

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY,

Plaintiff,

v.

NORTHLAND INVESTMENT CORP.,
CHURCH STREET NEW HAVEN, LLC,
NORTHLAND FUND II LP, NORTHLAND
FUND II PARTNERS, LLC, CINQUE GREEN
LIMITED PARTNERSHIP, AND LAWRENCE
R. GOTTESDIENER,

Defendants.

Civil Action No.

FIRST AMENDED COMPLAINT

Introduction

This action seeks [1] an order upholding the rescission of CGL Policy No. PGL 10008169100 (the “2015 Policy”), issued by Endurance American Specialty Insurance Company (“Endurance”) to Northland Investment Corp.; or, in the alternative, if rescission is not upheld, [2] a declaration that the terms of the 2015 Policy do not obligate Endurance to defend or indemnify Northland in litigation arising out of the complaints of tenants at the Church Street South Housing Project in New Haven, Connecticut (the “Litigation”). This action also seeks a declaration that Endurance is not obligated to defend or indemnify Northland in the Litigation under Policy No. PGL 10008169101 (the “2016 Policy”), effective November 15, 2016.

Parties

1. Endurance is an insurance company incorporated in the State of Delaware, with its principal place of business in New York, New York. It issued the 2015 and 2016 Policies to

Northland Investment Corp. in Newton, Massachusetts, as first named insured. Copies of the Endurance Policies are attached as Exhibits A and B, respectively.

2. On information and belief, Northland Investment Corp. (“Northland Investment”) is a Massachusetts stock corporation with its principal place of business at 2150 Washington Street, Newton, Massachusetts. It is the first named insured under the each of the Policies above.

3. On information and belief, Lawrence S. Gottesdiener is the Chairman and Chief Executive Officer of Northland Investment. He resides in Wellesley, Massachusetts.

4. On information and belief, Northland Fund II LP (“Northland LP”) is a Delaware limited partnership with its principal place of business at 2150 Washington Street, Newton, Massachusetts. On information and belief, its General Partner is Northland Fund II Partners, LP (“Northland Partners LP”).

5. On information and belief, Northland Partners LP is a Delaware limited liability company with its principal place of business at 2150 Washington Street, Newton, Massachusetts. On information and belief, its sole member is Northland Investment.

6. On information and belief, Church Street New Haven LLC (“Church Street”) is a Delaware limited liability company with its principal place of business at 2150 Washington Street, Newton, Massachusetts. On information and belief, its sole member is Northland LP.

7. On information and belief, Cinque Green Limited Partnership (“Cinque Green”) is a Delaware limited liability company with its principal place of business at 2150 Washington Street, Newton, Massachusetts.

8. Northland Investment, Gottesdiener, Northland LP, Northland Partners LP, Church Street and Cinque Green have been named as defendants in one or both of two actions currently pending in Connecticut Superior Court: *Noble v. Northland Investment Corp.*, No.

CV-16-6033559 (Waterbury, Conn. Super. Ct.), originally filed as *Noble v. Northland Investment Corp.*, No. 3:16-CV-1741 (D. Conn.) (“*Noble*”); and *Negron, et al. v. Northland Fund II, et al.* (Waterbury, Connecticut Superior Court, C.A. No. UWY-CV17-6033904-S) (“*Negron*”). Accordingly, for purposes of this Complaint, except where context otherwise requires, these individuals and entities will be referred to collectively as the “Northland Defendants,” or “Northland.”

Jurisdiction and Venue

9. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332. This is an action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to this action occurred in this judicial district and the insurance policy that is the subject of this action was issued in this district.

Background

11. Northland is a real estate investment firm, which manages a portfolio of properties across the United States. One of those properties is the Church Street South Housing Project in New Haven, Connecticut (“Church Street Project”).

12. The Church Street Project consists of 301 low-income apartment units located in downtown New Haven, Connecticut. It was built in the late 1960s, and purchased by Northland in July 2008. By 2015, the Project had become significantly dilapidated, and Northland described it as “functionally obsolete.”

