

No. 20-56031

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IN THE  
**United States Court of Appeals**  
**for the Ninth Circuit**

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MARK'S ENGINE COMPANY NO. 28 RESTAURANT, LLC,

*Plaintiff-Appellant,*

v.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,  
ERIC GARCETTI, AND DOES 1 TO 25,

*Defendants-Appellees.*

On Appeal from The United States District Court  
for the Central District of California

Honorable Andre Birotte  
No. 2:20-cv-04423-AB-SK

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**MOTION OF AMERICAN PROPERTY CASUALTY INSURANCE  
ASSOCIATION AND NATIONAL ASSOCIATION OF MUTUAL  
INSURANCE COMPANIES FOR LEAVE TO FILE *AMICUS  
CURIAE* BRIEF IN SUPPORT OF DEFENDANT-APPELLEE  
AND AFFIRMANCE**

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1, counsel for *Amici Curiae* states:

*Amicus* American Property Casualty Insurance Association is not a publicly owned corporation. It has not issued shares of stock nor does it have any parent corporation.

*Amicus* National Association of Mutual Insurance Companies is not a publicly owned corporation. It has not issued shares of stock nor does it have any parent corporation.

Dated: June 16, 2021

/s/ Laura A. Foggan  
Laura A. Foggan

*Attorney for Amici Curiae  
American Property Casualty Insurance  
Association and National Association  
of Mutual Insurance Companies*

Under Federal Rule of Appellate Procedure 29(b), American Property Casualty Insurance Association (“APCIA”) and National Association of Mutual Insurance Companies (“NAMIC”) (collectively, “*Amici*”) move for leave to file the accompanying *amicus curiae* brief supporting Defendant-Appellee Travelers Property Casualty Company of America and affirmance of the District Court’s decision. A copy of the proposed *amicus curiae* brief is attached. In support of this motion, *Amici* respectfully submit:

1. APCIA is the primary national trade association for home, auto, and business insurers. On issues of importance to the property and casualty insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members in legislative and regulatory forums at the state and federal levels and files *amicus curiae* briefs in significant cases before federal and state courts, including this Court. This allows APCIA to share its broad national perspective with the judiciary on matters that shape and develop the law. APCIA’s interests are in the clear, consistent, and reasoned development of law that affects its members and the policyholders they insure.

2. NAMIC is the largest property-casualty insurance trade group with a diverse membership of over 1,400 local, regional, and national member companies, including seven of the top 10 property-casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner's insurance market and 53 percent of the auto market. Through its advocacy programs, NAMIC promotes public policy solutions benefitting its member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

3. The issues in this and similar cases pending in courts throughout the country that arise from coronavirus-related business income insurance claims will have a significant impact on *Amici's* members, their policyholders, and the property insurance marketplace. *Amici's* unique national viewpoint will prove useful to this Court in analyzing the important issues before it.

4. *Amici* seek to fulfill the classic role of *amici curiae* by explaining the broader context in which the issues presented arise, explaining consequences of potential outcomes, offering additional

analytical approaches, and citing additional authority that might otherwise escape the Court's attention. In their proposed *amicus curiae* brief, *Amici*:

- focus on the policy's plain terms requiring "direct physical loss of or damage to property" at the insured premises, explaining how they provide important coverage for losses caused by perils such as fire, wind, hail, and vandalism, but were never intended to cover economic losses untethered to physical loss of or physical damage to property;
- explain how the history and purpose of commercial property insurance policies further support the District Court's decision regarding the meaning of "direct physical loss of or damage to property";
- explain how imposing a new and retroactive extra-contractual risk of economic losses in a pandemic on insurers would harm the California insurance marketplace because it would open the floodgates to many claims these policies were never intended to cover and thereby threaten insurers' ability to

honor their promises made in other existing insurance policies;

- provide well-reasoned holdings of courts nationwide, which recognize that the policies’ “physical” loss or damage requirement requires tangible harm to or physical dispossession of property (such as theft), and offer additional analysis relating to why loss of, or limitation on the use of, property does not constitute “direct physical loss of or damage to property;” and
- although this Court need not consider any exclusions because the claims fall outside of the policy’s coverage grants, demonstrate that the virus exclusion provides an independent ground for affirming the ruling below that no coverage is afforded.

5. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party or counsel for a party in the pending appeal authored the proposed *amicus* brief in whole or in part or made a monetary contribution intended to fund preparing or submitting the brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(2), counsel for

Travelers consented to this *amicus curiae* brief filing, but counsel for Mark's Engine Company No. 28 Restaurant, LLC has not consented, making this motion for leave necessary.

*Amici* respectfully urge the Court to allow them to participate as *amicus curiae* by allowing the filing of the proposed *amicus curiae* brief.

Respectfully submitted,

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Dated: June 16, 2021

## CERTIFICATE OF COMPLIANCE

The foregoing motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 701 words, excluding those parts exempted by Rule 32(f).

This motion also complies with the typeface requirements of Rule 32(a)(5)(A) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point, Century Schoolbook font.

/s/ Laura A. Foggan

Laura A. Foggan

*Attorney for Amici Curiae  
American Property Casualty Insurance  
Association and National Association  
of Mutual Insurance Companies*

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CASUALTY INSURANCE ASSOCIATION AND NATIONAL  
ASSOCIATION OF MUTUAL INSURANCE COMPANIES IN  
SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE**

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Dated: June 16, 2021

/s/ Laura A. Foggan  
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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

American Property Casualty Insurance Association (“APCIA”) is the primary national trade association for home, auto, and business insurers. With a legacy dating back 150 years, APCIA promotes and protects the viability of private competition to benefit consumers and insurers. APCIA’s member companies represent nearly 60 percent of the U.S. property-casualty insurance market, including 67 percent of the commercial property insurance market. On important issues to the property and casualty insurance industry and marketplace, APCIA advocates sound public policies on its members’ behalf in legislative and regulatory forums at the state and federal levels and files *amicus* briefs in significant cases before federal and state courts. This allows APCIA to share its broad national perspective with the judiciary on matters that shape and develop the law.

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici* declare that: (i) no party’s counsel authored the brief in whole or in part; (ii) no party or party’s counsel contributed money intended to fund preparing or submitting the brief; and (iii) no person, other than *Amici*, their members, and their counsel, contributed money to prepare or submit this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(2), counsel for Appellee consented to the filing of this *amicus curiae* brief, but counsel for Appellant has declined to provide consent to *Amici*’s participation.

National Association of Mutual Insurance Companies (“NAMIC”) is the largest property and casualty insurance trade group in the country with a diverse membership of over 1,400 local, regional, and national member companies, including seven of the top 10 property and casualty insurers within the United States. NAMIC members lead the personal lines sector, representing 66 percent of the homeowner’s insurance market and 53 percent of the auto market. Through its advocacy programs, NAMIC promotes public policy solutions benefitting its member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management of mutual companies and their policyholders.

The issues in this and similar cases pending in courts throughout the country arising from coronavirus-related business income insurance claims will affect *Amici*’s members, their policyholders, and the property insurance marketplace. *Amici*’s unique national viewpoint will prove useful to the Court in analyzing the significant issues before it. For these reasons, *Amici* submit this *amicus curiae* brief.

## **SUMMARY OF ARGUMENT**

I. The policy’s plain terms require “direct physical loss of or damage to property” at the insured premises. 3-ER-341. Commercial property insurances policies with business interruption coverage, like the Travelers Property Casualty Company of America policy in this appeal, do not—and were never intended to—provide coverage for economic losses untethered to physical loss of or physical damage to property.

A. Commercial property policies are written to provide coverage for physical, not nonphysical harm. These policies provide important coverage for losses caused by perils such as fire, wind, hail, and vandalism.

B. Ignoring the plain language of these policies would open them up to many claims they were never intended to cover. And it would subject insurers to overwhelming claims payment liability that would threaten their solvency and ability to honor their promises made in other existing insurance policies.

