

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

GR OPCO, LLC; and  
ELEVATED EATERIES OF MIAMI, LLC;

*Plaintiffs,*

v.

CHUBB LIMITED; and  
WESTCHESTER SURPLUS LINES  
INSURANCE COMPANY,

*Defendants.*

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs GR OPCO, LLC (“GR OPCO”), and Elevated Eateries of Miami, LLC (“Elevated Eateries”), hereby file this action against insurer Defendants Chubb Limited and Westchester Surplus Lines Insurance, and allege as follows.

**NATURE OF ACTION**

1. This is an action to hold Defendant Chubb—the world’s largest publicly traded insurance company—accountable for breaching its contractual obligations to a policyholder.

2. Plaintiffs are the owners and operators of E11EVEN, a nightclub located in Miami, Florida, and E11EVEN’s rooftop restaurant. In February 2020, when the COVID-19 pandemic was beginning to spread across the globe, Plaintiffs purchased a so-called “all risk” property insurance policy from Defendants. The all-risk policy included coverage for interruptions in Plaintiffs’ business operations. Notably, unlike Plaintiffs’ prior insurance policy with Chubb, this new policy *did not* contain any exclusion for viruses or pandemics. Plaintiffs obtained a policy without that exclusion to ensure coverage related to the emerging pandemic.

3. In March 2020, as the COVID-19 pandemic reached the United States and specifically Florida, the State of Florida and Miami-Dade County authorities issued emergency orders closing and restricting public access to all “non-essential” businesses—including E11EVEN. These closure orders were devastating to Plaintiffs’ business, suspending their business operations for an extended period of time and cutting off all of their revenues.

4. Plaintiffs filed an insurance claim seeking reimbursement of their substantial losses under their newly-purchased policy, which provided coverage for this very situation. Defendants, however, have breached the policy and outright denied the claim.

5. The COVID-19 pandemic has thus laid bare the Defendants’ business model: to collect premiums from those purchasing “all-risk” policies, but then refuse to comply with their obligations when presented with covered claims from policy-holders facing debilitating business interruption. Defendants view these policies as one-sided contracts. They are not.

6. Accordingly, Plaintiffs bring this action to vindicate their rights, seeking a declaratory judgment and bringing a claim for breach of contract to enforce their all-risk policy.

### **PARTIES**

7. Plaintiff GR OPCO is a Florida limited liability company organized to do business and doing business at 1112 N. Miami Avenue, in Miami, Florida. It is the owner and operator of E11EVEN, a nightclub located at 29 NE 11th Street in Miami, Florida. All of Plaintiff GR OPCO’s members are either Florida or Nevada domiciliaries and citizens of Florida for diversity purposes.

8. Plaintiff Elevated Eateries is a Florida limited liability company organized to do business and doing business at 15 NE 11th Street in Miami, Florida. It is the owner and operator of E11EVEN’s rooftop restaurant. This Complaint will refer to E11EVEN and its rooftop

restaurant collectively as “the Establishment” or as Plaintiffs’ businesses. All of Elevated Eateries’ members are either Florida or Nevada domiciliaries and citizens of Florida for diversity purposes.

9. Defendant Westchester Surplus Lines Insurance Company (“Westchester”) is a Georgia corporation with its principal place of business in the state of Georgia. Westchester is the Issuer of the insurance Policy that Defendants have breached.

10. Defendant Chubb Limited (“Chubb”) is Westchester’s parent company. It is a publicly traded corporation organized under the laws of Switzerland. Chubb has several duties and responsibilities under the Policy. By the terms of the Policy, Chubb is responsible for important administrative functions including responding to policyholder questions, handling claims, and receiving service of process.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332. There is complete diversity between Plaintiffs and Defendants and the amount in controversy exceeds \$75,000.

12. Venue is proper in this district under 28 U.S.C. § 1391(b)(2). A substantial part of the events and omissions giving rise to the claims occurred here. The property subject to this action is situated here. And Defendant Chubb can be found in this district. Chubb has a branch office located at 9130 South Dadeland Boulevard, Miami, Florida.

13. This Court has personal jurisdiction over both Defendants under Florida Statutes § 48.193(1)(a) and (2). Defendants engage in substantial and not isolated activity in Florida. Plaintiffs’ claims arise out of Defendants’ business activities in Florida. Specifically, Defendants regularly solicit business from Florida customers and maintain an office in Miami for that purpose. This business includes marketing in Florida and intentionally developing relationships with

brokers, agents, and customers to insure property within the State. The insurance policy at issue in this case was solicited, negotiated, and executed in Florida. The insured property is in Florida. Defendants breached the policy by failing to perform acts in Florida. And the effects of this breach are felt in Florida. Accordingly, Defendants have purposefully availed themselves of the protection of Florida's laws to conduct the business at issue in this suit and it would not offend traditional notions of fair play and substantial justice for them to defend the suit here.

