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RL NEW BRUNSWICK OWNER, LLC  
Plaintiff

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MIDDLESEX COUNTY

-against-

DOCKET NO.:

ZURICH AMERICAN INSURANCE  
COMPANY  
Defendant

CIVIL ACTION

**COMPLAINT AND  
JURY TRIAL DEMAND**

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Plaintiff, RL NEW BRUNSWICK OWNER, LLC, by and through its attorneys Lerner, Arnold & Winston, LLP, as and for their Complaint and Jury Trial Demand, respectfully alleges upon information and belief as follows:

**PARTIES AND JURISDICTION**

1. At all times hereinafter mentioned, Plaintiff, RL NEW BRUNSWICK OWNER, LLC (hereinafter referred to as "Plaintiff"), was and still is a limited liability company organized under the laws of the State of New Jersey.

2. At all times hereinafter mentioned, Defendant, ZURICH AMERICAN INSURANCE COMPANY (hereinafter referred to as "Defendant"), was and still is a corporation organized under the laws of the State of New York, duly authorized and licensed to transact insurance business in the State of New Jersey, with its principal place of business in the State of Illinois.

3. Defendant regularly conducted business, had offices, and/or maintained agents for the transaction of its customary business in Middlesex County, New Jersey.

4. At all times hereinafter mentioned, Defendant was and still is authorized by the New Jersey Department of Banking and Insurance to issue policies of insurance within the State of New Jersey.

5. At all times hereinafter mentioned, Defendant did and still does transact business within the State of New Jersey, including but not limited to the issuance of insurance policies within the State of New Jersey.

#### **VENUE**

6. Middlesex County is an appropriate venue for this action pursuant to N.J. Court Rules, Rule 4:3-2.

7. In particular, Plaintiff owns property in Middlesex County a located at 750 Highway 18 North, East Brunswick, New Jersey 08721 (hereinafter referred to as the "Subject Property").

#### **BACKGROUND FACTS RELEVANT TO ALL CAUSES OF ACTION**

8. At all times hereinafter mentioned, Plaintiff was the owner of the Subject Property.

9. At all times hereinafter mentioned, Plaintiff possessed an insurable interest in the Subject Property.

10. Prior to August 5, 2022, the Subject Property was leased to Red Lobster Restaurants, LLC (hereinafter referred to as "Red Lobster").

11. Pursuant to the terms of the lease, Red Lobster was required to maintain a policy of insurance covering the Subject Property.

12. The lease further required that Plaintiff be named as a loss payee under the required insurance policy.

13. Red Lobster obtained an insurance policy from Defendant which provided coverage for direct physical loss to the Subject Property (hereinafter referred to as the “Subject Insurance Policy”).

14. The Subject Insurance Policy Plaintiff was assigned policy number PPR 0176332-07.

15. The Subject Insurance Policy ran from November 1, 2021 through November 1, 2022.

16. The Subject Insurance Policy provided coverage for damage to the property up to the total insurable value of \$6,774,326.

17. Plaintiff was listed as a loss payee in the Subject Insurance Policy.

18. It was the intention of the Defendant and Red Lobster that Plaintiff be a third party beneficiary to the insurance policy.

19. On August 5, 2022, the Subject Insurance Policy was in full force and effect.

20. On August 5, 2022, the Subject Property was damaged as a result of fire.

21. Fire is a covered cause of loss under the Subject Insurance Policy.

22. No exclusions applied to the loss.

23. Red Lobster submitted an insurance claim to Defendant as a result of the damage to the Subject Property.

24. The damage caused extensive damage to the Subject Property and the cost to repair the same was in excess of \$1,000,000.

25. On or about November 15, 2022, Defendant issued a check to Red Lobster in the

amount of \$1,000,000 in payment of the insurance claim for the damage to the subject property.

26. On or about May 30, 2023, Defendant issued a second check to Red Lobster in the amount of \$242,411.64 in further payment of the insurance claim for the damage to the subject property.

27. Despite being a Loss Payee on the policy, Plaintiff was not named on either settlement check.

28. Upon information and belief, Red Lobster deposited in the settlement checks into its Wells Fargo bank account, comingling the insurance funds with Red Lobster's other assets.

29. Upon information and belief, around the time the checks were deposited into its account, Red Lobster was experiencing financial difficulties.

30. Ultimately, Red Lobster filed for bankruptcy protection and all of its assets were converted into assets of the bankrupt estate.

31. Red Lobster did not use the insurance settlement proceeds to make the repairs to the Subject Property as required under the lease.

32. Because of the bankruptcy filing, Red Lobster cannot use the insurance settlement proceeds to repair the subject property.

33. Had Plaintiff been named a Loss Payee Plaintiff would have been able to direct that the funds be used only to repair the Subject Property as required under the lease.

34. Due to Defendant's failure to include Plaintiff as a Loss Payee on the settlement check, Red Lobster was able to avoid using the settlement funds to repair the Subject Property.

**FIRST CAUSE OF ACTION AGAINST DEFENDANT**  
**(Breach of Contract)**

35. Plaintiff repeats, reiterates and realleges each and every allegation set forth in preceding paragraphs numbered “1” through “34” inclusive, with the same force and effect as though more fully set forth herein at length.

