

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BEAZLEY UNDERWRITING, LTD.

Plaintiff,

v.

MAX & MIA REALTY LLC

Defendant.

:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO. 3:22-cv-01404-KM

**ANSWER OF DEFENDANT, MAX & MIA REALTY, LLC TO THE COMPLAINT,
WITH AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendant, Max & Mia Realty, LLC (“MMR”), by and through its undersigned attorneys, hereby submit its Answer with Affirmative Defenses to the Complaint filed in this action by plaintiff, Beazley Underwriting, Ltd. (“Beazley”), along with a Counterclaim:

ANSWER

For its Answer, MMR avers as follows:

“I. NATURE OF THE ACTION”

1. Denied. The allegations in this paragraph seek to summarize the Complaint for Declaratory Judgment (the “Complaint”), which is a document and speaks for itself. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

2. Denied. The allegations in this paragraph seek to summarize the Complaint, which is a document and speaks for itself. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

3. Denied. The allegations in this paragraph seek to summarize the subject policy (the “Policy”), which is a document and speaks for itself. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied. Further, Beazley is neither identified nor even referenced in the Policy.

4. Admitted in part, denied in part. It is admitted that, in response to a claim asserted by MMR under the Policy, some entity, on behalf of the insurer or insurers who issued the Policy (the “Insurer”), issued payments described in this paragraph. By way of further response, the allegations in this paragraph seek to summarize the Policy, which is a document and speaks for itself. Further the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

5. Denied. The allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied. By way of further response, the allegations in this paragraph seek to summarize the Complaint, which is a document and speaks for itself.

“II. JURISDICTION AND VENUE”

6. Denied. The allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

7. Denied. The allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

8. Denied. The allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied. By the way of further

response, the Complaint is silent as to why Beazley is a proper party or has standing to seek declaratory relief under the Policy.

9. Denied. The allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

10. Denied. The allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied. By the way of further response, the Complaint is silent as to why Beazley is a proper party or has standing to seek declaratory relief under the Policy.

“III. THE PARTIES”

11. Denied. After a reasonable investigation, MMR is without knowledge or information sufficient to make an averment as to the truth of the allegations in this paragraph and, therefore, the allegations are denied.

12. Admitted in part and denied in part. It is admitted that (a) MMR is a limited liability company organized under the laws of the Commonwealth of Pennsylvania, (b) that MMR’s principal place of business is in Orwigsburg, Pennsylvania, and (c) that members of MMR are citizens of the Commonwealth of Pennsylvania and are not citizens of the United Kingdom or any foreign country. The remaining allegations are denied as stated.

“IV. FACTUAL BACKGROUND”

“A. THE POLICY”

13. Admitted in part and denied in part. It is admitted that MMR is the named insured under the Policy. It is specifically denied that MMR submitted anything to Beazley “for the purpose of obtaining insurance” in that MMR was unaware of the existence of Beazley until the Complaint was filed.

14. Denied. Beazley seeks to characterize the contents of the “Quote Policy,” which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

15. Denied. Beazley seeks to characterize the contents of the “Quote Policy,” which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

16. Denied. Beazley seeks to characterize the contents of the “Quote Policy,” which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

17. Denied. After reasonable investigation, MMR does not believe that it ever received “the quote” or the “Quote Policy,” or that it directly “placed an order for the quoted insurance,” as it understand that assertion, and, therefore, these allegations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are denied.

18. Denied. The email attached as Exhibit B (the “Exhibit B Email”) does not appear to have been sent by Beazley, but, rather, an entity identified as the “Beazley Group.” Further, at all relevant times, MMR was not aware of the existence of “RT Specialty,” or its role in the transaction. By way of further response, Beazley seeks to characterize the contents of the Exhibit B Email, which is a document that speaks for itself, and any mischaracterizations are denied.

19. Denied. The Exhibit B Email is not directed to MMR. By way of further response, Beazley seeks to characterize the contents of the Exhibit B Email, which is a document that speaks for itself, and any mischaracterizations are denied.

