

IN THE 22ND JUDICIAL CIRCUIT COURT  
ST. LOUIS CITY, MISSOURI

<p>SEOUL TACO HOLDINGS, LLC; SEOUL TACO LLC; SEOUL TACO STL LLC; SEOUL TACO CHESTERFIELD LLC; SEOUL TACO COLUMBIA LLC; SEOUL TACO CHICAGO LLC; SEOUL TACO HYDE PARK LLC; SEOUL TACO NAPERVILLE LLC; SEOUL TACO FOOD TRUCKS LLC;</p> <p>Plaintiffs,</p> <p>v.</p> <p>THE CINCINNATI INSURANCE COMPANY <b>Hold for Service,</b></p> <p>THE CINCINNATI CASUALTY COMPANY <b>Hold for Service,</b></p> <p>THE CINCINNATI INDEMNITY COMPANY <b>Hold for Service,</b></p> <p>CINCINNATI FINANCIAL CORPORATION <b>Hold for Service,</b></p> <p>THE CITY OF ST. LOUIS <b>Hold for Service,</b></p> <p><i>-and-</i></p> <p>FREDRICK ECHOLS, MD, in his official capacity <b>Hold for service,</b></p> <p>Defendants.</p>	<p>Case No. _____</p> <p>Division No. _____</p> <p><b>JURY TRIAL DEMANDED</b></p>
--	---

## **PETITION FOR DECLARATORY RELIEF**

COMES NOW, Plaintiffs Seoul Taco Holdings, Seoul Taco LLC, Seoul Taco STL LLC, Seoul Taco Chesterfield LLC, Seoul Taco Columbia LLC, Seoul Taco Chicago LLC, Seoul Taco Hyde Park LLC, Seoul Taco Naperville LLC, and Seoul Taco Food Trucks LLC (collectively “Plaintiffs” or “Seoul Taco”) and for their petition against Defendants The Cincinnati Insurance Company, The Cincinnati Casualty Company, the Cincinnati Indemnity Company, and the Cincinnati Financial Corporation (collectively “Cincinnati Insurance”) and St. Louis City and Frederick Echols, M.D., in his official capacity, (collectively the “St. Louis City Defendants”), states as follows:

### **INTRODUCTION**

1. Seoul Taco brings this action to establish that Cincinnati Insurance is obligated to pay them for its lost business income and extra expenses incurred due to a forced suspension of the operations Seoul Taco’s restaurants. This forced suspension resulted from the uncontrolled spread of the virus that causes coronavirus disease 2019 (“COVID-19”) and ensuing orders from the City of St. Louis, Missouri, St. Louis County, Missouri, Boone County, Missouri, City of Columbia, Missouri, the State of Illinois, and other government officials requiring that the restaurants shut down all in-premises dining. Despite dutifully paying its policy premiums and clear coverage under the policy, Cincinnati Insurance refuses to cover the loss. Therefore, Plaintiffs seek declaratory relief from this Court seeking a declaration that, among other things, the relevant St. Louis City and other government shutdown orders apply to the Seoul Taco restaurants, and that, as a result of these shutdown orders and the general uncontrolled spread of COVID-19, Cincinnati Insurance is obligated to cover Seoul Taco’s losses under the relevant policy provisions.

## **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action under the Missouri Declaratory Judgment Act, section 527.010, RSMo.

3. This Court has personal jurisdiction over all parties. The St. Louis City Defendants are domiciled in Missouri, and thus subject to this Court's general jurisdiction. This Court further has personal jurisdiction over Cincinnati Insurance because the insurance policy at issue was entered in Missouri and the insured properties and businesses are located in Missouri.

4. This Court has venue under section 508.060, RSMo because this Court presides over St. Louis City, a defendant in this lawsuit. This Court further has venue because several Plaintiffs are domiciled in St. Louis City and the contract for insurance at issue was formed in St. Louis City and covers property in St. Louis City.

## **THE PARTIES**

5. The Seoul Taco Plaintiffs are all incorporated in Missouri and are restaurants specializing in a fusion of Korean and Mexican cuisines. Beginning as a food truck in St. Louis in 2011, Seoul Taco now has seven locations, including locations in St. Louis and Columbia Missouri, and Chicago, Illinois, and has earned national acclaim in several publications as a top casual dining spot. The restaurants are owned and operated by St. Louis restaurateur David Choi.

