

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

THE CHARTER OAK FIRE
INSURANCE COMPANY,

Plaintiff,

v.

HIGH END HOTEL, LLC D/B/A LA
QUINTA INN & SUITES,

Defendant.

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CIVIL ACTION NO.: 5:22-cv-00029

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, The Charter Oak Fire Insurance Company (“Charter Oak”), by and through its undersigned counsel, files this Complaint for Declaratory Judgment pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 and 2202, alleging as follows:

I.
NATURE OF THE ACTION

1. Charter Oak brings this action for a declaratory judgment under a commercial property insurance policy (“Policy”) issued to Defendant High End Hotel, LLC d/b/a La Quinta Inn & Suites (“High End Hotel”), which operates a hotel at 1620 Rotan Road in Mount Pleasant, Texas (“Premises”). Charter Oak seeks a declaration that it has no obligation under the Policy for the business income loss High End Hotel claims to have sustained due to government orders issued in response to the threat of the novel coronavirus known as SARS-CoV-2 and the disease it causes, known as “COVID-19.” A certified copy of the Policy is attached hereto as Exhibit 1.

2. Charter Oak understands the spread of COVID-19 has affected the public and the vast majority of businesses throughout the country (and world) in unprecedented ways. These

challenging and unfortunate circumstances, however, do not create insurance coverage for losses that do not fall within the terms of a policyholder's insurance contract.

3. High End Hotel claims its hotel business lost revenues as the result of state and local government orders issued in response to the spread of the coronavirus known as SARS-CoV-2 (the "Coronavirus") and the disease it causes known as COVID-19.

4. High End Hotel claims that due to state and local government orders issued in response to the spread of the Coronavirus and COVID-19, it was not able to use its hotel property in the same manner that it was used prior to the Coronavirus.

5. The facts forming the basis for High End Hotel's insurance claim are set forth in a demand letter dated January 8, 2022, a true and correct copy of which is attached as Exhibit 2 (the "Demand Letter").

6. Even without reference to the Policy's exclusions, the relevant coverage grants require "direct physical loss of or damage to" property at the insured premises (for Business Income coverage) or "damage to property" at non-insured premises within one mile of the insured premises that gives rise to civil authority action prohibiting access to the insured premises and the surrounding area (for Civil Authority coverage). The restrictions imposed on High End Hotel's operations by government mandates issued in response to the spread of Coronavirus and COVID-19 do not constitute the "direct physical loss of or damage to" property that is required for Business Income coverage to exist. The civil authority orders that restricted High End Hotel's operations were not issued because of any damage to property in the area of High End Hotel's premises.

7. Moreover, the Policy includes an exclusion stating that loss or damage caused by or resulting from a virus is not covered. Specifically, the Policy excludes coverage for "loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or

is capable of inducing physical distress, illness or disease,” and it expressly states that this exclusion applies to “forms or endorsements that cover business income, extra expense, rental value or action of civil authority.”

8. SARS-CoV-2 is a virus capable of inducing physical distress, illness or disease.

9. Under the plain terms of the Policy, SARS-CoV-2 is not a “Covered Cause of Loss” and there is no coverage for High End Hotel’s claimed loss.

II. PARTIES

10. Plaintiff Charter Oak is a corporation incorporated under the laws of Connecticut with its principal place of business in Hartford, Connecticut.

11. Defendant High End Hotel is a limited liability company formed and existing under the laws of the State of Texas, with its principal place of business at 14917 Winnwood Road, Dallas, Texas 75254. High End Hotel may be served with process through its registered agent, Manohar Mundluru, 14917 Winnwood Drive, Dallas, Texas 75254.

III. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

A. Complete diversity of citizenship exists between Charter Oak and High End Hotels.

13. Plaintiff Charter Oak – as a corporation incorporated under the laws of Connecticut with its principal place of business in Hartford, Connecticut – is a citizen of Connecticut for purposes of diversity jurisdiction.

14. The citizenship of a limited liability company is determined by the citizenship of each member of the entity. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079 (5th Cir. 2008).

Based on publicly-available filings with the Texas Secretary of State, Charter Oak is informed and believes the sole member of Defendant High End Hotel is Manohar Mundluru – an individual who is domiciled and resides in Texas. Because the only reported member of High End Hotel (Mr. Mundluru) is a citizen of Texas, High End Hotel is likewise considered a citizen of Texas for diversity jurisdiction purposes.

