

**UNITED STATES DISTRICT COURT FOR  
EASTERN DISTRICT OF PENNSYLVANIA**

**TABLE 95 HOSPITALITY GROUP INC.**

**Plaintiff,**

**vs.**

**GENERAL CASUALTY COMPANY OF  
WISCONSIN**

**Defendant.**

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, Table 95 Hospitality Group Inc. brings this Complaint, alleging against Defendant, General Casualty Company of Wisconsin, as follows:

**NATURE OF THE CASE**

1. This is a civil action seeking declaratory relief arising from Plaintiff's contract of insurance with the Defendant.

2. In light of the Coronavirus global pandemic ("COVID-19") and state and local orders mandating that restaurants not permit in-store dining, Plaintiff shut its doors for customers on March 16, 2020.

3. Plaintiff's insurance policy provides coverage for all non-excluded business losses, and thus provides coverage here.

4. As a result, Plaintiff is entitled to declaratory relief that the restaurant is covered for all business losses that have been incurred in an amount greater than \$150,000.

**JURISDICTION**

5. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and the Defendant. Further, Plaintiff has suffered business losses in an amount greater than \$150,000. The amount in

controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value of those business losses. *Id.* at § 1332(a).

6. The Court has personal jurisdiction over Defendant because at all relevant times it has engaged in substantial business activities in the Commonwealth of Pennsylvania. At all relevant times Defendant transacted, solicited, and conducted business in Pennsylvania through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Pennsylvania. Defendant purposefully availed itself of personal jurisdiction in Pennsylvania because it contracted to provide insurance to Plaintiff in Pennsylvania which is the subject of this case

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because a substantial portion of the wrongful acts upon which this lawsuit is based occurred in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Plaintiff is a Pennsylvania corporation and Defendant is a corporation that has substantial, systematic, and continuous contacts in the Commonwealth of Pennsylvania, and the acts and/or omissions complained of took place, in whole or in part, within the venue of this Court.

### **PARTIES**

8. At all relevant times, Plaintiff Table 95 Hospitality Group. is a Corporation authorized to do business and doing business in the Commonwealth of Pennsylvania, County of Montgomery with a principal place of business at 1100 E Hector Street, Suite 225, Conshohocken, Pennsylvania, 19428. Table 95 owns, operates, manages, and/or controls seventeen restaurant/bars in nine states and the District of Columbia.

9. At all relevant times, Defendant General Casualty Company of Wisconsin (“Defendant”) is a corporation with its principal place of business in the County of Dane, State of

Wisconsin, and among other things, provides business interruption insurance to Plaintiff at all its locations.

10. At all relevant times, Defendant issued three insurance policies providing business interruption coverage for seventeen restaurant/bars owned by Plaintiff. Each policy provided coverage for business personal property, business income, and extra expense incurred by Plaintiff from October 1, 2019 until October 1, 2020:

11. The insurance policies are currently in full effect and each include coverage for, among other things, personal property, business income, and extra expense. The policies also each contain a provision for losses due to action of civil authority.

### **FACTUAL BACKGROUND**

#### **A. Insurance Coverage**

12. On or about October 1, 2019, Defendant entered into three contracts of insurance with the Plaintiff, whereby Plaintiff agreed to make payments to Defendant in exchange for Defendant's promise to indemnify the Plaintiff for losses including, but not limited to, business income losses at seventeen locations (the "Covered Properties").

13. The Covered Properties consist of the following locations, all of which are owned, leased by, managed, and/or controlled by the Plaintiff:

- 20376 Exchange Street, Ashburn, VA
- 132 W 31<sup>st</sup> Street, New York, NY
- 140 E 41<sup>st</sup> Street, New York, NY
- 374 Congress Street, Boston, MA
- 2 Logan Square, Philadelphia, PA
- 901 9th Street NW, Washington DC
- 3925 Walnut Street, Philadelphia, PA
- 1250 Connecticut Avenue, Washington DC
- 205 Demonbreun Street, Nashville, TN
- 848 Peachtree Street NE, Atlanta, GA
- 850 W Fulton Street, Chicago, IL
- 1100 E Hector Street, Conshohocken, PA

- 135 Bedford Street, Stamford, CT
- 199 Fleet Street, Oxon Hill, MD
- 177 Fleet Street, Oxon Hill, MD
- 1150 Filbert Street, Philadelphia, PA
- 112 Bedford Street, Stanford, CT

14. The Covered Properties are covered under a series of Commercial Property Coverage policies issued by the Defendant with the following policy numbers:

- Policy No. 1362674 (*See* Declaration page, attached hereto as Exhibit A);
- Policy No. 1365044 (*See* Declaration page, attached hereto as Exhibit B); and
- Policy No. 1350045 (*See* Declaration page, attached hereto as Exhibit C).