6. The Seoul Taco restaurant locations (hereinafter referred to as the "Insured Premises") include:

- 4099 Chouteau Ave, St. Louis, MO 63110;
- 6665 Delmar Blvd, St. Louis, MO 63130;
- 46 Four Seasons Shopping Center, Chesterfield, MO 63017;

- 1020 E. Broadway, Columbia, MO 65201;
  - 738 N. Clark St., Chicago, IL 60654;
  - 1321 E. 57th St., Chicago, IL 60637; and
  - 206 S. Washington St., Naperville, IL 60540.
7. Defendant Cincinnati Insurance is an insurance conglomerate headquartered in Fairfield, Ohio.
8. Defendant City of St. Louis is a Missouri city over which this Court presides.
9. Defendant Echols is the Director for the St. Louis City Department of Health and is party to this lawsuit solely in her official capacity as such.

## **GENERAL ALLEGATIONS**

### **The Policy**

10. On or about June 19, 2019, Seoul Taco entered into a contract of insurance with Cincinnati Insurance, policy number ECP 054 21 28 (the “Policy”), whereby Plaintiffs agreed to make payments to Cincinnati Insurance in exchange for Cincinnati Insurance’s promise to indemnify Plaintiffs for losses, including business income loss, at the Insured Premises. The Policy is effective through June 19, 2022. A copy of the Policy is attached hereto as Exhibit A.

11. The Policy is an all-risk policy, meaning that it covers all risks unless specifically excluded. The Policy, by its terms, covers all direct loss to the Insured Premises unless such loss is excluded or limited. *See* Exhibit A, at p. 45, § A, “Coverage” (preamble), and p. 47, § A(3)(a), “Covered Causes of Loss.” Loss is defined as accidental physical loss or accidental physical damage. *Id.* at p. 80, § G(8), “Definitions: Loss”.

12. The Policy does not have any exclusions related to viruses or pandemics.

Therefore, physical loss or physical damage caused by virus or pandemics is covered under the Policy.

13. The Policy expressly covers actual loss of business income and extra expenses incurred due to the necessary suspension of operations caused by any covered loss to the Insured Premises. *Id.* at p. 60, § A(5)(b)(1) and (2), “Coverage: Business Income and Extra Expense.” Business income is defined as net income (profit before income taxes) that would have been earned and continuing normal operating expenses incurred, including payroll. *Id.* at p. 80, § G(2), “Definitions: Business Income.” The policy covers all business income loss and extra expenses incurred during the period of suspension, without any limitation, for a maximum period of one year. *Id.* at p. 41, “Commercial Property Coverage Part Declarations.”

14. The policy also expressly covers actual loss of business income and necessary extra expenses incurred by action of civil authority where (1) a covered loss (which includes viruses and pandemics) causes damage to property other than the Insured Premises, (2) access to the Insured Premises is prohibited by civil authority as a result of the order, (3) access to the area surrounding the damaged property is prohibited by civil authority as a result of the damage, and (4) such action of civil authority is in response to dangerous physical conditions resulting from the damage or continuation of the covered loss that caused the damage. *Id.*, at p. 61, §A(5)(b)(3), “Civil Authority.” There is no geographical limitation as to the location of the third-party property that must sustain a loss for this provision to apply. *Id.* Under this coverage extension, the Policy covers all business income loss and extra expenses incurred, without limitation, for up to 30 days from the date of the civil authority action. *Id.*

### **The COVID-19 Virus**

15. The novel coronavirus that causes COVID-19 (the “COVID-19 Virus”) is a human pathogen and physical substance.

16. The COVID-19 Virus can and does exist outside of the human body in viral fluid particles. It can and does exist on inert physical surfaces and can be transmitted from such surfaces. These surfaces include floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touch screens, cardboard and plastic packages, food items, silverware, plates, serving trays, glasses, straws, menus, pots, pans, kitchen utensils, faucets, door handles and knobs, refrigerators, freezers, credit cards, and other items of property. It can exist on these surfaces and remain capable of transmission for hours, and, on some surfaces, days. The virus can also be transmitted through airborne viral particles emitted into the air by infected individuals.

