UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	Chapter 11
HO WAN KWOK, *et al.*,	Case No. 22-50073 (JAM)
Debtors.	(Jointly Administered)
GENEVER HOLDINGS LLC,	Adv. P. No. 23-05007 (JAM)
Plaintiff	Re: ECF No. 2
v.	
AIG PROPERTY CASUALTY COMPANY,	
Defendant.	

APPEARANCES

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MEMORANDUM OF DECISION AND ORDER
GRANTING MOTION FOR PRELIMINARY INJUNCTION

Julie A. Manning, United States Bankruptcy Judge

I. INTRODUCTION

Before the Court is the motion of the Debtor-in-Possession/Plaintiff Genever Holdings LLC ("Genever US") seeking a preliminary injunction against Defendant AIG Property Casualty Company ("AIG") (the "Motion for Preliminary Injunction"). (ECF No. 2.[1]) The Motion for Preliminary Injunction seeks to: (i) enjoin AIG from cancelling as of 12:01 a.m. on July 14, 2023, insurance policies between Genever US and AIG insuring a luxury residential apartment commonly known as all apartment space on the 18th floor, Apartment MR 2219, and Apartment MR 719 (collectively, the "Apartment") at the Sherry-Netherland apartment hotel (the "Sherry-Netherland"), a cooperative housing corporation located at 781 Fifth Avenue, New York, New York 10022, for the policy period of March 6, 2023 to March 6, 2024 (the "Policies")[2]; and (ii) direct AIG to rescind its Notices of Cancellation and issue Notices of Reinstatement to every entity AIG previously notified of the cancellation of the Policies.

II. BACKGROUND

Genever US is a New York limited liability company that filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York on October 12, 2020. (Genever ECF No. 1.) On November 3, 2022, the United States Bankruptcy Court for the Southern District of New York entered a Memorandum of Decision and Order Granting Joint Motion to Transfer Venue to this Court. (Genever ECF No. 225.) On November 21, 2022, this Court entered the Order Directing Joint Administration of Related Chapter 11 Cases, and

[1] References to the docket of the instant adversary proceeding will be styled "ECF." References to the docket of the Chapter 11 case of *In re Genever Holdings LLC*, Case No. 22-50592 (JAM) will be styled "Genever ECF." References to the docket of *In re Kwok*, Case No. 22-50073 (JAM) will be styled "Main Case ECF."

[2] The parties agreed on the record during the evidentiary hearing held on July 12, 2023 that AIG may cancel the policy relating to jewelry, fine arts, and silverware. Therefore, that particular policy is excepted from the defined term "Policies."

thereafter Genever US's Chapter 11 case has been jointly administered with the Chapter 11 cases of Mr. Ho Wan Kwok and Genever Holdings Corporation ("Genever BVI") under the caption of Mr. Kwok's bankruptcy case. (Main Case ECF No. 1141; Genever ECF No. 249.) Mr. Kwok was the indirect owner of Genever US through his ownership of Genever BVI, which is the sole member of Genever US. Ownership of Genever BVI and, through it, Genever US, passed to Mr. Luc A. Despins, not in his personal capacity but in his capacity as Chapter 11 trustee (the "Trustee") for the bankruptcy estate of Mr. Kwok. (Main Case ECF Nos. 465, 523.)

In accordance with the Proprietary Lease, Mr. Kwok and other members of his family reside at the Apartment. Genever Ex. 15. Early on the morning of March 15, 2023, Mr. Kwok was arrested by the Federal Bureau of Investigation ("FBI") at the Apartment. Subsequent to his arrest, while the FBI was searching the Apartment, a fire (the "Fire") broke out in the Apartment. The cause of the Fire and the extent of the damage caused by the Fire are both, at this time, unknown and unadjudicated.