(Hereinafter, “The Policies”).

15. The Policies are currently in full effect, providing, among other things coverage for personal property, business income, and extra expense, and additional coverages between the period of October 1, 2019 through October 1, 2020.

16. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, coverage for the loss of business income and extra expense sustained in the event of business interruption or closures by order of civil authority.

17. Under the Policies, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Covered Property is prohibited by order of civil authority as the direct result of damage to property in the immediate area of Plaintiff’s Covered Properties. This additional coverage is identified as coverage under “Civil Authority.”

18. The “Civil Authority” provision in the Policies issued by Defendant provides coverage as follows:

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.

19. The Policies are all-risk policies, insofar as they provide that covered causes of losses under the Policies mean direct physical loss or direct physical damage unless the loss is specifically excluded or limited in the Policies.

20. An all-risk policy is one that protects against catastrophic events, such as the Coronavirus (also known as COVID-19). COVID-19, a pandemic currently being experienced on a global scale, has resulted in the widespread, omnipresent and persistent presence of COVID-19 in and around Plaintiff's Insured Properties and adjacent properties.

21. Plaintiff's all-risk policies include coverage for business interruption, which is standard in most all-risk commercial property insurance policies, along with coverage for extended expenses. Plaintiff purchased the aforementioned Policies expecting to be insured against losses, including, but not limited to, business income losses at its restaurant.

22. The COVID-19 pandemic caused direct physical loss of or damage to the Covered Properties under the Policies by denying use of and damaging the Covered Properties and by causing a necessary suspension of operations during the period of restoration. Further, the COVID-19 pandemic renders the Covered Properties unsafe, uninhabitable, or otherwise unfit for their intended use, which constitutes direct physical loss.

23. Plaintiff purchased, among other coverages, business interruption coverage for closure by Order of Civil Authority.

24. Based upon information and belief, the Policies provided by Defendant included language that is essentially standardized language adopted from and/or developed by the ISO (“Insurance Service Office”). The ISO, founded in 1971, provides a broad range of services to the property and casualty insurance industry. In addition to form policies, ISO collects and manages databases containing large amounts of statistical, actuarial, underwriting, and claims information, fraud-identification tools, and other technical services. ISO describes itself as follows: “ISO provides advisory services and information to many insurance companies. ... ISO develops and publishes policy language that many insurance companies use as the basis for their products.” ISO General Questions, Verisk, <https://www.verisk.com/insurance/about/faq/> (last visited June 11, 2020); see also Insurance Services Office (ISO), Verisk, <https://www.verisk.com/insurance/brands/iso/> (last visited June 11, 2020).

25. The language in the Policies is language that is “adhesionary” in that Plaintiff was not a participant in negotiating or drafting its content and provisions.

26. Plaintiff possessed no leverage or bargaining power to alter or negotiate the terms of the Policies, and more particularly, Plaintiff had no ability to alter, change or modify standardized language derived from the ISO format.

27. Plaintiff purchased the Policies with an expectation that it was purchasing policies that would provide coverage in the event of business interruption and extended expenses, such as that suffered by Plaintiff as a result of COVID-19.

28. At no time had Defendant, or its agents, notified Plaintiff that the coverage that the all-risk Policies Plaintiff had purchased contained exclusions and provisions that purportedly

undermined the very purpose of the coverage: providing benefits in the occurrence of business interruption and incurring extended expenses.

29. The purported exclusions of the Policies that Defendant has or is expected to raise in defense of Plaintiff's claims under the Civil Authority coverage of the Policies are strained and contradictory to the provision of Civil Authority Order coverage.

30. Furthermore, Defendant's expected application of exclusions to undermine Plaintiff's bargained-for coverage violates public policy of the Commonwealth of Pennsylvania as a contract of adhesion that is unenforceable against Plaintiff.

