

STATE OF NORTH CAROLINA

File No.

20-CVS-2569

Durham County

In The General Court Of Justice
District Superior Court Division

Name And Address Of Plaintiff 1
North State Deli, LLC, et al.

FILED

2020 SEP 21 P 3:32

Name And Address Of Plaintiff 2

DURHAM CO., C.S.C.
BY [signature]

GENERAL CIVIL ACTION COVER SHEET

INITIAL FILING SUBSEQUENT FILING

Rule 5(b) of the General Rules of Practice for the Superior and District Courts

VERSUS

Name And Address Of Defendant 1
The Cincinnati Casualty Company

Name And Address Of Attorney Or Party, If Not Represented
(Complete for initial appearance or change of address)

Stuart Paynter
106 S. Churton St., Ste. 200
Hillsborough, NC 27278

Summons Submitted

Yes No

Telephone No.

919-245-3116

Cellular Telephone No.

NC Attorney Bar No.

42379

Attorney Email Address

stuart@paynterlaw.com

Name And Address Of Defendant 2
The Cincinnati Insurance Company

Initial Appearance in Case Change of Address

Name Of Firm

The Paynter Law Firm

Fax No.

866-734-0622

Summons Submitted

Yes No

Counsel For

All Plaintiffs All Defendants Only: (list party(ies) represented)

Jury Demanded In Pleading Complex Litigation Stipulate to Arbitration

TYPE OF PLEADING

(check all that apply)

- Amend (AMND)
Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Assess Costs (COST)
Answer/Reply (ANSW-Response)
Change Venue (CHVN)
Complaint (COMP)
Confession Of Judgment (CNFJ)
Consent Order (CONS)
Consolidate (CNSL)
Contempt (CNTP)
Continue (CNTN)
Compel (CMPL)
Counterclaim (CTCL) Assess Court Costs
Crossclaim (list on back) (CRSS) Assess Court Costs
Dismiss (DISM) Assess Court Costs
Exempt/Waive Mediation (EXMD)
Extend Statute Of Limitations, Rule 9 (ESOL)
Extend Time For Complaint (EXCO)
Failure To Join Necessary Party (FJNP)

- Failure To State A Claim (FASC)
Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
Improper Venue/Division (IMVN)
Including Attorney's Fees (ATTY)
Intervene (INTR)
Interplead (OTHR)
Lack Of Jurisdiction (Person) (LJPN)
Lack Of Jurisdiction (Subject Matter) (LJSM)
Modification Of Child Support In IV-D Actions (MSUP)
Notice Of Dismissal With Or Without Prejudice (VOLD)
Petition To Sue As Indigent (OTHR)
Rule 12 Motion In Lieu Of Answer (MDLA)
Sanctions (SANC)
Set Aside (OTHR)
Show Cause (SHOW)
Transfer (TRFR)
Third Party Complaint (list Third Party Defendants on back) (TPCL)
Vacate/Modify Judgment (VCMD)
Withdraw As Counsel (WDCN)
Other (specify and list each separately)

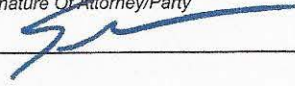
NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

(Over)

CLAIMS FOR RELIEF

- | | | |
|--|--|--|
| <input type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Minor Settlement (MSTL) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Money Owed (MNYO) | <input type="checkbox"/> Other (<i>specify and list each separately</i>) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Other (NEGO) | |
| <input checked="" type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) | |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP) | |
| <input type="checkbox"/> Injunction (INJU) | | |

Date 7/21/20

Signature Of Attorney/Party 

FEES IN G.S. 7A-308 APPLY
 Assert Right Of Access (ARAS)
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)
 Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY
 Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)

No.	<input checked="" type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
	Morris Insurance Agency Inc.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA

File No.

20-CVS-2569

Durham

County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff

North State Deli, LLC, et al.

FILED

Address

2020 SEP 21 P 3:33

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

City, State, Zip

DURHAM CO., C.S.C.

VERSUS

G.S. 1A-1, Rules 3 and 4

Name Of Defendant(s)

The Cincinnati Insurance Company, The Cincinnati Casualty Company, Morris Insurance Agency Inc.

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

The Cincinnati Casualty Company

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers! ¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Stuart Paynter
The Paynter Law Firm, LLC
106 S. Churton St., Ste. 200
Hillsborough, NC 27278

Date Issued SEP 21 2020

Time 3:33 AM PM

Signature Elizabeth Tapley

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM

Signature Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (*specify*)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (*specify*)

- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 20-CVS-02569

FILED

2020 SEP 21 P 3:33

DURHAM CO., C.S.C.

BY

NORTH STATE DELI, LLC d/b/a LUCKY'S DELICATESSEN, MOTHERS & SONS, LLC d/b/a MOTHERS & SONS TRATTORIA, MATEO TAPAS, L.L.C. d/b/a MATEO BAR DE TAPAS, SAINT JAMES SHELLFISH LLC d/b/a SAINT JAMES SEAFOOD, CALAMARI ENTERPRISES, INC. d/b/a PARIZADE, BIN 54, LLC d/b/a BIN 54, ARYA, INC. d/b/a CITY KITCHEN and VILLAGE BURGER, GRASSHOPPER LLC d/b/a NASHER CAFE, VERDE CAFE INCORPORATED d/b/a LOCAL 22, FLOGA, INC. d/b/a KIPOS GREEK TAVERNA, KUZINA, LLC d/b/a GOLDEN FLEECE, VIN ROUGE, INC. d/b/a VIN ROUGE, KIPOS ROSE GARDEN CLUB LLC d/b/a ROSEWATER, and GIRA SOLE, INC. d/b/a FARM TABLE and GATEHOUSE TAVERN,

Plaintiffs,

v.

THE CINCINNATI INSURANCE COMPANY; THE CINCINNATI CASUALTY COMPANY; MORRIS INSURANCE AGENCY INC.; and DOES 1 THROUGH 20, INCLUSIVE,

Defendants.

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

I. NATURE OF THE CASE

1. This is an action brought by independent businesses offering food and beverage across Durham and throughout North Carolina, seeking a declaratory judgment ordering their insurance providers, The Cincinnati Insurance Company and The Cincinnati Casualty Company

(“Cincinnati”), to honor valid contracts of insurance requiring payment for lost business income, extra expenses, and other business-related losses in light of COVID-19 and the related actions by governmental authorities requiring closure of their covered business premises. This Complaint further seeks damages for breach of contract for benefits due under the insurance policy contracts. To the extent coverage is not found, this Complaint also seeks damages against Morris Insurance Agency Inc. (“Morris Insurance”) for breach of fiduciary duty and for negligence. The Cincinnati Insurance Company, The Cincinnati Casualty Company, and Morris Insurance are collectively referred to herein as “Defendants.”

2. Plaintiffs are multiple restaurant groups operating sixteen highly-acclaimed restaurants in Durham and across North Carolina, including: Vin Rouge, Parizade, Mateo Bar de Tapas, Rosewater, Mothers & Sons Trattoria, Saint James Seafood, Lucky’s Delicatessen, Bin 54, City Kitchen, Village Burger, Nasher Cafe, Local 22, Kipos Greek Taverna, Golden Fleece, Farm Table, and Gatehouse Tavern.

3. The parent companies that bring this action are North State Deli, LLC d/b/a Lucky’s Delicatessen, Mothers & Sons, LLC d/b/a Mothers & Sons Trattoria, Mateo Tapas, L.L.C. d/b/a Mateo Bar de Tapas, and Saint James Shellfish LLC d/b/a Saint James Seafood (collectively, “North State Plaintiffs”); Calamari Enterprises, Inc. d/b/a Parizade, Bin 54, LLC d/b/a Bin 54, Arya, Inc. d/b/a City Kitchen and Village Burger, Grasshopper LLC d/b/a Nasher Cafe, Verde Cafe Incorporated d/b/a Local 22, Floga, Inc. d/b/a Kipos Greek Taverna, Kuzina, LLC d/b/a Golden Fleece, and Vin Rouge, Inc. d/b/a Vin Rouge (collectively, “Giorgios Hospitality Group”); Kipos Rose Garden Club LLC d/b/a Rosewater; and Gira Sole, Inc. d/b/a Farm Table and Gatehouse Tavern. The forgoing entities are collectively referred to herein as “Plaintiffs.”

4. The restaurants are owned and operated by Giorgios Nikolas Bakatsias, Matt Kelly, and Jay Mehdian, local chefs and businessowners who helped ignite the region’s culinary renaissance. Mr. Bakatsias and Mr. Kelly are both multi-time James Beard award nominees and, until recent events, daily served up some of the state’s most exciting food and drink. The three owners are also committed public servants who have contributed extensively to their local communities.

5. Over the past few months, all sixteen restaurants have been forced to close. These shutdowns were ordered by state and local governments which required Plaintiffs and their employees, customers, suppliers, and others to “shelter in place” and abide by strict “social distancing” guidelines. The mandated closures resulted in the immediate loss of income for Plaintiffs, forcing them to furlough and lay off their employees. Plaintiffs even face the prospect of permanent closures.

6. To protect against these sorts of unanticipated losses, Plaintiffs worked with their insurance broker, Morris Insurance Agency Inc., to purchase business interruption insurance from The Cincinnati Insurance Company and The Cincinnati Casualty Company (“Cincinnati”). Business interruption insurance is critical for businesses in the restaurant industry where margins are often razor-thin.

7. Cincinnati purports to understand this. Cincinnati promises that “[w]hen it comes to paying claims, we’ll look for coverage—not exceptions, helping to keep your business running in the event of a claim.”¹ Cincinnati markets its business interruption insurance as helping to cover “loss of income and necessary extra expenses you incur to keep your business

¹ Protection for Businesses and Organizations: Fulfilling our Promises, The Cincinnati Insurance Companies, *available at* <https://www.cinfin.com/business-insurance> (last visited May 10, 2020).

operating,” including lost profits, payroll, taxes, and other operating expenses.² Cincinnati assures prospective customers that Cincinnati is “everything insurance should be.”³

8. Accordingly, Plaintiffs purchased business interruption insurance from Cincinnati. Plaintiffs dutifully paid premiums to Cincinnati year-after-year—to the tune of tens of thousands of dollars per year—so that when the unimaginable hit, they would be protected. Plaintiffs purchased “all risks” policies that cover every one of those unimaginable risks unless the policy exclusions remove that risk from coverage.

9. Nothing in Plaintiffs’ policies excludes viruses from coverage. Mr. Kelly even negotiated to ensure that Plaintiffs’ policies would *include* coverage for viruses. Mr. Kelly made this request based in part on his prior knowledge of a norovirus outbreak among restaurants and businesses in North Carolina.

10. Nor does anything in the policies exclude governmental shutdown orders. Cincinnati did not choose to exclude all governmental action from coverage. To the contrary, by expressly excluding only governmental action ordering the seizure or destruction of property, Cincinnati acknowledged that other government actions are covered perils within the meaning of the policies. Plaintiffs therefore reasonably believed that their Cincinnati policies would cover the extensive losses they have sustained due to the COVID-19 pandemic and the ensuing governmental orders.

11. Nevertheless, Cincinnati has not paid and has no intention of paying Plaintiffs’ claims. Cincinnati had already decided—even before Plaintiffs filed their claims—that all claims

² Protection for Your Commercial Property, The Cincinnati Insurance Companies, *available at* <https://www.cinfin.com/business-insurance/products/property-insurance> (last visited May 10, 2020).