II. Loss of use does not equate to physical loss of or physical damage to property. Plaintiff-Appellant Mark’s Engine Company No. 28 Restaurant, LLC, a restaurant in Los Angeles, suffered purely economic

losses allegedly resulting from public health measures taken through several executive orders issued by California Governor Gavin Newsom and Los Angeles Mayor Eric Garcetti to mitigate the spread of the coronavirus by limiting opportunities for people to congregate. Mark's Engine alleged no "direct physical loss of or damage to" any property. Under the unambiguous policy terms, that should end the matter.

A. Mark's Engine urges this Court to ignore the unambiguous policy language and find coverage for purely economic losses caused by executive orders. Under Mark's Engine's approach, *any* executive order could trigger coverage under property insurance policies that require "direct physical loss of or damage to property."

B. If this Court departed from the well-reasoned holdings of nearly all courts, which recognize that the "physical" loss or damage requirement in property insurance policies requires tangible harm to or physical dispossession of property (such as theft), it would hurt insurers, policyholders, and the insurance marketplace. The Court should affirm the District Court's ruling enforcing Travelers' policy requirement of "direct physical loss of or damage to property."

III. Just as there was no damage to any property at Mark's Engine's premises, there was no direct physical loss of or damage to any property at non-insured premises giving rise to a civil authority order, and thus the District Court correctly dismissed Mark's Engine's civil authority claims.

IV. Finally, because Mark's Engine's claims fall outside of the policy's coverage grants, this Court need not consider any exclusions. But the Travelers' policy's virus exclusion provides an independent ground for affirming the ruling below that no coverage is afforded to Mark's Engine.

### **ARGUMENT**

#### **I. THE PLAIN TERMS OF THE POLICY REQUIRE "DIRECT PHYSICAL LOSS OF OR DAMAGE TO PROPERTY."**

Mark's Engine alleges that the executive orders prevented it from using its property for its intended purpose. It therefore seeks coverage from its property insurer Travelers. Under Travelers' policy terms, coverage exists for business income losses only if they are caused by a suspension of operations that is caused by "direct physical loss of or damage to property." 3-ER-341. But Mark's Engine suffered no physical loss; neither its property nor its inventory have been damaged or become

unrecoverable. The overwhelming weight of authority agrees: no amount of artful pleading or clever argument can convert claims for purely economic losses into claims for physical loss of or physical damage to property as required for coverage under a *property* insurance policy. *10E, LLC v. Travelers Indem. Co. of Conn.*, 483 F. Supp. 3d 828, 836 (C.D. Cal. 2020). Over 250 courts nationwide have reached the same conclusion as the District Court, holding that COVID-19 related claims for business income losses do not meet the requirement for direct physical loss of or damage to property under insurance policies like Travelers'. See Addendum 1 (listing of cases finding no physical loss or damage).

As another court rejecting claims for business interruption losses suffered during the COVID-19 pandemic wrote:

This Court is sympathetic to the plight of so many business owners in the wake of the COVID-19 pandemic. Yet, this Court cannot allow sympathy to cloud its review of the plain meaning of an insurance policy. Insurance companies cannot bear the burden of this crisis where, as here, the Policy does not provide for coverage of purely economic losses resulting from the COVID-19 pandemic.

*Dime Fitness, LLC v. Markel Ins. Co.*, No. 20-CA-5467, 2020 WL 6691467, at \*2 (Fla. Cir. Ct. Nov. 10, 2020). Enforcing plain insurance policy terms

is important to the public, policyholders, and insurers because it is essential to the viability of the insurance marketplace.

**A. Commercial Property Policies Are Written To Cover Property Against Risks Of “Direct Physical Loss Of Or Damage To Property,” Not For Risks And Consequences Of Nonphysical Harm.**

Historically, property insurance insured against the risk of fire for ships, buildings, and commercial property at a time when most of the structures in use were made of wood. 10A *Couch on Insurance*, § 148.1 (3d ed. 2020). Over time, commercial property coverage expanded to include loss arising from other perils that cause physical loss or damage to property, such as theft, hurricanes, floods, and riots. This type of insurance covers property, such as an insured’s building or its personal property (e.g., equipment, furniture), against risks of direct physical loss or damage, like fire, windstorms, or theft.

When purchasing property insurance, a business can add business income and extra expense coverage. These provisions provide additional coverage when insured property is damaged by, for example, a fire, requiring the business to suspend operations. In that event, certain losses of business income and extra expenses, such as renting a temporary office, during the “period of restoration,” while the property

damage is being repaired, would be covered, subject to the policy's terms. These additional layers of coverages, such as business income and extra expense, are secondary to and dependent on direct physical loss of or damage to property at the insured premises requiring repair or replacement. The insured's "*operations* are not what is insured—the building and the personal property in or on the building are." *Real Hosp., LLC v. Travelers Cas. Ins. Co. of Am.*, 499 F. Supp. 3d 288, 296 (S.D. Miss. 2020). As that court also explained in dismissing a similar case:

One does not buy simply "business interruption insurance." Policyholders are not insuring against "all risks" to their income—they are insuring against "all risks" to their property—that is, the building and its contents. . . . Based on the definition of Covered Property, should a covered peril befall the building or personal property located in or on the building, the insured can make a claim. As a subset of this coverage, should such a loss of or damage to the building or any personal property cause a disruption to a policyholder's business such that it suspends operations, then there is coverage for that income loss during the time of repair, rebuilding or replacement in order to get, for lack of a better phrase, "back to normal."

*Id.* at 294 n.9.

Business interruption—or business income coverage, as it is labeled in the Travelers Policy—helps businesses recover when they cannot operate because property has been physically lost or damaged by a

covered cause of loss. Risks and consequences of nonphysical harm, such as business income losses caused by governmental regulatory actions, are outside the boundaries of property coverage. Coverage for the risks of economic losses during a pandemic like COVID-19 does not exist under the plain language of policies like Travelers'. Like virtually all property policies, "any rational reading of the relevant contract language supports [Travelers'] interpretation of the contract" that its policy unambiguously limits coverage for business income losses to those sustained due to suspension of operations caused by direct physical loss of or physical damage to property. *Cafe Int'l Holding Co. v. Westchester Surplus Lines Ins. Co.*, No. 20-21641-CIV-GOODMAN, 2021 WL 1803805, at \*8 (S.D. Fla. May 4, 2021). "Interpreting direct physical loss to include only tangible dispossession aligns with insurance law doctrine which holds that all-risk contracts are intended to cover damage to property, not economic loss." *Nguyen v. Travelers Cas. Ins. Co. of Am.*, No. 2:20-CV-00597-BJR, 2021 WL 2184878, at \*11 (W.D. Wash. May 28, 2021).

**B. Imposing A New And Retroactive Extra-Contractual Risk On Insurance Carriers Would Threaten Insurer Solvency And Harm California’s Insurance Marketplace.**

Insurers can and do calculate and pool the risks of covered damage to property from perils such as fires, floods, and landslides, which impact different policyholders in different locations at different times. But the risk of economic losses in a pandemic, which could hit all or many members of a risk pool at virtually the same time, is very different. The National Association of Insurance Commissioners (“NAIC”) has explained that “[b]usiness interruption policies were generally not designed or priced to provide coverage against communicable diseases, such as COVID-19[.]”<sup>2</sup> To impose such a risk on Travelers would violate the plain language of its property policy and distort the insurance mechanism.