20. Denied. Beazley seeks to characterize the contents of the contents of the Exhibit B Email, which is a document that speaks for itself, and any mischaracterizations are denied.

21. Denied. Beazley seeks to characterize the contents of the “Binder,” which is a document that speaks for itself, and any mischaracterizations are denied.

22. Denied. After reasonable investigation, MMR is without knowledge or information sufficient to make an averment as to the truth of the allegations in this paragraph and, therefore, the allegations are denied. Further, at all relevant times, MMR was not aware of the existence of “RT Specialty,” or its role in procuring the Policy.

23. Denied. Beazley seeks to characterize the contents of an email attached as Exhibit C, which is a document that speaks for itself, and any mischaracterizations are denied.

24. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied.

25. Admitted in part, denied in part. It is admitted that there are two separate documents attached as Exhibit D to the Complaint. The first is a two page document that is titled “Statement of Values” and is signed, but not dated, by Roy Heim, a member of MMR (the “MMR SOV”). The MMR SOV states: “Blanket Building, Contents, & EDP \$7,770,598,” which reflects MMR’s understanding that the Policy provided blanket limits coverage. The second document is a spreadsheet that MMR had not seen until after the Fire when it was provided by a representative of the Insurer (the “Unknown Spreadsheet”). Although the Unknown Spreadsheet contains information similar to that contained in the MMR SOV, it does not include the language: “Blanket

Building, Contents, & EDP \$7,770,598.” With regard to the remaining allegations, Beazley is seeking to characterize the contents of the Policy’s Supplemental Declarations, which is a document that speaks for itself, and any mischaracterizations are denied.

26. Denied. Beazley seeks to characterize the contents of the Policy’s Supplemental Declarations, which is a document that speaks for itself, and any mischaracterizations are denied.

27. Admitted in part, denied in part. It is admitted that the buildings identified in the MMR SOV and the Unknown Spreadsheet are insured under the Policy. With regard to the allegations regarding the “Described Premises,” this appears to be a defined term in that the first letter of each word is capitalized, but it is not a defined term in the Policy, and, therefore, the allegation is denied as stated.

28. Denied. Beazley seeks to characterize the contents of the MMR SOV and the Unknown Spreadsheet, which are documents that speaks for themselves, and any mischaracterizations are denied.

29. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

30. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

31. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied.

32. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

33. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

34. Denied. Beazley seeks to characterize the contents of the Policy's Supplemental Declarations, which is a document that speaks for itself, and any mischaracterizations are denied.

35. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied.

36. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

37. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

“B. THE INSURANCE CLAIM”

38. Admitted in part, and denied in part. It is admitted that in the early morning hours of March 5, 2022, there was a catastrophic fire (the “Fire”) at a building located at 1020 Chestnut Road, Orwigsburg, PA (the “Subject Building”). The remaining allegations are denied as stated.

39. Admitted in part, and denied in part. It is admitted that the Subject Building is an approximately 43,000 square foot, steel and wood-constructed building. The remaining allegations are denied as stated.

40. Admitted in part, denied in part. It is admitted that the rear of the Subject Building contains approximately 34,000 square feet, which at the time of the Fire was used as warehouse space by a tenant of MMR, Clearly Clean Products, LLC, a company that describes itself as “an award-winning, innovative manufacturer that creates eco-friendly products with features that surpass their non-sustainable alternatives.” The remaining allegations are denied as stated.

41. Admitted in part, and denied in part. It is admitted that at the time of the Fire, Clearly Clean Products, LLC leased space in the Subject Building for \$10,000 per month.

42. Admitted in part, denied in part. It is admitted that the front of the Subject Building contains two levels, totaling approximately 9,000 square feet that was used as office space, and, that at the time of the Fire, was occupied by MMR’s tenant, Heim Construction Company, Inc. (“Heim”). The remaining allegations are denied as stated.

43. Admitted in part, and denied in part. It is admitted that at the time of the Fire, Heim leased space in the Subject Building from MMR at an allocated amount of \$10,000 per month. The remaining allegations are denied as stated.