³ About Us, The Cincinnati Insurance Companies, *available at* <https://www.cinfin.com/about-us> (May 10, 2020).

related to governmental orders limiting the use or access to Plaintiffs' property are invalid—even where no virus exclusion exists. Simply put, Plaintiffs did not get what they paid for.

12. Cincinnati's interpretation of the policy contracts is wrong, and its denial for losses caused by limitations on the physical use and access to Plaintiffs' property breached the contracts.

13. Plaintiffs seek compensatory damages, attorney's fees, interest, and declaratory relief.

II. JURISDICTION

14. This Court has subject-matter jurisdiction over the claims asserted herein pursuant to N.C. Gen. Stat. §§ 7A-240 and 7A-243. The claims are civil in nature and the amount in controversy exceeds twenty-five thousand dollars (\$25,000).

15. Personal jurisdiction over Defendants The Cincinnati Insurance Company and The Cincinnati Casualty Company ("Cincinnati") is conferred upon and vested in this Court by virtue of N.C. Gen. Stat. § 1-75.4(1)(d), as Cincinnati is engaged in substantial activity within North Carolina, and N.C. Gen. Stat. §§ 1-75.4(10)(a) and (b), as this matter arises out of contracts of insurance between Cincinnati and Plaintiffs, each of whom was a resident of North Carolina at all relevant times during the COVID-19 pandemic in North Carolina and the enforcement of the governmental orders described herein, which are the underlying events out of which Plaintiffs' claims arise.

16. Personal jurisdiction over Defendant Morris Insurance Agency Inc. ("Morris Insurance") is conferred upon and vested in this Court by virtue of N.C. Gen. Stat. § 1-75.4(1)(c), as Morris Insurance is a domestic corporation, and N.C. Gen. Stat. § 1-75.4(1)(d), as Morris Insurance is engaged in substantial activity within North Carolina. Personal jurisdiction

over Morris Insurance is further conferred upon and vested in this Court by virtue of N.C. Gen. Stat. § 1-75.4(6)(a), as well as N.C. Gen. Stat. §§ 1-75.4(10)(a) and (b).

III. VENUE

17. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-82.

IV. PARTIES

18. Plaintiffs North State Deli, LLC d/b/a Lucky's Delicatessen, Mothers & Sons, LLC d/b/a Mothers & Sons Trattoria, Mateo Tapas, L.L.C. d/b/a Mateo Bar de Tapas, and Saint James Shellfish LLC d/b/a Saint James Seafood (collectively, "North State Plaintiffs"), contracted with Defendant The Cincinnati Insurance Company for commercial property, commercial general liability, and other insurance. The North State Plaintiffs' policy is Policy Number ECP 042 94 72 ("North State Policy"). The North State Policy's effective period is March 1, 2019 through March 1, 2022.

19. The North State Plaintiffs paid \$35,904 for their policy, dutifully making payments in full every month by autodraft.

20. The North State Plaintiffs paid \$13,681 for the applicable period of coverage under the policy's Commercial Property Coverage Part. This property coverage applies to all four restaurant locations as specifically identified on the Named Insured Schedule. The North State Plaintiffs own and operate four covered restaurant premises, which comprise buildings and business personal property located in Durham, North Carolina, and include:

- a. Lucky's Delicatessen (105 West Chapel Hill Street, Durham, NC 27701);
- b. Mothers & Sons Trattoria (107 West Chapel Hill Street, Durham, NC 27701);
- c. Mateo Bar de Tapas (109 West Chapel Hill Street, Durham, NC 27701); and
- d. Saint James Seafood (806 West Main Street, Durham, NC 27701).

21. The North State Plaintiffs are all North Carolina domestic limited liability companies headquartered in Durham, North Carolina, and are all citizens of North Carolina.

22. Plaintiffs Calamari Enterprises, Inc. d/b/a Parizade, Bin 54, LLC d/b/a Bin 54, Arya, Inc. d/b/a City Kitchen and Village Burger, Grasshopper LLC d/b/a Nasher Cafe, Verde Cafe Incorporated d/b/a Local 22, Floga, Inc. d/b/a Kipos Greek Taverna, Kuzina, LLC d/b/a Golden Fleece, and Vin Rouge, Inc. d/b/a Vin Rouge (collectively, “Giorgios Hospitality Group”) contracted with Defendant The Cincinnati Casualty Company for commercial property, commercial general liability, and other insurance. Giorgios Hospitality Group’s policy is Policy Number ECP 027 19 15 (“Giorgios Policy”). The Giorgios Policy’s effective period is July 25, 2019 through July 25, 2020.

23. Giorgios Hospitality Group paid \$43,943 for its policy, dutifully making payments every month by autodraft.

24. Giorgios Hospitality Group paid \$15,243 for the applicable period of coverage under the policy’s Commercial Property Coverage Part. This property coverage applies to all nine restaurant locations as specifically identified on the Named Insured Schedule. Plaintiff Giorgios Hospitality Group owns and operates the nine covered restaurant premises, which comprise buildings and business personal property located in North Carolina, and include:

- a. Parizade (2200 West Main Street, Durham, NC 27705);
- b. Bin 54 (1201 Raleigh Road, Chapel Hill, NC 27517);
- c. City Kitchen (201 South Estes Drive, Chapel Hill, NC 27514);
- d. Village Burger (201 South Estes Drive, Chapel Hill, NC 27514);
- e. Nasher Cafe (2001 Campus Drive, Durham, NC 27701);
- f. Local 22 (2200 West Main Street, Durham, NC 27705);

- g. Kipos Greek Taverna (431 West Franklin Street, Chapel Hill, NC 27514);
- h. Golden Fleece (111 Grovewood Road, Asheville, NC 28804); and
- i. Vin Rouge (2010 Hillsborough Road, Durham, NC 27705).

25. Plaintiffs Calamari Enterprises, Inc. d/b/a Parizade, Arya, Inc. d/b/a City Kitchen and Village Burger, Verde Cafe Incorporated d/b/a Local 22, Floga, Inc. d/b/a Kipos Greek Taverna, and Vin Rouge, Inc. d/b/a Vin Rouge are all North Carolina domestic corporations headquartered in Durham, North Carolina, and are all citizens of North Carolina.

26. Plaintiffs Bin 54, LLC d/b/a Bin 54, Grasshopper LLC d/b/a Nasher Cafe, and Kuzina, LLC d/b/a Golden Fleece are all North Carolina domestic limited liability companies headquartered in Durham, North Carolina, and are all citizens of North Carolina.⁴

27. Plaintiff Kipos Rose Garden Club LLC d/b/a Rosewater contracted with Defendant The Cincinnati Insurance Company for commercial property, commercial general liability, and other insurance. Kipos Rose Garden Club LLC's policy is Policy Number ECP 055 57 70 ("Rosewater Policy"). The Rosewater Policy's effective period is October 10, 2019 through October 10, 2020.

28. Kipos Rose Garden Club LLC paid \$10,754 for its policy, dutifully making payments every month by autodraft.

29. Kipos Rose Garden Club LLC paid \$6,695 for the applicable period of coverage under the policy's Commercial Property Coverage Part. This property coverage applies to the

⁴ The named insured on the Giorgios Policy is listed incorrectly as "Giorgios Group Inc." In all likelihood this is the result of an error made by Morris Insurance. The correct owners and operators of all covered premises, the entities registered to do business in North Carolina, and the entities paying premiums to The Cincinnati Casualty Company are those listed above and identified collectively as the "Giorgios Hospitality Group." Accordingly, it is these latter entities that bring this lawsuit against Defendants on behalf of the covered premises they own, which are all correctly listed under the Giorgios Policy.

single restaurant location as specifically identified on the Common Policy Declaration and the Schedule of Locations. Plaintiff Kipos Rose Garden Club LLC owns and operates this single covered restaurant premise, which comprises buildings and business personal property located in Raleigh, North Carolina, and includes:

- a. Rosewater (110 Park at North Hills Street, Raleigh, NC 27609).

30. Plaintiff Kipos Rose Garden Club LLC is a North Carolina domestic limited liability company headquartered in Durham, North Carolina, and is a citizen of North Carolina.⁵

31. Plaintiff Gira Sole, Inc. d/b/a Farm Table and Gatehouse Tavern contracted with Defendant The Cincinnati Insurance Company for commercial property, commercial general liability, and other insurance. Gira Sole, Inc.'s policy is Policy Number ECP 031 16 48 ("Gira Sole Policy"). The Gira Sole Policy's effective period is March 5, 2018 through March 5, 2021.

32. Gira Sole, Inc. paid \$8,417 for its policy, dutifully making payments every month by autodraft.

33. Gira Sole, Inc. paid \$1,768 for the applicable period of coverage under the policy's Commercial Property Coverage Part. This property coverage applies to the two restaurant locations as specifically identified on the Common Policy Declaration and the Schedule of Locations. Plaintiff Gira Sole, Inc. owns and operates the two covered restaurant premises, which comprise buildings and business personal property located in Raleigh, North Carolina, and include:

⁵ The named insured on the Rosewater Policy is listed incorrectly as "Kimps Rose Garden Club LLC." In all likelihood this is the result of an error made by Morris Insurance. The correct owner and operator of all covered premises, the entity registered to do business in North Carolina, and the entity paying premiums to The Cincinnati Insurance Company is "Kipos Rose Garden Club LLC." Accordingly, this latter entity is the one that bring this lawsuit against Defendants on behalf of the covered premises it owns, which are all correctly listed under the Rosewater Policy.

- a. Farm Table (960 Gateway Commons Circle, Wake Forest, NC 27587); and
- b. Gatehouse Tavern (960 Gateway Commons Circle, Wake Forest, NC 27587).

34. Plaintiff Gira Sole, Inc. is a North Carolina domestic corporation headquartered in Durham, North Carolina, and is a citizen of North Carolina.⁶

35. Upon information and belief, Defendants The Cincinnati Insurance Company and The Cincinnati Casualty Company are Ohio corporations with their principal places of business in Fairfield, Ohio, and are citizens of Ohio.

36. Upon information and belief, Defendant Morris Insurance Agency, Inc. (“Morris Insurance”) is a North Carolina corporation with its principal place of business in Washington, D.C., and a place of business in Raleigh, North Carolina. Morris Insurance therefore resides in and is a citizen of North Carolina.

37. Plaintiffs are ignorant of the true names and capacities of the Defendants sued herein under the fictitious names Does 1 through 20, inclusive. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named Defendants are responsible in some manner for the unlawful conduct alleged herein.

V. FACTUAL BACKGROUND

A. The Restaurants

38. Plaintiffs own and operate sixteen highly-acclaimed restaurants in North Carolina. The first of these, Durham-based Parizade, is the flagship restaurant of the Giorgios Hospitality

⁶ The named insured on the Gira Sole Policy is listed incorrectly as “Girasole Trattoria Inc.” In all likelihood this is the result of an error made by Morris Insurance. The correct owner and operator of all covered premises, the entity registered to do business in North Carolina, and the entity paying premiums to The Cincinnati Insurance Company is “Gira Sole, Inc.” Accordingly, this latter entity is the one that bring this lawsuit against Defendants on behalf of the covered premises it owns, which are all correctly listed under the Gira Sole Policy.