On April 25, 2023, AIG issued Notices of Cancellation of the Policies with an effective date of May 31, 2023. On May 12, 2023, Genever filed its complaint (the "Complaint"), initiating the instant adversary proceeding. (ECF No. 1.) The Complaint seeks breach of contract damages, declaratory judgment, and related relief stemming from, *inter alia*, the Cancellation Notices and an anticipated future denial of coverage of damage caused by the Fire. On May 15, 2023, Genever US filed the Motion for Preliminary Injunction. Subsequently, AIG issued new Cancellation Notices changing the cancellation of coverage date from May 31, 2023 to July 14, 2023. The reasons for cancellation stated in the new Cancellation Notices are:

> (1) discovery of fraud or misrepresentation in obtaining the policy, specifically, we were advised that the insured's sole member was Ho Wan Kwok but learned after renewal that the insured's sole member was Genever Holdings Corporation, a British Virginia [sic] Islands corporation, and the Genever Holdings Corporation's sole shareholder was a

> bankruptcy trustee; (2) discovery of willful or reckless acts or omissions increasing the hazard insured against, specifically, the insured's acts in permitting Ho Wan Kwok, who was facing a judgment of $116,402,019.57 and a contempt fine of $134,000,000.00, and who had been stripped of his ownership of Genever Holdings Corporation because of conduct the insured viewed as showing his propensity to violate court orders, to reside in and maintain unfettered and unsupervised control over the condition of the apartment at 781 Fifth Avenue, 18th Floor, New York, NY, the fact that the properties insured are no longer primary residence [sic] and are unoccupied, and also because the insured did not disclose its true direct owner; and (3) physical changes in the property after issuance which result in the property becoming uninsurable in accordance with our underwriting standards, specifically, the poor physical condition of the 18th floor apartment after the March 15, 2023 fire and all three insured properties are no longer primary residences and are unoccupied.

AIG Ex. 27.

On May 31, 2023, AIG filed the Memorandum of Law in Opposition to the Motion for Preliminary Injunction. (ECF No. 16.) On June 6, 2023, Genever filed the Reply Brief in Support of Motion for Preliminary Injunction. (ECF No. 17.) On July 6, 2023, the parties filed their lists of witness and exhibits. (ECF Nos. 20–23.) On July 7, 2023, Genever filed an updated list of exhibits adding three further exhibits. (ECF No. 24.)

An evidentiary hearing on the Motion for Preliminary Injunction was held on July 12, 2023, during which three witnesses testified and several exhibits were admitted into evidence. Although the Court indicated to the parties at the conclusion of the evidentiary hearing that the Court may need to issue a supplemental memorandum of decision on the Motion for Preliminary Injunction, this Memorandum of Decision and Order is the decision on the Motion for Preliminary Injunction. Upon review and consideration of all the relevant pleadings in this adversary proceeding and the related Chapter 11 cases, and the testimony and exhibits introduced during the evidentiary hearing, the Court grants the Motion for Preliminary Injunction as set forth herein.

III. JURISDICTION

The United States District Court for the District of Connecticut has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This Court has authority to hear and determine this matter pursuant to 28 U.S.C. § 157(a) and the Order of Reference of the United States District Court for the District of Connecticut dated September 21, 1984. The instant proceedings are statutorily core proceedings. 28 U.S.C. § 157(b)(2)(A).

Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. DISCUSSION[3]

A. Preliminary Injunction Standard

The standard for Federal Rule of Civil Procedure 65(a) preliminary injunctive relief in the Second Circuit is "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979); *see Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35–38 (2d Cir. 2010) (holding *Jackson Dairy* remained the law of the Second Circuit). The movant, here Genever US, must make a "*clear showing*" that the elements are established. *Sussman v. Crawford*, 488 F.3d 136, 139 (2d Cir. 2007).

