

5. Thor has had the confirmed presence of coronavirus at several of its properties.

6. Based on the preliminary information available to it and its discussions to date with its tenants, Thor expects to suffer at least \$20 million in lost rental income as well as other loss and costs in connection with the coronavirus outbreak. Depending on how long the conditions caused by the outbreak last, those losses could increase substantially.

7. Thor promptly made a claim for coverage for those losses under the Policy.

However, in this time of crisis, FM has not paid any funds to Thor to date, and its response to

date has been merely to indicate it will only consider coverage under the Policy's specific coverages for communicable diseases, which is limited by a sublimit far lower than Thor's expected losses, notwithstanding the fact that Thor has made clear it is making its claim under other applicable coverages that are clearly triggered by the current situation.

8. Based on that response, Thor has a reasonable belief that FM will not honor its contractual obligations to Thor under the Policy, and Thor brings this action for anticipatory breach of contract and declaratory judgment that it is entitled to the full amount of coverage it paid substantial premiums for and badly needs.

THE PARTIES

9. Plaintiff Thor Equities, LLC, is a limited liability company organized under the laws of Delaware, with its principal place of business in New York, New York. The sole members of Thor are Joseph J. Sitt and Betty Sitt, both of whom are New York citizens.

10. Upon information and belief, Defendant Factory Mutual Insurance Company is a company formed under the laws of Rhode Island with its principal place of business in Johnston, Rhode Island. Upon information and belief, at all relevant times hereto, FM was authorized to underwrite insurance policies covering risks in the State of New York. Upon information and belief, FM has, at all relevant times, conducted business in the State of New York, including engaging in the business of selling insurance and investigating claims dealing with policyholders, property, or activities located in the State of New York.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties to this action and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

12. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

I. The Coronavirus Outbreak and Thor's Losses

13. Thor owns commercial properties across the United States and around the world, renting those properties to hundreds of tenants that use the properties for all manner of businesses including office space, retail stores (including many of the largest retail chains in the country), restaurants, and bars.

14. From the first reported case in the United States in January 2020 to the present, the impact of the coronavirus has been staggering. More than 1,000,000 Americans have had confirmed cases of COVID-19, and more than 60,000 have died.

15. State and local governments have taken drastic actions in an effort to stem the tide of the disease. On March 20, 2020, Illinois Governor J.B. Pritzker signed a statewide stay-at-home order that also ordered all non-essential business and operations to cease.

16. On March 21, 2020, New Jersey Governor Philip Murphy issued Executive Order No. 107, directing all residents to stay at home unless for certain essential activities, and specifically closing “[t]he brick-and-mortar premises of all non-essential businesses.”

17. On March 22, 2020, New York Governor Andrew Cuomo issued the “New York State on PAUSE” executive order, ordering the closure of all non-essential businesses and prohibiting non-essential gatherings. On April 16, Governor Cuomo extended the order through May 15, 2020, meaning it will be in place, even if not extended further, for more than fifty days. Similar executive orders have been issued by state and municipal governments across the country.

18. Many of the brick-and-mortar business premises that Thor owns and rents have been shuttered by these various stay-at-home orders. Many of these properties are commercial real estate in some of the country’s largest and most expensive markets such as New York City

and Chicago. At the same time as these orders went into effect, many of Thor's tenants, unable to generate revenue, contacted Thor to inform it they could not pay their rent and to request abatements and/or other accommodations. As a result, Thor has suffered and will continue to suffer significant business interruption.

19. Thor has had confirmed cases of COVID-19 at multiple properties and has had to take action to secure and preserve those properties, and as of the filing of this Complaint it has estimated that it will lose in excess of \$20 million in rental income alone. These losses are ongoing and could increase substantially depending on the length and ultimate severity of the outbreak and the government response.

II. The FM Policy

20. Thor owns many subsidiaries that directly own the properties listed in Appendix A of the Policy, the "Schedule of Locations," all of which are insured under the Policy. FM issued the Policy to Thor "and any subsidiary, and Thor Equities, LLC interest in any partnership or joint venture in which Thor Equities, LLC has management control or ownership as now constituted or hereafter is acquired" for the policy period March 15, 2020 to March 15, 2021. *See Ex. A at p. 10 of 92.*¹

21. To the extent any of Thor's losses are deemed to have taken place prior to March 15, 2020, Thor was insured in the prior year under a policy also issued by FM with materially identical terms and conditions. Thor seeks coverage under that policy, Mutual Corporation Non-Assessable Policy No. 1050440 with the policy period of March 15, 2019 to March 15, 2020, for any such losses.

¹ As the Policy is not consecutively paginated, citations to the Policy are to the page numbers of the PDF document attached as Exhibit A.

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