Group, launched in 1990 by owner Giorgios Nikolas Bakatsias. Mr. Bakatsias' early visionary leadership is credited with helping ignite the food revolution that has since swept the Triangle and the entire state. Mr. Bakatsias' first introduction to cooking was at the age of 12 when his family opened a small diner in Durham, above which his family lived. In 2014, Mr. Bakatsias earned a nomination for Outstanding Restaurateur from the James Beard Foundation for his North Carolina restaurants.

39. Mr. Bakatsias is naturally community-minded and has shared the fruits of his experience, especially in mentoring the next generation of aspiring chefs. After launching Durham-based Vin Rouge in 2002, Mr. Bakatsias promoted then-chef and Raleigh native Matt Kelly to equity ownership in 2007. Under Mr. Kelly's tenure, the intimate French bistro garnered national prominence as one of the state's most exciting places to eat and drink.

40. In 2012, with Mr. Bakatsias' support, Mr. Kelly went on to launch his first solo venture, Mateo Bar de Tapas, followed by three other restaurants that have become staples among food and beverage enthusiasts: Saint James Seafood, Mothers & Sons Trattoria, and Lucky's Delicatessen. Mr. Kelly also adopted Mr. Bakatsias' mentorship model and has himself promoted multiple longtime employees to partnership. For four straight years, from 2014-2017, Mr. Kelly was a semifinalist for the James Beard Foundation's award for Best Chef in America. Mr. Kelly has been called "The Tastemaker of Durham."

41. Mr. Bakatsias also supported Jay Mehdian, manager of Mr. Bakatsias' earliest restaurants and co-visionary in launching Vin Rouge, as Mr. Mehdian launched City Kitchen in 2001, and Village Burger in 2011. Both have become highly-recognized and frequently-visited dining establishments in Chapel Hill, North Carolina.

42. Mr. Bakatsias, Mr. Kelly, Mr. Mehdian, and the entire ownership group across all sixteen restaurants continue to share close social and business relationships, sharing back office support and other business functions, including staffing support. Plaintiffs' employees—and particularly the management staff—routinely work across or visit any or all of the seventeen restaurants as needs dictate.

43. Plaintiffs have also cultivated deep ties to their communities. Plaintiffs routinely donate food, time, and other resources to multiple local and statewide nonprofits, including the Frankie Lemmon Foundation, the Southern Foodways Alliance, SEEDS, Families Moving Forward, and Urban Ministries, among others. Most recently, Plaintiffs chose to become core supporters of Durham FEAST, a project to provide meals, fresh produce, and shelf stable ingredients to those experiencing food insecurity during the COVID-19 pandemic. Plaintiffs purchase local ingredients and put their employees to work making healthy meals for Durham children, predominantly those who would otherwise receive free or reduced-priced breakfast and lunch in public schools when not closed due to COVID-19.

44. In mid-March 2020, Plaintiffs were forced to close all but two of their restaurants (Parizade and Local 22 continued operating at minimal capacity, providing limited takeout services only; however, even these two restaurants were also eventually forced to cease all operations: Local 22 as of May 2, 2020, and Parizade as of May 10, 2020). These closures were ordered by state and local governments who required Plaintiffs and their employees, customers, vendors, and others to shelter at home, abide by strict “social distancing” requirements, cease all

non-essential activities, and abide by strict affirmative operational standards for enumerated essential activities like routine disinfecting cleanings of business premises.⁷

45. The closures—and immediate losses in revenue—forced Plaintiffs to begin furloughing employees, many of whom had spent lengthy careers at Plaintiffs’ restaurants, and most of whom were later laid off. Notwithstanding this, Plaintiffs provided three weeks of severance pay for many of its employees. Plaintiffs also partnered with Farmer Foodshare, an area nonprofit, to purchase farm shares (“CSAs” or community-supported agriculture) for many employees, even those who had been laid off. Importantly, Plaintiffs have maintained close contact with their committed staff, providing support, keeping them informed about the business and other related news, and even launching a socially-distanced jogging club to maintain social ties and spirit.

46. Plaintiffs’ mounting expenses and revenue losses, however, limit their ability to continue these and other activities in support of their businesses and employees, and absent reversal of the governmental orders and a financial payout from Cincinnati, Plaintiffs may be forced to terminate their businesses altogether.

47. To protect their businesses and employees from these very sorts of losses, Plaintiffs purchased insurance from Cincinnati that included coverage for business interruption. Plaintiffs’ policies provide coverage for Business Income, Extra Expense, and the consequences of actions by Civil Authority, among other coverages. Accordingly, Plaintiffs understandably believed that their insurance policies would help provide much-needed capital in the event the

⁷ In early March 2020, during the earliest days of the COVID-19 pandemic in North Carolina, a management-level employee believed he was infected with COVID-19, and even tried to get tested on two separate occasions, but was unable to because of the lack of testing prevalent at that time.

government ever ordered curtailments or closure of their business operations. When Plaintiffs first learned that state and local governments might issue orders limiting their business operations, Plaintiffs anticipated re-hiring their employees once Cincinnati began making payouts warranted under their policies.

48. In fact, prior to the effective dates of Plaintiffs' policies, Mr. Kelly had made an express request to his insurance broker, Defendant Morris Insurance, that Plaintiffs' policies provide coverage *for losses due to viruses*. Mr. Kelly made this request in part given his prior knowledge of a norovirus outbreak among restaurants and businesses in North Carolina, wanting to ensure that Plaintiffs' restaurants would be covered during similar or related events. Morris Insurance agreed and subsequently indicated to Mr. Kelly that Plaintiffs' renewed policies—which are the policies currently in effect—would cover losses arising from viruses and virus-related causes.

B. The COVID-19 Pandemic

49. COVID-19 is an infectious disease caused by a recently discovered novel coronavirus known as SARS-CoV-2 (“COVID-19”).

50. According to the World Health Organization (“WHO”): “People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth which are spread when a person with COVID-19 coughs or exhales. These droplets land on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth.”⁸

⁸ See Q&A on coronaviruses (COVID-19), “How does COVID-19 spread?,” World Health Organization (Apr. 16, 2020), *available at* <https://www.who.int/news-room/q-a-detail/q-acoronaviruses> (last visited May 5, 2020).

51. Researchers estimate that the number of people that an individual infected with COVID-19 will go on to infect—or basic reproduction number (R_0 or R-naught)—is between 3.3 and 6.5.⁹ The higher the R_0 figured, the faster an infectious disease will spread. By comparison, the R_0 estimate for the seasonal flu is 1.3,¹⁰ and for Ebola during the last catastrophic epidemic was 1.5.¹¹

52. For these reasons, “[p]ublic health experts and elected officials have emphasized again and again that social distancing is the best tool . . . to slow the coronavirus outbreak.”¹²

53. Although COVID-19 droplets are smaller and less visible than rust, mold, or paint, they are physical objects which can travel to other objects and cause harm.

54. These droplets can spread COVID-19 when they land on habitable surfaces where they can survive until that surface is touched by a potential human host.¹³

55. Droplets containing COVID-19 infect a variety of surfaces and objects for a period of a hours, days, or weeks, if not longer. After inspecting a cruise ship inhabited by

⁹ See Ying Liu *et al.*, The reproductive number of COVID-19 is higher compared to SARS coronavirus, *Journal of Travel Medicine* (Feb. 13, 2020), *available at* <https://academic.oup.com/jtm/article/27/2/taaa021/5735319> (last visited May 7, 2020).

¹⁰ See Matthew Biggerstaff *et al.*, Estimates of the reproduction number for seasonal pandemic, and zoonotic influenza: a systematic review of the literature, *BMC Infection Diseases* (Sept. 4, 2014), *available at* <https://bmcinfectedis.biomedcentral.com/articles/10.1186/1471-2334-14-480> (last visited May 7, 2020).

¹¹ See Adnan Khan *et al.*, Estimating the basic reproductive ratio for the Ebola outbreak in Liberia and Sierra Leone, *Infectious Diseases of Poverty* (Feb. 24, 2015), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4347917/> (last visited May 7, 2020).

¹² See Yuliya Pashina-Kottas, *et al.*, “This 3-D Simulation Shows Why Social Distancing Is So Important,” *The New York Times* (Apr. 21, 2020), *available at* <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-ar-ul.html> (last visited May 5, 2020).

¹³ See, *e.g.*, “How COVID-19 Spreads,” Centers for Disease Control, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited May 7, 2020).

passengers who carried COVID-19, the CDC reported that the virus was detectable on various surfaces inside the cruise ship up to 17 days after passengers had vacated the cabins.¹⁴

56. Recent scientific evidence shows that COVID-19 can survive and remain virulent on stainless steel and plastic for three to six days; on glass and banknotes for three days; and on wood and cloth for 24 hours.¹⁵ These materials are prevalent and unavoidable throughout Plaintiffs' facilities.

57. Research has even shown that COVID-19 can persist on surfaces under certain conditions commonplace in Plaintiffs' restaurants for up to 28 days.¹⁶

C. The COVID-19 Pandemic Hits North Carolina

58. While scientists are still working to identify "patient zero," the first public reports of the virus spreading to humans were issued in or around December 2019, resulting from an outbreak of the virus in Wuhan, China.

59. On January 21, 2020, the CDC reported the first American COVID-19 case in the State of Washington.

¹⁴ See Leah E. Moriarty *et al.*, "Public Health Responses to COVID-19 Outbreaks on Cruise Ships—Worldwide, February-March 2020," 69 *Morbidity and Mortality Weekly Report* 347 (Mar. 23, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e3-H.pdf> (last visited May 5, 2020).

¹⁵ See Neeltje van Doremalen *et al.*, "Aerosol and Surface Stability of SARS-CoV-2 as Compared to SARS-CoV-1," *New England Journal of Medicine* (Mar. 17, 2020), available at <https://www.nejm.org/doi/pdf/10.1056/NEJMc2004973> (last visited May 5, 2020); Alex W.H. Chin *et al.*, "Stability of SARS-CoV-2 in different environmental conditions," *The Lancet Microbe* (Apr. 2, 2020), available at [https://doi.org/10.1016/S2666-5247\(20\)30003-3](https://doi.org/10.1016/S2666-5247(20)30003-3) (last visited May 5, 2020).

¹⁶ Gunter Kampf *et al.*, Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents, 104 *J. Of Hospital Infection* 246 (2020), available at [https://www.journalofhospitalinfection.com/article/S0195-6701\(20\)30046-3/fulltext](https://www.journalofhospitalinfection.com/article/S0195-6701(20)30046-3/fulltext) (last visited May 5, 2020).

60. On March 3, 2020, the North Carolina Department of Health and Human Services (“NCDHHS”) reported the first case of COVID-19 in North Carolina. The infected individual was exposed to an outbreak at a long-term care facility in the State of Washington. The individual then returned home to Wake County, North Carolina, flying through Raleigh-Durham International Airport on February 22, 2020, and testing positive on March 3, 2020.