17. The presence of the COVID-19 Virus on or near any premises or item of property renders that premises or item physically unsafe and impairs its value, usefulness, and normal function. Thus, the presence of the COVID-19 Virus in or near any premises or any item of property constitutes a direct physical damage or physical loss to that premises or property. Further, the presence of people infected with the COVID-19 Virus in the vicinity of any premises or item of property renders such premises or property unsafe, and thus constitutes a direct physical damage or physical loss to the premises or property.

18. The COVID-19 Virus is and has been spreading uncontrollably across the United States, including St. Louis City and County, Missouri, Boone County, Missouri, and Cook County, Illinois. In these counties alone there have been tens of thousands of confirmed cases, and over 2,000 deaths linked to the virus. This, however, does not begin to capture the true

infection rate, as there is no widespread testing available for the virus. Further, as many as 50 percent of people infected with the virus are asymptomatic, and thus, while seemingly healthy, are spreading the virus while engaged in their daily functions in the community. Therefore, the COVID-19 Virus is ubiquitous, and has caused physical damage and loss to many businesses, including the Seoul Taco restaurants.

### **The Relevant Shutdown Orders**

19. Due to the uncontrolled spread of the COVID-19 virus, government authorities throughout the United States, including St. Louis City, St. Louis County, Boone County, and the State of Illinois have issued several orders that have forbidden all in-premises access to Seoul Taco restaurants to the general public. They are as follows.

#### **St. Louis City Orders**

20. On March 18, 2020, Director Echols issued Health Commissioner's Order No. 3, which forbids all restaurants and bars from providing in-person dining on premises. This order effectively prohibits in-person public access to restaurants and bars in St. Louis City. The original term of this order was March 19, 2020 through April 3, 2020, and through various extensions, this access ban has remained continuously in place to date.

#### **St. Louis County Orders**

21. On March 13, 2020, St. Louis County Executive Same Page issued Executive Order No.10 declaring a state of emergency in St. Louis County, finding imminent peril to lives and property in St. Louis County and that the "potential spread of COVID-19 poses an immediate and significant risk to health, safety, and wellbeing of St. Louis County."

22. On March 17, 2020, County Executive Page issued Executive Order No. 13, which, effective March 20, 2020, closed "to ingress, egress, use, and occupancy by members of

the public” restaurants that offer food or beverage for on-premise consumption. The purpose of the order is to “limit the spread of COVID-19, to protect the public health, and to provide essential protections to the people of St. Louis County.” This order has been continuously in effect to date.

23. On March 24, 2020, Acting Director of the St. Louis County Department of Public Health, Emily Doucette, M.D., issued an “Order Restricting the Operations of Restaurants and Bars,” which also “closed to ingress, egress, use, and occupancy by members of the public” restaurants that offer food or beverage for on-premise consumption. The purpose of the order is to “limit the spread of COVID-19 in St. Louis County to protect public health....” The order has been continuously in effect to date.

#### Boone County and Columbia Orders

24. On March 24, 2020, the Director of Public Health and Human Services for Boone County and Columbia, Missouri issued Order Nos. 2020-03 and 2020-03C, forbidding all on-site consumption at restaurants in Boone County and Columbia Missouri. The orders effectively prohibited all access to the public for on-premises dining at such establishments. This order expired on May 3, 2020, but was replaced with Order No. 2020-05, which, while allowing restaurants to reopen, restricted occupancy to 25 percent or less of authorized occupancy limits.

#### State of Illinois Orders

25. On March 16, 2020, Illinois Governor JB Pritzker issued Executive Order 2020-07, which forbids all Illinois restaurants and bars, among other establishments, to suspend all on-premises consumption, which effectively prohibits all on-premises public access to Illinois restaurants and bars. The order was issued to protect the health and welfare of the citizens of Illinois because of the widespread circulation of the COVID-19 Virus throughout all

communities in Illinois. The order was effective March 16, 2020, and, through various extensions, has remained in effect to date.

26. All of the above shutdown orders apply to the Seoul Taco restaurants, including the Insured Premises.

**The Seoul Taco Restaurants Suffer a Covered Loss Under the Policy**

27. The Seoul Taco restaurants have experienced direct physical loss and physical damage as a result of the COVID-19 virus and ensuing shutdown orders. The general spread of the virus in the community, including in the Insured Premises, and the above-described closure orders have forced Seoul Taco to close its restaurants to the public for on-premise dining. The restaurants have been so closed since approximately March 16, 2020. As a result, Seoul Taco has suffered substantial economic losses, including, among other losses, business income losses and extra expenses, and have been forced to furlough a number of its employees.