B. Irreparable Harm

Irreparable harm is the most important element of a preliminary injunction. *Faiveley Transport Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 116 (2d Cir. 2009). Irreparable harm must

[3] The following constitutes the findings of fact and conclusions of law of the Court pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

be "likely," not merely possible, to support a preliminary injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). While outside of bankruptcy proceedings irreparable harm generally must be the sort that cannot be adequately compensated by legal remedies, *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 333 (1999) (holding that a district court "had no authority to issue a preliminary injunction preventing petitioners from disposing of their assets pending adjudication of respondents' contract claim for money damages"); *Jackson Dairy*, 596 F.2d at 72 (holding that "irreparable injury means injury for which a monetary award cannot be adequate compensation and that where money damages is adequate compensation a preliminary injunction will not issue"), this rule does not necessarily apply in bankruptcy proceedings because "[t]he law of fraudulent conveyances and bankruptcy was developed to prevent [the disposition of assets pending adjudication]," *Grupo Mexicano*, 527 U.S. at 322. *See Rubin v. Pringle ex rel. Focus Media Inc. (In re Focus Media Inc.)*, 387 F.3d 1077 (9th Cir. 2004); *Urban Commons Queensway, LLC v. EHT Asset Mgmt., LLC (In re EHT US1, Inc.)*, Case No. 21-50476 (CSS), 2021 WL 3828556 (Bankr. D. Del. Aug. 27, 2021); *Ball ex rel. Soundview Elite Ltd. v. Soundview Composite Ltd. (In re Soundview Elite Ltd.)*, 543 B.R. 78 (Bankr. S.D.N.Y. 2016); *O'Donnell ex rel. Oxford Homes, Inc. v. Royal Business Grp., Inc. (In re Oxford Homes, Inc.)*, 180 B.R. 1 (Bankr. D. Me. 1995); *see also In re Owens Corning*, 419 F.3d 195, 208 n. 14 (3d Cir. 2005).

Under the specific facts and circumstances in and surrounding its Chapter 11 case, Genever US has made a clear showing of likely irreparable harm. The evidence presented during the evidentiary hearing established that in the absence of an injunction, the Policies will be cancelled. AIG Ex. 27. If the Policies are cancelled, the only substantial asset of Genever US's Chapter 11 bankruptcy estate—the Apartment—will be uninsured. Insurance is vital to protect

the interests of the bankruptcy estate's creditors. 7 *Collier on Bankruptcy* ¶ 1112.04[6][d] (16th Ed. 2023). If the Apartment is not insured, immediate cause exists for dismissal or conversion of Genever US's Chapter 11 reorganization case to a Chapter 7 liquidation case. 11 U.S.C. § 1112(b)(4)(c) ("the term 'cause' includes…failure to maintain appropriate insurance that poses a risk to the estate or to the public."); *In re Van Eck*, 425 B.R. 54, 59–61 (Bankr. D. Conn. 2010); *In re Hutter*, 207 B.R. 981, 983 (Bankr. D. Conn. 1997). In the absence of appropriate insurance, *any* party in interest can seek such relief. 11 U.S.C. § 1112(b)(1) (". . . on request of a party in interest . . .."). In fact, the Office of the United States Trustee, which is charged with supervising Chapter 11 cases, requires a debtor to maintain appropriate insurance coverage. *See* 7 *Collier on Bankruptcy* ¶ 1112.04[6][d] (citing 3 *United States Trustee Manual*, ch. 11. Case Administration, § 3-3.323). If the Apartment is uninsured at any time during Genever US's Chapter 11 case, it would be highly atypical for the United States Trustee *not* to seek *immediate* dismissal or conversion.

In addition, the Trustee testified that if the cancellation of the Polices becomes effective, Genever US would enter the insurance market as a presumptively toxic insured with policies cancelled mid-term. Hr'g at 11:22:20–11:22:34 a.m. Moreover, Genever US introduced evidence that any replacement insurance procured would be prohibitively expensive – between $500,000 and $750,000 – and well in excess of the annual AIG premium of approximately $66,000. Genever Exs. 27, 41. Furthermore, the Trustee testified that estate of Genever US has only $30,000 dollars. Hr'g at 11:21:45–11:22:08 a.m. Resultingly, replacement insurance may not be procurable at all. According to the testimony of Mr. Jordan Gerber, the head underwriter in the Private Clients Group of AIG, AIG would not place insurance for Genever US under the present facts and circumstances. Hr'g at 2:51:46–2:51:52 p.m. Therefore, dismissal or