61. COVID-19 then spread rapidly across North Carolina. Within just two weeks, by March 17, 2020, there were 330 confirmed cases of COVID-19 in North Carolina.¹⁷

62. The first case of “community spread” in North Carolina was reported on March 19, 2020.

63. On March 25, 2020, NCDHHS reported the first COVID-19-related deaths in North Carolina.

64. By March 27, 2020, there were 1,924 confirmed cases of COVID-19 in North Carolina, with results spread across 60 of the state’s 100 counties.¹⁸

65. By May 7, 2020, there were 13,397 confirmed cases of COVID-19 in North Carolina, with 507 deaths and 99 of the state’s 100 counties reporting infections. Of these totals, 807 cases and 27 deaths were in Durham County; 961 cases and 21 deaths were in Wake County; 239 cases and 30 deaths were in Orange County; 88 cases and 4 deaths were in Buncombe County; and 421 cases and 11 deaths were in Chatham County.¹⁹

¹⁷ See COVID-19 North Carolina Dashboard, North Carolina Department of Health and Human Services (May 7, 2020), *available at* <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count#by-counties-map> (last visited May 7, 2020).

¹⁸ See COVID-19 North Carolina Dashboard, North Carolina Department of Health and Human Services (May 7, 2020), *available at* <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count#by-counties-map> (last visited May 7, 2020).

¹⁹ See COVID-19 North Carolina Dashboard, North Carolina Department of Health and Human Services (May 7, 2020), *available at* <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count#by-counties-map> (last visited May 7, 2020).

66. Further, multiple structures in the vicinity of Plaintiffs' covered premises reported COVID-19 infections or outbreaks, and were in fact physically impacted by the presence of the COVID-19 virus on or around the surfaces of these structures.

67. For example, on April 11, 2020, the Durham County Department of Public Health reported a COVID-19 outbreak at the Durham Nursing Rehabilitation Center, a long-term care facility adjacent to downtown Durham. Multiple COVID-19 infections were reported among both residents and staff at the facility.²⁰

68. Earlier, on March 18, 2020, Duke University had announced eleven new cases of COVID-19 infections, all members of the Duke University community, most of whom had traveled internationally but had returned to Durham County. The university announced the same day that it had cancelled 2020 commencement ceremonies "in light of the rapid spread of COVID-19 and the latest public health advisories on travel and large gatherings." These announcements came just one day after the university had already announced fifteen new infections.²¹

69. Neighboring University of North Carolina at Chapel Hill in Orange County reported on March 21, 2020, that it had also confirmed multiple cases of COVID-19 infections

²⁰ See Durham County Department of Public Health Working in Coordination with Local Long-Term Care Facility to Investigate COVID-19 Outbreak, Durham County Department of Public Health (Apr. 11, 2020), *available at* <https://www.dconc.gov/Home/Components/News/News/6613/31?backlist=%2f> (last visited May 6, 2020); Durham County Department of Public Health Working in Coordination with Additional Long-Term Care Facilities to Investigate COVID-19 Outbreaks, Durham County Department of Public Health (Apr. 13, 2020), *available at* <https://www.dconc.gov/Home/Components/News/News/6619/31?backlist=%2f> (last visited May 6, 2020).

²¹ Dawn Baumgartner Vaughan *et al.*, Duke postpones commencement amid new cases of coronavirus connected to the school, *The News and Observer* (Mar. 19, 2020), *available at* <https://www.newsobserver.com/news/coronavirus/article241319351.html> (last visited May 11, 2020).

among members of its university community. In response to the pandemic and the related governmental orders, the university closed many of its campus buildings, including residence halls, and ceased in-person, non-essential services as of March 20, 2020.²²

70. At the Whole Foods grocery store in Chapel Hill, Orange County, at least two employees tested positive for COVID-19. The first tested positive shortly after North Carolina's first case was reported on March 3, 2020, and had worked at the store up to and including March 6, 2020. Since that diagnosis came to light, and in accordance with the governmental orders that were subsequently entered, the nearly 200 staff members at the store were supplied with single-use masks and gloves, plexiglass barriers were installed at all cash registers, high-touch surfaces were cleaned frequently, employees' temperatures were taken at the door, and the number of customers inside the store was limited to forty at one time.²³

71. As another example, in Wake County, the Wake County Department of Health and Human Services notified So.Ca, a Raleigh restaurant, that the county's first COVID-19 patient had dined there on February 28, 2020.²⁴ As of March 15, 2020, Wake County had fourteen confirmed cases of COVID-19, with many of those infected individuals exhibiting symptoms as early as March 6, 2020. One of those infected individuals flew through Raleigh-

²² UNC Reports Cases of COVID-19, WBTV News (Mar. 21, 2020), *available at* <https://www.wbvtv.com/2020/03/21/unc-reports-cases-covid/> (last visited May 11, 2020).

²³ Sayaka Matsuoka, Chapel Hill Whole Foods Had Coronavirus Case in Early March But Didn't Disclose It, Employers Say, *The Indy Week* (May 1, 2020), *available at* <https://indyweek.com/news/orange/chapel-hill-whole-foods-coronavirus/> (last visited May 14, 2020).

²⁴ See Martha Quillen *et al.*, Health officials are watching NC patient's contacts for signs of coronavirus spread, *The News & Observer* (Mar. 4, 2020), *available at* <https://www.newsobserver.com/news/local/article240879631.html> (last visited May 6, 2020).

Durham International Airport on March 8, 2020, and another attended a convention at the Raleigh Convention Center that same day.²⁵

72. On March 19, 2020, PNC Arena in Wake County announced that a concertgoer had tested positive for COVID-19. The concertgoer had attended The Millennium Tour 2020 on March 13, 2020. PNC Arena subsequently began cancelling mass gatherings and events.²⁶

73. In Buncombe County, the first case of COVID-19 was confirmed in mid-March 2020. The individual had traveled to Asheville between March 10-13, 2020, had developed symptoms, and was tested by county health department staff and immediately quarantined.²⁷ As of March 25, 2020, thirteen Buncombe County residents and an additional five out-of-state residents who had traveled in the county had tested positive for COVID-19.²⁸ On March 29, 2020, a person passed away from COVID-19 at Mission Health in Asheville, North Carolina.²⁹

²⁵ Wake County Coronavirus Cases Up To 14 As Of March 15, Patch.com (Mar. 15, 2020), available at <https://patch.com/north-carolina/raleigh/wake-county-coronavirus-cases-14-march-15> (last visited May 14, 2020).

²⁶ PNC Arena Statement Regarding COVID-19 (Mar. 11, 2020), available at <https://www.pncarena.com/news/detail/pnc-arena-statement-regarding-covid-19> (last visited May 13, 2020).

²⁷ WLOS Staff, Additional COVID-19 infections in Buncombe County residents, health officials confirm, WLOS News (Mar. 22, 2020), available at <https://wlos.com/news/local/additional-covid-19-infections-in-buncombe-county-residents-health-officials-confirm> (last visited May 14, 2020).

²⁸ Coronavirus: What you need to know in Asheville, WNC on March 25, Citizen Times (Mar. 25, 2020), available at <https://www.citizen-times.com/story/news/local/2020/03/25/coronavirus-what-you-need-know-asheville-wnc-march-25/2911449001/> (last visited May 14, 2020).

²⁹ Bailey Aldridge *et al.*, Coronavirus live updates: Here's what to know in North Carolina on March 30, The News and Observer (Mar. 30, 2020), available at <https://www.newsobserver.com/news/coronavirus/article241606656.html> (last visited May 14, 2020).

74. In Chatham County, two residents tested positive for COVID-19 on or around March 17, 2020.³⁰ As of April 14, 2020, a nursing and rehabilitation center in Chatham County had fifty-seven confirmed cases of COVID-19.³¹

75. Yet, throughout the entire period from December 2019 through March 16, 2020, Plaintiffs did not suffer closures or interruptions of their thriving businesses.

D. North Carolina Limits Use of and Access to Food and Beverage Facilities

76. It was when North Carolina's state and local governments entered civil authority orders beginning in March 2020 that Plaintiffs were forced to close or curtail their business operations.

77. On March 10, 2020, North Carolina Governor Roy Cooper entered Executive Order 116, declaring a "state of emergency to coordinate response and protective actions to prevent the spread of Covid-19." *See* State of North Carolina Executive Order No. 116.

78. On March 14, 2020, Governor Cooper entered Executive Order 117, which prohibited gatherings of more than 100 persons in a single room or space at the same time. This provision of Order 117 was made enforceable by state and local law enforcement officers, and violations carried threat of criminal prosecution punishable as a Class 2 misdemeanor under North Carolina law. Order 117 further urged all persons to maintain a social distance of six feet from all other people. *See* State of North Carolina Executive Order No. 117.

³⁰ Two Additional Chatham County Residents Test Positive for New Coronavirus, Chatham County (Mar. 17, 2020), *available at* <https://www.chathamnc.org/Home/Components/News/News/13673/19> (last visited May 13, 2020).

³¹ Chatham County nursing and rehabilitation center resident dies of coronavirus, WXII News (Apr. 14, 2020), *available at* <https://www.wxii12.com/article/coronavirus-chatham-county-laurels-57-positive-cases/32119145> (last visited May 13, 2020).

79. On March 17, 2020, Governor Cooper entered Executive Order 118, which imposed sweeping limitations on the use of and access to food and beverage facilities. Specifically, under Order 118, restaurants “must limit the sale of food and beverages to carry-out, drive-through, and delivery only.” Further, under Order 118, the State Health Director, acting under the quarantine and isolation authority provided by N.C. Gen. Stat. § 130A-145, “limit[ed] access to facilities that sell food and beverage to carry-out, drive-through and delivery services only.” Order 118 closed all bars outright with no exceptions. Finally, Order 118 amended Order 117 to extend the prohibition on gatherings of more than 100 persons to restaurants. Order 118 was made enforceable by state and local law enforcement officers, and violations carried threat of criminal prosecution punishable as a Class 2 misdemeanor under North Carolina law. *See* North Carolina Executive Order No. 118.

80. On March 23, 2020, Governor Cooper entered Executive Order 120, which further limited gatherings to no more than 50 persons in a single room or space at the same time. Order 120 also broadened the limitations on restaurants set forth in Order 118 to apply to all “dining facilities,” and ordered closed all entertainment facilities without a retail or dining component including, but not limited to, bingo parlors, bowling alleys, indoor exercise facilities, health clubs, pools, live performance venues, movie theaters, skating rinks, spas, and gaming establishments. Order 120 further closed all personal care and grooming businesses including, but not limited to, barber shops, beauty salons, hair salons, nail salons, massage parlors, and tattoo parlors. Order 120 was made enforceable by state and local law enforcement officers, and violations of these relevant provisions carried threat of criminal prosecution punishable as a Class 2 misdemeanor under North Carolina law. *See* North Carolina Executive Order No. 120.

81. On March 27, 2020, Governor Cooper entered Executive Order 121, requiring individuals to shelter in place at their residence except to conduct certain enumerated essential activities, and to maintain social distancing of at least six feet. The order also prohibited travel except for those same essential activities. The order required non-essential businesses and operations to cease, and defined restaurants as non-essential except for the narrow purpose of preparing food for off-premises consumption only, assuming social distancing requirements could be met. The order continued the complete closure of all bars. *See* North Carolina Executive Order No. 121.