31. Access to Plaintiff's businesses, and the immediate area surrounding Plaintiff's Insured Properties, were prohibited by Civil Authority Orders, losses that the Policies cover in the form of actual loss of business sustained and actual expenses incurred.

32. Plaintiff had a reasonable expectation that the Policies' business interruption coverage applied where a civil authority forced closure of the business, or the immediate area surrounding Plaintiff's Insured Properties, for an issue of public safety.

33. The all-risk Policies do not exclude the losses suffered by Plaintiff and therefore the Policies provide coverage for those losses.

34. Plaintiff suffered direct physical loss or damage within the definitions of the Policies as loss of use of property, as in this case, constitutes loss of access or damage.

35. The Policies' virus and bacterium exclusions do not apply because Plaintiff's losses were not directly caused by a virus, bacterium or other microorganism. Instead, Plaintiff's losses were caused by the entry of Civil Authority Orders, particularly those by Governor Wolf and by the Pennsylvania Department of Health, to mitigate the spread of COVID-19.

36. Further, the Virus Exclusion was first permitted by state insurance departments due to misleading and fraudulent statements by the ISO that property insurance policies do not and were not intended to cover losses caused by viruses, and so the Virus Exclusion offers mere clarification of existing law. To the contrary, before the ISO made such baseless assertions, courts considered contamination by a virus to be physical damage. Defendant's use of the Virus Exclusion to deny coverage here shows that the Virus Exclusion was fraudulently adopted, adhesionary, and unconscionable. See <https://www.propertycasualty360.com/2020/04/07/here-we-go-again-virus-exclusion-for-covid-19-and-insurers/> (last visited June 12, 2020)

37. The Policies' virus or bacteria exclusions (Virus Exclusion) do not apply to the closure of Plaintiff's Covered Properties as a result of the orders issued by a Civil Authority due to the COVID-19 pandemic.

38. Nevertheless, based on information and belief, the Defendant has accepted the policy premiums with no intention of providing any coverage for business income losses resulting from orders of a Civil Authority that the insured businesses be shutdown, or any related property damage.

39. On information and belief, Defendant intends to assert that any loss resulting from property damage or from Civil Authority Orders to cease normal business operations are excluded under the terms of the Policies' Virus Exclusion. Defendant is wrong. The Virus Exclusion clause does not apply to the facts presented here.

**B. The COVID-19 Pandemic**

40. The scientific community, and those personally affected by the virus, recognize COVID-19 as a cause of real physical loss and damage. It is clear that contamination of the



Covered Property would be a direct physical loss requiring remediation to clean the surfaces of the restaurant.

41. On information and belief, the virus that causes COVID-19 remains stable and transmittable: in airborne aerosols for up to three hours; on copper for up to four hours; on cardboard for up to 24 hours; and on plastic and stainless steel for up to two to three days. *See* <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited May 29, 2020).

42. The CDC has issued a guidance that gatherings of more than 10 people must not occur. People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19.

43. On March 11, 2020 the World Health Organization (“WHO”) made the assessment that COVID-19 shall be characterized as a pandemic. *See* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited June 11, 2020).

44. The global Coronavirus pandemic is exacerbated by the fact that the deadly virus physically infects and stays on surfaces of objects or materials, “fomites,” for up to twenty-eight (28) days.

45. A particular challenge with the novel coronavirus is that it is possible for a person to be infected with COVID-19 but be asymptomatic. Thus, seemingly healthy people unknowingly spread the virus via speaking, breathing, and touching objects.

46. While infected droplets and particles carrying COVID-19 may not be visible to the naked eye, they are physical objects which travel to other objects and cause harm. Habitable

surfaces on which COVID-19 has been shown to survive include, but are not limited to, stainless steel, plastic, wood, paper, glass, ceramic, cardboard, and cloth

47. China, Italy, France, and Spain have implemented procedures requiring the cleaning and disinfection of public areas prior to allowing them to re-open publicly due to COVID-19 contamination.

48. Courts in France have ruled that business interruption coverage applies where businesses lost revenue as a result of being forced to close their doors due to orders of civil authority in response to the COVID-19 Pandemic. *See* <https://www.insurancejournal.com/news/international/2020/05/22/569710.htm> (Last Visited June 11, 2020).