conversion of Genever US's Chapter 11 case based upon failure to maintain appropriate insurance – because of the cancellation and the inability to procure replacement insurance – poses a risk to the estate that is not "remote" or "speculative," but rather "actual" or "imminent," and therefore real. *ACC Bondholder Grp. v. Adelphia Commc'n Corp. (In re Adelphia Commc'n Corp.)*, 361 B.R. 337, 347–48 (S.D.N.Y. 2007) (quoting *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 975 (2d Cir.1989)). Absent an injunction, dismissal or conversion is "likely." *Winter*, 555 U.S. at 22.

Furthermore, the likely harm to Genever US is irreparable. Dismissal or conversion would fully and finally prevent Genever US's reorganization because it would no longer be a debtor-in-possession. *See In re USA Baby*, 674 F.3d 882, 883 (7th Cir. 2012). No money damages can compensate Genever US for losing possession of its bankruptcy estate – including its most valuable asset, the Apartment. "Chapter 11 . . . embodies the general Code policy of maximizing the value of the bankruptcy estate . . .. Under certain circumstances a . . . debtor's estate will be worth more if reorganized under Chapter 11 than if liquidated under Chapter 7." *Toibb v. Radloff*, 501 U.S. 157, 163–64 (1991). As noted above, "[t]he law of fraudulent conveyances and bankruptcy was developed to prevent [the disposition of assets pending adjudication]." *Grupo Mexicano*, 527 U.S. at 322. Bankruptcy serves the interest of a multitude of stake-holders. *Bank of America v. 203 LaSalle Street P'ship*, 526 U.S. 434 (1999). For these reasons, "the loss of an opportunity to reorganize is irreparable." *In re A& F Enterprises, Inc. II*, 742 F.3d 763 (7th Cir. 2014) (granting a stay pending appeal of an order deeming building leases rejected because in pertinent part it created an actual risk of conversion to Chapter 7); *see In re Rosson*, 545 F.3d 764, 770 (9th Cir.2008), *overruled on other grounds by In re Nichols*, 10 F.4th 956 (9th Cir. 2021). The cancellation of the Policies constitutes irreparable harm because it will

result in dismissal or conversion of Genever US's Chapter 11 reorganization case. *In re Amber Lingerie, Inc.*, 30 B.R. 736, 737 (Bankr. S.D.N.Y. 1983) ("Effectively, there is no replacement coverage available. The debtor cannot afford the cheapest alternative, which is several times more expensive than the present policy. If the debtor were to continue in business without insurance coverage, it would be subject to such a great risk of loss that its reorganization would be jeopardized."); *but see Bogey's Barn, Ltd. V. Ind. Ins. Co. (In re Bogey's Barn, Ltd.)*, 47 B.R. 555 (Bankr. S.D. Fla. 1985).

C. Balance of Hardships

The balance of hardships tips decidedly in favor of Genever US. The irreparable harm to Genever US, described above, is not compensable by money damages and greatly outweighs any harm to AIG. AIG has repeatedly stated on the record that coverage of the Fire is separate and distinct from cancellation of the Policies. The Trustee testified at length about the measures the Sherry-Netherland has taken to enforce this Court's order to secure and protect the Apartment. Because the Apartment is protected against the occurrence of future coverage events, for which Genever US may make a claim under the Policies, AIG's harm, if any, is negligible.

D. Likelihood of Success on the Merits or Sufficiently Serious Questions Going to the Merits

A likelihood of success on the merits is established where "the moving party is more likely than not to prevail on the merits of the underlying claims." *Citigroup*, 598 F.3d at 35. In *Citigroup*, the Second Circuit explained the alternate "serious questions" standard as permitting a court "to grant a preliminary injunction in situations where it cannot determine with certainty that the moving party is more likely than not to prevail on the merits of the underlying claims, but where the costs outweigh the benefits of not granting the injunction." *Id.* (internal citations omitted). The Second Circuit continued: "Because the moving party must not only show that

there are 'serious questions' going to the merits, but must additionally establish that 'the balance of hardships tips *decidedly*' in its favor its overall burden is no lighter than the one it bears under the 'likelihood of success' standard." *Id.* (internal citations omitted).

