

IN THE CIRCUIT COURT  
TWENTIETH JUDICIAL CIRCUIT  
ST. CLAIR COUNTY, ILLINOIS

KNIGHTSBRIDGE MANAGEMENT, INC.  
T/A KNIGHTSBRIDGE RESTAURANT  
GROUP; ARDEO, LLC T/A  
SABABA/BINDAAS; BOMBAY CLUB,  
INC.; OVAL ROOM, LLC; RASIKA, LLC,  
BIBIANA, LLC T/A MODENA; RASIKA  
WEST END, LLC; AB, LLC T/A OLIVIA;  
BINDAAS 2000 PENN LLC T/A  
BINDAAS; and ANNABELLE, LLC,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE  
COMPANY,

Defendant.

Case No. 20L0832

**COMPLAINT**

Knightsbridge Management, Inc. T/A Knightsbridge Restaurant Group; Ardeo, LLC T/A Sababa/Bindaas; Bombay Club, Inc.; Oval Room, LLC; Rasika, LLC; Bibiana, LLC T/A Modena; Rasika West End, LLC; AB, LLC T/A Olivia; Bindaas 2000 Penn LLC T/A Bindaas; and Annabelle, LLC ("Knightsbridge" or "Plaintiff") files suit against Zurich American Insurance Company ("Zurich" or "Defendant") and alleges as follows.

**INTRODUCTION**

1. Governments around the world have enacted stringent countermeasures in order to combat the COVID-19 pandemic, requiring the closure of many businesses and restricting almost all public activities.

2. Restaurants, in particular, have suffered immediate and precipitous losses. This impact on restaurants will have a devastating impact on the nation's economy and social life. As of 2016, Americans spend more than half of their food budget eating outside the home. According to The Brookings Institution, food preparation and service is the second most common occupation in the United States; waiting tables is the eighth most common. At the start of 2020, there were more than 12 million Americans working at over 600,000 food service and drinking establishments nationwide. Food & Wine reports that approximately 8 million restaurant workers have been laid-off or furloughed since mid-March. Before the COVID-19 pandemic materialized, the National Restaurant Association predicted 2020 sales would be \$899 billion. As of September 16, 2020, the Association's research shows that restaurants lost \$148 billion in sales between March and August. It also reported that "Looking ahead, most restaurant operators do not anticipate a rapid return to normal. Seventy-one percent of full-service operators say they do not expect their restaurant's sales to return to pre-coronavirus levels within the next six months." The outlook is dire for tens of thousands of restaurants that may never reopen. Data released by the website Yelp shows that 26,160 restaurants in Yelp's database had closed as of July 10, 2020 and 15,770 of them will not be reopening. The same data shows that the restaurant industry had surpassed the retail industry as the industry with the highest total business closures.

3. Knightsbridge bought full-spectrum, comprehensive insurance to protect all aspects of its insured businesses – not just for damage to insured premises and equipment, but also for interruptions in business operations that result in loss of business income. Knightsbridge believed that it had purchased comprehensive coverage that would apply to business interruptions under circumstances like this, where Plaintiff has done everything right to protect its businesses and the public. Such coverage is important, if not vital, because profit margins in the restaurant industry are

slim and, unlike in the insurance industry, reserve funds tend to be low. Hence, business interruptions are a particular concern of this industry.

4. Zurich, from whom Plaintiff had purchased such insurance, has denied Knightsbridge's claim. Though its reasons are cursory, the denial appears to be based on an unreasonable reading of its policy, which tracks form policies issued by Defendant on a take-it-or-leave-it basis. Defendant denied the claim despite having pocketed \$83,390.00 in premiums for the 2019 policy Plaintiff purchased from Zurich.

5. This arbitrary and wrongful denial of insurance benefits leaves Plaintiff's restaurants financially insecure and threatens their ongoing survival.

6. Plaintiff thus brings this action seeking declaratory relief and damages.

#### **PARTIES**

7. Plaintiff Knightsbridge Management, Inc. T/A Knightsbridge Restaurant Group is a corporation organized under the laws of the District of Columbia with its principal place of business in Washington, D.C. There are nine associated entities which operate the ten restaurants covered under the Zurich policy; Ardeo, LLC T/A Sababa/Bindaas; Bombay Club, Inc. d/b/a The Bombay Club; Oval Room, LLC d/b/a/ The Oval Room; Rasika, LLC d/b/a Rasika; Bibiana, LLC T/A Modena; Rasika West End, LLC d/b/a Rasika West End; AB, LLC T/A Olivia; Bindaas 2000 Penn LLC T/A Bindaas; and Annabelle, LLC d/b/a Annabelle. All of these restaurants are located in the District of Columbia.

8. Defendant Zurich American Insurance Company is an insurer organized under the laws of New York with its principal place of business at 1299 Zurich Way, Schaumburg, IL 60196-1056. At all relevant times, Defendant operated in Illinois, including in St. Clair County.

### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction because this action is justiciable and does not fall within the original and exclusive jurisdiction of the Supreme Court, pursuant to Article VI, section 9, of the Illinois.

10. This Court has personal jurisdiction over Defendant because Zurich maintains its principal place of business in Schaumburg, Illinois, does business in Illinois, and has engaged in conduct giving rise to the causes of action set forth herein in Illinois, pursuant to 735 Ill. Comp. Stat. 5/2-209 and the requirements of Due Process.

11. Venue is appropriate in this Court pursuant to 735 Ill. Comp. Stat. 5/2-102 because Defendant, whose headquarters is in Schaumburg, Illinois, does business regularly in St. Clair County.

### **FACTUAL BACKGROUND**

#### **I. The Onset of the COVID-19 Pandemic**

12. In January 2020 early media reports documented an outbreak of a novel strain of coronavirus – COVID-19 – in Wuhan, China. By late January, it was generally understood in the scientific and public health communities that COVID-19 was spreading through human-to-human transmission and could be transmitted by asymptomatic carriers.

13. On January 30, 2020, reports of the spread of COVID-19 outside China prompted the World Health Organization to declare the COVID-19 outbreak a “Public Health Emergency of International Concern.”

14. On March 11, the World Health Organization declared COVID-19 a global health pandemic based on existing and projected infection and death rates, as well as concerns about the speed of transmission and ultimate reach of this virus.

15. Public health officials have recognized for decades that non-pharmaceutical interventions (NPIs) can slow and stop the transmission of certain diseases. Among these are screening and testing of potentially infected persons; contact tracing and quarantining infected persons; personal protection and prevention; and social distancing. Social distancing is the maintenance of physical space between people. Social distancing can be limited – e.g., reducing certain types of conduct or activities like hand-shaking – or large-scale – e.g., restricting the movements of the total population.

16. A lack of central planning, shortages of key medical supplies and equipment, and the unfortunate spread of misinformation and disinformation about the risks of COVID-19 has led to widespread confusion, unrest, and uncertainty regarding the likely trajectory of this pandemic and the appropriate counter-measures necessary to mitigate the damage it could potentially cause.

17. Beginning in late February, public health officials began advising various governments around the world that one of the most disruptive NPIs – population-wide social distancing – was needed to stop the transmission of COVID-19. Suddenly densely occupied spaces, heavily traveled spaces, and frequently visited spaces such as schools, offices, public transit, restaurants, and shops were likely to become hot-spots for local transmission of COVID-19. By mid-March, the public health officials' advice was being implemented by state and local governments. These governments, including the government of the District of Columbia where Knightsbridge's restaurants are located, issued a series of orders ("Public Health Orders") placing significant limitations on public activities and private gatherings to limit the spread of COVID-19.

18. The D.C. Public Health Orders were not implemented to prevent contamination of Plaintiff's covered premises by coronavirus. They were implemented to lessen the burden on health care services and critical infrastructure in the D.C. metro area so that these systems would not be

overwhelmed. By mid-March, experts and commentators had concluded that, “our hope of stopping the disease in its tracks has ended. Our main goal now is to prevent a huge spike in cases, or ‘flatten the curve.’”<sup>1</sup> “Flattening the curve” is a strategy implemented not in response to the virus itself, but rather in response to the limits of the health care system. The curve being flattened is the epidemic curve, which is a visual representation of the number of infected people who need health care over a period of time. A healthcare system can break down during an epidemic or pandemic when the number of people infected exceeds the capability of the health care system’s ability to take care of them. Flattening the curve means slowing the spread of the pandemic so that the total number of people requiring care at any one time is reduced, and the health care system does not exceed its capacity. As explained in the March 24 Public Health Order issued by Mayor Bowser:

In epidemiology, the concept of slowing a virus’s spread so that fewer people need to seek treatment at any given time is known as “flattening the curve.” The faster and the more sharply the infection curve rises, the more quickly Washington, DC’s health care system will be stressed, to the point that it may become overloaded beyond its capacity to treat severely sick patients. *“Flattening the curve” is not expected to greatly reduce the total number of people that will become infected with COVID-19, but those infections will take place over a longer period of time, which will result in a less stressed health care system, and in turn, better patient outcomes.*

Mayor’s Order 2020-053 at 2 (Mar. 24, 2020) (emphasis added).

## **II. Public Health Orders Affecting Plaintiff’s Restaurants**

19. Plaintiff’s restaurants operate in the District of Columbia. Beginning in March 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued a series of Public Health Orders. In order to comply with the Public Health Orders, many D. C. businesses, including Plaintiff’s restaurants and the surrounding businesses, were forced to abandon their property and suspend ordinary business activity.