15. Because Charter Oak is a citizen of Connecticut, and High End Hotel is a citizen of Texas, complete diversity of citizenship exists under 28 U.S.C. § 1332(a).

B. The amount in controversy exceeds this Court's jurisdictional threshold of \$75,000.

16. High End Hotel seeks coverage under the Policy for loss of business income allegedly sustained during an unspecified period beginning on March 13, 2020. The Policy limit applicable to High End Hotel's Business Income is \$300,000. (Exhibit 1, Policy – Form CP T0 11 01 03.)

17. When an insurer – like Charter Oak – seeks a declaratory judgment regarding the coverage provided by an insurance policy, the “value of the right to be protected” is the “plaintiff's potential liability under the policy,” plus potential attorneys' fees, penalties, statutory damages and punitive damages. *Hartford Ins. Grp. v. Lou-Con Inc.*, 293 F.3d 908, 911–12 (5th Cir. 2002).

18. In the Demand Letter High End Hotel presented a “preliminary calculation of loss of \$57,855.00.” Notably, this “preliminary calculation of loss” did not include, “\$5,000.00 [in] attorney's fees [allegedly] incurred [by High End Hotel] to date.” (Exhibit 2, Demand Letter, at p. 5.) Nor did it account for any fees, costs, penalties, statutory damages, and punitive damages related to High End Hotel's alleged right of recovery under Chapters 541 and 542 of the Texas Insurance Code and Texas' Deceptive Trade Practices Act (“DTPA”). (*See id.* at pp. 4-5 (noting High End Hotel's intention “to seek damages to the fullest extent allowed by law. . . if [the parties]

are unable to resolve this matter before suit,” including additional damages under Chapter 541 of the Texas Insurance Code and/or the DTPA in an amount “up to three times the amount of economic damages” claimed by High End Hotel, which are currently estimated at \$57,855.00.)

19. Charter Oak denies the validity and merits of High End Hotel’s claimed right of recovery, the legal theories upon which that claimed right of recovery is based, and the claim for monetary and other relief referenced in High End Hotel’s Demand Letter dated January 8, 2022. However, for jurisdictional purposes only, and without conceding that High End Hotel is entitled to any damages or other relief under the Policy or applicable law, it is beyond dispute that the amount in controversy in this declaratory judgment action exceeds the sum of \$75,000.

20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this District, and the property that is the subject of the action (*i.e.*, the Premises) is situated in this District.

IV. **FACTS**

21. Charter Oak issued policy number I-660-4P57356A-COF-19 to High End Hotel for the policy period of December 23, 2019 to December 23, 2020 (“Policy”), subject to the terms, conditions, limitations, and exclusions set forth in the Policy. The Premises located at 1620 Rotan Road, Mount Pleasant, Texas is the only location identified on the Policy.

22. In or about late 2019, a novel coronavirus was first identified in Wuhan, China. Scientists have named that virus SARS-CoV-2, and have named the disease caused by that virus as COVID-19.

23. SARS-CoV-2 is a virus that induces or is capable of inducing physical distress, illness or disease, namely COVID-19.

24. Beginning in March 2020, government officials in Texas issued a series of orders, proclamations and resolutions (collectively, “Orders”) because of and in response to the public health crisis associated with SARS-CoV-2 and the spread of COVID-19, including the following:

(a) On or about March 13, 2020, Texas Governor Greg Abbott issued a Proclamation which, *inter alia*, declared that a state of disaster existed in the State of Texas due to the public health threat posed by SARS-CoV-2 and COVID-19. A true and accurate copy of the Proclamation dated March 13, 2020 is attached hereto as Exhibit 3.

(b) On or about March 19, 2020, Texas Governor Greg Abbott issued Executive Order No. GA-08, a true and accurate copy of which is attached hereto as Exhibit 4. Pursuant to Executive Order No. GA-08, Governor Abbott ordered every person of Texas to: (1) avoid social gatherings in groups of more than ten people; (2) avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors, but encouraging use of drive-thru, pickup, and delivery services; (3) not visit nursing homes or retirement or long-term care facilities; and (4) temporarily close schools.

(c) On or about March 19, 2020, the County Judge for Titus County, Texas, issued a “Declaration of Local State of Disaster Due to Public Health Emergency,” which further enforced the limitations established by Governor Abbott’s Executive Order No. GA-08 in Titus County. A true and accurate copy of the March 19, 2020 Declaration is attached hereto as Exhibit 5.