44. Admitted in part, and denied in part. It is admitted that at the time of the Fire, there was business personal property insured by the Policy that was located in the office space area of the Subject Building. The remaining allegations are denied as stated.

45. Denied. MMR believes that the reconstruction and replacement cost of the Subject Building is in excess of \$6,800,000.

46. Denied. MMR has neither claimed a business personal property loss of \$108,479.86, nor represented that “it had spent \$100,000 to replace damaged furnishings.” By way of further response, MMR believes that the value of the insured business personal property exceeds \$108,479.86.

47. Admitted in part, and denied in part. It is admitted only that MMR has not yet submitted an inventory for its business personal property losses. As to the remaining allegations, Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

48. Admitted in part, denied, in part. It is admitted that since the Fire, MMR has lost rental income of \$20,000 per month. The remaining allegations are denied as stated.

49. Denied. MMR never received a “statement of loss” from Beazley, an entity that it did not know even existed until Beazley filed its Complaint. By way of further response, Beazley seeks to characterize the contents of an alleged “statement of loss,” a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

50. Admitted in part, denied in part. It is admitted that MMR has not submitted a proof of loss to the Insurer. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

51. Admitted in part, denied in part. It is admitted that MMR disputes the Insurer's conclusion as to the limits of liability available under the Policy for the losses sustained at the Subject Building as a result of the Fire, and believes that it is entitled to receive payment for the full amount of those losses. The remaining allegations are denied as stated.

52. Denied. Beazley seeks to characterize the contents of a letter that counsel representing "Certain Underwriters at Lloyd's London subscribing to Policy No. W2073D10501" sent to counsel for MMR, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

53. Denied. Beazley seeks to characterize the contents of a letter that counsel representing "Certain Underwriters at Lloyd's London subscribing to Policy No. W2073D10501" sent to counsel for MMR, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

54. Denied. Beazley seeks to characterize the contents of a letter that counsel representing "Certain Underwriters at Lloyd's London subscribing to Policy No. W2073D10501" sent to counsel for MMR, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

**“COUNT I
CLAIM FOR DECLARATORY RELIEF”**

55. MMR incorporates the foregoing paragraphs by reference as though fully set forth at length herein.

56. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

57. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

58. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

59. Denied. Beazley seeks to characterize the contents of the Policy, which is a document that speaks for itself, and any mischaracterizations are denied. By way of further response, the allegations in this paragraph consist of legal conclusions to which no response is required and, therefore, the allegations are deemed denied.

WHEREFORE, MMR respectfully requests that the Court enter judgment in its favor and against Beazley as to Count I of the Complaint:

(a) declaring that the Policy provides blanket liability limits in the amount of \$7,770,598 for covered damages sustained to the Subject Building;

(b) alternatively, declaring that the Policy provides liability limits on a per location basis, or, as it relates to any loss at 1020 Chestnut Road, liability limits of \$6,892,934 for covered damages sustained to the Subject Building; and

(c) awarding such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

For its Affirmative Defenses, the Defendant MMR avers as follows:

1. The Complaint should be dismissed, in whole or in part, because Beazley failed to state a claim on which relief may be granted.

2. The Complaint should be dismissed, in whole or in part, under the doctrine of unclean hands.

3. The Policy is ambiguous and should be read against the drafter.

4. MMR reasonably expected that the Policy provided blanket liability limits in the amount of \$7,770,598 for covered damages sustained to the Subject Building (not including loss of business/rental income).

5. Beazley does not have standing to bring this lawsuit because it has not pled how it is one of the “Insurers” that issued the Policy, including its relationship to “Syndicate 2623” and “Syndicate 623.”

6. This Court does not have subject matter jurisdiction over this lawsuit because Beazley has not established whether any members of “Syndicate 2623” and “Syndicate 623” are citizens of the Commonwealth of Pennsylvania.