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<sup>1</sup> Sean Illing, *How Bad Could the Coronavirus Get in the US? I Asked an Expert*, Vox (Mar. 12, 2020), <https://www.vox.com/2020/3/12/21171505/coronavirus-covid-19-outbreak-containment>

20. On March 11, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Orders 2020-045 and 2020-046, which declared a public emergency and a public health emergency in the District of Columbia. These Orders went into effect immediately and were to remain in effect until at least March 26.

21. On March 16, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-048. The Order prohibited gatherings of more than fifty people. It also prohibited table seating at any restaurant in the District of Columbia beginning at 10:00 p.m. that night until April 1, 2020 at 6:00 a.m. Order 2020-048 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension of licensure. The Order went into effect immediately and was to remain in effect at least through March 31, 2020.

22. On March 20, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-051, which extended the specific prohibition of gatherings of more than fifty persons and on table seating at restaurants and, in addition, specifically prohibited service to standing customers. Order 2020-051 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension of licensure. This Order went into effect immediately and was to remain in effect at least through April 24, 2020.

23. On March 24, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-053, which prohibited large gatherings of ten or more people, mandated closure of all on-site operations of non-essential businesses, and specifically limited restaurants to delivery, carry out, and “grab and go” service only. Order 2020-053 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure. This Order went into effect at 10:00 p.m. on March 25, 2020 and was set to remain in effect at least through April 24, 2020.

24. On March 30, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-054, a Stay-At-Home Order, ordering all individuals living in Washington, D.C., to stay at their place of residence, except to obtain food and essential household goods or to engage in Essential Business Activities. The Stay-At-Home Order stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure. This Order went into effect at 12:01 a.m. on April 1, 2020 and was set to remain in effect through at least April 24, 2020.

25. On April 8, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-058, which mandated that all restaurants mark six foot distances outside and within their location to manage lines of customers and adopt social distancing requirements similar to those imposed on grocery stores and other retail food sellers, such as maintaining a minimum distance of six feet from each person who is not part of the same household. This Order went into effect at 12:01 a.m. on April 9, 2020 and was set to remain in effect at least through April 24, 2020.

26. On April 15, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-063, which extended Order 2020-053 and the Stay-At-Home Order (Order 2020-054) until May 15, 2020. Order 2020-063 also extended the public emergency and public health emergency in the District of Columbia until May 15, 2020. Order 2020-063 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and specified that individuals “should call 311 to report any suspected violations of this or other Mayor’s Orders related to the COVID-19 public health emergency.” This Order went into effect at 12:01 a.m. on April 17, 2020 and was set to remain in effect at least through May 15, 2020.



27. On May 13, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-066, which extended the public emergency and public health emergency (declared by Orders 2020-045 and 2020-046, respectively) and all previous COVID-19-related orders through June 8, 2020. This Order also required masks to be worn by employees, independent contractors, customers, and visitors of essential businesses and others, and it continued to prohibit large gatherings of more than ten individuals. Order 2020-066 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on May 16, 2020 and was set to remain in effect at least through June 8, 2020.

28. On May 27, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-067, which declared the District to be in Phase One of reopening and lifted the Stay-At-Home Order (Order 2020-054). The Order continued to require mask wearing and social distancing and to prohibit large gatherings of more than ten individuals. It allowed restaurants and other licensed food establishments to open for outdoor dining, subject to conditions including that tables seat no more than six individuals and that tables be at least six feet apart. Order 2020-067 extended the public emergency and public health emergency (declared by Orders 2020-045 and 2020-046, respectively) through July 24, 2020, and extended all previous COVID-19-related orders unless otherwise modified or superseded. The Order stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on May 29, 2020.

29. On June 19, 2020, the District of Columbia, through the Office of the Mayor Muriel

Bowser, issued Order 2020-075, which declared the District to be in Phase Two of reopening. The Order continued to require mask wearing and social distancing. It replaced the prohibition on large gatherings of more than ten individuals with a prohibition on large gatherings of more than fifty individuals. The Order permitted licensed food establishments to open for indoor dining, subject to conditions including that the establishment remain at or below 50% of occupancy, that tables seat no more than six individuals or allow for six feet between groups, that tables be at least six feet apart, that bar seating be prohibited if a bartender is working there, that indoor queuing is not allowed, and that patrons queuing outdoors be separated by at least six feet. Order 2020-075 stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure, and instructed individuals to call 311 to report violations. This Order went into effect at 12:01 a.m. on June 22, 2020 and remains effective for the duration of public health emergency.

30. On July 22, 2020, the District of Columbia, through the Office of the Mayor Muriel Bowser, issued Order 2020-079, extended the public emergency and public health emergency (declared by Orders 2020-045 and 2020-046, respectively) through October 9, 2020, and extended all previous COVID-19-related orders. The Order stated that violators would be subject to criminal, civil, and administrative penalties, including summary suspension or revocation of licensure. This Order went into effect immediately and remains in effect today.

