

UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

WORTH AVENUE RESTAURANT, INC.
d/b/a TA-BOO RESTAURANT,

Plaintiff,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Worth Avenue Restaurant, Inc. d/b/a Ta-boo Restaurant brings this Complaint, alleging against Defendant Certain Underwriters at Lloyd's, London ("Lloyd's") as follows:

I. NATURE OF THE CASE

1. This is a civil action seeking declaratory relief arising from Plaintiff's contract of insurance with the Defendant.
2. In light of the Coronavirus global pandemic and state and local orders mandating that restaurants not permit in-store dining, Plaintiff shut its doors for customers on March 20, 2020.
3. Plaintiff's insurance policy provides coverage for all non-excluded business losses, and thus provides coverage here.
4. As a result, Plaintiff is entitled to declaratory relief that the restaurant is covered for all business losses that have been incurred in an amount greater than \$150,000.00.

II. JURISDICTION

5. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff and the Defendant.

Further, Plaintiff has suffered business losses in an amount greater than \$150,000.00. The amount in controversy necessary for diversity jurisdiction over a declaratory judgment action is measured by the value those business losses. *Id.* at § 1332(a).

6. The Court has personal jurisdiction over Defendant because at all relevant times it has engaged in substantial business activities in the State of Florida. At all relevant times Defendant transacted, solicited, and conducted business in Florida through its employees, agents, and/or sales representatives, and derived substantial revenue from such business in Florida.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because a substantial portion of the wrongful acts upon which this lawsuit is based occurred in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Defendant is a corporation that has substantial, systematic, and continuous contacts in the State of Florida, and as a result it is subject to personal jurisdiction in this District.

8. The acts and/or omissions complained of took place, in whole or in part, within the venue of this Court.

III. PARTIES

9. Plaintiff Worth Avenue Restaurant, Inc. d/b/a Ta-boo Restaurant, is a Florida corporation with its principal place of business in Florida, authorized to do business and doing business in Florida. Worth Avenue Restaurant, Inc. d/b/a Ta-boo Restaurant owns, operates, manages, and/or controls the restaurant Ta-boo located at 221 Worth Avenue, Palm Beach, FL 33480.

10. Defendant Certain Underwriters at Lloyd's, London ("Lloyd's") is composed of separate syndicates, in turn comprised of entities known as "Names," which underwrite insurance in a market known as Lloyd's of London. Each "Name" and syndicate is organized under the

laws of the United Kingdom and is located in and has its principal place of business in England. At all relevant times, Lloyd's subscribed to Policy PXA0000905-00 issued to Plaintiff for the period of November 1, 2019 to November 1, 2020. *See* Policy Declaration page, attached hereto as Exhibit 1. Defendant is transacting in the business of insurance in the State of Florida and within the County of Palm Beach and the basis of this suit arises out of such conduct.

IV. **FACTUAL BACKGROUND**

A. **Insurance Coverage**

11. On or about November 1, 2019, Defendant entered into a contract of insurance with the Plaintiff, whereby Plaintiff agreed to make payments to Defendant in exchange for Defendant's promise to indemnify the Plaintiff for losses including, but not limited to, business income losses at its restaurant located in Palm Beach County (the "Insured Property").

12. The Insured Property consists of Ta-boo located at 221 Worth Avenue, Palm Beach, FL 33480 in Palm Beach¹ which is owned, leased by, managed, and/or controlled by the Plaintiff. *See* <http://www.taborestaurant.com/> (last visited June 26, 2020). Prior to March 20, 2020, Ta-boo was open seven days a week from 11:30 a.m. through 11:00 p.m., with the capacity to hold approximately 200 guests inside the restaurant; Ta-boo does not have any open air or outside capacity.

13. The Insured Property is covered under a policy issued by the Defendant with policy number believed to be PXA0000905-00 (hereinafter "Policy").

14. The Policy is currently in full effect, providing, among other things property, business personal property, business income and extra expense, contamination coverage, and additional coverages between the period of November 1, 2019 through November 1, 2020.

¹ This address is listed as the Insured Property under the Policy.

15. Plaintiff faithfully paid policy premiums to Defendant, specifically to provide, among other things, additional coverages in the event of business interruption or closures by order of Civil Authority.

16. Under the Policy, insurance is extended to apply to the actual loss of business income sustained and the actual, necessary and reasonable extra expenses incurred when access to the Insured Property is specifically prohibited by order of civil authority as the direct result of a covered cause of loss to property in the immediate area of Plaintiff's Insured Property. This additional coverage is identified as coverage under "Civil Authority."