(d) On or about March 20, 2020, the Mayor of the City of Mount Pleasant, Texas, issued a “Declaration of Local State of Disaster Due to Public Health Emergency,” which further enforced the limitations established by Governor Abbott’s Executive Order

No. GA-08 in Mount Pleasant, Texas. A true and accurate copy of the March 20, 2020 Declaration is attached hereto as Exhibit 6.

(e) On or about March 29, 2020, Governor Abbott issued Executive Order No. GA-12 relating to roadway screening and self-quarantine, which was intended to limit interstate travel, a true and accurate copy of which is attached hereto as Exhibit 7.

(f) On or about April 17, 2020, Governor Abbott issued Executive Order No. GA-16 relating to the reopening of select services (including dining services “through pickup . . . or delivery to the customer’s doorstep,” a true and accurate copy of which is attached hereto as Exhibit 8. Executive Order No. GA-16 also minimized social gatherings and in-person contact except where necessary to obtain “essential services,” which was defined as “everything listed by the U.S. Department of Homeland Security Cybersecurity and Infrastructure Security Agency (“CISA”) in its Guidance on the Essential Critical Infrastructure Workforce, Version 2.0 or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship.” (See Exhibit 8, GA-16, at p. 3.) CISA’s *Guidance on the Essential Critical Workforce, Version 3.0*, a true and accurate copy of which is attached hereto as Exhibit 9, was also published on April 17, 2020, and identified hotels as “essential services,” when “[m]anagement and staff at hotels and other temporary lodging facilities that provide for COVID-19 mitigation, containment, and treatment measures or provide accommodations for essential workers.” (See Exhibit 9, Guidance on the Essential Critical Infrastructure Workforce, Version 3.0, at p.18.)

(g) On or about April 20, 2020, the County Judge for Titus County issued a “Second Amended Declaration of Local State Disaster Due to Public Health Emergency,”

which reiterated CISA’s “essential services” definition that included hotels as an “essential service.” A true and correct copy of the April 20, 2020 Declaration is attached hereto as Exhibit 10.

(h) On or about April 27, 2020, Governor Abbott issued Executive Order No. GA-18, which reopened retail and dine-in services at twenty-five percent capacity, a true and accurate copy of which is attached hereto as Exhibit 11. Notably, Executive Order No. GA-18 specified that “[t]he conditions and limitations set forth above for reopened services shall not apply to essential services.” (*See* Exhibit 11, GA-18, at p.4.) Moreover, although nearly all other services – including movie theaters, museums, libraries and golf courses – were specifically limited, Executive Order No. GA-18 did not impose any occupancy limitations on hotels. (*See id.* at pp.3-4.)

(i) On or about May 5, 2020, Governor Abbott issued Executive Order No. GA-21 related to the expanded reopening of services, a true and accurate copy of which is attached hereto as Exhibit 12. Like Executive Order No. GA-18, this order did not impose any limitations on hotels, and it specified that no occupancy limits were imposed on business engaged in “essential services.” (*See* Exhibit 12, GA-21, at p.4.)

(j) On or about May 21, 2020, Governor Abbott issued Executive Order No. GA-24 relating to the termination of air travel restrictions, a true and accurate copy of which is attached hereto as Exhibit 13.

(k) On or about June 3, 2020, Governor Abbott issued Executive Order No. GA-26 relating to the expanded opening of Texas, a true and accurate copy of which is attached hereto as Exhibit 14. Executive Order No. GA-26 limited every business establishment in Texas to operate at no more than fifty percent of the total listed occupancy,

provided, however, that there was no occupancy limit for any “essential services” listed in CISA’s *Guidance on the Essential Critical Infrastructure Workforce, Version 3.1*, a true and accurate copy of which is attached hereto as Exhibit 15. (See Exhibit 15, GA-26, at pp.2-3.) And, while Executive Order No. GA-26 referred to the “essential services” definition from an amended and revised version of CISA’s *Guidance on the Essential Critical Infrastructure, Version 3.1*, the inclusion of hotels as an “essential service” remained the same. (See Exhibit 15, *Guidance on the Essential Critical Infrastructure, Version 3.1*, at p.18.)

(l) On or about June 26, 2020, Governor Abbott issued Executive Order No. GA-28 relating to the targeted response to the COVID-19 disaster, a true and accurate copy of which is attached hereto as Exhibit 16. Executive Order No. GA-28 continued to reduce capacity limitations on commercial services while “essential services,” including hotels, continued to operate under no capacity restraints. (See Exhibit 16, GA-28, at pp. 2-4.)