### **III. Plaintiff's Experiences**

31. All ten of Knightsbridge's restaurants are owned by Ashok Bajaj. He opened his first restaurant, The Bombay Club, in December of 1988. Since then, he has opened all of the other restaurants under the Knightsbridge umbrella, featuring modern Indian, modern American, authentic Italian and Israeli cuisine. A 2013 profile in *The New York Times* headlined "Right This

Way, Senator: A New Delhi-Born Restaurateur Brings Power Dining to D.C.” describes Bajaj as “arguably the most successful restaurateur in Washington.” He was recognized as the 2013 Restaurateur of the Year by the Restaurant Association of Metropolitan Washington (“RAMMY”), which also honored him with the 2017 Duke Zeibert Capital Achievement Award.

32. Knightsbridge restaurants have been incredibly successful and widely recognized. The Bombay Club is located at 815 Connecticut Ave NW, Washington, D.C. It has received multiple awards and accolades over the years; it been recognized multiple times by Zagat, including as one of the Top Ten Restaurants in the D.C. Region in 2015, and was named one of the Seven Best Indian Restaurants Around the Globe by GQ India in 2014. In 2014, it was named to the Washington Post’s top 100 restaurants and to the Washingtonian’s list of the Top Ten restaurants in the D.C. region. In 2008, it was nominated for Fine Dining Restaurant of the Year by RAMMY The executive chef of The Bombay Club, Nilesh Singhvi, spent almost two decades as the Indian chef in top five-star hotels, including at the Taj Palace Hotel, New Delhi, a five-star property known for its restaurants, and he has cooked for dignitaries such as Former Indian Prime Minister A.B. Vajpayee, Former French President Jacques Chirac, Former U.K. Prime Minister Margaret Thatcher, Former President George Bush Sr., Microsoft founder Bill Gates, and many others.

33. The Oval Room, located at 800 Connecticut Avenue NW in Washington, D.C., opened in 1996. It is a critically acclaimed restaurant serving modern American cuisine with Mediterranean influences. Located steps from the Oval Office, the restaurant is a virtual “Who’s Who” of Washington politicians and media. It has received many awards and accolades since it opened, including being nominated as The Power Spot of the Year and Fine Dining Restaurant of the Year by RAMMY, being named to the Washingtonian’s 100 Best Restaurants numerous times, a “Perennial Power Spot” by Forbes, and Restaurant of the Year by D.C. Modern Luxury magazine.

The executive chef, Bryan Moscatello, previously served for two years as executive chef of the award-winning Calistoga Ranch in Napa Valley, part of the esteemed, five-star Auberge Resorts Collection. Prior to that, Chef Moscatello served as executive chef at The Little Nell in Aspen, Colorado, where he gained a Forbes Five-Star award in 2015 and oversaw all culinary operations including seven world-class dining and beverage venues at the AAA Five Diamond hotel. He was named to Food & Wine magazine's 2003 Best New Chefs in America and was awarded 2003 Chef of the Year from Denver's 5280 magazine. Among the distinguished guests he has cooked for are Former President Clinton, Former President George H. W. Bush, Former Secretary of State Condoleezza Rice (who declared on NBC with Tom Brokaw that Oval Room is her favorite restaurant), and Senator Dianne Feinstein.

34. Rasika, located at 633 D Street NW in Washington, D.C., opened in 2005, and according to the New York Times, "[i]ts critical success is close to unprecedented for an Indian-American restaurant." It has won too many awards and accolades to list; a representative sample is still impressive. In 2012, Tom Sietsema, food critic for the Washington Post, gave Rasika four stars, his highest rating, calling it "the best Indian restaurant in the country." Mr. Sietsema has a "Hall of Fame" comprised of eleven of the best restaurants in the D.C. region; Rasika and Rasika West End are among them. He again awarded Rasika four stars in October 2019, stating that no matter how hard he tries, he "can't find an Indian restaurant in the country better than this one." Rasika was a semi-finalist for the 2016 James Beard Award – Outstanding Restaurant, has been named to The Washingtonian's Top 20 Restaurants since 2009, was named the RAMMY "New Restaurant of the Year" in 2007 and "Top New Restaurant" for the D.C. and Baltimore region that same year by Zagat. Vikram Sunderam has been the executive chef at Rasika since it opened in 2005 and has received many awards, including nominations for "Best Chef, Mid-Atlantic" by James Beard

Foundation from 2009 through 2014; he was a finalist in 2012 and 2013 and won the award in 2014. He was also nominated and was a semifinalist as an Outstanding Chef by James Beard Foundation in 2018 and 2019. He also received Chef of the Year nominations by RAMMY in 2009 and 2010 .