### **FACTUAL BACKGROUND**

#### ***The Insurance Policy***

14. In the first quarter of 2020, Plaintiffs insured the Establishment and the income from its operations by purchasing a property insurance policy ("the Policy") from Defendant Chubb, through its subsidiary Westchester. The Policy bears the policy number D42301863 001, and provided coverage from February 28, 2020 to February 28, 2021. The Policy is attached as "**Exhibit 1**" to this Complaint.

15. Westchester issued the Policy and Chubb is responsible for administering it, including by responding to policyholder questions, handling claims, and receiving service of process related to the Policy.

16. Pursuant to the Policy, Plaintiffs paid monthly premiums to Defendants in exchange for Defendants' promises of coverage.

17. The Policy is what is known as an "all-risks" commercial property insurance policy. The defining feature of an "all-risks" policy is that it covers all risks of loss unless they are specifically excluded.

18. Additionally, the Policy provides for coverage of certain enumerated "Covered Causes of Loss." These explicitly covered losses include losses due to "Business Interruption,"

“Extra Expense,” and “Civil Authority Coverage.” The “Business Interruption” provisions cover loss of business income due to a suspension of business operations. “Extra Expense” coverage requires Defendants to cover Plaintiffs’ expenses incurred in connection with Plaintiffs’ efforts to mitigate their business interruption losses. And “Civil Authority Coverage” explicitly insures against business interruptions caused by the actions of civil authorities that prevent access to or use of Plaintiffs’ business.

19. Notably, the Policy consists of a collection of standardized forms drafted by the Insurance Services Office (“ISO”), an advisory organization that serves the insurance industry.

20. It is a common practice within the insurance industry, and with Defendants in particular, to build insurance policies using a collection of ISO forms.

21. There exists a standard ISO form that modifies commercial property insurance coverage to exclude “loss due to virus or bacteria.” It is form CP 01 40 07 06 (the “Virus Exclusion Form”) and is attached to this Complaint as “**Exhibit 2.**” If it had been included as part of the Policy, it would have excluded “loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease” from coverage for “property damage to buildings or personal property” and from coverage for “business income, extra expense or action of civil authority.”

22. But the Parties **did not** include the Virus Exclusion Form as part of the Policy. Accordingly, coverage for loss of business income, extra expenses, and actions of civil authorities caused by viruses are not excluded—and instead are included—as part of the Parties’ bargain.

23. The Parties’ decision not to include the Virus Exclusion Form as part of the Policy was not by oversight or by accident. The previous version of Plaintiffs’ policy—effective February 28, 2019 to February 28, 2020—**did** include this form exclusion. But as Plaintiffs sought to renew

their insurance coverage and with news of that the Covid-19 virus was beginning to spread throughout the world, Plaintiffs opted to ensure that they were covered in the event that the virus impacted their business. For this coverage, the Plaintiffs paid a higher premium than they would have if the Virus Exclusion Form had been included in the Policy.

***Defendants' Breach***

24. Plaintiffs paid their premiums and performed their obligations under the Policy. But when Plaintiffs turned to Defendants to honor their end of the bargain, Defendants declined.

25. In March of 2020, Plaintiffs experienced a severe (and ongoing) business interruption when they were forced to close the Establishment's doors due to COVID-19.

26. Plaintiffs had to close their doors due to the physical presence of the COVID-19 virus as well as actions by relevant Civil Authorities that prohibited access to and use of the establishment in response to these dangerous physical conditions. These Civil Authorities include the State of Florida, Miami-Dade County, and the City of Miami. As a result, Plaintiffs have incurred significant losses and ongoing expenses covered by the Policy.

27. As a result of the presence of COVID-19, Plaintiffs have experienced a suspension of business operations, loss of business income, and incurred extra expenses within the meaning of the Policy.

28. As a result of the Civil Authority actions referenced above, Plaintiffs have experienced a suspension of business operations, loss of business income, and incurred extra expenses.

29. These losses have continued through the date of the filing of this action. As of the date of filing, the Plaintiffs' businesses remain closed.