82. Executive Order 121 also set forth “Social Distancing Requirements,” requiring that all businesses continuing to operate under the terms of the order comply with, *inter alia*, the following: (i) maintenance of at least six feet distancing from other individuals; (ii) washing hands using soap and water for at least twenty seconds as frequently as possible or the use of hand sanitizer; and (iii) regularly cleaning high-touch surfaces. The order further limited gatherings to no more than ten people. The order was made enforceable by state and local law enforcement officers, and violations carried threat of criminal prosecution punishable as a Class 2 misdemeanor under North Carolina law. *See* North Carolina Executive Order No. 121.

83. On April 9, 2020, Governor Cooper entered Executive Order 131, mandating all retail establishments still permitted to operate under prior orders to follow additional social distancing requirements. Those additional requirements included:

- a. Limiting the maximum occupancy to no more than twenty percent of the retail establishment’s stated fire capacity, or to five customers for every one thousand square feet of the retail location’s total square footage;
- b. Posting staff at entrances and exits to enforce the occupancy limits;
- c. Posting the terms of the occupancy limits in a conspicuous place;

- d. Marking clearly six feet of spacing in lines at cash registers and other high traffic areas inside the retail establishment;
- e. Marking clearly six feet of spacing in a designated line outside the retail establishment; and
- f. Frequent and routine environmental cleaning and disinfecting of high-touch areas with a disinfectant approved by the Environmental Protection Agency (“EPA”) for COVID-19.

The order further encouraged all retail establishments to take the following additional protective steps:

- a. Use of cloth face coverings for all employees in positions that do not allow for appropriate social distancing;
- b. Marking clearly six feet of spacing in high traffic areas within the staff-only portions of the premises;
- c. Placing of hand sanitizer prominently at entry and exit points;
- d. Posting signs conveying the terms of the required social distancing; and
- e. Use of acrylic or plastic shields at points of sale.

Order 131 was made enforceable by state and local law enforcement officers, and violations carried threat of criminal prosecution punishable as a Class 2 misdemeanor under North Carolina law. *See* North Carolina Executive Order No. 131.

84. Local and municipal governments across North Carolina entered their own orders mandating that residents shelter in place and that businesses limit or cease operations. Often these local orders mandated more stringent restrictions on the movement of people and the use or access to goods, services, and facilities. Such orders have been entered by government entities in Durham, Wake, Orange, and Buncombe Counties. Chatham County called for adherence to the statewide orders.

85. For example, on March 25, 2020, the City of Durham entered an order prohibiting all individuals in the City of Durham from traveling and from engaging in any business activity, with certain enumerated exceptions. The order permitted restaurants to prepare and serve food, but for off-premises consumption only. The order expressly prohibited restaurants from allowing food to be consumed “at the site where it is provided, or at any other gathering site due to the virus’s propensity to physically impact surfaces and personal property.” *See* Second Amendment to Declaration of State of Emergency in the City of Durham (Mar. 25, 2020).

86. Under each successive order, Plaintiffs’ businesses and covered premises were limited to essential activities, minimum necessary operations, or required closure. The governmental actions also prohibited, via stay-at-home orders or travel restrictions, all nonessential movement by all residents. These governmental orders resulted in losing physical use of, physical access to, and physical enjoyment of Plaintiffs’ property by its owners, customers, vendors, employees, and others.

E. Plaintiffs’ “All Risks” Insurance Policies

87. To protect their thriving businesses from interruption and other perils, Plaintiffs, through their insurance broker Morris Insurance, purchased business insurance from Cincinnati including loss of business income, extra expense, property, liability, and other coverages. Mr. Kelly made a specific request to Morris Insurance that Plaintiffs’ policies cover losses arising from viruses and virus-related causes, and specifically negotiated for no virus exclusion.

88. Plaintiffs’ policies are the same in all material respects and are hereafter referred to and described collectively as “Policies.”

89. The Policies consist of the policy jackets and their policy provisions, the declarations or information pages, and the endorsements.

90. In exchange for payment of the premiums, Cincinnati agreed to provide the insurance coverages described in Plaintiffs' Policies.

91. The Policies are "all risks" policies. That is, the policies cover the insured for any peril, imaginable or unimaginable, unless expressly excluded or limited. In the event a covered peril results in direct loss to Plaintiffs' business premises, the Policies will pay for lost business income and extra expenses. Business income means net income (net profit or loss) that would have been earned had no direct loss occurred, together with continuing normal operating expenses (including payroll). Extra expenses means the costs incurred because of the direct loss—that is, those costs that would have otherwise been avoided. In the event of a direct loss, the Policies pay for both.

92. Specifically, as the Common Policy Declarations indicate, *see* ICP 517 07 11 at p. 1, the Policies provide commercial property coverage on Form FM 502. The first page of Form FM 502, entitled Commercial Property Coverage Part Declarations, *see* FM 502 07 08 at p. 1, indicates that the Policies cover business income and extra expenses. The Businessowners Building and Personal Property Coverage Form, in turn, sets forth the specifics of the coverage for "Business Income" and "Extra Expense." *See* FM 101 05 16 at ¶¶ E.b.1 and E.b.2.

93. The Business Income coverage provides that Cincinnati must:

"pay for the actual loss of 'Business Income' and 'Rental Value' you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration.' The 'suspension' must be caused by a direct 'loss' to property at a 'premises' caused by or resulting from any Covered Cause of Loss."

94. The Extra Expense coverage provides that Cincinnati must pay:

"necessary expenses you sustain . . . during the 'period of restoration' that you would not have sustained if there had been no

direct 'loss' to property caused by or resulting from a Covered Cause of Loss.”

95. The Business Income and Extra Expense paragraphs also establish the applicable “Covered Causes of Loss,” which the Policies define as “direct 'loss' unless the 'loss' is excluded or limited” by the Commercial Property Coverage part. This language covers all risks unless excluded by Paragraph A.3.b or limited by Paragraph A.3.c.

96. The Policies contain several exclusions, which identify risks that preclude coverage for direct losses caused by those risks.

97. None of the exclusions in the Policies preclude coverage for the governmental orders pursuant to which Plaintiffs suspended their business operations. The governmental orders therefore constitute a covered “direct loss” under the Policies.

98. Nor do any exclusions in the Policies preclude coverage for damage to property caused by the COVID-19 virus itself, whether at Plaintiffs’ covered premises or at any other premises. The Policies do not exclude viruses or viral-related causes of direct losses. Any losses Plaintiffs sustain caused by action of civil authority prohibiting access to their covered premises in response to the COVID-19 pandemic are therefore also covered under the Policies.

F. Cincinnati Has Not Paid and Has No Intention of Paying Plaintiffs’ Insurance Claims

99. While representing to its insureds that it will diligently investigate business interruption claims connected to the COVID-19 pandemic, Cincinnati has told investors the truth: that it will not honor such claims.

100. Specifically, in its 10-Q filing for Q1 2020, Cincinnati stated:

Virtually all of our commercial property policies do not provide coverage for business interruption claims unless there is direct physical damage or loss to property. Because a virus does not produce direct physical damage or loss to property, no coverage

exists for this peril – rendering an exclusion unnecessary. For this reason, most of our standard market commercial property policies in states where we actively write business do not contain a specific exclusion for COVID-19. While we will evaluate each claim based on the specific facts and circumstances involved, our commercial property policies do not provide coverage for business interruption claims unless there is direct physical damage or loss to property.³²

101. Consistent with this position, and while purporting to reserve its rights, Cincinnati provided a letter responding to Plaintiffs’ claims, twice stating: “Your notice of claim indicates that your claim involves Coronavirus. However, the fact of the pandemic, without more, is not direct physical loss or damage to property at the premises.” Cincinnati’s letter further demanded additional information prior to rendering a coverage decision under the guise of conducting an investigation. But the 10-Q and Cincinnati’s letter are the same. The only difference is that the 10-Q states outright what the letter implies: Cincinnati has no intention of paying out under Plaintiffs’ Policies.

102. As the 10-Q and letter make clear, Cincinnati’s premeditated strategy to deny all COVID-19-related claims applies *even where an insured expressly negotiated for virus coverage*.³³

103. Given Cincinnati’s intention to issue categorical denials of all claims arising out of the COVID-19 pandemic, it is no surprise that Cincinnati failed to evaluate each of Plaintiffs’ claims based on all information that could be gathered from a fair and neutral individualized

³² Form 10-Q, Cincinnati Financial Corporation (filed Apr. 27, 2020), *available at* <https://cincinnati-financial-corporation.gcs-web.com/static-files/787fd5db-ee48-474b-98b1-4d7186fa8fb5> (last visited May 12, 2020).

³³ Plaintiffs submitted business insurance claims to Cincinnati in April and May 2020. Cincinnati responded by letters dated: April 29, 2020 (Rosewater Policy); April 30, 2020 (Giorgios Policy); May 7, 2020 (Gira Sole Policy); and May 8, 2020 (North State Policy). Cincinnati’s letters are substantively identical. By way of representative example, the May 8, 2020 letter regarding the North State Policy is attached as Exhibit A.

investigation. Cincinnati further failed to review ample publicly-available and easily-accessible information regarding the claims, and failed to secure an outside counsel opinion on coverage to avoid bias. Cincinnati has made no indication that it has visited or plans to visit any of the covered locations.

104. Instead, Cincinnati asserts that it is Plaintiffs' burden to show "certain key elements" of coverage to Cincinnati, and then demands that prior to rendering a coverage decision, Plaintiffs must expend the time and expense to supply information that is otherwise readily-available to Cincinnati.

105. Cincinnati's letters further misstate policy terms and engineer new post-hoc requirements for coverage (including, for example, requiring "direct physical loss or direct physical damage . . . to property at the covered premises," rather than the requirement as stated in the Policies that "direct 'loss'" cause the *suspension*). Cincinnati's letters also quote at length numerous provisions from the Policies themselves, but with no explanation.

106. Plaintiffs, on the other hand, satisfied all duties under the Policies and the law.

107. Plaintiffs followed the requirements and guidance of the governmental orders described herein, resulting in the complete closure of all sixteen restaurants (except for minimal maintenance activities). Two restaurants—Parizade and Local 22—remained open for the limited purpose of takeout only. At these two restaurants, Plaintiffs closed off the dining areas and other areas traditionally open to the public, provided gloves and masks to all employees, and routinely disinfected all high-touch surfaces with strong chemicals designed to rid those surfaces of the COVID-19 virus. Local 22 then closed on May 2, 2020, and Parizade closed on May 10, 2020.

108. At the closed restaurant premises, and to the extent those premises were used for minimal maintenance activities, Plaintiffs ensured all social distancing protocols were met.

Plaintiffs also disinfected all high-touch surfaces routinely, using strong disinfectant chemical solutions designed to rid surfaces of the COVID-19 virus. Plaintiffs further ensured face masks and gloves were provided to all individuals at the premises, and that disinfectant chemical solutions, wipes, hand sanitizers, or other hygiene materials were made available throughout the premises. Plaintiffs further barricaded or cordoned off the entirety of the closed restaurants, making known to the public that the restaurants had been closed in full.