49. The determinations by courts in France, and potentially other countries, that coverage exists is consistent with public policy that in the presence of a worldwide Pandemic such as COVID-19, businesses that possess business interruption insurance coverage should recover their losses from the insurance carriers.

**C. Civil Authority Orders**

50. Plaintiff's Covered Properties, which operate nationwide in a total of nine states as well as the District of Columbia, have been forced to shut down operations as a result of orders issued by state and local civil authorities ordering the closure of non-essential businesses ("Civil Authority Orders"). In every state where Plaintiff's Covered Properties operate, the Civil Authority Orders require the suspension of all in-person dining. *See* <https://web.archive.org/web/20200420012407/https://www.wsj.com/articles/a-state-by-state-guide-to-coronavirus-lockdowns-11584749351> (published April 20, 2020; last visited June 24, 2020).

1. *Connecticut*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Five-person limit for social and recreational gatherings; 50-person limit for religious services.
- **Businesses:** Nonessential businesses must suspend all in-person operations.
- **Quarantines:** No statewide directive. Out-of-state visitors are strongly urged to self-quarantine.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Trails and grounds of state parks and forests are open with social distancing.

2. *Georgia*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Open, with social distancing requirements.

3. *Illinois*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks, fish and wildlife areas, recreational areas and historic sites are closed.

4. *Maryland*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work. Senior-citizen activities centers are closed.
- **Quarantines:** People traveling into Maryland from anywhere outside Maryland are required to self-quarantine for 14 days with limited exceptions. (Guidance)
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State park beaches are closed. Some parks remain open.

5. *Massachusetts*

- **Travel outside home:** People and especially older adults are strongly advised to stay home as much as possible.
- **Gatherings:** 10-person limit. Applies to confined spaces, not parks and other outdoor spaces.
- **Businesses:** Nonessential businesses must close their physical workplaces and facilities to workers and customers. Groceries must reserve an hour in the morning for older customers.
- **Quarantines:** Arriving travelers from out of state are instructed to self-quarantine for 14 days.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** No congregating on coastal beaches. State parks are open and campgrounds closed.

6. *New York*

- **Travel outside home:** Only for essential needs/work. Individuals age 70 and older and those with compromised immune systems must stay home and limit home-visitation to immediate family members or close friends.
- **Gatherings:** Nonessential gatherings are prohibited.
- **Businesses:** Nonessential businesses limited to minimum operations or remote work.
- **Quarantines:** No mandatory quarantine for out-of-state travelers. Mandatory quarantines for people who have been in close contact with a Covid-19 patient.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Social distancing at state parks.

7. *Pennsylvania*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Gatherings are generally prohibited.
- **Businesses:** Non-life-sustaining businesses must close or operate remotely.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Trails, lakes, roads and parking are limited to “passive and dispersed recreation.”

8. *Tennessee*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** Social gatherings of 10 or more people prohibited.
- **Businesses:** Nonessential businesses are limited to minimum operations or remote work.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** State parks/trails closed.

9. *Virginia*

- **Travel outside home:** Only for essential needs/work.
- **Gatherings:** 10-person limit.
- **Businesses:** Recreation and entertainment businesses must close.
- **Quarantines:** No statewide directive.
- **Bars/restaurants:** Dine-out only.
- **Beaches/parks:** Beaches are closed except for fishing and exercising. State parks are open for day-use activities. Campgrounds are closed.

10. *Washington D.C.*

Non-essential businesses ordered to close, including sit-down restaurants. *See* <https://mayor.dc.gov/release/mayor-bowser-orders-closure-non-essential-businesses> (last visited June 24, 2020). Additionally, a stay-at-home order was also imposed, specifying that residents may leave their homes only to:

- engage in essential activities, including obtaining medical care that cannot be provided through telehealth and obtaining food and essential household goods; perform or access essential governmental functions;
- work at essential businesses;
- engage in essential travel; or
- engage in allowable recreational activities, as defined by the Mayor's Order.

*see* <http://coronavirus.dc.gov/release/mayor-bowser-issues-stay-home-order> (last visited June 24, 2020).

51. Further, on April 10, 2020 President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff:

REPORTER: Mr. President may I ask you about credit and debt as well. Many American individuals, families, have had to tap their credit cards during this period of time. And businesses have had to draw down their credit lines. Are you concerned Mr. President that that may hobble the U.S. economy, all of that debt number one? And number two, would you suggest to credit card companies to reduce their fees during this time?