Because the balance of hardships tips decidedly in favor of Genever US, Genever US must only establish sufficiently serious questions going to the merits. However, Genever US has established a likelihood of success on the merits on its claim for declaratory judgment that the cancellation of the Policies is a breach of contract. The testimony and evidence provided a clear showing that it is more likely than not that AIG improperly seeks to cancel the Policies.

N.Y. Ins. § 3425 governs cancellation of personal lines insurance, such as the homeowner's insurance at issue here. AIG's rationales for cancellation attempt to fit within this statutory provision and their own internal underwriting guidelines. The first rationale is the

> discovery of fraud or misrepresentation in obtaining the policy, specifically, we were advised that the insured's sole member was Ho Wan Kwok but learned after renewal that the insured's sole member was Genever Holdings Corporation, a British Virginia [sic] Islands corporation, and the Genever Holdings Corporation's sole shareholder was a bankruptcy trustee . . ..

AIG Ex. 27. Misrepresentation is governed by N.Y. Ins. § 3105. A misrepresentation is "a [false] statement as to past or present fact, made to the insurer by, or by the authority of, the applicant for insurance or the prospective insured, at or before the making of the insurance contract as an inducement to the making thereof." N.Y. Ins. § 3105(a). To support denial of coverage or cancellation of coverage, a misrepresentation must be "material," meaning "the facts misrepresented would have led to a refusal by the insurer to make such contract." N.Y. Ins. § 3105(b)(1).

It is more likely than not that Mr. Kwok, Genever US, and Trustee made no misrepresentation to AIG as to the ownership structure of Genever US. The evidence establishes

that Mr. Kwok told Wolfson Insurance Brokerage Inc. ("Wolfson") that he was the indirect owner of Genever US through his ownership of Genever BVI and that Wolfson communicated this to Chubb, the previous insurer of the Apartment. Genever Ex. 35. Attorney Patrick Linsey, in his capacity as counsel for Genever US and the Trustee, testified that he also told Wolfson of the ownership structure of Genever US before the Policies were renewed by AIG in 2023. Hr'g at 10:14:25–10:17:44 a.m.

Furthermore, Mr. Gerber also testified that Mr. Kwok's name was kept out of his file on account of Mr. Kwok's privacy concerns and AIG agreeing to protect those concerns. Hr'g at 1:44:33–1:45:02 p.m. Given this testimony, it is wholly unsurprising that there is no paper record showing that Ms. Catherine Skibitcky, the Wolfson broker who worked with AIG in connection with the Policies, told AIG about Genever BVI. Moreover, Mr. Gerber testified that Ms. Skibitcky was professionally honest and reliable. Hr'g at 1:43:10–1:43:29 p.m. Therefore, even if Ms. Skibitcky did omit the existence of Genever BVI in communications with AIG, the Court has no reason to believe such omission was for the purpose of inducing coverage. N.Y. Ins. § 3105(a). Finally, if Ms. Skibitcky did omit the existence of Genever BVI, it was wholly immaterial. N.Y. Ins. § 3105(b)(1). The Trustee testified that despite the general allegations surrounding Mr. Kwok and his web of shell companies, there is no evidence that Genever BVI has ever been anything but a pure holding company. In fact, Mr. Gerber testified that his group insures high net worth individuals through holding companies. Genever Ex. 37. Hr'g at 12:42:06–12:42:36 p.m.

