

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ANTARES UNDERWRITING
LIMITED,

Plaintiff,

v.

E&D MAINSTREET CORP D/B/A
MAINSTREET PUB,

Defendant.

Case No.: _____

**DECLARATORY RELIEF REQUESTED - COMPLAINT FOR
DECLARATORY JUDGMENT**

COMES NOW, Antares Underwriting Limited (“Antares”), by and through its undersigned counsel, and hereby files this, its Complaint for Declaratory Judgment, respectfully showing this Court the following:

INTRODUCTION

1. Antares seeks a declaration that E&D Mainstreet Corp. d/b/a Mainstreet Pub (“E&D Mainstreet”) is precluded from recovering, under an insurance policy to which Antares subscribed, for its claimed loss of business income related to SARS-CoV-2.

2. The insurance policy provides certain coverage to E&D Mainstreet’s property located at 705 East New Haven Road, Melbourne, Florida 32901 (the

“Property”) and E&D Mainstreet’s business personal property located therein, subject to the Policy’s terms, exclusions, conditions, limitations, and endorsements.

3. E&D Mainstreet claims that governmental authorities, both state and local, mandated business closures throughout the State of Florida which led to E&D Mainstreet’s loss of business income. However, there is no insurance coverage under the Policy for the losses for which E&D Mainstreet now claims. As a threshold matter, the Policy requires “direct physical loss of or damage to Covered Property”, and the presence or suspected presence of the SARS-CoV-2 virus does not constitute the requisite “direct physical loss” or “damage.”

4. Additionally, the Policy contains certain exclusions which preclude E&D Mainstreet from recovering under the subject Policy.

5. For these and other reasons, the Policy does not afford coverage for E&D Mainstreet’s claimed loss of business income.

THE PARTIES

6. Antares is a foreign entity organized under the laws of England and Wales with its principal place of business located at 21 Lime Street London, EC3M 7HB. Antares is the 100% corporate member of Syndicate AUL 1274 for the applicable year of account. Antares subscribed to the insurance policy at issue and is a citizen of the United Kingdom. Antares has over \$75,000 at stake in connection with the amount insured under the insurance policy at issue.

7. E&D Mainstreet is a corporation organized under the laws of the State of Florida and maintains its principal place of business as 705 East New Haven Road, Melbourne, Florida, 32901.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(2) because there is complete diversity of citizenship between Antares and E&D Mainstreet and the amount in controversy exceeds \$75,000.

9. This Court has personal jurisdiction over E&D Mainstreet because E&D Mainstreet's principal place of business is Florida.

10. Venue in this District is proper under 28 U.S.C. § 1391(b)(1) and (2) because E&D Mainstreet's principal place of business is in this District and Division and because a substantial part of the events or omissions giving rise to the claim occurred in this District and Division.

11. An actual case and controversy of a justiciable nature exists between Antares and E&D Mainstreet regarding the duties, rights, and obligations, if any, under the subject insurance Policy. Antares is, therefore, entitled to bring this declaratory judgment action in this Court pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

FACTUAL BACKGROUND

A. The Property and Claims History

12. This matter arises out of a commercial property insurance policy, policy number APOPR003 issued to E&D Mainstreet to which Antares subscribed (the “Policy”). A true and accurate copy of the Policy is attached hereto as Exhibit A. (“Ex. A”).

13. The Policy has a policy period of June 10, 2019 to June 10, 2020.

14. On March 17, 2020, the Governor of Florida, Ron DeSantis, issued Executive Order 20-68. Executive Order 20-68 required all Florida restaurants to limit their occupancy to 50% of their current building occupancy, as well as implement other social distancing guidelines.

15. Thereafter, on March 20, 2020, Governor DeSantis issued Executive Order 20-71. Executive Order 20-71 ordered all restaurants and food establishments within the State of Florida to suspend on-premises food consumption for customers. However, Executive Order 20-71 permitted restaurants to operate their kitchens for the purpose of providing delivery or take-out services.

16. Executive Order 20-71 additionally permitted employees, janitorial personnel, contractors and delivery personnel to be allowed access to restaurants and food establishments for the purposes of delivery or take-out services.