13. In mid-2015, the City of New Haven and Federal housing authorities conducted a series of intensive inspections of the Church Street Project, which ultimately resulted in the

condemnation of 23 apartment units and orders to repair or replace the roofs at seventeen of the nineteen separate buildings in the complex.

14. Also in mid-2015, tenants at the Church Street Project began to complain publicly of respiratory diseases and other medical ailments. The tenants attributed these diseases to mold, fungi, bacteria, dust mites, and other airborne contaminants and health hazards at the Project. The tenants attributed these unhealthy conditions, in turn, to poor maintenance and neglect by Northland during its ownership of the Project.

15. On July 16, 2015, an attorney for a tenant named Lanette Del Hoyo reported that Ms. De Hoyo's seven-year-old child had experienced asthma episodes and Ms. De Hoyo's seven year old child was experiencing upper respiratory issues. The attorney attributed these medical conditions to mold infestation and hazardous air quality in Ms. De Hoyo's apartment.

[REDACTED]

16. In the weeks that followed, at least nineteen other tenants submitted complaints to Northland, indicating that they were experiencing breathing problems, asthma, rhinitis, blood clotting disorders, and rashes. These conditions were attributed to mold, mildew, environmental irritants, and other indoor allergens, such as dust. On information and belief, many of the individuals presenting these complaints were represented by, or working with, counsel at the New Haven Legal Assistance Association.

17. On August 15, 2015, Federal housing authorities issued a notice of default, finding Northland was out of compliance with its contract to provide low-income housing at the Project. The notice specifically cited Northland's failure to maintain the property in "decent, safe, and sanitary condition."

18. On September 2, 2015, Federal housing authorities conducted a further, broad inspection of the Church Street Project. The inspection found 1,015 violations, of which 512 were characterized as “life-threatening.” It found that 113 of 272 apartments showed signs of mold or mildew, and gave the Project a failing grade (20 points out of 100).

19. In August and September 2015, Northland – at substantial expense – began to relocate and put up in hotels many of the individuals who had asserted medical claims as a result of the conditions at the Church Street Project. At the time, these individuals had not filed formal legal claims. But Northland understood that they could (and likely would) do so. [REDACTED]

[REDACTED]

[REDACTED]

20. On October 23, 2015, a prominent New Haven attorney, David Rosen, held a press conference on Northland’s property, announcing that he was going to file a class action lawsuit against the company. Four days later, the *Boston Globe* reported that “a class-action lawsuit against [Northland] is in the works...”.

21. The *New Haven Independent*, which covered Attorney Rosen’s press conference, began its article as follows:

Northland Faces Class-Action Lawsuit on Church Street South

By Paul Bass (Oct. 23, 2015) 1:00 PM

A prominent New Haven attorney confirmed he will “soon” file a class-action lawsuit against Northland Investment Corp. on behalf of the families living at the crumbling Church Street South housing

The *Independent* article also reported that Mr. Gottesdiener had been approached for a comment concerning Attorney Rosen’s forthcoming class action lawsuit, but declined.

Northland's Insurance Program

22. In mid-2015, as the events above were transpiring, Northland was insured by Navigators Specialty Insurance Company (“Navigators”) under Commercial General Liability Policy No. NY 14 CGL 140862 IC (the “Navigators Policy”). But Northland and Navigators had a difficult history, and Navigators was losing interest in underwriting Northland’s real estate risks. In mid-2015, on information and belief, Navigators advised Northland to consider obtaining CGL coverage elsewhere.

23. In August 2015, Northland – through a broker, RT Specialty Services (“RTS”) – approached Endurance to inquire about the possibility of obtaining coverage when the Navigators Policy expired on November 15, 2015.

