

20-107  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
HERALD TOWERS LLC.,

Plaintiff,

-against-

AFFILIATED FM INSURANCE COMPANY.,

Defendant.  
-----X

Index No.:  
**SUMMONS**  
The Plaintiffs designate New York County as the place of trial.  
The basis of venue is Plaintiff's principal place of business:  
50 West 34th Street, NY, NY

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  
September 2, 2020

Defendant's address:

270 Central Avenue  
Johnston, RI 02919

**WEG AND MYERS, P.C.**  
*Attorneys for Plaintiff*  
Federal Plaza  
52 Duane Street, 2<sup>nd</sup> Floor  
New York, New York 10007  
(212) 227-4210

20-107  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
HERALD TOWERS LLC.,

Index No.

Plaintiff,

**COMPLAINT**

-against-

AFFILIATED FM INSURANCE COMPANY.,

Defendant.

-----X

Plaintiff, HERALD TOWERS LLC. (hereinafter referred to as “Plaintiff” or “Herald”), by its attorneys WEG AND MYERS, P.C., as for its Complaint herein alleges as follows:

**INTRODUCTION**

1. Plaintiff Herald Towers LLC is a retail shopping and apartment complex located in the middle of Midtown Manhattan.
2. Formerly known as Hotel McAlpin, Herald Towers was the largest hotel in the world when it was constructed in 1912 and is famously known as the residence where Jackie Robinson received the call to join the Brooklyn Dodgers in 1947.
3. Herald Towers is 25 stories high, with 102,912 square feet of retail space and over a millions square feet of apartment space, the latter of which is subdivided into 690 luxury rental homes.
4. Like most property owners, out of concern for the general possibility of unforeseen loss, Plaintiff procured insurance in order to protect its assets against fortuitous losses.

5. Specifically, Plaintiff procured an “all risk” insurance policy sold by Affiliated FM Insurance Company that was in full force and effect when the Covid-19 pandemic swept through the nation.

6. The Covid-19 pandemic has caused physical loss or damage to high volume commercial residential and retail businesses.

7. In particular, in response to the damage being inflicted and to protect the public from further exposure to infected areas, New York State and New York City both issued “stay at home” orders which prohibited the Plaintiff’s tenants from continuing their retail business operations.

8. When the retail tenants were forced to close their doors, they stopped paying rent causing a substantial loss to the Plaintiff.

9. Plaintiff fully expected that, in light of the all-encompassing all-risk policy of insurance, Defendant would be responsive to their insurance claim.

10. Defendant’s failure to provide Plaintiff with coverages for losses sustained due to the outbreak of Covid-19 has forced Plaintiff to bring this litigation.

### **PARTIES**

11. At all times hereinafter mentioned, Herald 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 50 West 34th Street, New York, New York.

12. At all times hereinafter mentioned, Defendant AFFILIATED FM INSURANCE COMPANY (hereinafter referred to as “Defendant” or “Affiliated”) was and is a foreign corporation organized and existing under and by virtue of the laws of Rhode Island, having its principal place of business at 270 Central Avenue, Johnston, Rhode Island.

**FACTS RELEVANT TO ALL CAUSES OF ACTION**

13. This is an action for breach of insurance contract arising from the failure of Affiliated to provide payment to Plaintiff for its losses resulting from the global pandemic commonly referred to as coronavirus or Covid-19 beginning in or about March 20, 2020.

14. On or about March 1, 2020, for good and valuable consideration, Plaintiff procured a policy of insurance from Affiliated (the "Subject Policy") bearing policy number 1062700.

15. The Subject Policy provides coverage for, *inter alia*, physical loss or damage, as well as losses of income due to business interruption.

16. The Subject Policy bears effective dates from March 1, 2020 to March 1, 2021.

17. The Subject Policy was in full force and effect as of March 20, 2020, and remains in full force and effect through the filing date of this Complaint.

18. The insuring clause of the Subject Policy provides in relevant part:

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy.

19. The Subject Policy further provides coverage for losses resulting from interruption to Plaintiff's business, specifically:

This **Policy** includes **Business Interruption** coverage including:

(a) Gross Earnings

The recoverable Gross Earnings loss is the actual loss sustained by the Insured of Gross Earnings, less all charges and expenses that do not necessarily continue, plus all other earnings derived from the operations of the business, excluding loss covered under Rental Income, during the Period of Liability.

(b) Gross Profits

The recoverable Gross Profits loss is the actual loss sustained by the insured of the reduction in sales; and the increased cost of doing business, resulting from the necessary interruption of business during the period of liability.

(c) Rental Income

The recoverable Rental Income loss is the actual loss sustained by the Insured during the Period of Liability, including the fair rental value of any portion of the property occupied by the Insured, income reasonably expected from the rentals of unoccupied or unrented portions of such property, and the rental income from the rented portions of such property, according to bona fide leases, contracts or agreements in force at the time of loss.

20. The Subject Policy also includes coverage extensions losses suffered as a result of orders issued by civil or military authority, specifically:

(d) Civil or Military Authority:

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a location provided such order is the direct result of physical damage of the type insured at a location or within five (5) statute miles of it.

21. The Subject Policy further provides coverage extensions in the event that the property covered by the Subject Policy is exposed to a communicable disease and subject to governmental restrictions as a result thereof, specifically:

(e) Communicable Disease

If a described location owned, leased or rented by the Insured has the actual not suspected presence of communicable disease and access to such described location is limited, restricted or prohibited by an

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