The NAIC has expressed concern that “if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of

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<sup>2</sup> NAIC, NAIC Statement on Congressional Action Relating to COVID-19, (Mar. 25, 2020), <https://tinyurl.com/y59fdw4m> (last visited June 12, 2021).

insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.” *Id.* Rating agencies agree with NAIC on the threat to insurer solvency if courts and governments imposed coverage for the COVID-19 pandemic on property policies, contrary to the plain language of their terms.<sup>3</sup>

The potential impact of a legal ruling purporting to apply industrywide cannot be overstated. Analyses APCA conducted in May 2020 estimated that California COVID-19-related business interruption losses for businesses with fewer than 250 employees and some business interruption coverage—should coverage be mandated—would range from \$9.1 billion to \$33.7 billion per month. By comparison, total monthly premiums for commercial property policies written in California amount

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<sup>3</sup> See, e.g., Best’s Commentary: *Two Months of Retroactive Business Interruption Coverage Could Wipe Out Half of Insurers’ Capital*, Business Wire (May 5, 2020, 11:07 AM), <https://tinyurl.com/y5szsxc9> (last visited June 12, 2021); Credit FAQ: *How COVID-19 Risks Factor Into U.S. Property/Casualty Ratings*, S&P Global Ratings (Apr. 27, 2020, 2:50 PM), <https://tinyurl.com/y3cadxm8> (last visited May 18, 2021).

to only \$480 million, of which business interruption premiums constitute a small fraction.<sup>4</sup>

Nationwide small business losses from the COVID-19 pandemic have been estimated at between \$255 billion and \$431 billion *per month*.<sup>5</sup> By contrast, for companies of all sizes, the total property casualty industry surplus is about \$800 billion to protect auto, home, and business policyholders for all types of future insured losses. These funds are budgeted for the fires, storms, vehicle collisions, and other insured losses occurring daily throughout the country.<sup>6</sup> Thus, treating insurers as a deep pocket to pay for COVID-19 losses would be short-sighted and unjust.

The overly expansive policy interpretation sought here could be disastrous for insurers, policyholders, and the insurance marketplace in California. Retroactively imposing a new, massive, and extra-contractual risk on insurance carriers could well lead to insurer insolvencies, creating

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<sup>4</sup> See Ellen Gilligan, *APCIA Releases Update to Business Interruption Analysis*, American Property Casualty Insurance Association (Apr. 28, 2020), <https://www.apci.org/media/news-releases/release/60522/> (last visited June 12, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

an anticompetitive market and undermining the availability and affordability of insurance in California.<sup>7</sup> The effect would reach all property and casualty insurers providing primary coverage, as well as excess insurance carriers and reinsurers. Any insurer insolvency would affect insurance guaranty associations and also clog the courts with complex insurance rehabilitation and liquidation proceedings.

Insurers are not, and cannot be, guarantors against the consequences of all unfortunate events that impact society. Yet insurers play a vital role in helping individuals and businesses prepare for and recover from the potentially devastating effects of catastrophic events such as wildfires, storms, and earthquakes. Insurance claims payments help ensure the economic security of individuals and businesses and help sustain many related industries. In 2019, these payments in California, as measured by direct property and casualty incurred losses, totaled \$44.5 billion.<sup>8</sup>

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<sup>7</sup> *See generally* NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, CYCLES AND CRISES IN PROPERTY/CASUALTY INSURANCE: CAUSES AND IMPLICATIONS FOR PUBLIC POLICY (National Association of Insurance Commissioners eds. 1991).

<sup>8</sup> INSURANCE INFORMATION INSTITUTE, A FIRM FOUNDATION: HOW INSURANCE SUPPORTS THE ECONOMY, STATE FACT SHEETS, CALIFORNIA

California is extremely susceptible to wildfires, landslides, and earthquakes. Between 1980 and 2019, California suffered five of the costliest U.S. earthquakes.<sup>9</sup> The costliest U.S. earthquake on record was the 1994 Northridge earthquake, causing \$15.3 billion in insured damages when it occurred (\$26.9 billion in 2019 dollars).<sup>10</sup> It was the eighth costliest U.S. disaster based on insured property losses.<sup>11</sup> In 2019, a pair of significant earthquakes struck the Ridgecrest City section of California. In 2018, the state experienced an outbreak of the most destructive wildfires in its history—until 2020, which now holds that tragic distinction. The largest number of households at high to extreme risk for wildfires is in California.<sup>12</sup> The top 10 costliest wildfires in the

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FIRM FOUNDATION, <https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/state-fact-sheets/california-firm-foundation>.

<sup>9</sup> *Facts + Statistics: Earthquakes and Tsunamis*, INSURANCE INFORMATION INSTITUTE (2020), <https://www.iii.org/fact-statistic/facts-statistics-earthquakes-and-tsunamis>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Wildfire Risk Analysis*, VERISK, <https://www.verisk.com/insurance/campaigns/location-fireline-state-risk-report/>.

U.S. all occurred in California.<sup>13</sup> The ability of insurers to honor their promises made in insurance policies covering these devastating and all too commonplace property perils would be dangerously undermined by a finding of coverage for purely economic losses attributable to the COVID-19 pandemic.

Finally, the California insurance industry has a significant impact on the economy that extends well beyond its duties to collect premiums and settle covered claims. It employs licensed professionals, pays taxes, owns municipal bonds, and serves people in their times of greatest need. As the Insurance Information Institute reports in *A Firm Foundation: How Insurance Supports the Economy*, U.S. Department of Commerce data shows that in 2018 in California, the insurance industry provided 331,469 jobs and accounted for about \$28.4 billion in compensation.<sup>14</sup> In 2017, the industry contributed \$40.2 billion to California's gross state

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<sup>13</sup> INSURANCE INFORMATION INSTITUTE, A FIRM FOUNDATION: HOW INSURANCE SUPPORTS THE ECONOMY, STATE FACT SHEETS, CALIFORNIA FIRM FOUNDATION, <https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/state-fact-sheets/california-firm-foundation>.

<sup>14</sup> *Id.*

product in 2017, accounting for 1.4 percent of the gross state product.<sup>15</sup> In 2019, insurance companies in California paid premium taxes totaling \$2.7 billion.<sup>16</sup>

Many businesses across the country have experienced economic strain because of COVID-19. But funding for distressed businesses should come from government-backed pandemic recovery solutions, not efforts to force property insurers to pay for economic losses despite the limitations of their contractual obligations. Governmental relief efforts have provided trillions of dollars to businesses suffering setbacks from the pandemic, through a series of laws providing forgivable loans and other relief to American businesses. *See* Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Pub. L. No. 116-136, 134 Stat. 281 (2020); Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, 134 Stat. 146 (2020); Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 177 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021). This includes the recently-enacted Restaurant Revitalization

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Fund, which, according to the Small Business Administration, “will provide restaurants with funding equal to their pandemic-related revenue loss up to \$10 million per business[.]”<sup>17</sup> Solutions for the economic toll COVID-19 has wreaked on businesses, particularly small businesses such as Mark’s Engine, should come from programs such as these, not attempting to shoehorn claims into insurance policies that do not cover them.

## **II. LOSS OF USE DUE TO GOVERNMENT ORDERS IS NOT DIRECT PHYSICAL LOSS OF OR DAMAGE TO PROPERTY.**

Travelers’ policy provides coverage for only those Business Income losses “due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration’. The ‘suspension’ must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.” 3-ER-342–43. These provisions require that property at the insured premises suffers either a direct physical loss *or* direct physical damage to trigger coverage.

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<sup>17</sup> See <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-2> (visited June 12, 2021).