7. Beazley attempts to unlawfully avoid its obligation to provide coverage under the Policy.

WHEREFORE, MMR respectfully requests that the Court enter judgment in its favor and against Beazley as to Count I of the Complaint:

- (a) declaring that the Policy provides blanket liability limits in the amount of \$7,770,598 for covered damages sustained to the Subject Building;
- (b) alternatively, declaring that the Policy provides liability limits on a per location basis, or, as it relates to any loss at 1020 Chestnut Road, liability limits of \$6,892,934 for covered damages sustained to the Subject Building; and
- (c) awarding such other and further relief as the Court deems just and proper.

COUNTERCLAIM OF MAX AND MIA REALTY, LLC

Defendant/Counterclaim Plaintiff, Max & Mia Realty, LLC, by and through its undersigned counsel, Cohen Seglias Pallas Greenhall & Furman, P.C., brings the following Counterclaim against Plaintiff/Counterclaim Defendant, Beazley Underwriting, Ltd., and hereby asserts the following in support thereof:

FACTUAL BACKGROUND

1. Counterclaim Plaintiff, Max & Mia Realty, LLC (“MMR”) is a limited liability company organized and existing pursuant to the laws of the Commonwealth of Pennsylvania, with a principal place of business in Orwigsburg, Pennsylvania.
2. Counterclaim Defendant, Beazley Underwriting, Ltd. (“Beazley”) alleges that it is a United Kingdom corporation and a citizen of the United Kingdom.
3. At all times relevant, MMR was a named insured under Policy No. W2073D210501, with a policy period of October 11, 2021 through October 11, 2022 (the “Policy”). (A true and correct copy of the Policy is attached as Exhibit A, and, for ease of reference, has been Bates labeled Policy 001 – Policy 061).

4. E.K. McConkey & Co., Inc. t/a McConkey Insurance & Benefits (“McConkey”), MMR’s insurance broker, procured the Policy for MMR.

5. As part of the procurement process, McConkey had issued a “Business Insurance Proposal” (the “Insurance Proposal”) to MMR. (A true and correct copy of the Insurance Proposal is attached as Exhibit B).

6. The Insurance Proposal, under “Coverage/Limits:” stated as follows:

Coverage Form: “SPECIAL” – This provides coverage against risk of direct physical loss or damage, unless excluded or limited.

Replacement Cost

Blanket Building and Business Personal Property Coverage

See Exhibit B, p.7 (emphasis added).

7. The Insurance Proposal also contained a “Statement of Values” (the “MMR SOV”) that identified the various properties that were to be insured under the Policy, and included certain valuation amounts attributable to, *inter alia*, each building that was insured, and the “business personal property” and “EDP Equipment” contained in each building, if applicable. See Exhibit B, pp.9-10.

8. The MMR SOV, which was signed by a representative of MMR, also states the following:

Blanket Building, Contents & EDP	\$7,770,598
---	--------------------

See Exhibit B, p.10.

9. Based on the statements contained in the Insurance Proposal, and conversations with Michael C. Harter, AIC, AIM, Executive Vice President/Principal of McConkey, MMR understood that the Policy, when issued, would provide “Blanket” limits of coverage for all buildings insured under the Policy, meaning that each building was insured for Building, Personal

Property, and Electric Data Processing Hardware replacement coverage up to a limit of \$7,770,598.

10. The Policy does not identify the specific entity that issued the Policy but, rather, states in the “Lloyd’s Certificate” (the “Certificate”) that “[t]his Insurance is effected with certain Underwriters at Lloyd’s London.” *See* Exhibit A, Policy 002.

11. The Certificate further states that the “Insurers hereunder are those Underwriters at Lloyd’s, London whose syndicate numbers can be ascertained as hereinbefore set forth,” and that “**Insurance** is effective with certain **UNDERWRITERS AT LLOYD’S, LONDON** percentage: 100%.” *See* Exhibit A, Policy 003 – Policy 005, ¶¶ 2, 15 (emphasis in the original).

12. Although no “syndicate numbers” are identified “hereinbefore” paragraph 2 as asserted in the Certificate, after paragraph 2, the Certificate states the following:

LLOYD’S SECURITY SCHEDULE

Syndicate 2623	82%
Syndicate 623	18%

See Exhibit A, Policy 006.