36. Prior to August 5, 2022, Defendant issued the Subject Insurance Policy to Red Lobster.

37. Plaintiff is a named loss payee within the Subject Insurance Policy.

38. Plaintiff was a third-party beneficiary of the Subject Insurance Policy.

39. Pursuant to the terms of the Subject Insurance Policy Plaintiff was to be named on any settlement checks issued by Defendant in order to ensure that Plaintiff’s property would be repaired following any loss.

40. On or about November 15, 2022, Defendant issued a \$1,000,000 settlement payment to Red Lobster and failed to name Plaintiff on the payment check.

41. On or about May 30, 2023, Defendant issued a \$242,411.64 settlement payment to Red Lobster and failed to name Plaintiff on the payment check.

42. Because Red Lobster comingled the insurance settlement payments with its other assets, the funds from the insurance settlement are now part of the bankrupt estate and are not available to repair the Subject Property.

43. Defendant’s failure to name Plaintiff on the settlement payment checks amounts to a breach of contract.

44. As a result of Defendant’s breach of contract, Plaintiff has been damaged in an amount to be determined by a Middlesex County Jury.

**WHEREFORE**, Plaintiff demands judgment on its First Cause of Action against Defendant for:

- a) Compensatory damages, together with lawful interest;
- b) Consequential damages, together with lawful interest;
- c) Costs of suit and reasonable attorneys' fees; and
- d) For such other and further relief as this Court deems just and proper.

**SECOND CAUSE OF ACTION AGAINST DEFENDANT**  
**(Negligence)**

45. Plaintiff repeats, reiterates and realleges each and every allegation set forth in preceding paragraphs numbered "1" through "44" inclusive, with the same force and effect as though more fully set forth herein at length.

46. Defendant had a duty to act at all times in a commercially reasonable matter with respect to Plaintiff.

47. Defendant issued two insurance settlement checks to Red Lobster totaling \$1,242,411.64.

48. Defendant negligently failed to include Plaintiff as a loss payee on the two settlement checks.

49. In failing to name Plaintiff as a loss payee in addition to Red Lobster, Defendant breached the duty owed to Plaintiff.

50. Plaintiff has suffered damages as a result of its inability to recover the insurance proceeds in order to repair the Subject Property.

51. Plaintiff's damages are a direct result of the above-mentioned negligence by Defendant.

52. The damages Plaintiff was caused to sustain as a result of Defendant's above-mentioned negligence were reasonably foreseeable.

53. The damages sustained by Plaintiff occurred without any fault, negligence, want of care or assumption of risk on the part of Plaintiff contributing thereto.

54. As a result of Defendant's above-mentioned negligence, Plaintiff has been damaged in an amount to be determined by a Middlesex County jury.

**WHEREFORE**, Plaintiff demands judgment on its Second Cause of Action against Defendant for:

- a) Compensatory damages, together with lawful interest;
- b) Consequential damages, together with lawful interest;
- c) Costs of suit and reasonable attorneys' fees; and
- d) For such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff, pursuant to New Jersey Civil Rule 4:35-1, hereby demands a trial by jury as to all issues.

**DESIGNATION OF TRIAL COUNSEL**

Robert T. Trautmann, Esq., of the law firm Lerner, Arnold & Winston, LLP, is hereby designated as trial counsel for Plaintiff in the within action.

Dated: August 1, 2024

/s/ Robert T. Trautmann  
Robert T. Trautmann, Esq.



**CERTIFICATION**

Pursuant to the requirements of New Jersey Civil Rule 4:5-1 (Notice of Other Actions), I, the undersigned, do hereby certify, to the best of my knowledge, information and belief, that, except as hereinafter indicated, the subject of the controversy referred to in the within pleading is not the subject of any other cause of action, pending in any other Court, or of a pending arbitration proceeding, nor is any other cause of action, arbitration proceeding contemplated:

1. OTHER ACTIONS PENDING? . . . Yes \_\_\_\_\_ No X

a. If Yes – Parties to other pending actions (see attachment).

b. In my opinion, the following parties should be joined in the within pending cause of action (see attachment).

2. OTHER ACTIONS CONTEMPLATED? . . . Yes \_\_\_\_\_ No X

If Yes - Parties contemplated to be joined in other causes of action (see attachment).

3. ARBITRATION PROCEEDINGS PENDING? . . . Yes \_\_\_\_\_ No X

a. If Yes - Parties to arbitration proceedings (see attachment).

b. In my opinion, the following parties should be joined in the pending arbitration proceedings (see attachment).

4. OTHER ARBITRATION PROCEEDINGS CONTEMPLATED? . . . Yes \_\_\_\_ No X

If Yes - Parties contemplated to be joined to arbitration proceedings (see attachment). In the event that during the pending of the within cause of action, I shall become aware of any change as to any facts stated herein, I shall file an Amended Certification, and serve a copy thereof on all other parties (or their attorneys) who have appeared in said cause of action.

Dated: August 1, 2024

/s/ Robert T. Trautmann  
Robert T. Trautmann, Esq.