**A. Direct Physical Loss Of Or Damage To Property Does Not Encompass Loss of Use Unaccompanied By Any Sort Of Tangible, Physical Alteration Or Permanent Dispossession Of Property.**

Mark's Engine urges the disjunctive "or" in the Policy's definition of "loss" requires "physical loss" and "physical damage" to have distinct meanings. Appellant's Br. at 18–20. *Amici* do not dispute that a "physical loss" can mean something different from "physical damage," as many courts have acknowledged in response to the proliferation of insurance coverage litigation arising from the COVID-19 pandemic. *See, e.g., 4431, Inc. v. Cincinnati Ins. Cos.*, No. 5:20-CV-04396, 2020 WL 7075318, at \*10 n.15 (E.D. Pa. Dec. 3, 2020), *appeal pending*, No. 20-3594 (3d Cir. Dec. 23, 2020) ("[T]he Court agrees with Plaintiffs that the disjunctive nature of 'physical loss' or 'physical damage' as used in the Policies indicates that the two terms are not synonymous[.]"). But, as many courts have concluded, "direct physical loss" requires physical harm to or dispossession of property, not merely a loss of or limitation on its use. *See, e.g., Kevin Barry Fine Art Assocs. v. Sentinel Ins. Co.*, No. 20-cv-04783-SK, 2021 WL 141180, at \*4 (N.D. Cal. Jan. 13, 2021). "[L]oss of contemplates that the property is unrecoverable." *Robert W. Fountain, Inc. v. Citizens Ins. Co. of Am.*, No. 20-cv-05441-CRB, 2020 WL 7247207,

at \*4 (N.D. Cal. Dec. 9, 2020), *appeal pending*, No. 21-15053 (9th Cir. Jan. 11, 2021).

In *Simon Marketing, Inc. v. Gulf Insurance Co.*, a California court noted that under its policy, which is similar to the one here, “[t]here must be loss of, or damage to, insured property[.]” 149 Cal. App. 4th 616, 623, 57 Cal.Rptr.3d 49 ( Cal. Ct. App. 2007) (citation omitted). According to the court:

The requirement that the loss be “physical,” given the ordinary definition of that term is widely held to exclude alleged losses that are intangible or incorporeal, and, thereby, to preclude any claim against the property insurer where the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.

*Id.* (citing 10A Couch on Insurance § 148:46, p. 148–81, fns. omitted (3d ed. 2005)). In *Ward General Insurance Services, Inc. v. Employers Fire Insurance Co.*, a California Court of Appeal considered the exact phrase at issue here, “direct physical loss of or damage to” property, when the insured lost information stored in a computer database. 114 Cal. App. 4th 548, 553–54, 7 Cal. Rptr. 3d 844, 848-49 (Cal. Ct. App. 2003). The court held that “direct physical” modifies both “loss of” and “damage to.” *Id.* at 554, 7 Cal. Rptr. 3d at 849. After analyzing the ordinary sense of the word

“physical,” the court held “that the loss of plaintiff’s database [information] does not qualify as a ‘direct physical loss,’ *unless* the database has a material existence, formed out of tangible matter, and is perceptible to the sense of touch.” *Id.* at 556, 7 Cal. Rptr. 3d at 850.

As courts have explained in rejecting the argument Mark’s Engine makes here, a theft, for example, would be a “physical loss” that typically would not involve “physical damage,” while a fire typically would involve “physical damage,” but can also cause a total “loss”:

Despite the disjunctive phrasing, with the modifying adjectives, the phrases are “direct physical loss of property” or “damage to property.” Either way, “property” is involved. The property is either physically lost, i.e., the insured suffers a permanent dispossession of the property, or it is damaged. After all, it is a commercial “property” policy. As Travelers readily acknowledges, a theft would be a direct physical loss of property, and while a fire typical[ly] involves direct physical damage, it can also cause a total loss of property.

*Real Hosp., LLC*, 499 F. Supp. 3d at 294; *see also Wellness Eatery La Jolla LLC v. Hanover Ins. Grp.*, No. 20cv1277-AJB-RBB, 2021 WL 389215, at \*7 (S.D. Cal. Feb. 3, 2021) (citation omitted) (finding “the phrase ‘loss of includes the permanent dispossession of something” and holding the COVID-19 related precautionary measures did not result in permanent dispossession of the insured’s restaurant); *Michael Cetta, Inc. v. Admiral*

*Indem. Co.*, No. 20 Civ. 4612 (JPC), 2020 WL 7321405, at \*9 (S.D.N.Y. Dec. 11, 2020) (“[T]he term ‘loss’ would seem to include ‘theft or misplacement,’ which would not constitute damage to the property. Further, ‘loss’ would extend to the *complete* destruction of property, whereas ‘damage’ contemplates a lesser injury. . . . Thus, [plaintiff’s] argument that ‘direct physical loss of’ then ‘*must* encompass loss of use,’ is an untenable leap in logic.”) (citations omitted), *appeal withdrawn*, No. 21-57 (2d Cir. Mar. 23, 2021). In asserting that “physical loss” need not encompass physical alteration or a dispossession of property (such as theft), Mark’s Engine directly contradicts the policy’s clear language and the weight of authority construing the same or similar language. The result advocated by Mark’s Engine “would be a sweeping expansion of insurance coverage without any manageable bounds.” *Plan Check Downtown III, LLC v. AmGuard Ins. Co.*, 485 F. Supp. 3d 1225, 1231 (C.D. Cal. 2020), *appeal pending*, No. 20-56020 (9th Cir. Oct. 2, 2020).

As another court applying California law said:

Plaintiffs are not the first policyholders to argue in court that government orders forcing their businesses to stop operating as a result of the COVID-19 pandemic trigger insurance under provisions similar or identical to the ones in the Policy here. Most courts have rejected these claims, finding that the

government orders did not constitute direct physical loss or damage to property.

*Pappy's Barber Shops, Inc. v. Farmers Grp.*, 487 F. Supp. 3d 937, 943 (S.D. Cal. 2020). By its plain language, the policy belies Mark's Engine's exceedingly broad interpretation of loss. Consistent with the policy language, California law makes clear that "direct physical loss" means some "distinct, demonstrable, physical alteration of the property" or "*physical change* in the condition of the policy." *MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 779-80, 115 Cal. Rptr. 3d 27, 37-38 (Cal. Ct. App. 2010) (internal quotations and citations omitted); *see also Doyle v. Fireman's Fund Ins. Co.*, 21 Cal. App. 5th 33, 39, 229 Cal. Rptr. 3d 840, 844 (Cal. Ct. App. 2018) (holding that "when it comes to property insurance, diminution in value is not a covered peril, it is a measure of [ ] loss"); *Plan Check Downtown*, 485 F. Supp. 3d at 1230-31 ("The weight of California law [ ] appears to require some tangible alteration, no matter whether the trigger language uses 'loss' or 'damage.'"). If there is no demonstrable physical change to or permanent dispossession of the insured's property, the policy does not provide coverage. *See Protégé Rest. Partners LLC v. Sentinel Ins. Co.*, No. 20-cv-03674-BLF, 2021 WL 428653, at \*4 (N.D. Cal. Feb. 8, 2021) (citing

*Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 487 F. Supp. 3d 834, 839 (N.D. Cal. 2020)).

This result also follows the plain meaning of the words used in the policy as understood by a layperson. As one court recently explained:

[A] person of ordinary understanding would define “physical damage” to be a perceptible, material harm to property. The same person would define “physical loss” to be a material, perceptible destruction or ruin of property. In other words, a person of ordinary understanding would read the policy to cover a spectrum of property damage that ranges from lesser harm (*i.e.* physical damage) to total ruin (*i.e.* physical loss). And that person would understand that the property damage must be “physical”—*i.e.*, material and perceptible, not theoretical or invisible.

*Woolworth LLC v. Cincinnati Ins. Co.*, No. 2:20-CV-01084-CLM, 2021 WL 1424356, at \*4 (N.D. Ala. Apr. 15, 2021), *appeal pending*, No. 21-11847 (11th Cir. May 28, 2021). While Mark’s Engine may have been required to temporarily limit its operations to takeout and delivery service, it was not dispossessed of its property. *Long Aff. Carpet & Rug, Inc. v. Liberty Mut. Ins. Co.*, 500 F. Supp. 3d 1075, 1079 (C.D. Cal. 2020) (citing *Mudpie*, 487 F. Supp. 3d at 839).