35. Rasika has been so overwhelmingly popular that six years after the original opened, Knightsbridge opened Rasika West End in 2011. It was nominated by Eater Awards as Best New Restaurant in 2012 and took the #5 spot on the Washingtonian's 100 Very Best Restaurant List in 2016. It was included in Tom Sietsema's 2019 Fall Dining Guide for the Washington Post. Former President and Former Secretary of State Bill and Hillary Clinton celebrated their 37<sup>th</sup> wedding anniversary at Rasika West End, and President Barack Obama celebrated his 52<sup>nd</sup> and 56<sup>th</sup> birthday there. Vikram Sunderam is also the executive chef at Rasika West End.

36. Bibiana LLC was incorporated in June 2009 and operated a restaurant by the same name, Bibiana, at 1100 New York Avenue NW in Washington, D.C., for ten years. Bibiana was a D.C. favorite, frequented by Michelle Obama among others, but at the end of August 2019, it was closed and transformed into Modena. Since opening in September of 2019, Modena was ranked #2 on the list of "20+ Hot Restaurants to Try Now In Washington, D.C." and was named to Tom Sietsema's 7 Places to Eat Right Now in October 2019. Executive Chef John Melfi serves Italian-influenced California cuisine driven by sustainable, locally sourced ingredients. Prior to joining Modena, Chef Melfi served as chef de tournant of Robert Wiedmaier Restaurant Group, and before that, he served as executive chef of the Michelin-starred Fiola D.C. under James Beard award-winning chef and owner Fabio Trabocchi. Chef Melfi was previously the executive chef of The Oval Room where, during his three-year tenure, the restaurant received three stars from The Washington Post. Chef Melfi also served for one year as the opening executive chef of Fiola Mare

from January 2014 to January 2015, during which time Fiola Mare received three stars from The Washington Post and from Washingtonian magazine. Prior to that, Chef Melfi served as chef de cuisine at the award-winning Blue Duck Tavern, and during that time Blue Duck Tavern won the “Fine Dining Restaurant of the Year” award. He was nominated the same year as a “Rising Culinary Star of the Year.”

37. Sababa, located at 3311 Connecticut Avenue NW in Washington, D.C., opened in March of 2018. Sababa is a Hebrew slang word meaning “great” or “cool” and can express enthusiasm and satisfaction. Sababa comes from the Arabic word tzababa, which means “great” or “excellent” in spoken Arabic. Like the name Sababa, Israel’s food has its roots in both Jewish and Arab cuisine. The cuisine of Sababa exemplifies the true melting pot that is Israel, as Israeli food encompasses the traditions of over a hundred cultures that have been in Israel and in Palestine or moved from the Diaspora to modern-day Israel. Sababa’s menu offers a small plates and large plates menu as well as a full wine bar that offers wines from around the world including Israel, Lebanon, the other locations in the Mediterranean. Since opening, Sababa has been recognized as a Bib Gourmand in the 2019 and 2020 Michelin Guide. It was also named to Tom Sietsema’s 8 Favorite Places to Eat Right Now list in 2019. Executive Chef Ryan Moore graduated from L’Académie de Cuisine in Bethesda, Maryland, and began his culinary career in 2002 as a sous chef at Zola, before being tapped by José Andrés to be part of his team at Minibar. While he was at Minibar, it was annually nominated for a James Beard award. Chef Moore began working at Zaytinya in 2010, and he immersed himself in the techniques and flavor profile of Mediterranean cuisine. He has been with Sababa since before it opened, and he spearheaded the menu.

38. The original Bindaas location is right next door to Sababa, at 3309 Connecticut Ave. NW. It opened before Sababa, in August of 2016, and was named to the 100 Very Best Restaurants

List in the 2020 Washingtonian and was referred to as one of the best new restaurants in D.C. in an October 2017 review in the Washington Post. In 2018, the Washington Post wrote “[f]or Indian street food, you can't beat Bindaas” in their Spring Dining Guide; Bindaas has also been featured in the Washington Post many other times including being featured in 2016 as one of the best new restaurants in Washington, D.C. It is a casual dining concept featuring Indian street food, and was so well received that in November of 2017, a second Bindaas location was opened at 2000 Pennsylvania Avenue NW in Washington, D.C. Both Bindaas locations are overseen by James Beard award-winning chef Vikram Sunderam of Rasika.

39. According to the Washington Post, Olivia Restaurant, located at 800 F Street NW in Washington, D.C., is one of the best new restaurants in Washington, D.C. according to the Washington Post. It opened in January of 2019 and the next month was named to Thrillist’s Best Restaurants in Washington, D.C. Right Now. In March and April of 2019, it was named to Thrillist’s “15 Hottest Restaurants in Washington, D.C. Right Now” and became a Michelin Guide restaurant in October of 2019. Executive chef Matt Kuhn has been referred to as a “rising star chef.” He was named executive chef of Knightsbridge’s former restaurant NOPA Kitchen + Bar in January 2015, and his successful tenure garnered recognition by critics, including the 2018 Michelin Guide.