It is also more likely than not that no misrepresentation was made regarding the judgments against Mr. Kwok or the bankruptcy proceedings. There is no evidence that Mr. Kwok failed to tell AIG about his legal issues at any point in response to questions, if any, AIG

posed to him. *Phila. Indem. Ins. Co. v. Horowitz, Greener & Stengel, LLP*, 379 F. Supp. 2d 442, 452–53 (S.D.N.Y. 2005) ("There is no duty to volunteer information unless a 'question plainly and directly requires it to be furnished.'") None of the judgments against Mr. Kwok concerned AIG in its initial screening of him or set off a "flag" when the policies were repeatedly renewed, despite the very public nature of Mr. Kwok's legal life. Hr'g at 12:46:09–12:47:40 p.m., 1:46:06-1:55:28 p.m. Attorney Linsey emailed AIG about Genever US's bankruptcy case on December 21, 2022. Genever Ex. 42. Indeed, Mr. Gerber testified that AIG knew, *prior to the renewal of the 2023 Policies*, that Genever US had filed a Chapter 11 petition. Hr'g 12:47:28–12:47:37 p.m. Moreover, Mr. Gerber testified that bankruptcy was not uncommon among the insureds whose policies his group underwrites and that a bankruptcy filing is not concerning to AIG. Hr'g at 1:39:06–1:39:37 p.m.

Finally, it is more likely than not that Wolfson is AIG's agent. While an insurance broker is generally the agent of the insured, a broker becomes the agent of the insurer where the insurer took some action "from which a general authority to represent the insurer may be inferred." *Phila. Indem.*, 379 F. Supp. 2d at 457. Mr. Gerber testified that his group generally never communicates with insureds and never communicated with Genever US – all communications to insureds were through Wolfson. Hr'g at 1:57:31–1:58:04 p.m. Furthermore, AIG documents also indicate that Wolfson was AIG's agent. For example, AIG lists Wolfson as "THIS COMPANY'S REPRESENTATIVE" on the Cancellation Notices. AIG Ex. 27. Therefore, all of Mr. Kwok's, Genever US's, and the Trustee's representations to Wolfson were more likely than not representations to AIG.

The second rationale in the Cancellation Notices is:

> discovery of willful or reckless acts or omissions increasing the hazard insured against, specifically, the insured's acts in permitting Ho Wan Kwok, who was facing a judgment

> of $116,402,019.57 and a contempt fine of $134,000,000.00, and who had been stripped of his ownership of Genever Holdings Corporation because of conduct the insured viewed as showing his propensity to violate court orders, to reside in and maintain unfettered and unsupervised control over the condition of the apartment at 781 Fifth Avenue, 18th Floor, New York, NY, the fact that the properties insured are no longer primary residence [sic] and are unoccupied, and also because the insured did not disclose its true direct owner . . ..

AIG Ex. 27. It is more likely than not that the Trustee and Genever US have not been willful or reckless in "allowing" Mr. Kwok to reside in the apartment. The Proprietary Lease allows Mr. Kwok and his family to occupy the Apartment. AIG Ex. 19. Indeed, prior to the Fire, Genever US had brought an adversary proceeding to amend the Proprietary Lease to revoke the provision allowing Mr. Kwok and his family to occupy the Apartment. *See, generally*, *Genever Holdings LLC v. Kwok (In re Kwok)*, Case No. 22-50073 (JAM), Adv. P. No. 23-05002 (JAM) (Bankr. D. Conn. Feb. 15, 2023), ECF No. 1. The Trustee testified that prior to the commencement of that adversary proceeding, he had been in constant contact with the Sherry Netherland about the daily activities associated with the Apartment and has never been told about any issues concerning the security of the Apartment. Hr'g at 10:45:58–10:48:22 a.m.

The third rationale is:

> physical changes in the property after issuance which result in the property becoming uninsurable in accordance with our underwriting standards, specifically, the poor physical condition of the 18th floor apartment after the March 15, 2023 fire and all three insured properties are no longer primary residences and are unoccupied.