13. Beazley has represented that the Policy was “subscribed to by Beazley,” and that, as such, Beazley has certain rights, and owes certain obligations under the Policy, as, presumably, the “Insurers” that issued the Policy as referenced in the Certificate.

14. MMR asserts this Counterclaim against Beazley based solely on these representations, without acknowledging the accuracy of the representations.

15. One of the buildings covered by the Policy was an office/warehouse building (the “Subject Building”) located at 1020 Chestnut Road, Orwigsburg, PA (the “Property”).

16. The Subject Building is approximately a 43,000 square foot, steel and wood-constructed building which at all relevant times was occupied by MMR’s tenants.

17. On March 5, 2022, the Subject Building sustained a catastrophic fire (the “Fire”), which effectively destroyed the Subject Building, necessitating that the existing structure be demolished and reconstructed.

18. As a result of the Fire, MMR, through McConkey, provided notification of the Fire to the Insurer and asserted a Claim under the Policy for associated damages (the “Claim”).

19. In response, MMR was contacted by a representative of “Sedgwick” who, in a letter dated April 15, 2022 (the “April Letter”), advised that “Sedgwick has been appointed the independent adjuster for Certain Underwriters at Lloyds, London (“Underwriters”) who issued the above-captioned policy.”

20. In the April Letter, Sedgwick, on behalf of the Insurer, referenced certain portions of the Policy, including the Scheduled Limit of Liability Clause endorsement (the “Scheduled Limit Endorsement”), and stated:

The Statement of Values provided to Underwriters in connection with the Policy reflects a value of \$3,413,330 for the fire-damaged building and \$440,740 for business personal property. Based on the Policy language above, in particular paragraph 2.B. of the [Scheduled Limit Endorsement], this would be the maximum recoverable amount under the Policy’s Building coverage in connection with the loss. While our investigation is in its early stages, it appears possible that the damage to the fire-damaged building may meet or exceed that amount.

21. MMR disputed the interpretation of the Policy set forth in the April Letter and demanded that the Insurer pay, at a minimum, the liability limits which it was acknowledging were owed as a result of the Claim.

22. Thereafter, the Insurer issued payments under the Policy in the total amount of \$3,761,809.96 (the “Payments”).

23. According to counsel for the Insurer, the Payments were calculated as follows: (a) \$3,413,330 for damage to the Subject Building, (b) \$108,479.96 for business personal property “identified to date,” and (3) \$240,000 for “lost rents for the past five months plus an advance for the next seven months – based on the projected period of restoration.”

COVERAGES POSITION OF BEAZLEY AND MMR

24. As set forth in the April Letter and in its Complaint, Beazley seeks to interpret the Policy, and specifically the Scheduled Limit Endorsement, as limiting the liability of the Insurer based on the stated value for the individual “Building,” “Business Personal Property” and “Electronic Data Processing Hardware” (also referred to as “EDP Equipment”) coverages for each individual building identified for each location set forth in the MMR SOV, and the spreadsheet attached to the Complaint as Exhibit D (the “Unknown Spreadsheet”).

25. Based on this interpretation, Beazley then asserts that its (and the Insurers’) “liability is limited to the amount listed on the SOV for the Building (i.e., \$3,413,330).” *See* Complaint, ¶ 32.

26. Beazley’s interpretation of the Policy is erroneous.

27. The Supplemental Declarations state, under “Coverages Provided,” that “Insurance at the Described Premises applies for which a Limit of Insurance is shown,” and then state that there is a “Limit of Insurance” is \$8,190,598 Per Occurrence” for all “Prem. No./Bldg. No.” *See* Exhibit A, Policy 010.

28. This language in the Supplement Declarations, individually and when read in conjunction with the MMR SOV, which (a) includes a valuation for various buildings, including the Subject Building, as well as the “Business Personal Property” and “EDP Equipment” within each building, and (b) includes the phrase, “Blanket Building, Contents, & EDP \$7,770,598,”

means that the Policy provides a blanket limit of insurance for each insured building, and the personal property and electronic data processing hardware contained in that building, of \$7,770,598.