40. Annabelle, located at 2132 Florida Ave NW in Washington, D.C., is the final restaurant insured under the Knightsbridge policy. Annabelle features modern American cuisine with a menu crafted by former White House chef Frank Ruta, who has served three presidents. Though Annabelle opened in 2020, it has already received many awards. Eater DC gave it accolades before it even opened. Annabelle was praised in the Washington Post in January of 2020 for its stellar food and “dishes fit for a President”. In March of 2020, it was featured in Eater DC as



one of the 15 hottest restaurants in D.C. Chef Ruta, a James Beard finalist, served for eleven years as the executive sous chef at the White House, under three presidents. He was also the owner and chef of the award-winning restaurant Palena, a beloved Cleveland Park restaurant that earned early success, and it secured its place in the competitive Washington, D.C. culinary scene for thirteen years, during which time Chef Ruta and Palena received widespread recognition and acclaim, including Food and Wine Magazine's Best Chef in 2001, Esquire Magazine's Best New Restaurant in 2001, Washingtonian Magazine's 2002 Restaurateurs of the Year (along with Ann Amernick, then co-owner and pastry chef), James Beard's Best Chef Mid-Atlantic in 2007, The Washington City Paper's Chef of the Year in 2007, and a James Beard nomination for Best Restaurant in 2014.

41. Each of Plaintiff's restaurants were subject to the Public Health Orders reproduced above, and Plaintiff has complied with all of the Public Health Orders.

42. As a result of these Public Health Orders, Plaintiff's restaurants were forced to either close or seriously curtail their operations. Initially, Plaintiffs' restaurants were forced to cease all dine-in service. Many restaurants are not suited for takeout or delivery and as a result were forced to close completely at that time.

43. Even as the Public Health Orders have allowed these restaurants to reopen in part, none has been able to operate as it had before. Several restaurants have reopened but with extremely limited capacity and commensurate limits on revenue. Others have not reopened at all. The Oval Room is being forced to close for several months, while Olivia Restaurant must permanently close. All of Plaintiffs' restaurants face significant losses and possible closure if Zurich continues to refuse to provide insurance coverage.

44. These business interruptions have caused direct loss of Plaintiff's insured property in that the restaurants and their equipment, furnishings, and other business personal



property have been made unavailable, inoperable, useless and uninhabitable, and their functionality has been severely reduced if not eliminated.

45. The impact of the Public Health Orders is felt not simply in their direct application to Plaintiff's operations, but also in their application to the businesses and properties surrounding Plaintiff's restaurants in the District of Columbia. As a result of these losses, business income for Plaintiff has plummeted, or stopped completely at the restaurants that have remained closed. Knightsbridge has also suffered losses to its insured business property. By way of example, food at the restaurants has spoiled and had to be thrown away.

46. Before the Public Health Orders were issued, Plaintiff's restaurants employed approximately 500 people at 9 different locations. As a result of these Orders, Plaintiff has been forced to furlough many of these employees. Currently, Plaintiff is able to continue employing only about 250 individuals at 7 locations.. The business income coverage Plaintiff purchased from Zurich covers normal payroll expenses and tips. It also covers the monthly rent at the insured premises that are not owned.

47. Even as the District of Columbia begins to revise and ease the governing Public Health Orders to allow for more business to be conducted, Plaintiff is experiencing and is likely to continue experiencing residual effects, given that the pandemic spread still remains uncontrolled and densely occupied public spaces remain unsafe as places where the risk of transmission remains high.

48. Knightsbridge purchased a comprehensive business insurance policy (the "Policy") from Zurich, with a policy period from December 8, 2019 to December 8, 2020 .

49. Knightsbridge purchased the Policy to protect itself against all risks that the covered restaurants might face, including those risks that might cause interruptions to the covered restaurant

businesses and resulting lost business income.

50. The owner and operator of Knightsbridge's restaurants, Ashok Bajaj, is an extraordinarily savvy restaurateur who excels at operating restaurants; he is not a risk assessment professional aware of every possible catastrophe that might occur which could cause the restaurants to close. In its dealings with Zurich, Knightsbridge was a consumer, and what it cared about was being covered by insurance under any circumstances that might cause the insured restaurants to close. Zurich, on the other hand, is in the business of predicting catastrophes and has been aware of the potential for a COVID-19-type pandemic for at least a decade, if not longer.

51. There are many extensions of coverage in the Policy, including business income and extra expense coverage, as well as coverage for dependent income losses.

52. Once triggered, the Policy pays business income losses and extra expense coverage up to a blanket limit of \$7,660,000.00. Of that limit, the premises in which Annabelle is located has a \$752,000 sub-limit for business income coverage; no other restaurants contain a similar sublimit.