17. The Policy is an all-risk policy, insofar as it provides that covered causes of loss under the policy means direct physical loss or direct physical damage unless the loss is specifically excluded or limited in the Policy.

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

19. Plaintiff's all-risk policy includes coverage for business interruption, which is standard in most all-risk commercial property insurance policies, along with coverage for extended expenses.

20. Plaintiff purchased the aforementioned Policy expecting to be insured against losses, including, but not limited to, business income losses at its restaurant.

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

22. Based upon information and belief, the Policy provided by Defendant included

language that is essentially standardized language adopted from and/or developed by the ISO (“Insurance Service Office”). The ISO, founded in 1971, provides a broad range of services to the property and casualty insurance industry. In addition to form policies, ISO collects and manages databases containing large amounts of statistical, actuarial, underwriting, and claims information, fraud-identification tools, and other technical services. ISO describes itself as follows: “ISO provides advisory services and information to many insurance companies. . . . ISO develops and publishes policy language that many insurance companies use as the basis for their products.” ISO General Questions, Verisk, <https://www.verisk.com/insurance/about/faq/> (last visited June 26, 2020); *see also* Insurance Services Office (ISO), Verisk, <https://www.verisk.com/insurance/brands/iso/> (last visited June 26, 2020).

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

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

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

26. At no time had Defendant, or its agents, notified Plaintiff that the coverage that Plaintiff had purchased pursuant to an all-risk policy that included business interruption coverage, contained exclusions and provisions that purportedly undermined the very purpose of the coverage: providing benefits in the occurrence of business interruption and incurring extended expenses.

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

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

29. Furthermore, Defendant's expected application of exclusions to undermine Plaintiff's bargained-for coverage violates public policy of the State of Florida as a contract of adhesion and hence not enforceable against Plaintiff.

30. Access to Plaintiff's business was prohibited by Civil Authority Orders and the Policy provides for coverage for actual loss of business sustained and actual expenses incurred as a covered loss caused by the prohibitions of the Civil Authority Orders in the area of Plaintiff's Insured Property.

31. Plaintiff had a reasonable expectation that the Policy's business interruption coverage applied where a civil authority forced closure of the business for an issue of public safety in the immediate area surrounding the Insured Property.

32. The Policy does not exclude the losses suffered by Plaintiff and therefore the Policy does provide coverage for those losses.

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

34. The Policy does not appear to contain any separate, explicit virus exclusion. It

does appear to have a Total Mold, Mildew, or Other Fungi Exclusion. This exclusion does not mention a virus in its header or endorsement title. However, it appears to try to include “organic pathogens,” which it goes on to define as “mold, fungus, bacteria, or virus including but not limited to their byproducts such as mycotoxins, mildew, or biogenic aerosol,” as well as “fungi or mycotoxins produced by such fungi.” The COVID-19 virus, however, is not mold, mildew, fungus, or bacterium. It does not create any mycotoxins or mildew as a byproduct. The Policy elsewhere defines mold, fungi, and bacteria without any reference to viruses. Simply put, the COVID-19 virus is not mold, mildew, or other fungi. Even if a virus is within the meaning of mold, fungi, or bacteria (which it is not), the Policy goes on to include Limited coverage for Mold, Fungi, Wet or Dry Rot or Bacteria.

35. Regardless, even assuming Defendant wrongly claims its exclusions cover a virus, such exclusions would not apply because Plaintiff’s losses were not directly caused by a virus, bacterium or other microorganism. Instead, Plaintiff’s losses were caused by the entry of Civil Authority Orders, particularly those by the Governor of Florida, the Florida Health Department, and Palm Beach County, to mitigate the spread of COVID-19.

36. Further, any exclusion Defendant may argue that might include a virus (even though COVID-19 is not mold, mildew, fungus, or bacterium) (called, for shorthand only here, the Virus Exclusion) was first permitted by state insurance departments due to misleading and fraudulent statements by the ISO that property insurance policies do not and were not intended to cover losses caused by viruses, and so the exclusion offers mere clarification of existing law. To the contrary, before the ISO made such baseless assertions, courts considered contamination by a virus to be physical damage. Defendant’s use of the Virus Exclusion to deny coverage here shows that the Virus Exclusion was fraudulently adopted, adhesionary, and unconscionable. *See*

<https://www.propertycasualty360.com/2020/04/07/here-we-go-again-virus-exclusion-for-covid-19-and-insurers/> (last visited June 26, 2020).