**B. This Court Should Agree With The Overwhelming Majority Of Courts That Have Held That Government Orders To Slow The Spread Of The Coronavirus Do Not Cause Direct Physical Loss Of Property.**

Courts rejecting claims nearly identical to Mark's Engine's routinely hold that a loss of use of property resulting from orders issued to mitigate the spread of the coronavirus does not constitute "direct physical loss of or damage to property" absent physical alteration of property. Courts applying California law agree.

For instance, in *Pappy's Barber Shops*, the court recognized, "[u]nder California law, losses from inability to use property do not amount to 'direct physical loss of or damage to property' within the ordinary and popular meaning of that phrase." 487 F. Supp. 3d at 943-44 (citations omitted). Similarly, in *West Coast Hotel Management, LLC v. Berkshire Hathaway Guard Insurance Companies*, the court rejected plaintiffs' contention "that the loss of use of their properties is sufficient to trigger coverage" when the policy provided coverage for "direct physical loss of or damage to" property, as Travelers' policy does here. 498 F. Supp. 3d 1233, 1239 (C.D. Cal. 2020); *see also Ba Lax, LLC v. Hartford Fire Ins. Co.*, No. 2:20-cv-06344-SVW-JPR, 2021 WL 144248, at \*3 (C.D. Cal. Jan. 12, 2021), *appeal pending*, No. 21-55109 (9th Cir.); *Water Sports Kauai*,

*Inc. v. Fireman's Fund Ins. Co.*, 499 F. Supp. 3d 670, 673 (N.D. Cal. 2020) (noting that the “overwhelming majority of courts . . . have determined that the mere threat of coronavirus cannot cause a ‘direct physical loss of or damage to’ covered property as required under the Policy”).

Mark's Engine argues that Travelers' policy language is ambiguous, but this argument is unavailing. The need for interpretation does not invariably create ambiguity in a contract. *Lockheed Martin Corp. v. Cont'l Ins. Co.*, 134 Cal. App. 4th 187, 197-98, 35 Cal. Rptr. 3d 799, 806 (Cal. Ct. App. 2005) (citations omitted); *see also O'Brien Sales & Mktg., Inc. v. Transp. Ins. Co.*, No. 20-cv-02951-MMC, 2021 WL 105772, at \*6 n.7 (N.D. Cal. Jan. 12, 2021). And in the context of COVID-19 business interruption claims with the same policy terms, courts have consistently construed the “direct physical loss or damage” requirement to require more than loss of use of property and to bar coverage for economic losses from the pandemic. *E.g., Jonathan Oheb MD, Inc. v. Travelers Cas. Ins. Co. of Am.*, No. 2:20-cv-08478-JWH-RAOx, 2020 WL 7769880, at \*3–4 (C.D. Cal. Dec. 30, 2020). Mark's Engine's “loss of its on-site dining use, with its consequent economic loss, but with no loss of or damage to tangible property, [is] not a direct physical loss of or damage to covered

property under the terms of the subject insurance policy, and, therefore, the loss is not covered.” *Wellness Eatery*, 2021 WL 389215, at \*5 (quoting *Ward*, 114 Cal. App. 4th at 556–57, 7 Cal. Rptr. 3d at 851) (internal quotation Mark’s omitted).

Contrary to Mark’s Engine’s flawed interpretation of this crucial phrase, “loss of use . . . is insufficient to establish a direct physical loss.” *Palmer Holdings & Invs., Inc. v. Integrity Ins. Co.*, No. 4:20-cv-154-JAJ, 2020 WL 7258857, at \*10 (S.D. Iowa Dec. 7, 2020), *appeal pending*, No. 21-1040 (8th Cir. Jan. 7, 2021) (citation omitted). “Even if loss and damage are distinct, the physicality requirement of the loss or damage remains,” which requires Mark’s Engine to “allege a tangible loss or alteration to property that is sufficient to trigger coverage under the Business Income provision.” *Id.* This Court should apply this straightforward interpretation, which allows for a distinction between “loss” and “damage” while effectuating the Policy’s wording requiring that “loss” or “damage” be “direct” and “physical.”

**C. Mark’s Engine Relies On Cases That Are Inapposite Or Contrary To California Law.**

Mark’s Engine relies on *Hughes v. Potomac Insurance Co.*, 199 Cal. App. 2d 239 (1962), where a landslide stripped the soil from around and

beneath the insureds' house, leaving it perched over the edge of a newly formed 30-foot cliff. But this involved a structure being "rendered completely useless." *Long Aff.*, 500 F. Supp. 3d at 1078 (quoting *Hughes*, 199 Cal. App. 2d at 248). Mark's Engine has alleged no such physical damage to its premises, or the ground underneath it, rendering it useless or uninhabitable. This is why multiple courts faced with similar COVID-19-related business interruption allegations have found *Hughes* inapposite. See *id.*; *Barbizon Sch. of S.F., Inc. v. Sentinel Ins. Co.*, No. 20-cv-08578-TSH, 2021 WL 1222161, at \*8 (Mar. 31, 2021); *Musso & Frank Grill Co., Inc. v. Mitsui Sumitomo Ins. USA Inc.*, No. 20STCV16681, 2020 WL 7346569, at \*3 (Cal. Super. Ct. Nov. 9, 2020).

Mark's Engine also relies on a few outlier or inapposite decisions from outside California, such as *Elegant Massage, LLC v. State Farm Mutual Automobile Insurance Co.*, No. 2:20-cv-265, 2020 WL 7249624 (E.D. Va. Dec. 9, 2020) and *Murray v. State Farm Fire & Casualty Co.*, 509 S.E.2d 1, 17 (W. Va. 1998), which have been resoundingly and repeatedly rejected by other courts, including numerous courts applying California law. Compare Appellant's Br. at 12, 20 n.3 with *Protege*, 2021 WL 428653, at \*5 (finding *Elegant Massage* unpersuasive because it

relies on Virginia state law and non-binding decisions to find ambiguity); *Gym Mgmt. Servs., Inc. v. Vantapro Specialty Ins. Co.*, No. CV 20-9541-GW-KSx, 2021 WL 647528, at \*3 (C.D. Cal. Feb. 1, 2021), *appeal pending*, No. 21-55231 (9th Cir. Mar. 12, 2021) *and Long Aff.*, 500 F. Supp. 3d at 1078 (rejecting *Murray* because the structure was “unusable or uninhabitable”); *Mudpie*, 487 F. Supp. 3d at 840 (finding premises in *Murray* was “unusable or uninhabitable” because of an intervening physical force). “[I]t is telling that the only cases [Mark’s Engine] has identified in support of its position [are] out-of-state decisions applying other states’ laws.” *Gym Mgmt. Servs.*, 2021 WL 647528, at \*3. There is no need to rely on these cases, no matter how persuasive, when California’s appellate courts have considered whether actual harm is required when interpreting these policies and provided a clear answer under California law.

**D. Mark’s Engine’s Position Is Contrary To A Reading Of The Policy As A Whole.**

Mark’s Engine also fails to show how, when the policy is read as a whole,<sup>18</sup> its position can plausibly be squared with the policy’s “period of restoration,” which is the period for Business Income and Extra Expense coverage when coverage exists. 3-ER-342-43, 353.<sup>19</sup> There are two aspects to the “period of restoration”: “(i) that the period begins only *after* there is ‘direct physical loss or damage,’ and (ii) that it ends not when the

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<sup>18</sup> Courts applying California law must read the insurance policy as a whole. Cal. Civ. Code § 1641; *Powerine Oil Co. v. Superior Ct.*, 37 Cal. 4th 377, 391, 118 P.3d 589, 598 (2005), *as modified* (Oct. 26, 2005), *as modified* (Oct. 27, 2005) (citations omitted).