109. Cincinnati's repudiation of the insurance contracts that Plaintiffs' purchased to protect their restaurants and employees is unlawful. The governmental actions affecting Plaintiffs' property have caused a loss of income and an increase in expense. This risk—of governmental action—is nowhere limited or excluded in the Policies.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Declaratory Judgment Against Cincinnati³⁴)

110. Plaintiffs re-allege and incorporate the preceding paragraphs as if set forth herein.

111. Plaintiffs bring this cause of action under N.C. Gen. Stat. § 1-253 *et seq.*, seeking a declaration that (i) the stay at home orders issued by the Governor of North Carolina and county and municipal entities in North Carolina constitute covered perils under Plaintiffs' all-risk Policies that caused "direct 'loss' to property" at the described premises, and (ii) that therefore

³⁴ Plaintiffs' First Claim for Relief seeks a declaratory judgment against both The Cincinnati Insurance Company and The Cincinnati Casualty Company, referred to collectively throughout as "Cincinnati." As explained herein, all relevant Policies purchased by Plaintiffs from either entity are the same in all material respects, as are too the relevant policy analysis and all relevant correspondence between both entities and Plaintiffs. Accordingly, the same declaratory judgment entered by the Court against one Cincinnati entity must also be entered against the other Cincinnati entity.

Cincinnati must pay for the resulting lost business income and extra expenses as defined by the Policies.

112. Under the Business Income coverage, Cincinnati must “pay for the actual loss of ‘Business Income’ and ‘Rental Value’ you sustain due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’”

113. Under the Extra Expense coverage, Cincinnati must pay the “necessary expenses you sustain . . . during the ‘period of restoration’ that you would not have sustained if there had been no direct ‘loss’ to property”

114. Under the Policies, “suspension” means: “(a) The slowdown or cessation of your business activities; and (b) That a part or all of the ‘premises’ is rendered untenable.”

115. Under the Policies, “operations” means: “(a) Your business activities occurring at the ‘premises’; and (b) The tenantability of the ‘premises,’”

116. Under the Policies, “period of restoration” means: “the period of time that: (a) Begins at the time of direct ‘loss’ [and] (b) Ends on the earlier of: (1) The date when the property at the ‘premises’ should be repaired, rebuilt or replaced with reasonable speed and similar quality; or (2) The date when business is resumed at a new permanent location.”

117. Under the Policies, “loss” means “accidental physical loss or accidental physical damage.”

118. Additionally, under Business Income and Extra Expense coverage, the suspension must be caused by “direct ‘loss’ to property” at the relevant premises.

119. As discussed in more detail below, Cincinnati’s interpretation that the requirement of “direct loss” or “accidental physical loss” is not satisfied by losing physical access or use and quiet enjoyment of Plaintiffs’ property is wrong. Cincinnati chose not to define

these terms to have the meanings Cincinnati now asserts against Plaintiffs. Both undefined phrases are reasonably construed, however, to mean the loss of the ability to physically access or use property. Losing the ability to access or use one's property is a direct loss of physical, material rights and advantages, substantial and important. Considering that exclusions to coverage must be narrowly construed; that language drafted by the insurer with ambiguity should ordinarily be construed against the drafter; and that Plaintiffs' interpretation is supported by dictionary definitions of the terms, coverage should be afforded.

A. Loss of Access or Use Constitutes Direct Loss

120. The Policies do not define the phrase "direct loss" nor the phrase "accidental physical loss."

121. Common usage of the words in these phrases dictates that ouster and prohibition/interdiction of access and use by insureds and insured's agents, employees, and customers are physical losses. Such losses are direct in that ouster of and prohibition/interdiction of access and use by all nonessential people results directly in a physical loss.

122. Physical means relating to "material things" that are "perceptible especially through the senses."³⁵ It is also defined in a way that is tied to the body: "of or relating to the body." *Id.* Another Merriam-Webster Dictionary defines the concept of physical this way: "of or relating to natural or material things as opposed to things mental, moral, spiritual, or imaginary."³⁶

³⁵ "Physical." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/physical> (last visited May 5, 2020).

³⁶ "Physical." Webster's Third New International Dictionary, Unabridged. 2020. Web. 24 Apr. 2020.

123. Prohibiting or limiting the physical presence on the premises of any or all persons (except for those facilitating minimal maintenance or takeout and delivery services) and the prohibition or limitation of the physical use of equipment, fixtures and furniture constitutes a physical loss that caused the suspension of business operations.

124. Such direct losses are also accidental. Accidental means “occurring unexpectedly or by chance.”³⁷ Governmental orders of the kind described herein were in no way expected by insureds entering into insurance policies with Cincinnati prior to the COVID-19 pandemic.

B. Governmental Action Resulted in Plaintiffs’ Loss of Use or Access to the Premises or Business Personal Property, a Non-Excluded Direct Loss

125. Coverage under the “all risks” Policies is provided for any risk of direct loss unless expressly limited or excluded.

126. One risk addressed in the exclusions is governmental action. *See* FM 101 05 16, Section A, ¶ 3.b.1.c.

127. By recognizing governmental action in the exclusions, the Policies confirm governmental action as a risk of direct loss and a Covered Cause of Loss.

128. The Policies exclude some but not all governmental action from coverage. Specifically, the Policies only exclude coverage for any loss caused directly or indirectly by governmental action that consists of seizure or destruction of property by order of governmental authority unless the destruction was done to prevent the spread of a fire. As ordinarily used, “seizure” means “taking possession of person or property by legal process.”

129. The governmental orders affecting Plaintiffs’ property do not require seizure or destruction because the government did not destroy Plaintiffs’ property or take physical

³⁷ “Accidental.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/accidental> (last visited May 5, 2020).

possession of, or title to, such property. Instead, the orders limited access to and use of covered property at the premises described in the Policies' declarations.

130. Therefore, the Policies do not exclude the governmental actions described herein.

131. The business-income losses, extra expenses, and other losses sustained by Plaintiffs were caused by or resulted from the aforementioned governmental orders, a Covered Cause of Loss.

132. The Policies further require that the business-income losses be incurred because of the necessary suspension of operations during the period of restoration. Plaintiffs suffered losses because of suspension of operations during the period of restoration.

133. The direct loss of physical access to and use of the premises listed in the declarations, and business property thereon, for Plaintiffs and their vendors, agents, employees, and customers, caused the suspension of the Plaintiffs' operations.

134. Because the Policies cover all risks, including governmental action that, for the good of the public, does no more than limit physical access to and use of property (real and personal), coverage is required.

135. The governmental actions affecting Plaintiffs' property—executive and other orders that directly or indirectly limit direct physical access to Plaintiffs' real and personal property—has caused a loss of income and an increase in expense, exactly the “outside force” that interrupts business and causes insureds to close their doors for a period of time, that requires that capital continue to flow to keep the business afloat and to help replace lost income and pay expenses such as salaries and mortgages. This governmental action is precisely the unexpected jolt that motivates the purchase of insurance.

C. No Other Exclusions Apply to Preclude Coverage

136. No other applicable exclusions or limitations apply to preclude coverage for the direct losses caused by or resulting from the governmental actions described herein.

137. None of Plaintiffs' Policies exclude from the commercial property coverage losses arising from viruses or viral-related causes.

138. Nor does the provision excluding "Delay, loss of use or loss of market" preclude coverage. The provision reads in full:

"We will not pay for 'loss' caused by or resulting from any of the following: . . . (b) . . . Delay, loss of use or loss of market."

139. This provision means the Policies will not pay for losses caused by or resulting from any "loss of use." Losses are excluded under this provision only to the extent they flow from the "loss of use." Here, Plaintiffs' losses were not caused by and do not flow from the "loss of use." Rather, Plaintiffs' loss *is* the "loss of use," which itself was caused by the governmental orders. The insured-against peril—governmental action—resulted directly and immediately in Plaintiffs' direct physical loss of access or use.

140. Put differently, the exclusion for "loss of use" applies only to losses that are consequential. Consequential losses, or consequential damages, are special or indirect damages. In other words, consequential damages are "[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act. — Also termed *indirect damages*."³⁸ Plaintiffs' losses here are not consequential.

141. Limiting the "loss of use" exclusion to consequential losses also renders sensible an exclusion that otherwise swallows the entire policy.

³⁸ *Consequential Damages*, Black's Law Dictionary (11th ed. 2019) (emphasis in original).

D. Declaratory Relief

142. Plaintiffs seek a declaration of rights under the language of the Policies and a declaration of the rights and liabilities of the parties herein.

143. Plaintiffs seek a Declaratory Judgment finding that the Policies cover Business Income and Extra Expense during the period of restoration caused by or resulting from governmental action that forced Plaintiffs to suspend operations, subject to no limitations or exclusions under the Policies.

144. Coverage begins at the time of governmental action. Plaintiffs' property was subject to governmental orders in North Carolina that did not seek to seize or destroy the property. The governmental orders do not constitute governmental seizures because at no point did any governmental entity in North Carolina take physical possession of the property or legal title to the property. The orders properly exercised the police powers of their respective state and local governments to protect public health, affecting Plaintiffs' property, which caused a loss of the ability to physically access and use the insured property.

145. Under each successive order, Plaintiffs' property was limited to the minimum necessary operations or forced to close (with the exception of Parizade and Local 22, at least for the limited period of time when they operated takeout services only until they, too, were forced to close). The governmental action also prohibited, via stay-at-home orders or travel restrictions, all nonessential movement by all residents. These governmental orders resulted in losing physical access to and physical use and enjoyment of Plaintiffs' property by its owners, customers, vendors, employees, and others. The orders further made the physical aspects of Plaintiffs' premises unusable and unable to generate income.

146. Coverage is warranted.

**SECOND CLAIM FOR RELIEF
(Declaratory Judgment Against Cincinnati³⁹)**

147. Plaintiffs re-allege and incorporate the preceding paragraphs as if set forth herein.

148. The Policies provide an independent basis of coverage for Business Income and Extra Expense when civil authorities take certain actions. Plaintiffs bring this second and independent cause of action under N.C. Gen. Stat. § 1-253 *et seq.*, seeking a declaration that it violates North Carolina state law and Plaintiffs' insurance contracts to deny coverage on the basis of the Policies' "Civil Authority" coverage.

149. The Civil Authority coverage provides, in relevant part:

"When a Covered Cause of Loss causes damage to property other than Covered Property at a 'premises', we will pay for the actual loss of 'Business Income' and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the 'premises', provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) 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"

A. COVID-19 Is A Covered Cause of Loss Under the Policies

150. Nothing in the Policies excludes or limits coverage for viruses or virus-related causes of loss.

³⁹ Plaintiffs' Second Claim for Relief seeks a declaratory judgment against both The Cincinnati Insurance Company and The Cincinnati Casualty Company, referred to collectively throughout as "Cincinnati." As explained herein, all relevant Policies purchased by Plaintiffs from either entity are the same in all material respects, as are too the relevant policy analysis and all relevant correspondence between both entities and Plaintiffs. Accordingly, the same declaratory judgment entered by the Court against one Cincinnati entity must also be entered against the other Cincinnati entity.

151. As the Policies make clear, Cincinnati—as sole drafters of the Policies—relied on materials generated by the Insurance Services Office (“ISO”) in drafting Plaintiffs’ Policies.

152. The ISO is a company that drafts standard policy language for use in insurance contracts.

153. Notably, the ISO and insurance providers like Cincinnati became aware of the possibility of virus-related causes during multiple prior health-related crises, including: the 2002 SARS epidemic (Severe Acute Respiratory Syndrome); 2009 H1N1 swine flu pandemic; 2012 MERS epidemic (Middle East Respiratory Syndrome); 2014 Ebola epidemic; and the 2016 Zika epidemic, among others.