53. The Policy was not individually negotiated. The Policy's substantive terms were set unilaterally by Defendant, were not subject to individual negotiation by Plaintiff, and were presented to Plaintiff on a "take it or leave it" basis, despite the hefty premiums charged. Subsequent amendments to the original terms – called endorsements – were also unilaterally imposed on Plaintiff.

54. Knightsbridge was never informed by the Defendant that for the business income and extra expense coverage to apply, there would need to be visible physical damage to the insured property. The Policy also does not say this anywhere.

55. To date, Knightsbridge has paid all of the premiums required by Defendant to keep the Policy in full force, and has met all applicable conditions precedent in order to receive payment

under the Policy and to recover the lost business income and extra expenses that have resulted from the Public Health Orders closing and/or severely restricting Plaintiff's restaurants.

56. On June 9, 2020, Plaintiff reported a loss of business income under the Policy.

57. On August 6, 2020, Zurich sent a letter to Knightsbridge denying its claim for coverage. The letter stated, "based on the information provided, we have concluded that the Policy does not provide coverage for the loss of revenue associated with the civil authority closure of Knightsbridge Corporation's business." According to the denial letter, "the presence of the COVID-19 virus does not constitute 'direct physical loss or damage' to property. Moreover, any damage to property would be excluded under the Microorganisms Exclusions." Zurich's denial under the civil authority coverage extension also hinged on its determination that there was no direct physical loss or damage.

58. Zurich's denials are contrary to the terms and conditions of the Policy and applicable law, which give effect to plain language, construe ambiguity in favor of coverage, and narrowly construe exclusions, the applicability of which insurers have the burden of proving.

59. Plaintiff's restaurants were ordered to suspend or severely curtail business due to the various Public Health Orders, which are covered causes of loss as defined in the Policy. As a result of the suspensions, Plaintiff has suffered the direct physical loss of the insured real and personal property, including spoiled food and the loss of use of the dining room in each of the insured premises and the bar in those premises that have one; seated dining and alcohol sales are the drivers of business income for Knightsbridge, and is the business for which Zurich calculated its premiums and agreed to provide business interruption coverage under the Policy. As such, the Policy's coverage for losses to business income and extra expenses are triggered. The Policy's coverage for dependent business income is also likely triggered.

60. Plaintiff has suffered and will continue to suffer damages due to Zurich's wrongful denial of insurance coverage; insurance which Plaintiff acquired to sustain the insured restaurants and protect their continued viability in circumstances such as these.

### **CAUSES OF ACTION**

#### **Count I: Declaratory Judgment**

61. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

62. Plaintiff purchased the Policy which provides comprehensive business insurance from Defendant.

63. Plaintiff met all or substantially all of their contractual obligations, including paying all the premiums required by Defendant.

64. The Policy includes provisions that provide coverage for the direct physical loss of use of the insured premises and equipment as well as business income coverage for the actual loss of business income and extra expenses sustained during the suspension of operations as a result of direct physical loss, including loss of use.

65. Beginning in March 2020, the D.C. government issued a series of Public Health Orders that severely restricted access to Plaintiff's business premises.

66. As a result of these Public Health Orders, Plaintiff suffered losses to its business personal property at the insured premises, lost the use of its business property and lost substantial business income as a result of the loss of the use of its business property.

67. These Public Health Orders were not issued in a vacuum, or as a result of unsubstantiated fear of future damage; the District of Columbia was already under siege by the coronavirus when the first Public Health Order went into effect. A Reverend at Christ Church in

Georgetown was the first known resident of D.C. to be diagnosed with COVID-19; this occurred on March 7, 2020.<sup>2</sup> He became very ill and was hospitalized, church services were cancelled indefinitely, and all 500 members of Christ Church's congregation were asked to self-quarantine after he tested positive. Further testing showed that he transmitted the virus to the organist and four parishioners.

68. Over the next several days COVID-19 cases began to pile up in the District – the second case was a Nigerian man who had traveled from Nigeria to D.C. and became ill on the flight; then came the positive tests of the Christ Church parishioners. Within two more days, Senator Cantwell from Washington state had to close her offices as one of her aides tested positive for the virus, and by March 12, the Supreme Court, the Capitol, and the White House were closed to the public, the George Washington University and Georgetown announced they were moving to virtual classes, and the D.C. public school system announced it was also going virtual.

69. Within a week of the first positive diagnosis, Mayor Bowser announced the 17<sup>th</sup> confirmed case, a 38-year-old woman who caught the coronavirus from another infected person. By March 20, Mayor Bowser announced the first COVID-19 death, a 59-year-old Franciscan friar and permanent deacon, and the number of confirmed cases in the District rose to 77. By March 22, the total number of confirmed cases was up to 116, and another District resident passed away.