<sup>19</sup> The Policy provides that the “period of restoration”:

- (a) Begins 24 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the Dependent Property;
- (b) Ends on the date when the property at the premises of the Dependent Property should be repaired, rebuilt or replaced with reasonable speed and similar quality; and
- (c) Does not include any increased period required due to the enforcement of any ordinance or law that:
  - (i) Regulates the construction, use or repair, or requires the tearing down of any property; or
  - (ii) Requires any insured or others to tests for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of ‘pollutants’.

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property is ‘restored’ but when it is ‘repaired, rebuilt or replaced.’” *Cafe Int’l*, 2021 WL 1803805, at \*12 (citation omitted).

Mark’s Engine has not alleged that any property needs to be “repaired, rebuilt or replaced.” 3-ER-354; *see also Wellness Eatery*, 2021 WL 389215, at \*6 (“[W]ithout some tangible physical alteration to the property, there would be no need to restore, repair, rebuild, or replace.”); *Water Sports Kauai*, 2020 WL 6562332, at \*6 (no “direct physical loss of or damage to property” where insured “identifies nothing it needs to fix or replace”); *Michael Cetta, Inc.*, 2020 WL 7321405, at \*1, \*6-7 (finding plaintiffs’ position inconsistent with “period of restoration” provision).

Nor would any need to clean property constitute repair, rebuilding, or replacement. While Mark’s Engine does not allege the presence of the coronavirus on its property, there is a near-unanimous view that “direct physical loss of or damage to property” is not satisfied by coronavirus contamination because “like the coating of dust and debris in *Mama Jo’s*, the surfaces allegedly contaminated by COVID-19 seem to only require cleaning to fix.” *Rococo Steak, LLC v. Travelers Specialty Ins. Co.*, No. 8:20-cv-2481-VMC-SPF, 2021 WL 268478, at \*4 (M.D. Fla. Jan. 27, 2021), *appeal pending*, No. 21-10672 (11th Cir. Mar. 1, 2021) (citing

*Mama Jo's, Inc. v. Sparta Ins. Co.*, 823 F. App'x 868 (11th Cir. 2020), *cert. denied*, No. 20-998, 2021 WL 1163753 (U.S. Mar. 29, 2021). *See also Unmasked Mgmt., Inc. v. Century-Nat'l Ins. Co.*, No. 3:20-cv-01129-H-MDD, 2021 WL 242979, at \*6 (S.D. Cal. Jan. 22, 2021), *appeal filed*, No. 21-55090 (9th Cir. Feb. 5, 2021) (citation omitted); *Nguyen*, 2021 WL 2184878, at \*1 (“While the Court is sympathetic to the plight of businesses in this difficult time, today it joins the majority of those courts around the country who have addressed similar claims and finds that the businesses in question are not entitled to coverage under their insurance policies. Like the overwhelming consensus that has formed, this Court determines that COVID-19 does not cause the physical loss or damage to property required as a condition precedent to trigger coverage in all the relevant policies.”)

### **III. THE DISTRICT COURT CORRECTLY DISMISSED MARK'S ENGINE'S CIVIL AUTHORITY CLAIMS.**

Just as Mark's Engine's claims for “direct physical loss of or damage to” property at its premises fail as a matter of law, so must Mark's Engine's civil authority claims. The Civil Authority coverage requires showing “direct physical loss of or damage to property at locations, other than described premises, that are within 100 miles of the described

premises, caused by or resulting from a Covered Cause of Loss.” 3-ER-

355. It provides that:

When the Declarations show that you have coverage for Business Income and Extra Expense, you may extend that insurance to apply to the actual loss of Business Income you sustain and reasonable and necessary Extra Expense you incur caused by action of civil authority that prohibits access to the described premises. The civil authority action must be due to direct physical loss of or damage to property at locations, other than described premises, caused by or resulting from a Covered Cause of Loss.

*Id.*

As the District Court recognized, there is simply no “direct physical loss of or damage to property” at issue, either at Mark’s Engine’s restaurant or any other location. It correctly concluded that Mark’s Engine’s allegations about the business restrictions limited access only to the restaurant’s patrons rather than to the policyholder itself—and did not alter the outcome or justify departure from the majority of California district courts finding that COVID-19 and the related orders do not constitute “direct physical loss of or damage to” property. *Id.* at 9; *Wellness Eatery*, 2021 WL 389215, at \*5. Without “direct physical loss of or damage to property at locations other than” the insured’s premises

giving rise to the civil authority order, there can be no Civil Authority coverage.<sup>20</sup>

Mark's Engine also suggests that the civil authority orders themselves caused "direct physical loss of or damage to property" because they allegedly resulted in Mark's Engine's loss of use of its property for its intended purpose. But civil authority coverage requires that the physical loss or damage be to non-insured property, and loss of use does not constitute "direct physical loss of or damage to property." Moreover, the civil authority action itself cannot constitute the "direct physical loss of or damage to property" at a non-insured location triggering coverage.

The Civil Authority provision requires that a Covered Cause of Loss must cause the "direct physical loss of or damage" to non-insured property that then gives rise to the civil authority order. Otherwise, the policy could be interpreted to afford coverage in response to any government directive limiting the use of an insured's property. *See Plan Check Downtown*, 485 F. Supp. 3d at 1232 (noting that potentially any

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<sup>20</sup> Mark's Engine also fails to satisfy the other elements of Civil Authority coverage. It has not shown that the civil authority actions "prohibit[ed] access to the described premises" given that takeout and delivery service were permitted, and Mark's Engine always had access to its own property.

regulation, like changing the maximum occupancy caps, expanding the closure times for businesses in residential zones, or mandatory evacuation orders for wildfires (without property destruction) would trigger coverage under the policyholders' misguided theory).

Mark's Engine's argument that the California civil authority orders caused the "direct physical loss of or damage to property" is thus circular and nonsensical. *See Franklin EWC, Inc. v. Hartford Fin. Servs. Grp.*, 488 F. Supp. 3d 904, 908 (N.D. Cal. 2020) (citation omitted) ("Under Plaintiffs' theory, the Closure Orders (the orders of a civil authority) were issued as the direct result of the Closure Orders, a claimed Covered Cause of Loss. However, the Closure Orders cannot have been issued as a result of the Closure Orders; instead, as the complaint repeatedly alleges, they were issued as the direct result of COVID-19"); *see also Pez Seafood DTLA, LLC v. Travelers Indem. Co.*, No. CV 20-4699-DMG (GJSx), 2021 WL 234355, at \*7 (C.D. Cal. Jan. 20, 2021) (rejecting same argument as "circular" and "nonsensical"), *appeal pending*, No. 21-55100 (9th Cir. Feb. 8, 2021); *Tralom, Inc. v. Beazley USA Servs., Inc.*, No. 2:20-CV-08344-JFW (RAOx), 2020 WL 8269539 (C.D. Cal. Dec. 29, 2020) (civil

authority orders cannot be both the cause of physical loss and due to the physical loss, as required under this policy language).