154. In 2006, after the SARS epidemic, the ISO drafted a new endorsement, CP 01 40 07 06, entitled “Exclusion of Loss Due to Virus or Bacteria,” acknowledging that claims for business interruption losses could be filed under existing policy language for losses resulting from pandemics or the presence of disease-causing agents. This new endorsement, which other insurance providers have since incorporated in policies, provides that the insurer “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.”

155. Despite the widespread recognition of virus-related causes, and the ISO’s publication of a new endorsement memorializing an express virus exclusion, Cincinnati did not include a virus exclusion in Plaintiffs’ Policies. Under Plaintiffs’ “all risks” Policies, COVID-19 constitutes a Covered Cause of Loss.

B. Coverage Is Warranted Under the Policies’ Civil Authority Provisions

156. When preparing CP 01 40 07 06, the ISO circulated a statement to state insurance regulators that included the following acknowledgment:

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses. Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case.⁴⁰

157. The insurance industry has thus recognized since 2006 that the presence of virus can constitute damage to property.

158. COVID-19—a non-excluded Covered Cause of Loss—has been found present on or within property other than Plaintiffs’ covered premises, damaging those properties.

159. The Policies do not define the term “damage.” According to the Oxford English Dictionary, “Damage” means “[p]hysical harm caused to something in such a way as to impair its value, usefulness, or normal function.”⁴¹ Black’s Law Dictionary supplies a related definition: “(1) Loss or injury to person or property; esp., physical harm that is done to something or to part of someone’s body. (2) By extension, any bad effect on something.”⁴²

160. COVID-19 alters the physical landscape of the surfaces on which it is present, rendering those surfaces impure and consequently impairing their value and usefulness. While

⁴⁰ Larry Podoshen, New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria, Insurance Services Office Circular (July 6, 2006), *available at* <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf> (last visited May 10, 2020).

⁴¹ “Damage.” Lexico.com, Oxford English Dictionary, <https://www.lexico.com/en/definition/damage> (last visited May 14, 2020).

⁴² *Damage*, Black’s Law Dictionary (11th ed. 2019).

COVID-19 may be smaller and less visible than rust, mold, or paint, the virus has mass and is necessarily physical in nature, traveling to other objects and causing harm.

161. Moreover, access to the area immediately surrounding that damaged property has been prohibited by civil authority as a result of the damage, as described herein.

162. The Civil Authority provisions further require that the governmental actions are “taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage.”

163. Cincinnati chose not to define the term “dangerous physical conditions.” According to Merriam-Webster dictionary, “Dangerous” means “(1) involving possible injury, pain, harm, or loss . . . (2) able or likely to inflict injury or harm.”⁴³ The presence of COVID-19 results in conditions that are both dangerous and physical. And by their own terms, the governmental orders described herein were entered in response to these dangerous physical conditions resulting from the damage or continuation of COVID-19 that caused the damage at properties other than Plaintiffs’ properties.

C. Declaratory Relief

164. Plaintiffs seek a declaration of rights under the language of the Policies and a declaration of the rights and liabilities of the parties herein.

165. Plaintiffs seek a Declaratory Judgment finding that the Policies cover Business Income and Extra Expense due to action of civil authority arising from damage to property other than Plaintiffs’ property caused by COVID-19.

166. Coverage begins at the time of governmental action.

⁴³ “Dangerous.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/dangerous> (last visited May 11, 2020).

**THIRD CLAIM FOR RELIEF
(Breach of Contract Against Cincinnati⁴⁴)**

167. Plaintiffs re-allege and incorporate the preceding paragraphs as if set forth herein.

168. Plaintiffs have valid contracts of insurance with Cincinnati, whereby Plaintiffs agreed to make and did make premium payments to Cincinnati in exchange for Cincinnati's promise to indemnify Plaintiffs for losses including, but not limited to, Business Income and Extra Expense.

169. Plaintiffs are current on all premiums required under the Policies and the Policies are in full effect.

170. Cincinnati has not honored and has no intention of honoring its obligations under the contracts to pay for lost Business Income and Extra Expense.

171. The Policies require payment of direct losses caused by or resulting from the forced suspension of operations mandated by government orders issued in North Carolina, including but not limited to Business Income and Extra Expense. Coverage for these losses is in no way limited or excluded under the Policies' terms.

172. The Policies further require payment of losses caused by action of civil authority that prohibits access to premises other than Plaintiffs' premises where COVID-19—a non-excluded covered cause of loss—caused damage to those other premises; where access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of

⁴⁴ Plaintiffs' Third Claim for Relief asserts a claim for breach of contract against both The Cincinnati Insurance Company and The Cincinnati Casualty Company, referred to collectively throughout as "Cincinnati." As explained herein, all relevant Policies purchased by Plaintiffs from either entity are the same in all material respects, as are too the relevant policy analysis and all relevant correspondence between both entities and Plaintiffs. Accordingly, the same judgment entered by the Court against one Cincinnati entity must also be entered against the other Cincinnati entity.

the damage; and where the action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the COVID-19 pandemic that caused the damage. Coverage for these losses is in no way limited or excluded by the Policies' terms.

173. Despite the Policies affording coverage, Cincinnati has uniformly taken the position, without seeking independent coverage advice, that the Policies' language does not afford coverage where governmental action limited or prohibited certain use, access, and deployment of Plaintiffs' property or of other property, and that such claims would, as a business practice, be denied.

174. While representing to its insureds that it will diligently investigate business interruption claims connected to the COVID-19 pandemic, Cincinnati has told investors the truth: that it will not honor such claims. In its 10-Q filing for Q1 2020, Cincinnati explained its categorical position that "[b]ecause a virus does not produce direct physical damage or loss to property, no coverage exists for this peril."

175. Cincinnati's premeditated strategy to deny all COVID-19-related claims applies *even where an insured expressly negotiated for virus coverage*.

176. Cincinnati's entire decision was rendered before Plaintiffs even filed their claims. Cincinnati has made clear that it has no intention of providing coverage irrespective of any specifics relating to each of the insured Plaintiffs (as no investigation occurred here). By making its intention known, Cincinnati has breached the contracts.

177. Cincinnati's intended and forthcoming failures to affirm coverage and pay benefits represent a clear repudiation of the insurance policy contracts and thus constitute a breach of the contracts.

178. As a result of Cincinnati's breach, Plaintiffs have suffered and will continue to suffer monetary losses, and without prompt relief will likely be forced to shutter indefinitely.

**FOURTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty Against Morris Insurance)**

179. Plaintiffs re-allege and incorporate the preceding paragraphs as if set forth herein.

180. Plaintiffs allege this Fourth Claim for Relief in the alternative in the event that the Court finds no coverage exists under Claims 1-3 alleged herein.

181. Plaintiffs retained Morris Insurance to procure for them business insurance coverage. Plaintiffs engaged the assistance of Morris Insurance and the individual agent or agents at Morris Insurance responsible for Plaintiffs' accounts to determine the types and quantities of coverage best suited to Plaintiffs' needs and preferences.

182. During these conversations, Mr. Kelly made a specific request to Morris Insurance and individual agents of Morris Insurance that virus-related causes be covered and not excluded under Plaintiffs' business insurance coverage. This request was made prior to the current Policies' effective periods. Morris Insurance and its individual agents recommended the coverage currently in effect and indicated that the Policies complied with Mr. Kelly's request and did not exclude virus-related causes from coverage.

183. Accordingly, Plaintiffs reasonably believed that the Policies provided coverage for Business Income, Extra Expense, and other losses if the government ever ordered Plaintiffs to curtail or cease operations in light of a virus-related cause of loss.

184. Plaintiffs further reasonably believed that the Policies provided coverage for Business Income, Extra Expense, and other losses under the Policies' "Civil Authority" provisions.

185. The legal relationship between an insurance broker and an insured is a fiduciary relationship giving rise to fiduciary duties under North Carolina law. Moreover, a relationship of confidence and trust exists between Plaintiffs, Morris Insurance, and Plaintiffs' individual agents at Morris Insurance. Because of Plaintiffs' lack of expertise in business insurance, Plaintiffs relied upon Morris Insurance and individual insurance agents at Morris Insurance to select, purchase, deliver, and manage Plaintiffs' business insurance coverage, pursuant to the specific business needs and coverage preferences articulated by Plaintiffs.

186. To the extent this Court finds that Plaintiffs' Policies do not cover the business losses described herein, Morris Insurance breached its fiduciary duties to Plaintiffs to procure for them coverage adequate to fit Plaintiffs' specifically-expressed needs.

187. Plaintiffs have been harmed as a result of this breach in that they have suffered substantial business income losses, extra expenses, and other harms that Cincinnati has not agreed to cover under the Policies.

188. The specific insurance agents with whom Plaintiffs and Mr. Kelly spoke, and who recommended, managed, and delivered insurance coverage and who processed Plaintiffs' applications for insurance coverage, were at all relevant times employees of Morris Insurance acting within the scope of their duties.

**FIFTH CLAIM FOR RELIEF
(Negligence Against Morris Insurance)**

189. Plaintiffs re-allege and incorporate the preceding paragraphs as if set forth herein.

190. Plaintiffs allege this Fifth Claim for Relief in the alternative in the event that the Court finds no coverage exists under Claims 1-3 alleged herein.

191. Under North Carolina law, "if an insurance agent or broker undertakes to procure for another insurance against a designated risk, the law imposes upon him the duty to use

reasonable skill, care and diligence to procure such insurance and holds him liable to the proposed insured for loss proximately caused by his negligent failure to do so.” *White v. Consol. Planning, Inc.*, 166 N.C. App. 283, 301, 603 S.E.2d 147, 160 (2004).

192. As explained, Plaintiffs retained Morris Insurance and its insurance agents to broker business insurance pursuant to certain expressly articulated needs, including the need to have coverage for virus-related causes of loss.

193. To the extent this Court finds that Plaintiffs’ Policies do not cover the business losses described herein, Morris Insurance breached its duties to Plaintiffs.

194. Plaintiffs have been harmed as a result of this breach in that they have suffered substantial business income losses, extra expenses, and other harms that Cincinnati has not agreed to cover under the Policies.

195. The specific insurance agents with whom Plaintiffs and Mr. Kelly spoke, and who recommended, managed, and delivered insurance coverage and who processed Plaintiffs’ applications for insurance coverage, were at all relevant times employees of Morris Insurance acting within the scope of their duties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following judgment:

- A. Declaratory relief, as described herein;
- B. An Order finding The Cincinnati Insurance Company and The Cincinnati Casualty Company to have breached the Policies;
- C. An Order finding Morris Insurance to have breached its fiduciary duties to Plaintiffs;

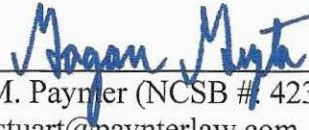
- D. An Order finding that Morris Insurance was negligent in brokering Plaintiffs' Policies.
- E. Compensatory damages;
- F. An award of attorney's fees and costs, as provided by law;
- G. Pre- and post-judgment interest at the highest rate allowed by law; and
- H. Such other and further relief as this Court may deem just, equitable, or proper.

JURY DEMAND

Plaintiffs demand a trial by jury of the claims asserted in this complaint so triable.

Respectfully submitted this the 21st day of September, 2020.