30. These losses are covered under the Policy. Nevertheless, when Plaintiffs made their claim, Defendants breached their contract and refused to pay. A copy of Defendants' letter denying Plaintiffs claim is attached to this Complaint as "**Exhibit 3.**"

31. Indeed, Defendant Chubb has taken a blanket position that none of its thousands of policies cover claims related to COVID-19, and its premium-paying insureds are accordingly on their own.

32. As a result of Defendants' breach, Plaintiffs have suffered damages greater than the \$75,000 jurisdictional threshold applicable to diversity actions before this Court.

### **COUNT I – DECLARATORY JUDGMENT**

33. Plaintiffs incorporates paragraphs 1–32 of their Complaint into this count as if set forth fully herein.

34. Plaintiffs Policy is an insurance contract pursuant to which Plaintiffs paid premiums to Defendants in exchange for promised insurance coverage.

35. Through the Policy, Defendants agreed to pay Plaintiffs' losses of business income sustained as a result of perils not excluded under the Policy. Additionally, Defendants promised to pay for losses of business income sustained due to a suspension of business operations, the actions of civil authorities that barred access to and use of the businesses, and extra expenses incurred to mitigate these losses.

36. The State of Florida, Miami-Dade County, and the City of Miami have taken actions as civil authorities within the meaning of the Policy to bar access to and use of the businesses, and Plaintiffs have incurred extra expenses to mitigate these losses.

37. COVID-19 caused direct physical loss and damage to Plaintiffs' premises, resulting in the suspension of business operations and the incurring of extra expenses covered by the policy.

38. Plaintiffs have complied with all of their obligations under the Policy.

39. Plaintiffs have made a claim for payment under the policy but were denied without adequate justification.

40. Defendants maintain that Plaintiffs' losses are not covered by the Policy.

41. Plaintiffs seek a Declaratory Judgment that the Policy provides coverage of the losses Plaintiffs have sustained.

42. An actual case or controversy exists as to this dispute because Defendants continue to refuse to honor the Policy.

WHEREFORE, Plaintiffs ask the Court to enter a Declaratory Judgment that the Policy covers Plaintiffs' claimed losses.

### **COUNT II – BREACH OF CONTRACT**

43. Plaintiff incorporates paragraphs 1–32 of this Complaint into this count as if set forth fully herein.

44. Plaintiffs' Policy is an insurance contract pursuant to which Plaintiffs paid premiums to Defendants in exchange for promised insurance coverage.

45. Through the Policy, Defendants agreed to pay Plaintiffs' losses of business income sustained as a result of perils not excluded under the Policy. Additionally, Defendants promised to pay for losses of business income sustained due to a suspension of business operations, the actions of civil authorities that barred access to and use of the businesses, and extra expenses incurred to mitigate these losses.

46. The State of Florida, Miami-Dade County, and the City of Miami have taken actions as civil authorities within the meaning of the Policy to bar access to and use of the businesses, and Plaintiffs have incurred extra expenses to mitigate these losses.



47. COVID-19 caused direct physical loss and damage to Plaintiffs' premises, resulting in the suspension of business operations and the incurring of extra expenses covered by the policy.

48. Plaintiffs have complied with all of their obligations under the Policy.

49. Plaintiffs have made a claim for payment under the policy but were denied without adequate justification.

50. As a result, Plaintiffs have suffered actual and substantial damages for which Defendants are liable.

WHEREFORE, Plaintiffs seek compensatory damages resulting from Defendants' breach of the Policy and seek all other relief deemed appropriate by this Court, including attorneys' fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

- A. Enter declaratory judgment on Count I in favor of Plaintiffs and against Defendants, stating that Plaintiffs' losses are covered under the Policy.
- B. Enter judgment on Count II in favor of Plaintiffs and against Defendants, awarding damages for breach of contract in an amount to be determined at trial.
- C. Enter judgment for both pre-and post-judgment interest on any amounts awarded.
- D. Enter judgment for costs and attorneys' fees in Plaintiffs' favor.
- E. Such other relief as may be appropriate.

**JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury on all claims so triable.

Dated: August 31, 2020

Respectfully submitted,

**MARCUS NEIMAN RASHBAUM  
& PINEIRO LLP**

*/s/ Jeffrey Neiman*

**Jeffrey Neiman**

Florida Bar. No. 544469

jneiman@mnrlawfirm.com

**Michael Pineiro**

Florida Bar No. 41897

mpineiro@mnrlawfirm.com

**Derick Vollrath**

Florida Bar No. 126740

dvollrath@mnrlawfirm.com

100 Southeast Third Avenue

Suite 805

Fort Lauderdale, FL 33394

Telephone: (954) 462-1200

Facsimile: (954) 688-2492

*Counsel for Plaintiffs*