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. ***Business interruption insurance***, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. ***But if I had it I'd expect to be paid.*** You have people. ***I***

*speaking mostly to the restaurateurs*, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot of money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

[https://youtu.be/\\_cMeG5C9TjU](https://youtu.be/_cMeG5C9TjU) (last visited on April 29, 2020) (emphasis added).

52. The President is articulating a few core points:
- a. Business interruption is a common type of insurance, especially for restaurants.
  - b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
  - c. This pandemic should be covered unless there is a specific exclusion for pandemics.
  - d. If insurers deny coverage, they would be acting in bad faith.
  - e. Public policy considerations support a finding that coverage exists and that Defendant's denial of coverage would be in violation of public policy.

53. These Orders and proclamations, as they relate to the closure of all non-essential businesses, evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiff's Covered Properties, as the requisite contact and interaction causes a heightened risk of the properties becoming contaminated.

54. Plaintiff did not have the ability or right to ignore these Orders made by agents of civil authority, as doing so would expose Plaintiff to fines and sanctions.

55. However, Plaintiff's adherence to the requirements of these Orders and proclamations was in furtherance of the Orders' intent to protect the public and supportive of public policy to attempt to minimize the risk of spread of COVID-19.

**D. Impact on Plaintiff's Covered Properties**

56. As a result of the Orders referenced herein, all seventeen of Plaintiff's Covered Properties shut their doors in mid-March and continue to be shut down pursuant to the Civil Authority Orders.

57. Plaintiff's business at 848 Peachtree Street NE in Atlanta, GA is the only Covered Property that has re-opened on a partial basis, offering solely take-out options to customers since April. However, the Atlanta location is generating only 10-20% of revenue compared to its normal operations, and the other sixteen Covered Properties have generated no revenue at all since their doors closed in mid-March pursuant to orders of civil authority in the states where they operate.

58. Prior to the Covered Properties' shutdowns as required under the Civil Authority Orders, the Covered Properties employed as many as 1300 full and part-time staff. As a direct and proximate result of the Orders, Plaintiff has been forced to lay off all of those employees, save for a small staff at Plaintiff's Atlanta location.

59. The businesses operating out of Plaintiff's Covered Properties, are not closed environments, and because people – staff, customers, community members, and others – constantly cycle in and out of the businesses, there is an ever-present risk that the Covered Properties are contaminated and would continue to be contaminated.

60. Businesses like the Plaintiff's are more susceptible to being or becoming contaminated, as both respiratory droplets and fomites are more likely to be retained on the Covered Properties and remain viable for far longer as compared to a facility with open-air ventilation.

61. Plaintiff's Covered Properties are also highly susceptible to rapid person-to-property transmission of the virus, and vice-versa, because the service nature of the business places staff and customers in close proximity to the property and to one another.

62. As a sit-down restaurant/bars, Plaintiff's Covered Properties serve thousands of customers weekly in an intimate setting.

63. The operation of formal restaurants involves a great deal of person to person interaction between staff and customers, as well as repeated and shared uses of surfaces in the kitchens and dining rooms.

64. Because of COVID-19's persistence in locations and surfaces, and the prospect of causing asymptomatic responses in some people, the risk of infection to persons is not only high but could also cause persons with asymptomatic responses to come into contact with others who may develop serious illness.

65. Recognizing this risk, the Civil Authority Orders, and similar such orders in the states and commonwealths where the Covered Properties operate, were the lawful exercise of authority to protect the public and minimize the risk of spread of disease.

66. Even with the entry of these Orders, there remained physical impact not only within the Covered Properties but in and around their surrounding locations due to the difficulty of identifying the presence of COVID-19.



67. Upon information and belief, individuals have contracted the COVID-19 illness in Montgomery County and/or in and around the location of the Covered Properties, thereby confirming the presence of COVID-19 and its impact on property and locations in and around the Covered Properties, supporting the propriety of the entry of the Civil Authority Orders.

68. The government-mandated closures are physically impacting the Covered Properties. Any effort by the Defendant to deny the reality that the above-referenced Orders have caused physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger the Plaintiff and the public.