AIG Ex. 27. Mr. Gerber testified that when there is a fire at an insured premises, the decision to cancel is based on the repair process, the timeline for reoccupation of the premises, and the intent of the insured. Hr'g at 2:39:42–2:40:55 p.m. Insofar as Mr. Gerber testified that a fire alone is an insufficient basis to cancel a policy, his testimony comports with regulators' interpretation of New York law regarding cancellation of personal lines insurance, such as homeowner's insurance, on account of a covered event. General Counsel Opinion 5-10-2002 (N.Y. Ins. Bul.),

2002 WL 33011040 (May 10, 2002) ("It is this Department's view that the insurer may not cancel a policy when a pet becomes seriously ill from a condition covered under the policy, since this is the very risk that the insurer is insuring against. Thus, an event that is supposed to be covered under the policy, such as a serious injury or illness, cannot then be considered a physical change in the property and uninsurable.").

Mr. Gerber testified that his group will cancel policies when there is "static" disrepair and lack of occupancy which they ascertain at a "reasonable" interval from the risk. Hr'g at 2:35:51–2:39:31 p.m. It is more likely than not that the one (1) month and ten (10) days between the Fire and original Cancellation Notices was not a reasonable interval of time. Mr. Gerber testified that AIG neither knew nor investigated whether Mr. Kwok was seeking bail or seeking to return to the Apartment if released on bail. Hr'g at 2:43:55–2:44:58 p.m. Mr. Gerber did not testify about the intent of any other members of Mr. Kwok's family to reoccupy the Apartment. Moreover, the Trustee testified that the Sherry-Netherland has strictly enforced this Court's orders regarding access to the Apartment following the Fire. Therefore, Mr. Gerber's testimony regarding concerns about a lack of occupancy at the Apartment are not supported by the evidence. Furthermore, Mr. Gerber testified that his group insures others within the Sherry-Netherland, including those with apartments that have been damaged by the Fire, but whose policies have not been cancelled due to the physical condition of their apartments. Hr'g at 2:40:57–2:41:31 p.m. He also testified that he did not know – but rather believed – repairs had started in the apartments of the other insureds. Hr'g at 2:41:31–2:42:09 p.m.

In response to a direct examination question by AIG's counsel as to why the initial Cancellation Notices that AIG later rescinded were "perfunctory," Mr. Gerber testified that AIG was aware of the potentially adverse position it would be in upon cancellation, "wanted to move

away from the Policies," and that the "reality is we were just trying to separate. . . . as 'quickly and reasonably' as possible." Hr'g at 12:50:27–12:51:21 p.m. In response to cross examination about the efforts undergone to ascertain the repair process to the Apartment, the timeline for reoccupation of the Apartment, and the intent of anyone seeking to reoccupy the Apartment, Mr. Gerber testified that only steps taken to decide to cancel the Policies was consultation with AIG's legal department. Hr'g at 2:50:18–2:50:51 p.m. Finally, as noted above with respect to irreparable harm, Mr. Gerber testified that AIG would not place insurance for Genever US under the present facts and circumstances. Hr'g at 2:51:46–2:51:52 p.m.

V. CONCLUSION AND ORDER

Genever US has made a clear showing that the Cancellation Notices irreparably harm Genever US, its Chapter 11 bankruptcy estate, all of its creditors, and other interest holders. Genever US has also made a clear showing that it is likely to succeed on the merits as to whether AIG breached its contract in cancelling the Policies. Accordingly, pursuant to Fed. R. Civ. P. 65, made applicable in this adversary proceeding by Fed. R. Bankr. P. 7065, it is hereby

ORDERED: Effective immediately upon entry of this Order, which shall enter prior to 12:01 a.m. on July 14, 2023, AIG is preliminarily enjoined from cancelling the Policies until after a determination on the merits of the Complaint; and it is further

ORDERED: AIG shall immediately rescind its Notices of Cancellation and issue Notices of Reinstatement to every entity AIG previously notified of the cancellation of the Policies.

Dated at Bridgeport, Connecticut this 13th day of July, 2023.

Julie A. Manning
United States Bankruptcy Judge
District of Connecticut