37. Based on information and belief, the Defendant has accepted the policy premiums with no intention of providing any coverage for business losses or the Civil Authority extension due to a loss and shutdown.

B. The Coronavirus Pandemic

38. The scientific community, and those personally affected by the virus, recognize the Coronavirus as a cause of real physical loss and damage. It is clear that contamination of the Insured Property would be a direct physical loss requiring remediation to clean the surfaces of the restaurant.

39. The virus that causes COVID-19 remains stable and transmittable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel. See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited June 26, 2020).

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

41. On March 11, 2020 the World Health Organization (“WHO”) made the assessment that COVID-19 shall be characterized as a pandemic. See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited June 26, 2020).

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

(28) days.

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

44. While infected droplets and particles carrying COVID-19 may not be visible to the naked eye, they are physical objects which travel to other objects and cause harm. Habitable surfaces on which COVID-19 has been shown to survive include, but are not limited to, stainless steel, plastic, wood, paper, glass, ceramic, cardboard, and cloth.

45. China, Italy, France, and Spain have implemented the cleaning and fumigating of public areas prior to allowing them to re-open publicly due to the intrusion of microbials.

46. Courts in France have ruled that business interruption coverage applies where businesses lost revenue as a result of being forced to close their doors due to orders of civil authority in response to the COVID-19 Pandemic. *See* <https://www.insurancejournal.com/news/international/2020/05/22/569710.htm> (last visited June 26, 2020).

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

C. Civil Authority

48. On March 1, 2020, Florida Governor Ron DeSantis issued Executive Order No. 20-051, establishing a public health emergency as to COVID-19. *See* Exhibit 2.

49. On March 9, 2020, Florida Governor Ron DeSantis issued Executive Order No.

20-52, declaring a State of Emergency in the State of Florida based on the ongoing risk posed by COVID-19. *See* Exhibit 3.

50. On March 13, 2020, Palm Beach County announced a local State of Emergency due to the Coronavirus pandemic. *See* <http://discover.pbcgov.org/PDF/COVID19/Declaration-of-Local-State-of-Emergency-COVID-19.pdf> (last visited June 26, 2020).

51. On March 17, 2020, Governor Ron DeSantis issued Executive Order 20-68, which immediately required restaurants in Florida counties *other than* Broward and Palm Beach Counties to limit occupancy to 50%. *See* Exhibit 4.

52. On March 20, 2020, Governor Ron DeSantis issued Executive Order 20-70, which ordered that all restaurants, bars, taverns and other facilities in Broward and Palm Beach Counties be closed to on-premise service of customers. *See* Exhibit 5.

53. On March 20, 2020, Governor Ron DeSantis issued Executive Order 20-71, which ordered all restaurants and bars in Florida to suspend on-premise service of customers. *See* Exhibit 6.

54. On March 22, 2020, Palm Beach County issued COVID-10 Public Safety Order Number 1, which incorporated the governor's Executive Order 20-70. *See* <http://discover.pbcgov.org/PDF/COVID19/Emergency-Order-Number-1.pdf> (last visited June 26, 2020).

55. On April 29, 2020, Governor Ron DeSantis issued Executive Order No. 20-112 (taking effect May 4, 2020), which among other things allowed restaurants in counties *other than* Miami-Dade, Broward, and Palm Beach to resume on-premise consumption of food and beverage so long as they adopt appropriate social distancing measures and limit their indoor occupancy to no more than 25 percent of their building occupancy. In addition, outdoor seating is permissible

with appropriate social distancing. Appropriate social distancing requires maintaining a minimum of 6 feet between parties, only seating parties of 10 or fewer people and keeping bar counters closed to seating. *See* Exhibit 7.

56. Restaurants, bars, and other establishments in Palm Beach County were not allowed re-open until May 11, 2020. *See* Exhibit 8 (Executive Order 20-120, signed by Governor Ron DeSantis on May 9, 2020, and taking effect on May 11, 2020).

57. During this period of Civil Authority Orders, Plaintiff abided by the state and local orders requiring Plaintiff to close its business.