24. On August 18, 2015, Northland provided Endurance with a “preliminary packet” of material, which described Northland as a “real estate investment firm specializing in the acquisition, development, operation and long-term ownership of commercial, retail, industrial, multifamily, mixed-use and hospitality properties.” For “additional information,” the packet referred Endurance to the Northland web site, <http://www.northland.com>. The web site included a tab labeled “Properties,” which showed photographs of attractive high-end residential properties in various states. Although the “Properties” tab appeared – on its face – to be a complete list of properties under Northland management, it did not show, mention or provide any information about the Church Street Project.

25. Northland’s August 18, 2015 packet also included a set of Navigators loss runs dated July 6, 2015. The loss runs had been printed a few days before Ms. Del Hoyo approached Northland with her complaints of respiratory ailments. These loss runs did not mention the

Church Street Project, or refer to the claims of bodily injury that Northland had received, and was continuing to receive, from tenants at the Project.

26. After reviewing the material Northland forwarded, Endurance agreed to move forward to negotiate coverage. On October 19, 2015, it provided Northland with an initial quote. Thereafter, for a period of some weeks, Northland and Endurance communicated frequently and at length. During this time, Northland did not update the Navigators loss runs, or mention the bodily injury claims of the Project tenants.

27. Instead, as negotiations proceeded, Northland pressed Endurance to expand the scope of the coverage offered: for example, deleting exclusions for “Chemical Diseases,” “Real Estate Property Managed,” and “Designated Work / Designated Ongoing Operations,” and adding a broadened definition of “bodily injury.” These requests puzzled Endurance. On several occasions, the underwriters asked for clarification as to why Northland wanted this kind of broadened coverage. Northland responded with general explanations. It did not mention the issues at the Church Street Project, the claims of bodily injury that it was receiving from tenants, or the class action litigation that Attorney Rosen would be bringing on behalf of those tenants.

November 2015 Application

28. On November 13, 2015, Endurance – still having no knowledge of the Church Street situation – agreed to bind coverage to Northland, effective November 15, 2015, subject to Northland’s submission of a signed, updated ACORD Application. The Application was to include a final updated “Loss History” and up-to-date loss profile.

29. As part of the loss profile, Northland was instructed to “enter all claims or occurrences that may give rise to claims for the prior five years.” Northland responded on November 13, 2015. Again it did not report the Church Street issues. In response to the

question as to “claims or occurrences that may give rise to claims for the prior five years,” Northland only referred to the July 6, 2015 loss runs: “Carrier Loss Runs provided @ renewal 2015.” Northland signed this application, and Endurance issued the Policy.

30. On information and belief, Northland’s misrepresentation and omission of information during the negotiation of the Policy was willful, intentional, and made with intent to deceive. As Northland surely recognized, if Endurance had been truthfully advised of the numerous issues at the Church Street Project – including the large-scale condemnation of apartments, the letters from Federal housing authorities, the health issues tenants were alleging, the widespread movement of tenants to hotels, the involvement of legal counsel on tenants’ behalf, and the impending class action litigation – Endurance would not have provided CGL coverage, or, at a minimum, it would not have written the Policy on the terms and at the premium it did.

**Endurance’s Discovery of Northland’s
Misrepresentations and Omissions**

31. On October 21, 2016, Attorney Rosen filed the *Noble* class action suit in United States District Court for the District of Connecticut, on behalf of a proposed class consisting of all residents who “have lived at Church Street South within the past three years.” On November 23, 2016, Mr. Rosen voluntarily dismissed and re-filed the suit in New Haven Superior Court. Shortly thereafter, several members of the proposed class filed the separate *Negron* action, making similar allegations on their own behalf. The two actions have since been transferred to Waterbury, Connecticut Superior Court, where they are currently pending.

32. In October 2016, Northland notified Endurance of the class action complaint. Based on the allegations in that complaint – and still lacking knowledge of the events described above – Endurance agreed to defend Northland under reservation of rights. Several other

insurers also issued letters reserving rights. Northland demanded independent counsel. It retained the law firm of Mintz Levin to defend it in the litigation.