17. On or about April 24, 2020, E&D Mainstreet’s insurance agent, J. Curtis & Associates, Inc. (the “Agent”) reported a claim for business interruption related to the COVID-19 pandemic. The Agent further reported that E&D Mainstreet

wished to make a claim for lost revenue under the Policy's provisions for Civil Authority and Business Interruption with Extra Expense.

18. On May 14, 2020, a reservation of rights letter was sent to E&D Mainstreet explaining the Policy's coverage language and highlighting various exclusions and limitations on coverage for the claim.

19. During the claim investigation process, a representative of E&D Mainstreet, Joe McAneney, was interviewed. The interview was then reduced to writing and approved by Mr. McAneney.

20. In the interview, Mr. McAneney confirmed that all of E&D Mainstreet's claimed damages were related to Governor DeSantis' executive orders pertaining to restaurants in Florida. Mr. McAneney stated that E&D Mainstreet was precluded from doing business as a restaurant/bar as per the executive orders, but was not prevented access to the building, and sold packaged store items to-go during this time. Mr. McAneney also confirmed that there are no known direct or physical damages to the Property.

21. Mr. McAneney confirmed that E&D Mainstreet did not have to restrict access to the Property due to direct or known presence, or suspected presence, of COVID-19.

22. Mr. McAneney confirmed that, to his knowledge, no employees, vendors, customers, or anyone at all with COVID-19 had visited the Property.

23. Mr. McAneney confirmed that the Property was not tested to determine if COVID-19 is or was present at the Property, and he is not aware of any actual confirmed COVID-19 contamination at the Property.

24. By correspondence dated June 23, 2020, E&D Mainstreet was advised of the lack of coverage for its claim.

B. Relevant Policy Provisions

25. The Policy provides coverage for certain “direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.” Ex. A, at CP 00 10 10 12, p. 1 of 16.

26. In turn, the Policy defines a “Covered Cause of Loss” as “direct physical loss unless the loss is excluded or limited in this policy.” Ex. A, at CP 10 30 09 17, p. 1 of 10.

27. The Policy contains a “Business Income (and Extra Expense) Coverage Form.” The coverage form provides, in relevant part:

We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss.

Ex. A, at CP 00 30 10 12, p. 1 of 9. The Business Income (and Extra Expense)

Coverage Form defines “period of restoration” as follows:

3. “Period of restoration” means the period of time that:

a. Begins:

(1) 72 hours after the time of *direct physical loss or damage* for Business Income Coverage; or

(2) Immediately after the time of the *direct physical loss or damage* for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

b. Ends on the earlier of:

(1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

(2) The date when business is resumed at a new permanent location.

“Period of restoration” does not include any increased period due to the enforcement of or compliance with any ordinance or law that:

(1) Regulates the construction, use or repair, or requires the tearing down of any property; or

(2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants”.

The expiration date of this policy will not cut short the “period of restoration”. (Emphasis added.)

COUNT I – DECLARATORY JUDGMENT

**NO DUTY TO PROVIDE COVERAGE FOR BUSINESS INCOME AND
EXTRA EXPENSE AS THE ALLEGED LOSS DOES NOT CONSTITUTE
DIRECT PHYSICAL LOSS OR DAMAGE**

28. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

29. E&D Mainstreet has made a claim for and requested that Antares provide coverage under the Policy for claimed business interruption loss related to the COVID-19 pandemic.

30. Under the Policy's "Business Income (and Extra Expense) Coverage Form," coverage is available for the actual loss of Business Income sustained due to the necessary "suspension" of the insured's "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property. Period of restoration is measured by when the direct physical loss or damage occurs. The loss or damage must be caused by or result from a Covered Cause of Loss. Covered cause of loss means *direct physical loss* unless the loss is excluded or limited in the policy.

31. Therefore, the insuring clause requires, as a condition precedent to coverage, a covered cause of loss, and to fall within the basic scope of coverage for Business Income, a claim must involve "direct physical loss."

32. The presence, or suspected presence, of COVID-19 at the Property does not constitute direct physical loss or damage to Property.