69. A declaratory judgment determining that the coverage provided under the Policy is necessary to prevent the Plaintiff from being left without vital coverage acquired to ensure the survival of Plaintiff's business due to the shutdown caused by the Civil Authority Orders. As a result of these Orders, Plaintiff has incurred, and continues to incur, among other things, a substantial loss of business income and additional expenses covered under the Policies.

**CAUSE OF ACTION**  
**DECLARATORY RELIEF**

70. Plaintiff re-alleges and incorporates by reference into this cause of action each and every allegation set forth in each and every paragraph of this Complaint.

71. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in “a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a); *see also Principal Life Ins. Co. v. Minder*, No. CIV A 08-5899, 2009 WL 1917096 (E.D. Pa. July 1, 2009); *Miller v. Liberty Mut. Grp.*, 97 F. Supp. 2d 672 (W.D. Pa. 2000).

72. An actual controversy has arisen between Plaintiff and the Defendant as to the rights, duties, responsibilities and obligations of the parties under the Policies in that Plaintiff contends and, on information and belief, the Defendant disputes and denies that:

- a. The Orders constitute a prohibition of access to Plaintiff's Covered Properties;
- b. The prohibition of access by the Orders has specifically prohibited access as defined in The Policies;
- c. The Policies' Virus Exclusion does not apply to the business losses incurred by Plaintiff here.
- d. The Orders trigger coverage;
- e. The Policies include coverage for losses caused by the Orders;
- f. The Policies include coverage for losses caused by the Coronavirus;
- g. The Policies provide coverage to Plaintiff for any current and future civil authority closures of the Covered Properties due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters;
- h. Under the circumstances of the COVID-19 pandemic and the entry of the Civil Authority Orders, Plaintiff had no choice but to comply with the Orders, and Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses;
- i. Defendant's denial of coverage for losses sustained that were caused by the entry of the Civil Authority Orders referenced, and Plaintiff's required compliance with the Orders, violates public policy;
- j. The Policies provide business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Covered Properties; and
- k. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

73. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

74. Plaintiff seeks a Declaratory Judgment to determine whether the Orders constitute a prohibition of access to Plaintiff's Covered Properties as Civil Authority as defined in the Policies.

75. Plaintiff further seeks a Declaratory Judgment to affirm that the Civil Authority Orders trigger coverage.

76. Plaintiff further seeks a Declaratory Judgment to affirm that Defendant's Policies provide coverage to Plaintiff for any current and future business personal property losses, loss of business income, and extended business income losses as a result of Civil Authority Orders affecting the operation of their business due to physical loss or damage caused by the COVID-19 pandemic.

#### **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff herein prays as follows:

- a. For a declaration that the Orders constitute a prohibition of access to Plaintiff's Covered Properties.
- b. For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policies.
- c. For a declaration that the Orders trigger coverage under the Policies.
- d. For a declaration that the Policy provides coverage to Plaintiff for any current and future closures in Montgomery County, or the Covered Properties' states/municipalities, due to any physical loss or damage directly or indirectly arising out of COVID-19 and/or pandemic circumstance under the Civil Authority coverage parameters.
- e. For a declaration that the Policies' exclusions for virus and bacteria do not apply to the circumstances presented in this lawsuit and the kind and types of damages and losses suffered by Plaintiff.
- f. For a declaration that under the circumstances of the COVID-19 pandemic and the entry of the Civil Authority Orders, Plaintiff had no choice but to comply with the Orders and Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses.

- g. For a declaration that Defendant's denial of coverage for losses that were caused by entry of the Civil Authority Orders and Plaintiff's required compliance with those Orders violates public policy.
- h. For a declaration that the Policies provide coverage to Plaintiff for any current, future and continued civil authority closures of non-essential businesses due to physical loss or damage directly or indirectly from COVID-19 under the Civil Authority coverage parameters.
- i. For a declaration that the Policies provide coverage to Plaintiff for any current, future and continued civil authority closures of the Covered Properties due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.
- j. For a declaration that the Policies provide business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Covered Properties or the immediate area of Plaintiff's Covered Properties.
- k. For such other relief as the Court may deem proper.

**TRIAL BY JURY IS DEMANDED**

Plaintiff hereby demands trial by jury.

Dated: June 26, 2020

/s/ Richard M. Golomb  
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