**IV. THE POLICY'S VIRUS EXCLUSION PROVIDES AN INDEPENDENT GROUND FOR AFFIRMING THE RULING BELOW THAT NO COVERAGE IS AFFORDED TO MARK'S ENGINE.**

Mark's Engine has not met its threshold burden of proving that coverage exists under the Policy given the requirement for "direct physical loss of or damage to property," and the decision below should be affirmed on that basis. In addition, this Court can affirm the result below on the independent ground that coverage is barred by the Virus Exclusion. The Policy excludes coverage for "loss or damage caused by or resulting from any virus . . . that induces or is capable of inducing physical distress, illness or disease." 3-ER-468. The Virus Exclusion in Travelers' Policy unambiguously bars coverage for Mark's Engine's claims and forecloses coverage regardless of what theory of coverage Mark's Engine pursues. Mark's Engine cannot evade the plain terms of the Virus Exclusion by contending that the losses were attributable to governmental orders instituted to slow the spread of the virus, and not to the virus itself. Whether the loss is "caused directly or indirectly by COVID-19," it is expressly excluded. *Mortar & Pestle Corp. v. Atain*

*Specialty Ins. Co.*, No. 20-cv-03461-MMC, 2020 WL 7495180, at \*6 (N.D. Cal. Dec. 21, 2020). As the District Court found, Mark’s Engine’s allegations are inextricably tied to the virus:

Plaintiff’s FAC clearly demonstrates that all alleged loss or damage was both caused by and resulted from the novel coronavirus. The FAC alleges that Mayor Garcetti issued the order because of “the dire risks of exposure with the contraction of COVID-19 and evidence of physical damage to property.” (FAC ¶ 18.) Plaintiff also states that it shut down its business because employees had “refused to work out of fear of contracting the novel Coronavirus.” (*Id.* at ¶ 22.) And most tellingly, Plaintiff seeks declaratory relief “due to physical loss or damage from the Coronavirus.” (*Id.* at ¶ 28.)

1-ER-10; *see also Robert W. Fountain*, 2020 WL 7247207, at \*5. As another California district court explained:

An “efficient proximate cause” is a cause of loss that predominates and sets the other cause of loss in motion. When loss can be attributed to two causes—a covered and an excluded cause—coverage only exists if the efficient proximate cause of the damage is covered under the policy. The Civil Authority Orders would not exist absent the presence of COVID-19; COVID-19 is therefore the efficient proximate [cause] of Plaintiffs’ losses. Thus, the Virus Exclusion precludes Plaintiffs’ claim for business income losses and extra expenses under the Civil Authority provision.

*Boxed Foods Co. v. Cal. Cap. Ins. Co.*, 497 F. Supp. 3d 516, 522 (N.D. Cal. 2020) (citing *Garvey v. State Farm Fire & Cas. Co.*, 48 Cal. 3d 395, 402-03, 257 Cal. Rptr. 292, 770 P.2d 704 (1989)). As the plain policy terms

and California law make clear, the Virus Exclusion bars coverage here. Further, courts nationwide agree that the Virus Exclusion bars coverage for COVID-19-related claims for businesses' financial losses. As shown in Addendum 2, over 100 courts have granted motions to dismiss COVID-19 cases seeking coverage for business losses based on virus exclusions. This Court should join with them in applying the Virus Exclusion here.

### **CONCLUSION**

This Court should affirm the well-reasoned decision of the District Court. Mark's Engine has not met the threshold requirement of establishing "direct physical loss of or damage to property." In addition, coverage is barred by the Virus Exclusion in the Travelers Policy.

Respectfully submitted,

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Dated: June 16, 2021

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Certificate of Compliance for Briefs

9th Cir. Case Number No. 20-56206

I am the attorney or self-represented party.

**This brief contains 7,360 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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**Signature** /s/ Laura A. Foggan **Date** June 16, 2021  
(use "s/[typed name]" to sign electronically filed documents)

# ADDENDUM 1

**COVID-19 Business Interruption Insurance Cases Finding No  
Direct Physical Loss of or Damage to Property**  
(Listed by State, in Chronological Order)

**Alabama**

1. *Hillcrest Optical, Inc. v. Cont'l Cas. Co.*, 2020 WL 6163142 (S.D. Ala. Oct. 21, 2020)
2. *Drama Camp Prod., Inc. v. Mt. Hawley Ins. Co.*, 2020 WL 8018579 (S.D. Ala. Dec. 30, 2020)
3. *Part Two LLC v. Owners Ins. Co.*, 2021 WL 135319 (N.D. Ala. Jan. 14, 2021)
4. *Pure Fitness LLC v. Twin City Fire Ins. Co.*, 2021 WL 512242 (N.D. Ala. Feb. 11, 2021)
5. *The Woolworth LLC v. The Cincinnati Ins. Co.*, N.D. Ala., No. 2:20-cv-01084-CLM (Apr. 15, 2021)
6. *Ascent Hospitality Mgmt. Co., LLC v. Employers Ins. Co. of Wausau, et al.*, N.D. Ala., No. 2:20-cv-00770-GMB (May 5, 2021)
7. *Dukes Clothing, LLC v. The Cincinnati Ins. Co.*, N.D. Ala., No. 7:20-cv-860-GMB (May 5, 2021)
8. *Akridge Family Dental, Inc. v. The Cincinnati Ins. Co.*, S.D. Ala., No. 1:20-cv-00427 (May 6, 2021)

**Arizona**

9. *Chattanooga Pro. Baseball LLC v. Nat'l Cas. Co., et al.*, 2020 WL 6699480 (D. Ariz. Nov. 13, 2020)
10. *Border Chicken Az LLC, v. Nationwide Mut. Ins. Co., et al.*, 2020 WL 6827742 (D. Ariz. Nov. 20, 2020)
11. *B Street Grill & Bar LLC, et al. v. Cincinnati Ins. Co.*, D. Ariz., No. 2:20-cv-01326-SMB (Mar. 8, 2021)
12. *ABT Performing Arts Ass'n Inc. v. Cincinnati Ins. Co.*, Ariz. Sup. Ct., Maricopa Cnty., No. CV 2020-010495 (Mar. 22, 2021)
13. *Cibus LLC, v. Capital Ins. Grp., et al.*, 2021 WL 1566306 (D. Ariz. Mar. 23, 2021)

**California**

14. *10E, LLC v. Travelers Indem. Co. of Connecticut*, 2020 WL 5359653 (C.D. Cal. Sept. 2, 2020), *dismissing second amended complaint with prejudice*, 2020 WL 6749361 (C.D. Cal. Nov. 13, 2020)

15. *Plan Check Downtown III, LLC v. Amguard Ins. Co.*, 2020 WL 5742712 (C.D. Cal. Sept. 10, 2020)
16. *Pappy's Barber Shops, Inc. v. Farmers Group, Inc.*, 2020 WL 5500221 (S.D. Cal. Sept. 11, 2020)
17. *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 2020 WL 5525171 (N.D. Cal. Sept. 14, 2020)
18. *Franklin EWC, Inc. v. Hartford Fin. Servs. Grp., Inc.*, 2020 WL 5642483 (N.D. Cal. Sept. 22, 2020)
19. *Mark's Engine Co. No. 28 Restaurant, LLC v. The Travelers Indem. Co. of Conn.*, 2020 WL 5938689 (C.D. Cal. Oct. 2, 2020)
20. *Travelers Cas. Ins. Co. of Am. v. Geragos and Geragos*, 2020 WL 6156584 (C.D. Cal. Oct. 19, 2020)
21. *Founder Institute Inc., v. Hartford Fire Ins. Co.*, 2020 WL 6268539 (N.D. Cal. Oct. 22, 2020)
22. *W. Coast Hotel Mgmt., LLC v. Berkshire Hathaway Guard Ins. Companies*, 2020 WL 6440037 (C.D. Cal. Oct. 27, 2020)
23. *Boxed Foods Co., LLC, et al., v. California Cap. Ins. Co.*, 2020 WL 6271021 (N.D. Cal. Oct. 27, 2020)
24. *Musso & Frank Grill Co., Inc. v. Mitsui Sumitomo Ins. USA Inc.*, 2020 WL 7346569 (Cal. Super. Nov. 09, 2020)
25. *Water Sports Kauai, Inc. v. Fireman's Fund Ins. Co.*, 2020 WL 6562332 (N.D. Cal. Nov. 9, 2020), *dismissing second amended complaint with prejudice*, No. 20-3750 (N.D. Cal. Feb. 1, 2021)
26. *Long Affair Carpet and Rug, LLC v. Liberty Mut. Ins. Co. et al.*, 2020 WL 6865774 (C.D. Cal. Nov. 12, 2020)
27. *Selane Products, Inc. v. Continental Cas. Co.*, 2020 WL 7253378 (C.D. Calif. Nov. 24, 2020)
28. *Geragos & Geragos Engine Co. No. 28, LLC v. Hartford Fire Ins. Co.*, 2020 WL 7350413 (C.D. Cal. Dec. 3, 2020)
29. *Robert W. Fountain, Inc. v. Citizens Ins. Co. of Am.*, 2020 WL 7247207 (N.D. Cal. Dec. 9, 2020)
30. *Mortar and Pestle Corp. v. Atain Specialty Ins. Co.*, 2020 WL 7495180 (N.D. Cal. Dec. 21, 2020)
31. *Posh Café Inc. v. AmGUARD Ins. Co.*, 2020 WL 8184062 (C.D. Cal. Dec. 21, 2020)
32. *VStyles, Inc. v. Cont'l Cas. Co.*, No. RIC2003415 (Cal. Super. Ct. Dec. 23, 2020)