33. The governmental orders at issue do not constitute direct physical loss or damage to Property.

34. The Property did not sustain direct physical loss or damage. As a result, coverage is not triggered under the Policy's Business Income (and Extra Expense) Coverage Form.

35. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage for the loss claimed by E&D Mainstreet.

36. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide any coverage or issue any payments to E&D Mainstreet for the claim submitted under the Policy because there has been no Covered Cause of Loss.

COUNT II – DECLARATORY JUDGMENT

THE CIVIL AUTHORITY COVERAGE IS INAPPLICABLE AND ANTARES DOES NOT OWE COVERAGE UNDER THIS PROVISION

37. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

38. The Policy includes an additional coverage for Civil Authority which provides, in relevant part:

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises will apply for a period of up to four consecutive weeks from the date on which such coverage begins. Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
 - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

Ex. A, CP 00 30 10 12, p. 2 of 9.

39. As set forth above, E&D Mainstreet claims business interruption loss as a result of various governmental executive orders.

40. Coverage for Civil Authority (an additional coverage) applies if there is a Covered Cause of Loss causing damage to property other than property at the described premises, provided that access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage.

41. Neither the presence, nor the suspected presence, of COVID-19 constitutes a Covered Cause of Loss.

42. Rather, any suspension or limitation of operations was the result of government actions taken to slow the spread of the COVID-19 pandemic, and not as a result of any Covered Cause of Loss.

43. Moreover, access to the described premises was not prohibited by action of civil authority.

44. Pursuant to the relevant executive orders, E&D Mainstreet was able to access the Property to provide delivery or take-out services.

45. E&D Mainstreet was permitted to access the Property for other purposes, as well.

46. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage under the Civil Authority provision.

47. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide any coverage or issue any payments to E&D Mainstreet under the Civil Authority provision.

COUNT III – DECLARATORY JUDGMENT

COVERAGE IS PRECLUDED BY THE ORDINANCE OR LAW

EXCLUSION

48. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

49. The Policy contains an exclusion for ordinance or law which, in relevant part, provides:

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

- a. Ordinance or Law

The enforcement of or compliance with any condition or law:

- (1)Regulating the construction, use or repair of any property; . . .

Ex. A, CP 10 30 09 17, pp. 1-2 of 10.

50. Under the plain terms of this provision, coverage for damages caused directly or indirectly by the enforcement of or compliance with any condition regulating the use of the Property are expressly excluded under the Policy.

51. As set forth above, E&D Mainstreet claims business interruption loss as a result of various governmental executive orders, and specifically, E&D Mainstreet's ability to use the interior of the Property for on-premises food and beverage consumption.

52. Thus, coverage is not owed under the Policy for any alleged business interruption caused by the enforcement or compliance of any condition or law regulating the use of the Property.

53. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage for the loss claimed by E&D Management.

54. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide or issue any payments to E&D Mainstreet for the claim submitted under the Policy due to the Ordinance or Law Exclusion.

COUNT IV – DECLARATORY JUDGMENT

COVERAGE IS PRECLUDED BY THE ACTS OR DECISIONS

EXCLUSION

55. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

56. The Policy contains an exclusion for acts or decisions which, in relevant part, provides:

B. Exclusions

* * *

3. We will not pay for loss or damage caused by or resulting from any of the following 3.a through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

* * *

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

Ex. A, CP 10 30 09 17, p. 4 of 10.

57. Coverage for loss or damage caused by or resulting from acts or decisions of any person, group, organization or governmental body is expressly excluded by the Policy.

58. As set forth above, E&D Mainstreet claims business interruption loss as a result of the acts or decisions of various governmental bodies, individuals, or entities, and specifically, E&D Mainstreet's ability to use the Property for on premises food and beverage consumption.

59. Thus, coverage is not owed under the Policy for any alleged business interruption caused by any acts or decisions of any person, group, organization or governmental body. This includes, but is not limited to, any acts or decisions by the Governor of Florida.

60. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage for the loss claimed by E&D Management.

61. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide or issue any payments to E&D Mainstreet for the claim submitted under the Policy due to the Acts or Decisions Exclusion.