58. State and local authorities' concerns were echoed at the national level. For example, on April 10, 2020 President Trump seemed to support insurance coverage for business loss like that suffered by the Plaintiff:

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

PRESIDENT TRUMP: Well it's something that we've already suggested, we're talking to them. ***Business interruption insurance***, I'd like to see these insurance companies—you know you have people that have paid. When I was in private I had business interruption. When my business was interrupted through a hurricane or whatever it may be, I'd have business where I had it, I didn't always have it, sometimes I had it, sometimes, I had a lot of different companies. ***But if I had it I'd expect to be paid.*** You have people. ***I speak mostly to the restaurateurs***, where they have a restaurant, they've been paying for 25, 30, 35 years, business interruption. They've never needed it. All of a sudden they need it. And I'm very good at reading language. I did very well in these subjects, OK. And I don't see the word pandemic mentioned. Now in some cases it is, it's an exclusion. But in a lot of cases I don't see it. I don't see it referenced. And they don't want to pay up. I would like to see the insurance companies pay

if they need to pay, if it's fair. And they know what's fair, and I know what's fair, I can tell you very quickly. But business interruption insurance, that's getting a lot money to a lot of people. And they've been paying for years, sometimes they just started paying, but you have people that have never asked for business interruption insurance, and they've been paying a lot of money for a lot of years for the privilege of having it, and then when they finally need it, the insurance company says 'we're not going to give it.' We can't let that happen.

https://youtu.be/_cMeG5C9TjU (last visited on April 17, 2020) (emphasis added).

59. The President is articulating a few core points:
- a. Business interruption is a common type of insurance, especially for restaurants.
 - b. Businesses pay in premiums for this coverage and should reasonably expect they'll receive the benefit of the coverage.
 - c. This pandemic should be covered unless there is a specific exclusion for pandemics.
 - d. If insurers deny coverage, they would be acting in bad faith.
 - e. Public policy considerations support a finding that coverage exists and that Defendants' denial of coverage would be in violation of public policy. These Orders and proclamations, as they relate to the closure of all "non-life- sustaining businesses," evidence an awareness on the part of both state and local governments that COVID-19 causes damage to property. This is particularly true in places where business is conducted, such as Plaintiff's, as the requisite contact and interaction causes a heightened risk of the property becoming contaminated.

60. Plaintiff did not have the ability or right to ignore these Orders made by agents of civil authority, including the Governor of Florida and the County of Palm Beach, as doing so would expose Plaintiff to fines and sanctions.

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

D. Impact on Plaintiff

62. As a result of the Orders referenced herein, Plaintiff shut its doors to customers on March 20, 2020. Plaintiff did not re-open until May 22, 2020, and when it did re-open, it continued to abide by all Civil Authority Orders restricting the number of customers permitted within the restaurant.

63. As a further direct and proximate result of the Orders, Plaintiff was forced to lay off approximately 50 employees for the duration of time the restaurant originally remained closed in March, April and May.

64. Plaintiff's business is not a closed environment, and because people – staff, customers, community members, and others – constantly cycle in and out of the restaurant, there is an ever-present risk that the Insured Property is contaminated and would continue to be contaminated.

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

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

67. As a sit-down restaurant, Plaintiff's business serves hundreds of customers weekly in an intimate setting.

68. The operation of a formal restaurant such as Plaintiff's involves a great deal of person to person interaction between staff and customers, as well as repeated and shared uses of surfaces in the kitchen and dining room.

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

70. Moreover, COVID-19 caused physical damage to the inventory of Plaintiff's business, such as foodstuffs, and creates a high and dangerous risk of such injury to the same.

71. Recognizing this risk, the Civil Authority Orders were the lawful exercise of authority to protect the public and minimize the risk of spread of disease.

72. Even with the entry of these Orders, there remained physical impact not only within Plaintiff's Insured Property but in and around the surrounding location of the Insured Property due to the difficulty of identifying the presence of COVID-19.

73. Upon information and belief, individuals have contracted the COVID-19 illness in Palm Beach County and/or in and around the location of the Insured Property, thereby confirming the presence of COVID-19 and its impact on property and locations in and around the Insured Property, supporting the propriety of the entry of the Civil Authority Orders.

74. The virus is therefore physically impacting Plaintiff's business. Any effort by Defendant to deny the reality that the virus causes physical loss and damage would constitute a false and potentially fraudulent misrepresentation that could endanger Plaintiff and the public.

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

76. Plaintiff submitted a claim under the Policy to Defendant on or about May 22, 2020. Defendant denied the claim on or about June 15, 2020. In its follow-up letter for additional information, Defendant reserved its rights to deny coverage. Defendant cited, among other things, a micro organism exclusion (that is not attached to the Policy provided to Plaintiff) and a special form of exclusions for ordinances or laws that appear to conflict with the Policy's other coverage, and which does not encompass the Civil Authority issuances by the state and county executives (which are not legislative or regulatory "ordinances") discussed above.