THE PAYNTER LAW FIRM, PLLC



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Tapas, L.L.C. d/b/a Mateo Bar de Tapas,
Saint James Shellfish LLC d/b/a Saint James
Seafood, Calamari Enterprises, Inc. d/b/a
Parizade, Bin 54, LLC d/b/a Bin 54, Arya,
Inc. d/b/a City Kitchen and Village Burger,
Grasshopper LLC d/b/a Nasher Cafe, Verde
Cafe Incorporated d/b/a Local 22, Floga,
Inc. d/b/a Kipos Green Taverna, Kuzina,
LLC d/b/a Golden Fleece, Vin Rouge, Inc.
d/b/a Vin Rouge, Kipos Rose Garden Club
LLC, d/b/a Rosewater, and Gira Sole, Inc.
d/b/a Farm Table and Gatehouse Tavern*

Exhibit A



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company
The Cincinnati Life Insurance Company

Corey Houston
Senior Claims Specialist

May 8, 2020

VIA EMAIL AND U.S. MAIL

North State Deli LLC DBA Lucky's, Mothers and Sons LLC and MRK Properties Mateo Tapas
ATTN: Ted Gallagher
109 W Chapel Hill St
Durham, NC 27701-3205
ted@vinrougedurham.com

RE:	Insured:	North State Deli LLC DBA Lucky's
	Claim No.:	3548751
	Policy No.:	05ECP0429472
	Loss Date:	03/17/2020

Dear Mr. Gallagher,

I am the Cincinnati claims professional responsible for your claim. All communications regarding your claim should be directed to my attention. This letter further addresses the above-referenced claim made by North State Deli LLC DBA Lucky's, Mothers and Sons LLC and MRK Properties Mateo Tapas to Cincinnati Insurance Company ("Cincinnati"). As submitted, the claim involves the Novel Coronavirus known as SARS-CoV-2, which causes the viral infection known as COVID-19 ("Coronavirus"). The claim asserts that you have business interruption due to COVID-19.

Cincinnati will investigate your claim. However, it is important that you understand certain coverage issues that may be implicated by your claim. To that end, certain of your Policy provisions are referred to in this letter. Nevertheless, Cincinnati reserves the right to rely on other Policy provisions should it become appropriate to do so as this investigation progresses. Cincinnati is investigating your claim under a full reservation of rights.

THE CINCINNATI POLICY

Cincinnati issued Policy no. ECP 042 94 72 to North State Deli LLC DBA Lucky's, Mothers and Sons LLC and MRK Properties Mateo Tapas (the "Policy"). The Policy's effective dates are from 03/01/2019 – 03/01/2022.

RESERVATION OF RIGHTS

A. Direct Physical Loss

The Policy¹ provides the following coverage:

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

(FM 101 05 16 at p. 3.) The Policy defines "loss" as "accidental physical loss or accidental physical damage." (FM 101 05 16 at p. 38.) The Policy defines "premises" as "the Locations and Buildings described in the Declarations." (FM 101 05 16 at p. 39.)

At the threshold, there must be direct physical loss or damage to Covered Property caused by a covered cause of loss in order for the claim to be covered. Covered Property generally entails your premises and business personal property. Direct physical loss or damage generally means a physical effect on Covered Property, such as a deformation, permanent change in physical appearance or other manifestation of a physical effect. Your notice of claim indicates that your claim involves Coronavirus. However, the fact of the pandemic, without more, is not direct physical loss or damage to property at the premises.

B. Business Income and Extra Expense Coverage

The Policy provides coverage for Business Income and Extra Expense under certain circumstances. This coverage is included in Form FM 101 05 16:

(1) Business Income

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property In the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are lo-

¹ We cite to or quote provisions of the Policy in this letter. In some instances, in the interests of brevity, we quote or cite only portions of the language. Any terms in bold are in bold in the policy and do not denote additional emphasis unless so indicated. Please refer to the Policy for a full reading of all the terms, conditions or other language cited or referenced.

cated, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the "premises"; and
- (b) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

(2) Extra Expense

- (a) We will pay Extra Expense you sustain during the "period of restoration". Extra Expense means necessary expenses you sustain (as described in Paragraphs **(2)(b)**, **(c)** and **(d)**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- (b) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **(2)(c)**) to:
 - 1) Avoid or minimize the "suspension" of business and to continue "operations" either:
 - a) At the "premises"; or
 - b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - 2) Minimize the "suspension" of business if you cannot continue "operations".
- (c) We will also pay expenses to:
 - 1) Repair or replace property; or
 - 2) Research, replace or restore the lost information on damaged "valuable papers and records";

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

- (d) Extra Expense does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

* * *

The most we will pay for "loss" in any one occurrence under this "Business Income" and Extra Expense Coverage Extension is \$25,000.

(Form FM 101 05 16 at pp. 18-19, 21.)

Additionally, your policy includes form FA 213 05 16, which also supplies Business Income and Extra Expense coverage. That form states, in relevant part:

1. Business Income

- a. 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 "loss" 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" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.
- b. With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
 - (1) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the described "premises".
 - (2) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

2. Extra Expense

- a. Extra Expense coverage is provided at the "premises" described in the Declarations only if the Declarations show that "Business Income" coverage applies at that "premises".

- b. Extra Expense means necessary expenses you sustain (as described in Paragraphs **2.c.**, **d.** and **e.**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c. If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **2.d.**) to:
 - (1) Avoid or minimize the "suspension" of business and to continue "operations" either:
 - (a) At the "premises"; or
 - (b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
 - (2) Minimize the "suspension" of business if you cannot continue "operations".
- d. We will also pay expenses to:
 - (1) Repair or replace property; or
 - (2) Research, replace or restore the lost information on damaged "valuable papers and records"but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage Form will be reduced by the salvage value of that property.
- e. Extra Expense as described in Paragraphs **2.a.** thru **2.d.** does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM.**

(FA 213 05 16 at pp.1-2.)

The "Business Income" and Extra Expense coverages provided under both of these forms require that there be direct physical loss or direct physical damage caused by a Covered Cause of Loss. This direct physical loss or direct physical damage must be to property at the covered premises. Without it, there can be no business income or extra expense coverage. Moreover, as stated, direct physical loss or damage generally means a physical effect on covered property, such as a deformation, permanent change in physical appearance or other manifestation of a physical effect. Your notice of claim

indicates that your claim involves Coronavirus. However, the fact of the pandemic, without more, is not direct physical loss to property at the premises. Later in this letter, we ask questions and seek information directed toward these issues.

C. Civil Authority

The Policy provides coverage for an interruption of your business caused by an order from a civil authority. This coverage is included in the main property form in your policy, FM 101 05 16:

When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises", we will pay for the actual loss of "Business Income" and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) 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.

This Civil Authority coverage for "Business Income" will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
 - 2) When your "Business Income" coverage ends;
- whichever is later.

* * *

The most we will pay for "loss" in any one occurrence under this "Business Income" and Extra Expense Coverage Extension is \$25,000.

(Form FM 101 05 16 at pp. 19, 21.)

Civil authority coverage is also included in policy form FA 213 05 16. That form provides:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "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
- (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.

Civil Authority coverage for "Business Income" will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

(FA 213 05 16 at p. 2.)

This civil authority coverage described in Form FA 213 05 16 above is included within and not additional to the "Business Income" and Extra Expense Limits of Insurance.

There are certain key elements to this coverage that are your burden to show to us. These are: damage to property other than your own that was caused by a covered cause of loss; access to the area immediately surrounding the other, damaged property is prohibited by civil authority; and the action of the civil authority is taken in response to dangerous physical conditions resulting from the damage to the other property. Later in this letter, we ask questions and seek information directed toward these issues.

CONCLUSION

This letter addresses certain key, threshold policy provisions that are generally implicated by Coronavirus claims. Other policy provisions may become relevant as our investigation continues. Should that happen, we will supplement this letter to inform you of those policy provisions and to discuss their relationship to your claim.

Cincinnati is conducting its investigation subject to a full reservation of its rights. As part of Cincinnati's investigation, please provide the following documents and information as soon as possible:

- Please describe any direct physical loss or damage to your premises or property at your premises by the Coronavirus. Additionally, please specify these details and supply these documents:
 - The reason or reasons why you believe that there was direct physical loss or damage to your premises or to property at your premises.
 - Copies of all inspection reports and test reports referring or relating to actual or suspected presence of Coronavirus at your premises or on property at your premises.
 - Documents referring or relating to the presence of Coronavirus at your premises, including among employees, customers or other visitors to the premises.
 - These documents should include any relevant correspondence or emails.

- Please state whether you have been ordered by a civil authority, such as a government official, to close, or restrict access to, your premises. If so, please specify these details and supply these documents:
 - Identify the civil authority that issued the order or orders.
 - Identify the date and nature of the order or orders.
 - Supply a copy of the order or orders.

- Identify any property, other than your own, that suffered direct physical loss or direct physical damage, thereby causing the civil authority order to issue. Additionally, please specify these details and supply these documents:
 - The reason or reasons why you believe that there was direct physical loss or direct physical damage to premises or to property at premises other than your own premises.
 - The reason or reasons why you believe that the presence of Coronavirus at that other premises caused the issuance of the civil authority order involved in your claim.
 - Copies of all inspection reports and test reports referring or relating to direct physical loss or direct physical damage to that other premises.
 - Copies of all inspection reports and test reports referring or relating to actual or suspected presence of Coronavirus at that other premises or property at that other premises.

* * *

Cincinnati is not waiving any of its rights under the Policy. Cincinnati reserves the right to rely on any other language in the Policy which may become applicable as circumstances develop. Cincinnati reserves the right to rely on other provisions or terms of the Policy and not just those discussed in this letter.

North State Deli LLC DBA Lucky's, Mothers and Sons LLC and MRK Properties Mateo Tapas
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May 8, 2020

Please feel free to contact me if you have any questions or would like to discuss this matter.

Very truly yours,

Corey Houston

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corey_houston@cinfin.com

cc: Morris Insurance Agency – Mr. Robert Taylor – robert@morrisins.com

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the attorney is, and at all times hereinafter mentioned was, more than eighteen (18) years of age; and that on this day, copies of the foregoing will be served on the following by electronic mail addressed as follows:

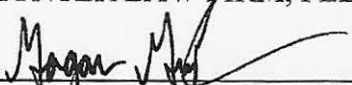
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Counsel for Defendant Morris Insurance Agency, Inc.

The undersigned attorney certifies under penalty of perjury that the foregoing is true and correct.

This the 21st day of September, 2020.

THE PAYNTER LAW FIRM, PLLC


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Tapas, L.L.C. d/b/a Mateo Bar de Tapas,
Saint James Shellfish LLC d/b/a Saint James
Seafood, Calamari Enterprises, Inc. d/b/a
Parizade, Bin 54, LLC d/b/a Bin 54, Arya,
Inc. d/b/a City Kitchen and Village Burger,*

Grasshopper LLC d/b/a Nasher Cafe, Verde Cafe Incorporated d/b/a Local 22, Floga, Inc. d/b/a Kipos Green Taverna, Kuzina, LLC d/b/a Golden Fleece, Vin Rouge, Inc. d/b/a Vin Rouge, Kipos Rose Garden Club LLC, d/b/a Rosewater, and Gira Sole, Inc. d/b/a Farm Table and Gatehouse Tavern