33. In ensuing months, the insurers repeatedly requested information concerning these claims, including written status reports from Northland's Massachusetts and Connecticut counsel. Northland was uncooperative. It stalled and refused to provide the written status reports the insurers were requesting – while repeatedly demanding payment of the Mintz Levin bills, and accusing the insurers of bad faith under Massachusetts law for not responding quickly enough to those payment requests.

34. Finally, in March 2018, Northland provided the insurers with “Initial Status Reports” on the *Noble* and *Negron* claims. The status reports included a background section, which led Endurance to conduct further investigation as to when, in fact, Northland became aware of the claims and occurrences set out in these complaints. That investigation uncovered – among other things – the October 23, 2015 *New Haven Independent* article, and the other information described above. On April 13, 2018, Endurance sent a letter to Northland, rescinding the 2015 Policy and tendering the premium (less applicable deductions) as required by M.G.L. ch. 175 § 186. Northland has not accepted the rescission of the Policy and has rejected the return premiums tendered by Endurance.

COUNT I

Rescission – 2015 Policy

35. Endurance re-alleges and incorporates by reference paragraphs 1 through 34, above, as if fully set forth herein.

36. In the course of negotiating the Policy, Northland made misrepresentations and omissions as to its business activities, its loss history, the issues at the Church Street Project, the

anticipated litigation, or the numerous claims of bodily injury that Northland had received from tenants at the Project.

37. Northland's misrepresentations and omissions were material to Endurance's evaluation of the risk Northland presented in its Application. Northland knew Endurance's decision to accept the risk and issue a policy for the premium charged, and with the coverages, terms, conditions, exclusions, limits of liability, and self-insured retentions contained in the Policy, was dependent upon Endurance receiving a complete and accurate loss history, which Northland failed to provide.

38. Northland's conduct significantly increased the risk of loss to Endurance, and in fact, has caused significant actual loss. Over the past months, Endurance has paid hundreds of thousands of dollars in legal fees and related expenses for the *Noble* and *Negron* matters, under significant pressure from Northland. Northland's legal defense is ongoing, and Northland's counsel has continued to press Endurance for additional defense payments totaling hundreds of thousands of dollars more.

39. Upon information and belief, Northland's misrepresentations and omissions were made in bad faith, with intent to deceive, and with knowledge that its responses were materially incomplete and false.

40. By reason of Northland's omissions and concealments and its aforesaid breaches of the Policy, the 2015 Policy is null and void from inception and should be adjudicated rescinded. Endurance is prepared to return to Northland the premiums paid under the Policies, less amounts previously paid and other applicable deductions, to the extent required by M.G.L. ch. 175 § 186.

41. There exists an actual and justiciable controversy between Northland and Endurance as to the rescission of the Policy and whether the Policy is void *ab initio*. As to this controversy, Endurance has no adequate remedy at law.

COUNT II

Declaratory Judgment – 2015 Policy

42. Endurance re-alleges and incorporates by reference paragraphs 1 through 41, above, as if fully set forth herein.

43. If this Court declines to uphold the rescission of the 2015 Policy, it should nonetheless find (in the alternative) that there is no coverage under that Policy, and no duty to defend the claims asserted by Church Street tenants in the *Noble* and *Negron* litigation.

44. The Insuring Agreement of the 2015 Policy provides coverage for “bodily injury” and “property damage” claims via Form CG 00 01 04 13, as follows:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee"

authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1 of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1 of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1)** Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2)** Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3)** Becomes aware by any other means that "bodily injury" or "property damage" has occurred or had begun to occur.