**V. CAUSE OF ACTION
DECLARATORY RELIEF**

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

78. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a); *see also, e.g., State Farm Mut. Automobile Ins. Co. v. Advance Med. Assocs. & Forme Rehab, Inc.*, No. 1:17-cv-21737, 2017 WL 5953295 (S.D. Fla. Aug. 15, 2017).

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

- f. The Orders constitute a prohibition of access to Plaintiff's Insured Property;
- g. The prohibition of access by the Orders has specifically prohibited access as defined in the Policy;
- h. The Policy's Exclusion of Loss Due to Mold, Mildew, Fungus, or Bacterium (and, even if virus could be read to be included) does not apply to the business losses incurred by Plaintiff here.

- i. The Orders trigger coverage;
- j. The Policy provides coverage to Plaintiff for any current and future civil authority closures of restaurants in Palm Beach County due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters;
- k. Under the circumstances of the COVID-19 pandemic and the entry of the Civil Authority Orders, Plaintiff had no choice but to comply with the Orders, and Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses;
- l. Defendant's denial of coverage for losses sustained that were caused by the entry of the Civil Authority Orders referenced, and Plaintiff's required compliance with the Orders, violates public policy;
- m. The Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the insured premises or immediate area of the Insured Property; and
- n. Resolution of the duties, responsibilities and obligation of the parties is necessary as no adequate remedy at law exists and a declaration of the Court is needed to resolve the dispute and controversy.

80. Plaintiff seeks a Declaratory Judgement to determine whether the Orders constitute a prohibition of access to Plaintiff's Insured Property as Civil Authority as defined in the Policy.

81. Plaintiff further seeks a Declaratory Judgement to affirm that the Order triggers coverage.

82. Plaintiff further seeks a Declaratory Judgment to affirm that the Policy provides coverage to Plaintiff for any current and future Civil Authority closures of restaurants in Palm Beach County due to physical loss or damage from the Coronavirus and the policy provides business income coverage in the event that Coronavirus has caused a loss or damage at the Insured Property.

83. Plaintiff does not seek any determination of whether the Coronavirus is physically in or at the Insured Property, amount of damages, or any other remedy other than declaratory relief.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff herein prays as follows:

- 1) For a declaration that the Orders constitute a prohibition of access to Plaintiff's Insured Property.
- 2) For a declaration that the prohibition of access by the Orders is specifically prohibited access as defined in the Policy.
- 3) For a declaration that the Orders trigger coverage under the Policy.
- 4) For a declaration that the Policy provides coverage to Plaintiff for any current and future closures in Palm Beach County due to any physical loss or damage directly or indirectly arising out of COVID-19 and/or pandemic circumstance under the Civil Authority coverage parameters.
- 5) For a declaration that the Policy's exclusions for mold, mildew, fungus, and bacterium (and to the extent these can be read to include virus) do not apply to the circumstances presented in this lawsuit and the kind and types of damages and losses suffered by Plaintiff.
- 6) For a declaration that under the circumstances of the COVID-19 pandemic and the entry of the Civil Authority Orders, Plaintiff had no choice but to comply with the Orders and Plaintiff's compliance resulted in business losses, business interruption and extended expenses, and therefore constitute covered losses.
- 7) For a declaration that Defendant's denial of coverage for losses that were caused by entry of the Civil Authority Orders and Plaintiff's required compliance with those Orders violates

public policy.

8) For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of non-essential businesses due to physical loss or damage directly or indirectly from COVID-19 under the Civil Authority coverage parameters.

9) For a declaration that the Policy provides coverage to Plaintiff for any current, future and continued civil authority closures of restaurants in Palm Beach County due to physical loss or damage directly or indirectly from the Coronavirus under the Civil Authority coverage parameters.

10) For a declaration that the Policy provides business income coverage in the event that Coronavirus has directly or indirectly caused a loss or damage at the Plaintiff's Insured Property or the immediate area of the Plaintiff's Insured Property.

11) For such other relief as the Court may deem proper.

TRIAL BY JURY IS DEMANDED

Plaintiff hereby demands trial by jury.

Dated: July 14, 2020

Respectfully submitted,

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE:

DOCKET NUMBER:

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

VII. CAUSE OF ACTION

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature: A. V. ...

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.