29. Alternatively, the Schedule Value Endorsement needs to be read in conjunction with not only the Supplemental Declarations and MMR SOV, but also the Policy’s “A Scheduled Policy” form (FS C 590 03 21) (the “Scheduled Policy Form”). *See* Exhibit A, Policy 001.

30. The Scheduled Policy Form states: “This Policy is based on a Statement of Value for each scheduled location.” (emphasis added). *Id.*

31. The Schedule Value Endorsement seeks to limit the “liability” of the Insurer to “100% of the individually stated value for each scheduled item of property . . . which had the loss as shown in the latest Statement of Value on file with the Company;” *See* Exhibit A, Policy 040.

32. However, since the Scheduled Value Endorsement does not define “property” (and specifically does not use the word “building”), when read in conjunction with the Scheduled Policy Form and the MMR SOV, “property” must refer to the property identified for each “scheduled location.”

33. The property identified as “Loc #:1” in the MMR SOV is 1020 Chestnut Road, Orwigsburg, PA 17961, which is where the Subject Building is located.

34. Accordingly, and alternatively, the Scheduled Value Endorsement must be interpreted as providing liability limits on a per location basis, or, as it relates to any loss at 1020 Chestnut Road, or, specifically, liability limits of \$6,892,934 for covered damages to any building located on the property, and the personal property and electronic data processing hardware contained in that building.

35. The Subject Building has sustained damages insured under the Policy (excluding Business Personal Property and Business/Rental Income coverage) in excess of \$6,800,000 (the “Replacement Cost Damages”).

36. Beazley has “projected” the “Period of Restoration” as defined under the Business Income (Without Extra Expense) Coverage Form to be period of one year, and has paid MMR the sum of \$240,000 for loss of “Rental Income” as defined under the Policy (“Rental Income”) for that one year period.

37. However, MMR believes that the “Period of Restoration” will be significantly longer than the one year period “projected” by Beazley due, in part, to the fact that MMR has not received sufficient funds from the Insurer to rebuild the Subject Building.

38. The Policy provides Rental Income limits of “Actual Loss Sustained up to the Policy’s “Limits of Insurance” of “\$8,190,598 Per Occurrence.”

39. Because Beazley, either as the Insurer, or on behalf of the Insurer, has refused to fully honor its obligation under the Policy, MMR brings this Counterclaim to enforce its rights under the Policy.

COUNT I
BREACH OF CONTRACT

40. The foregoing paragraphs are incorporated by reference as though fully set forth at length herein.

41. The Policy is a valid and enforceable contract.

42. There is coverage under the Policy for the damages to the Building caused by the Fire, as well as the resulting loss of Rental Income through the Period of Restoration.

43. Beazley’s refusal to cover the full portion of the Claim pertaining to the damages caused to the Subject Building, and the actual loss of Rental Income, is a breach of the Policy.

WHEREFORE, MMR requests that the Court enter judgment in its favor and against Beazley (a) for the total amount of the Replacement Cost Damages minus \$3,413,330 already paid on behalf of the Insurer, (b) for the loss of Rental Income through the actual “Period of Restoration” as defined under the Policy (with (a) and (b) not exceeding the total sum of \$8,190,598), (c) for the costs of suit, and (d) for any such other and further relief as the Court deems just and proper.

**COHEN SEGLIAS PALLAS
GREENHALL & FURMAN, P.C.**

Date: December 12, 2022

BY:



JONATHAN A. CASS, ESQUIRE

(76159)

1600 Market Street, 32nd Floor

Philadelphia, Pennsylvania 19103

Tel.: (215) 564-1700

Email: jcass@cohenseglias.com

Attorney for Defendant,


Max & Mia Realty, LLC

CERTIFICATE OF SERVICE

I hereby certify that, on December 12, 2022, a copy of the foregoing **ANSWER OF DEFENDANT, MAX & MIA REALTY, LLC TO THE COMPLAINT, WITH AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**, was served via the Court's ECF system upon all counsel of record.

Date: December 12, 2022

BY:



JONATHAN A. CASS, ESQUIRE