70. This was the backdrop in which the Public Health Orders were issued – the March 11 Public Health Order declaring a state of emergency occurred right after the first case was reported, and the March 16 Public Health Order suspending on-site bar and restaurant service, as well as many other non-essential business services, was issued five days later, when it became clear

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<sup>2</sup> Heather Graf, *Father Tim Cole of Christ Church Georgetown, D.C.'s First COVID-19 Case, Shares His Story*, WJLA (Mar. 20, 2020), <https://wjla.com/news/local/reverend-at-christ-church-georgetown-dcs-first-covid-19-case-shares-his-story>.

that the virus was spreading rapidly through the population via travel and other crowded places. The Public Health Orders were issued in direct response to the burgeoning pandemic in an attempt to preserve the public health system and keep it from collapsing.

71. These losses are insured losses under several provisions of the Policy, including provisions covering direct loss of property, coverage for lost business income and extra expense, and the coverage extensions for dependent business income.

72. There are no applicable, enforceable exclusions or definitions in the Policy that preclude coverage for Plaintiff's losses.

73. Wherefore, Plaintiff seeks a declaration that its business income losses are covered under the business income coverage of the Policy and are not precluded by exclusions or other limitations in the Policy.

## **Count II: Breach of Contract**

74. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

75. Plaintiff purchased the Policy from Defendant to ensure against all risks (unless specifically excluded) the restaurant businesses might face. The Policy is a binding contract that is supposed to provide Plaintiff with comprehensive business insurance under its terms and conditions.

76. Plaintiff met all or substantially all of its contractual obligations, including by paying all the premiums required by Defendant.

77. Beginning in March 2020, the D.C. government issued a series of Public Health Orders that severely restricted access to Plaintiff's business premises.

78. As a result of these Public Health Orders, Plaintiff suffered losses to its business

personal property at the insured premises, lost the use of its business property and lost substantial business income as a result of the loss of the use of its business property.

79. These losses are insured losses under several provisions of The Policy, including provisions covering direct loss of property, coverage for lost business income and extra expense, and the coverage extensions for dependent business income. There are no applicable, enforceable exclusions in the Policy that preclude coverage for Plaintiff's losses.

80. Defendant breached the contracts by denying comprehensive business insurance coverage to Plaintiff.

81. As a direct and proximate result of Zurich's denial of comprehensive business insurance coverage under the Policy, Knightsbridge has suffered damages and is continuing to suffer ongoing damages.

82. Wherefore, Knightsbridge seeks a judgment that Defendant has breached its contract with Plaintiff and corresponding damages for that breach.

### **Count III: Breach of Implied Covenant of Good Faith and Fair Dealing**

83. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

84. Plaintiff contracted with Defendant to provide it with the Zurich policy, which contains comprehensive business insurance to ensure against all risks (unless specifically excluded) a business might face.

85. The contract was subject to the implied covenant of good faith and fair dealing that all parties would act in good faith and with reasonable efforts to perform their contractual duties – both explicit and fairly implied – and not to impair the rights of other parties to receive the rights, benefits, and reasonable expectations under the contract. These included the covenants that Zurich

would act fairly and in good faith in carrying out its contractual obligations to provide Plaintiff with comprehensive business insurance.

86. Defendant breached the implied covenant of good faith and fair dealing by:

- a) selling Plaintiff a policy that appears to provide liberal coverage for loss of property and lost business income, knowing that it would interpret poorly defined terms, undefined terms, and ambiguously written exclusions to deny coverage under circumstances foreseen by Defendant but not Plaintiff;
- b) denying coverage for loss of property and business income by invoking undefined, ambiguous, and contradictory terms that are inconsistent with the plain terms and purpose of the Policy; and
- c) denying Plaintiff's claim without adequate investigation or inquiry, arbitrarily and capriciously, and/or with knowledge that the denials were unreasonable under the Policy.

87. Plaintiff met all or substantially all of its contractual obligations, including by paying all the premiums required by Defendant.

88. Defendant's failure to act in good faith in providing comprehensive business insurance coverage to Plaintiff denied Plaintiff the full benefit of the bargain it made with Zurich.

89. Accordingly, Plaintiff has been injured as a result of Defendant's breach of the covenant of good faith and fair dealing and is entitled to damages in an amount to be proven at trial.

90. Wherefore, Plaintiff seeks a judgment that Defendant has breached its covenant of good faith and fair dealing implied in its contracts with Plaintiff and corresponding damages for that breach.

**PRAYER FOR RELIEF**



WHEREFORE, Plaintiff requests that the Court enter a judgment awarding the following relief:

- a. A declaration that Plaintiff's losses are covered under Defendant's comprehensive business insurance policies;
- b. Damages;
- c. Attorneys' fees and costs; and
- d. Such other relief as this Court deems just and proper.

Dated: October 23, 2020

Respectfully submitted,

Joseph A. Bartholomew

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