(m) On or about July 2, 2020, Governor Abbott issued Executive Order No. GA-29, which required face masks for adults inside any commercial entity or other buildings or space open to the public, a true and accurate copy of which is attached hereto as Exhibit 17.

(n) On or about September 17, 2020, Governor Abbott issued Executive Order No. GA-30 relating to the continued state response to the COVID-19 disaster, a true and accurate copy of which is attached hereto as Exhibit 18. Similar to the previous orders issued by Governor Abbott, Executive Order No. GA-30 continued to reduce capacity limitations on commercial services, while “essential services,” including hotels, continued to operate under no capacity restraints. (See Exhibit 18, GA-30, at pp. 2-4.) And, while the

Order relied on an amended and updated version of the CISA's *Guidance on the Essential Critical Infrastructure Workforce, Version 4.0*, a true and accurate copy of which is attached hereto as Exhibit 19, the inclusion of hotels as an "essential service" remained unchanged. (*See* Exhibit 19, *Guidance on the Essential Critical Infrastructure Workforce, Version 4.0*, at p.22.)

(o) On or about October 7, 2020, Governor Abbott issued Executive Order No. GA-32 relating to the continued state response to the COVID-19 disaster, a true and accurate copy of which is attached hereto as Exhibit 20. Under Executive Order No. 32, commercial venues were allowed to operate at seventy-five percent capacity, and "essential services," including hotels, continued to operate under no capacity restrictions. (*See* Exhibit 20, GA-32, at pp. 2-4.)

25. None of the Orders prohibit (or prohibited) access to the Premises or the surrounding area.

26. None of the Orders required the complete closure of hotels.

27. None of the Orders make reference to any physical loss of or damage to property at any location caused by or resulting from a "Covered Cause of Loss," as defined in the Policy.

28. None of the Orders were issued due to direct physical loss of or damage to the Premises or property at the Premises caused by or resulting from a "Covered Cause of Loss," as defined in the Policy.

29. None of the Orders were issued due to direct physical loss of or damage to property at locations, other than the Premises, that are within one mile of the Premises, caused by or resulting from a "Covered Cause of Loss," as defined in the Policy.

30. On or about November 2, 2020, High End Hotel – acting by and through its legal counsel, Danny Ray Scott of the Scott Law Firm – reported a claim to Charter Oak under the Policy for loss of business income related to the SARS-CoV-2 virus and/or COVID-19 (“Claim”).

31. Charter Oak acknowledged receipt of notice of High End Hotel’s Claim on or about November 3, 2020, and on November 4, 2020, Charter Oak requested that High End Hotel provide certain information to assist with Charter Oak’s investigation and evaluation of the Claim. Charter Oak received no immediate response from High End Hotel or the Scott Law Firm.

32. Charter Oak subsequently sent several additional letters and emails to High End Hotel reiterating its request(s) for certain information to assist with Charter Oak’s investigation and evaluation of the Claim. Again, Charter Oak received no response from High End Hotel or the Scott Law Firm.

33. On February 17, 2021, Charter Oak sent another letter requesting that High End Hotel provide certain information to assist with Charter Oak’s investigation and evaluation of the Claim. In so doing, it notified High End Hotel that Charter Oak would close its file for the Claim on February 26, 2021 if High End Hotel failed to provide the requested information on or before that date.

34. High End Hotel did not respond to Charter Oak’s letter dated February 11, 2021 within the timeframe specified in Charter Oak’s letter. In fact, High End Hotel did not provide any of the information requested by Charter Oak to assist with its investigation and evaluation of the Claim prior to sending the Demand Letter on January 8, 2022. Charter Oak closed its file for the Claim on February 26, 2021.