28. The losses suffered by the Seoul Taco restaurants are covered under the Policy. Specifically, the uncontrolled spread of the COVID-19 virus constitutes direct physical damage and physical loss to the Insured Premises, which, due to the deadly nature of the virus, has forced Seoul Taco to suspend its operations until its spread has been adequately controlled. Further, the loss of use of the Insured Premises for their intended purposes is, in itself, a direct physical loss to the premises and property within, and thus covered under the Policy. Thus, Seoul Taco is entitled to its loss of business income and extra expenses incurred due to this suspension of operations under section A(5)(b)(1) and (2) of the Policy, which expressly covers such losses.

29. Further, Seoul Taco's losses are separately covered under the civil authority provision of the Policy because (1) the COVID-19 Virus has caused damage to multiple properties other than the Insured Premises, (2) orders of a civil authority—i.e., the shutdown

orders described above—have prohibited public access to the Insured Premises, (3) these orders also prohibit access to the areas surrounding the damaged third-party properties due to the damage, and (4) the action of the civil authority is in response to dangerous physical conditions resulting from the uncontrolled spread of the COVID-19 Virus. Therefore, Seoul Taco is entitled to its loss of business income and extra expenses incurred due the action of a civil authority under Section A(5)(b)(3) of the Policy.

**Despite Payment of All Premiums, Cincinnati Insurance Refuses to Pay Under the Policy**

30. The Seoul Taco Plaintiffs have dutifully made all required premium and other payments due under the Policy.

31. In April 2020, Seoul Taco made a claim for their lost business income and extra expenses due under the Policy.

32. Cincinnati Insurance has denied and refused to pay the claim.

33. Therefore, Seoul Taco has been forced to submit the issue of coverage under the Policy to this Court.

**CLAIMS FOR RELIEF**

**Count I: Declaratory Relief**

34. Plaintiffs reallege the above allegations as if fully stated herein.

35. Under the Missouri Declaratory Judgment Act, this Court has the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” RSMo, § 527.010.

36. An actual controversy has arisen between Seoul Taco and Cincinnati Insurance as to the rights, duties, responsibilities, and obligations of the parties related to Cincinnati Insurance’s obligation to pay under the policy. Specifically, Plaintiffs contend, and Cincinnati

Insurance disputes, that: (1) the shutdown orders described above constitute a forced suspension of operations and prohibition of access to the Insured Premises; (2) the shutdown orders and uncontrolled spread of the COVID-19 Virus in the community triggers coverage because the Policy does not exclude damages caused by viral pandemics, and actually extends coverage for such loss or damage under the business suspension and civil authority provisions of the Policy; and (3) Cincinnati Insurance is obligated to pay the full and actual amount of Plaintiffs' loss of business income and extra expenses incurred during the periods of coverage under the Policy.

37. Therefore, Plaintiffs seek a declaration that: (1) the shutdown orders described above constitute a forced suspension of operations and prohibition of access to the Insured Premises; (2) the shutdown orders and uncontrolled spread of the COVID-19 Virus trigger coverage under the Policy; and (3) Cincinnati Insurance is obligated to pay the full and actual amount of Plaintiffs' business income loss and actual expenses incurred.

38. Resolution of these issues by declaratory judgment is necessary because no adequate remedy at law exists and a declaration of the Court is needed to resolve this dispute and controversy.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

- (a) For a declaration that the shutdown orders described above constitute a forced suspension of operations of and prohibition of access to the Insured Premises;
- (b) For a declaration that the shutdown orders and uncontrolled spread of the COVID-19 Virus triggers coverage under the Policy;
- (c) For a declaration that Cincinnati Insurance is obligated to pay the full and actual amount of Plaintiffs' lost business income and extra expenses incurred;

- (d) For Plaintiffs' reasonable attorneys' fees and costs; and
- (e) For any other relief this Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial for all issues so triable.

Dated: May 13, 2020

Respectfully Submitted,

ELIAS LLC

/s/ Richard M. Elias  
Richard M. Elias, #53820  
231 S. Bemiston, Suite 800  
St. Louis, MO 63105  
314-391-6820  
[relias@eliasllc.com](mailto:relias@eliasllc.com)