Here, Northland and its key executives – including Mr. Gottesdiener – knew at the time of Policy inception that the relevant "bodily injury" and "property damage" had occurred, or begun to occur. As of this date, Northland had already received written or verbal demands or claims for damages from many of the individuals who later became class plaintiffs. It had (in some cases) reported these claims to its environmental insurance carrier. It had moved a number of the class plaintiffs out of the Project, and was spending hundreds of thousands of dollars housing these individuals in hotels, so as to mitigate the damages it knew the individuals might ultimately seek to recover.

45. The Insuring Agreement of the 2015 Policy also provides coverage for "personal and advertising injury" claims via Form CG 00 01 04 13, as follows:

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

Here, virtually all of the *Noble* and *Negron* Plaintiffs moved out of the Project prior to November 15, 2015. Insofar as these Plaintiffs' complaints do not allege any covered "offense" during the policy period, there is no coverage under Coverage Part B for any "personal or advertising injury" that may be claimed.

46. In addition to the foregoing, many of Plaintiffs' claims are barred – in whole or in part – by the Fungi or Bacteria Exclusion, the Pollution Exclusion, the Designated Professional Services Exclusion, the Contractual Liability Exclusion, the Breach of Contract Exclusion, the Owned Property Exclusion, and the other exclusions in the Policies. Additionally, there are significant questions as to whether Plaintiffs' damages are due to "bodily injury" or "property damage" caused by an "occurrence," and whether these claims involve covered entities, or arise out of the ownership, maintenance or use of a premise listed on the Policy schedules. Additionally, there are also significant questions as to Northland's compliance with Policy conditions, including (for example) the policy condition requiring cooperation in the investigation and settlement of Plaintiffs' claims, and the defense of Plaintiffs' suit.

47. Endurance notes, further, that the Policy does not afford coverage for any punitive damages that may be awarded in connection with Plaintiffs' claims, or for the costs of complying with any injunctions issued by the Court. Nor does the Policy require Endurance to pay defense costs that exceed what is reasonable and necessary for matters of this type.

48. For the foregoing reasons, even if this Court declines to uphold rescission, Endurance is entitled to a declaration that the terms of the 2015 Policy do not obligate it to defend or indemnify Northland in the Litigation. There exists an actual and justiciable controversy between Northland and Endurance as to these matters, as to which Endurance has no adequate remedy at law.

COUNT III

Declaratory Judgment – 2016 Policy

49. Endurance re-alleges and incorporates by reference paragraphs 1 through 48, above, as if fully set forth herein.

50. This Court should also find that there is no coverage and no duty under the 2016 Policy to defend the claims asserted by Church Street Project tenants in the *Noble* and *Negron* litigation. First, the terms of the 2016 Policy are identical – or substantially similar – to the terms of the 2015 Policy, and coverage under the 2016 Policy is precluded for the same reasons identified in connection with the 2015 Policy, above.

51. Second, as of the inception of the 2016 Policy, Northland had already received and tendered to its insurers the *Noble* class action lawsuit. There can be no doubt that Northland and its key executives knew the relevant “bodily injury” and “property damage” had occurred, or begun to occur, as of the date this complaint was received.

52. For the foregoing reasons, Endurance seeks a declaration that the terms of the 2016 Policy do not obligate it to defend or indemnify Northland in the Litigation. There exists

an actual and justiciable controversy between Northland and Endurance as to these matters, as to which Endurance has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Endurance prays for judgment as follows:

1. That the Court enter an Order upholding the rescission of the 2015 Policy;
2. That the Court declare that the 2015 Policy is null and void *ab initio* and rescinded;
3. That the Court declare Northland is not entitled to any benefits under the 2015 and 2016 Policies, and should be required to return benefits previously received;
4. That the Court declare the rights and obligations of the parties under the Policies in accordance with Endurance's contentions as set forth herein;
5. That the Court award Endurance reasonable attorneys' fees and costs incurred in connection with this action; and
6. That the Court order such other and further relief as is just and proper.

JURY DEMAND

Jury trial is requested on all claims so triable.

Respectfully submitted,

Dated: May __, 2018

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY

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