35. Nearly eleven months later, on or about January 8, 2022, Charter Oak received the Demand Letter from the Scott Law Firm. (*See generally* Exhibit 2, Demand Letter.) The Demand

Letter alleged that High End Hotel suffered and continues to suffer business income loss due to civil authority actions that ordered High End Hotel to “modify operations in March 2020 for an ongoing period of time.” (*Id.* at p. 1.) The Demand Letter also claimed that High End Hotel was “forced to comply with the new restrictions and resumed business activities with extreme limitations,” including the alleged implementation of social distancing measures, the installation of barriers or shields between patrons and employees, the usage of masks, the shut down of certain food related services, and restrictions on the number of persons allowed on the Premises. (*Id.*) The Demand Letter asserted that coverage was owed under the Civil Authority provision in the Policy. (*Id.*)

36. Based on Charter Oak’s review and consideration of the Claim-related information set forth (for the first time) in High End Hotel’s Demand Letter dated January 8, 2022, in a letter dated February 15, 2022, Charter Oak informed High End Hotel of its coverage determination. In so doing, Charter Oak advised High End Hotel (in part) that Business Income coverage is not available under the Policy in the absence of direct physical loss of or damage to property at the Premises caused by or resulting from a Covered Cause of Loss, and that loss or damage caused by virus was excluded from coverage by the Policy’s virus exclusion. The letter also advised High End Hotel that Civil Authority coverage was not available for several reasons. A true and correct copy of Charter Oak’s letter to High End Hotel denying coverage for its claimed losses is attached hereto as Exhibit 21.

37. As set forth in High End Hotel’s Demand Letter dated January 8, 2022, High End Hotel claims it is entitled to payment from Charter Oak for alleged losses arising under the Policy. (*See* Exhibit 2, Demand Letter, at pp. 1-4.) And, as set forth in Charter Oak’s coverage determination letter dated February 15, 2022, Charter Oak contends the Policy provides no

coverage for High End Hotel's claimed losses. (See Exhibit 21, Coverage Determination Letter, at pp. 2-6.)

V.
OVERVIEW OF CERTAIN POLICY PROVISIONS

38. The Policy includes Business Income coverage, for which the grant of coverage provides, in relevant part:

1. Business Income

- c. 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*.

(Exhibit 1, Policy - Form CP T1 04 02 17, at p. 1 (emphasis added).) The Policy defines the term "suspension" as "a. The partial or complete cessation of your business activities; or b. That a part or all of the described premises is rendered untenable, if coverage for Business Income including 'Rental Value' or 'Rental Value' applies" (*Id.* at p. 11.) The Policy defines the term "operations" as "a. Your business activities occurring at the described premises; and b. The tenantability of the described premises, if coverage for Business Income including 'Rental Value' or 'Rental Value' applies." (*Id.* at p.10.)

39. The Policy includes Civil Authority coverage, for which the grant of coverage provides, in pertinent part, as follows:

3. Additional Coverages

a. Civil Authority

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 the reasonable and necessary Extra Expense you incur 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.

(Exhibit 1, Policy - Form CT T1 04 02 17, at p. 2 (emphasis added).)

40. The Policy defines the phrase “Covered Causes of Loss” as follows:

A. COVERED CAUSES OF LOSS

When Special is shown in the Declarations, Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section B., Exclusions; or
 2. Limited in Section C., Limitations;
- that follow.

(*Id.*, Policy - Form CP T1 08 02 17, at p. 1.)

41. The Policy contains an endorsement entitled “EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA,” which provides, in pertinent part, as follows:

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

- A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and *forms or endorsements that cover business income, extra expense, rental value or action of civil authority.*
- B. We will not pay for loss or damage caused by or resulting from *any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.*

(*Id.*, Policy - Form IL T3 82 05 13 (emphasis added).)

42. The Policy contains the following exclusions:

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 ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged;
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

- 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.

- 3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c.

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

(*Id.*, Policy - Form CP T1 08 02 17, at pp. 1-5.)

VI.
APPLICATION OF THE POLICY
TO HIGH END HOTEL'S CLAIMED LOSSES

A. High End Hotel's claimed losses do not fall within the Policy's grants of coverage.

43. There is no coverage for High End Hotel's claimed loss of business income under the Business Income provision quoted in Paragraph 38 above because High End Hotel experienced no suspension of its operations "caused by direct physical loss of or damage to property at the described premises" caused by or resulting from a Covered Cause of Loss. (*Id.*, Policy - Form CP T1 04 02 17, at p. 1.)

44. The limitations and/or restrictions High End Hotel allegedly experienced because of the Orders, such as social distancing, the use of masks, and the shutdown of certain food related services do not constitute direct physical loss of or direct physical damage to property.

45. Moreover, many of the purported “limitations” on High End Hotel’s operations (as alleged in High End Hotel’s Demand Letter), including the installation of barriers or shields, were not actually required by any of the Orders. In fact, as an “essential service,” High End Hotel was authorized to operate at full capacity at all relevant times during the Policy period.