COUNT V – DECLARATORY JUDGMENT

COVERAGE IS PRECLUDED BY THE LOSS OF USE OR LOSS OF MARKET EXCLUSION

62. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

63. The Policy contains an exclusion for loss of use or loss of market which, in relevant part, provides:

B. Exclusions

* * *

2. We will not pay for loss or damage caused by or resulting from any of the following:

* * *

- b. Delay, loss of use or loss of market.

Ex. A CP 10 30 09 17, p. 3 of 10.

64. Coverage for loss or damage caused by or resulting from delay, loss of use or loss of market is expressly excluded by the Policy.

65. As set forth above, E&D Mainstreet claims business interruption loss as a result of E&D Mainstreet's inability to use the Property for on-premises food and beverage consumption.

66. The Governor of Florida prohibited the use of the interior of the Property for on-premises food and beverage consumption for customers, but permitted E&D Mainstreet to remain operational to provide take-out and delivery services.

67. Further, employees, janitorial personnel, contractors and deliver personnel were allowed access to E&D Mainstreet for the purposes of delivery or take-out services.

68. Thus, there is no coverage for any loss of use of the interior dining room of the Property, or loss of market for general downturn in the demand for E&D Mainstreet's goods or services.

69. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage for the loss claimed by E&D Management.

70. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide any coverage or issue any payments to E&D Mainstreet for the claim submitted under the Policy due to the exclusions for loss of loss and loss of market.

COUNT VI – DECLARATORY JUDGMENT

COVERAGE IS PRECLUDED BY THE POLLUTION EXCLUSION

71. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

72. The Policy contains a pollution exclusion which, in relevant part, provides:

B. Exclusions

* * *

2. We will not pay for loss or damage caused by or resulting from any of the following:

* * *

1. Discharge, dispersal, seepage, migration, release or escape of “pollutants” unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the “specified causes of loss”. But if the discharge, dispersal, seepage, migration, release or escape of “pollutants” results in a “specified cause of loss”, we will pay for the loss or damage caused by that “specified cause of loss”.

This exclusion, 1., does not apply to damage to glass caused by chemicals applied to the glass.

Ex. A, CP 10 30 09 17, pp. 3-4 of 10.

73. The Policy defines “pollutants” as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.” Ex. A, CP 00 30 10 12, p. 9 of 9.

74. E&D Mainstreet claims loss of business income resulting from governmental orders issued to slow the spread of the COVID-19 pandemic.

75. COVID-19 is a contaminant. As the Policy expressly excludes coverage for loss or damage caused by or resulting from “contaminants,” there is no coverage for E&D Mainstreet’s claimed loss of business income.

76. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage for the loss claimed by E&D Management.

77. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide any coverage or issue any payments to E&D Mainstreet for the claim submitted under the Policy due to the exclusion for loss or damage caused by pollutants.

COUNT VII – DECLARATORY JUDGMENT

**COVERAGE IS PRECLUDED BY THE SEEPAGE AND/OR POLLUTION
AND/OR CONTAMINATION EXCLUSION**

78. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

79. The Policy contains a seepage and/or pollution and/or contamination exclusion which, in relevant part, provides:

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure:

- (a) any loss, damage, cost or expense, or
- (b) any increase in insured loss, damage, cost or expense, or
- (c) any loss, damage cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instructions or request of, or by any agreement with, any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation.)

which arises from any kind or seepage of any kind or pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a Peril Insured, or from steps or measures taken in connection with

the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term any kind of seepage or any kind of pollution and/or contamination as used in this Endorsement includes (but not limited to):

(a) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as hazardous material by the United States Environmental Protection Agency or as a hazardous material by the United States Department of Transportation, or defined as a toxic substance by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and

(b) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

Ex. A, SCU-006 (05/19), p. 4 of 8.

80. E&D Mainstreet is seeking coverage for economic loss due to the threat of COVID-19, which is a virus whose presence, existence, or release endangers or threatens to endanger the health, safety or welfare of persons or the environment.

81. As there is no coverage for the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment, there is no coverage for E&D Mainstreet's claim. This includes, but is not limited to, the actual or perceived presence of COVID-19 at the

Property, or any governmental orders issued in response to the COVID-19 pandemic.

82. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage for the loss claimed by E&D Management.

83. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide any coverage or issue any payments to E&D Mainstreet for the claim submitted under the Policy due to the exclusion for loss, damage, cost or expense caused by seepage and/or pollution and/or contamination.

COUNT VIII – DECLARATORY JUDGMENT

**COVERAGE IS PRECLUDED BY THE MICROORGANISM EXCLUSION
(ABSOLUTE)**

84. Antares re-adopts and re-alleges each and every allegation contained in paragraphs 1-27 as though fully set forth herein.

85. The Policy contains a Microorganism Exclusion (Absolute) which provides, in relevant part:

This policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

Mold, mildew, fungus, spores, or other micro-organism of any type, nature, or description, including but not limited

to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the policy that provides insurance, in whole or in part for these matters.

Ex. A, SCU-006 (05/19), p. 3 of 8.

86. The U.S. Department of Health and Human Services, National Institute of Health and National Institute of Allergy and Infectious Diseases define microorganism as “microscopic organisms, including bacteria, viruses, fungi, plants, and animals.”¹

87. SARS-CoV-2, which causes COVID-19, is a microorganism.

88. E&D Mainstreet’s claim arises from economic loss directly or indirectly arising out of or relating to a microorganism whose presence poses an actual or potential threat to human health.

¹ *Understanding Microbes in Sickness and in Health*, U.S. DEP’T OF HEALTH & HUMAN SERVS., NAT’L INST. OF HEALTH 47 (Jan. 2006).

89. More specifically, E&D Mainstreet's claim for business interruption arises from governmental orders regulating restaurants throughout Florida in order to combat the actual or potential threat to human health posed by SARS-CoV-2.

90. The Policy expressly provides that it does not insure for any loss, damage, claim, cost or expense, either arising directly or indirectly, or relating to, microorganisms. Accordingly, there is no coverage for any claimed business interruption related in any way to SARS-CoV-2.

91. This Policy provision further expressly provides that it excludes loss, damage, cost or expense directly or indirectly relating to any loss of use, occupancy, or functionality. Thus, there can be no coverage for E&D Mainstreet's alleged economic directly or indirectly related to SARS-CoV-2.

92. An actual controversy has arisen as to whether, under the terms of the Policy, Antares has an obligation to provide coverage for the loss claimed by E&D Management.

93. Accordingly, pursuant to 28 U.S.C. § 2201, Antares is entitled to a declaration that it owes no duty to provide any coverage or issue any payments to E&D Mainstreet for the claim submitted under the Policy due to the exclusion for loss, damage, cost or expense caused directly or indirectly by SARS-CoV-2.

PRAYER FOR RELIEF

WHEREFORE, Antares respectfully requests that the Court grant it the following relief:

a. Enter a declaratory judgment that the Property has not sustained “direct physical loss of or damage to Covered Property,” and thus the Policy does not provide coverage for the loss claimed by E&D Mainstreet;

b. Enter a declaratory judgment that there is no coverage under the Policy for Civil Authority;

c. Enter a declaratory judgment that coverage under the Policy is precluded by the Ordinance or Law Exclusion;

d. Enter a declaratory judgment that coverage under the Policy is precluded by the Acts or Decisions Exclusion;

e. Enter a declaratory judgment that coverage under the Policy is precluded by the Loss of Use and/or Loss of Market Exclusions;

f. Enter a declaratory judgment that coverage under the Policy is precluded by the Pollution Exclusion;

g. Enter a declaratory judgment that coverage under the Policy is precluded by the Seepage and/or Pollution and/or Contamination Exclusion;

h. Enter a declaratory judgment that coverage under the Policy is precluded by the Microorganism Exclusion;

i. Grant such other relief as this Court deems just and appropriate.

Respectfully submitted, this 24th of February, 2021.

FIELDS HOWELL LLP

9155 S. Dadeland Blvd., Suite 1012

Miami, FL 33156

Telephone: (786) 870-5600

Facsimile: (855) 802-5821

Email: arubio@fieldshowell.com

/s/ Armando P. Rubio

Armando P. Rubio

Florida Bar No.: 478539

Counsel for Plaintiff