46. The changes in business operations that High End Hotel implemented during the COVID-19 pandemic were actions taken deliberately by High End Hotel based on its understanding of its obligations under the Orders.

47. Moreover, the Policy does not provide coverage for High End Hotel’s claimed loss of business income because, as set forth in the virus exclusion quoted in Paragraph 41 above, neither SARS-CoV-2 nor COVID-19 is a “Covered Cause of Loss” as that term is defined in the Policy.

48. There is no coverage for High End Hotel’s claimed loss of business income under the Policy’s Civil Authority provisions quoted in Paragraph 39 above because the Orders do not prohibit all access to the Premises. In addition, the Orders did not prohibit access to an “area immediately surrounding” the Premises. The Orders were not issued due to “damage to property” at any location, and were not “in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage” (Exhibit 1, Policy - Form CP T1 04 02 17, at p. 2.) Although the Orders required High End Hotel customers to wear masks and limited dine-in options during certain periods (while always allowing food service via pickup and delivery service), these limitations did not cause physical loss of or physical

damage to property. And, again, neither SARS-CoV-2 nor COVID-19 is a Covered Cause of Loss, which vitiates any possible coverage for High End Hotel's claimed loss.

B. Several exclusions bar coverage for High End Hotel's claimed losses.

49. Moreover, even if there were the requisite "direct physical loss of or damage to property at the described premises," or "damage to property" at a non-insured location giving rise to a civil authority order, any such direct physical loss or damage would not be caused by a Covered Cause of Loss, based on the "EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA" quoted in Paragraph 41 above. This provision excludes "loss or damage caused by or resulting from any virus . . . that induces or is capable of inducing physical distress, illness or disease."

50. SARS-CoV-2 is a virus that induces or is capable of inducing physical distress, illness or disease.

51. To the extent High End Hotel's claimed loss of business income was caused by any Orders purportedly "[r]egulating the . . . use" of the Premises, High End Hotel's alleged losses are also excluded by the Policy's Ordinance or Law exclusion, which is quoted in Paragraph 42, above.

52. High End Hotel's claimed loss of business income is also excluded by the Policy's "loss of use" exclusion, as quoted in Paragraph 42 above, because High End Hotel's alleged losses were caused by a purported "loss of use" of the Premises.

53. High End Hotel's claimed loss of business income is also excluded by the Policy's exclusion providing that "We will not pay for loss or damage caused by or resulting from . . . loss of market," as quoted in Paragraph 42 above, to the extent the general economic conditions caused by governmental actions and social distancing has caused a loss of or reduction in the market or demand for the services provided by High End Hotel.

54. To the extent High End Hotel's claimed losses were caused by an act or decision of the management of High End Hotel or by the act or decision of any federal, state, county or

local officer(s) or entity(ies) in enacting any COVID-related Orders, they are also excluded by the exclusion quoted in Paragraph 42 above providing that “We will not pay for loss or damage caused by or resulting from . . . [a]cts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.”

VII.
COUNT ONE

(Declaratory Judgment Pursuant to 28 U.S.C. § 2201)

55. Charter Oak repeats and realleges the allegations contained in Paragraphs 1 through 54 above, as if fully set forth herein.

56. High End Hotel has made claim for and requested that Charter Oak provide coverage under the Policy for claimed business income loss related to SARS-CoV-2 and COVID-19. More specifically, as set forth in its Demand Letter dated January 8, 2022, High End Hotel contends it is entitled to payment under the Policy’s Civil Authority coverage for the financial losses it allegedly sustained due to the Orders.

57. Charter Oak has denied High End Hotel’s Claim and contends the Policy affords no insurance coverage for the losses claimed by High End Hotel.

58. An actual controversy has arisen as to whether, under the terms, conditions, limitations, and exclusions of the Policy, Charter Oak has an obligation to provide coverage for the losses claimed by High End Hotel.

59. Pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, Charter Oak is entitled to (and hereby seeks) a declaration that, under the Policy, it has no obligation to provide coverage for the losses claimed by High End Hotel.

VIII.
REQUEST FOR RELIEF

WHEREFORE, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201 and 2202, Charter Oak respectfully requests that the Court grant it the following relief:

- (a) Enter a declaratory judgment that the Policy does not provide coverage for the losses claimed by High End Hotel and does not require Charter Oak to pay for those alleged losses; and
- (b) Grant such other relief as this Court deems just and appropriate.

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Respectfully submitted,

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