33. *Karen Trinh, DDS, Inc. v. State Farm Gen. Ins. Co.*, 2020 WL 7696080 (N.D. Cal. Dec. 28, 2020)
34. *Tralom, Inc. v. Beazley USA Servs., Inc.*, 2020 WL 8620224 (C.D. Cal. Dec. 29, 2020)
35. *Jonathan Oheb MD, Inc. v. Travelers Cas. Ins. Co. of Am.*, 2020 WL 7769880 (C.D. Cal. Dec. 30, 2020)
36. *Baker v. Or. Mut. Ins. Co.*, 2021 WL 24841 (N.D. Cal. Jan. 4, 2021)
37. *Palmdale Estates, Inc. v. Blackboard Ins. Co.*, 2021 WL 25048 (N.D. Cal. Jan. 4, 2021)
38. *Rialto Pockets, Inc. v. Certain Underwriters at Lloyd's, Including Beazley Furlonge Ltd.*, No. CV 20-7709 DSF (JPRx) (C.D. Cal. Jan. 7, 2021)
39. *BA LAX, LLC et al. v. Hartford Fire Ins. Co.*, 2021 WL 144248 (C.D. Cal. Jan. 12, 2021)
40. *O'Brien Sales & Mktg., Inc. v. Transp. Ins. Co.*, 2021 WL 105772 (N.D. Cal. Jan. 12, 2021)
41. *Kevin Barry Fine Art Associates v. Sentinel Ins. Co.*, 2021 WL 141180 (N.D. Cal. Jan. 13, 2021)
42. *Roundin3rd Sports Bar LLC v. The Hartford*, No. 2:20-cv-05159-SVW-PLA (C.D. Cal. Jan. 14, 2021)
43. *Pez Seafood DTLA, LLC v. Travelers Indem. Co.*, 2021 WL 234355 (C.D. Cal. Jan. 20, 2021)
44. *Unmasked Mgmt., Inc. v. Century-Nat'l Ins. Co.*, No. 3:20-cv-01129-H-MDD (S.D. Cal. Jan. 22, 2021)
45. *Fink v. Hanover Ins. Grp., Inc.*, No. 4:20-cv-03907-JST (N.D. Cal. Jan. 25, 2021)
46. *Colgan v. Sentinel Ins. Co.*, No. 4:20-cv-04780-HSG (N.D. Cal. Jan. 26, 2021)
47. *Thomas Phan v. Nationwide Gen'l Ins. Co. et al*, 2:20-cv-07616, 2021 WL 609845 (C.D. Cal. Feb. 1, 2021)
48. *Wellness Eatery La Jolla LLC v. Hanover Ins. Grp.*, 2021 WL 389215 (S.D. Cal. Feb. 3, 2021)
49. *Gym Mgmt. Servs. v. Vantapro Spec. Ins. Co.*, C.D. Cal., No. CV 20-9541-GW-KSx (Feb. 1, 2021)
50. *Protégé Restaurant Partners LLC v. Sentinel Ins. Co., Ltd.*, N.D. Cal., No. 5:20-cv-03674-BLF (Feb. 8, 2021)
51. *Another Planet Entertainment, LLC v. Vigilant Ins. Co.*, N.D. Cal., No. 20-cv-07476-VC (Feb. 25, 2021)

52. *Daneli Shoe Co. v. Valley Forge Ins. Co.*, 2021 WL 1112710 (S.D. Cal. Mar. 17, 2021)
53. *Out West Restaurant Group, Inc. v. Affiliated FM Ins. Co.*, N.D. Cal., No. 20-cv-06786-TSH (Mar. 19, 2021)
54. *Westside Head & Neck v. Hartford Fin. Servs. Grp., Inc.*, 2021 WL 1060230 (C.D. Cal. Mar. 19, 2021)
55. *Mayssami Diamond, Inc. v. Travelers Cas. Ins. Co. of Am.*, S.D. Cal., No. 3:20-cv-01230-AJB-RBB (Mar. 30, 2021)
56. *Barbizon School of San Francisco, Inc. v. Sentinel Ins. Co., Ltd.*, N.D. Cal., No. 20-cv-08578-TSH (Mar. 31, 2021)
57. *Motiv Grp, Inc. v. Cont'l Cas. Co.*, Case No. 2:20-cv-09368-ODW, 2021 WL 1240779 (C.D. Cal. Apr. 1, 2021)
58. *Islands Restaurants, LP v. Affiliated FM Ins. Co.*, S.D. Cal., No. 3:20-cv-02013-H-JLB (Apr. 2, 2021)
59. *Caribe Rest. & Nightclub, Inc. v. Topa Ins. Co.*, 2:20-cv-03570-ODW-MRW, 2021 WL 1338439 (C.D. Cal. Apr. 9, 2021)
60. *Los Angeles County Museum of Natural History Found. v. The Travelers Indem. Co. of Conn., et al.*, C.D. Cal., No. 2:21-cv-01497-SVW-JPR (Apr. 15, 2021)
61. *Varel, Inc. v. Hiscox Ins. Co., Inc., et al.* No. 2:20-cv-09530 (C.D. Cal. Apr. 16, 2021)
62. *French Laundry Partners, LP, et al., v. Hartford Fire Ins. Co.*, 2020 WL 5429033 (N.D. Cal. Apr. 27, 2021)

### **Connecticut**

63. *LJ New Haven LLC, v. Amguard Ins.Co.*, 2020 WL 7495622 (Conn. Dec. 21, 2020)
64. *SA Hospitality Grp. v. Hartford Fire Ins. Co.*, No. 20-cv-1033 (VLB) (D. Conn. June 3, 2021)

### **Florida**

65. *Mama Jo's Inc. v. Sparta Ins. Co.*, 2020 WL 4782369, (11th Cir. Aug. 18, 2020)
66. *Malaube, LLC v. Greenwich Ins. Co.*, 2020 WL 5051581 (S.D. Fla. Aug. 26, 2020)
67. *Mauricio Martinez, DMD, P.A. v. Allied Ins. Co. of America*, 483 F.Supp.3d 1189 (M.D. Fla. Sept. 9, 2020)

68. *Infinity Exhibits, Inc. v. Certain Underwriters at Lloyd's London Known as Syndicate PEM 4000*, 2020 WL 5791583 (M.D. Fla. Sept. 28, 2020)
69. *Mace Marine, Inc. v. Tokio Marine Spec. Ins. Co.*, Case No. 20-CA-120-P (Fla. 16th Jud. Circ. Ct., Monroe County, Oct. 8, 2020)
70. *Harvest Moon Distributors, LLC, v. Southern-Owners Ins. Co.*, 2020 WL 6018918 (M.D. Fla. Oct. 9, 2020)
71. *Raymond H. Nahmad DDS PA, et al. v. Hartford Cas. Ins. Co.*, 2020 WL 6392841 (S.D. Fla. Nov. 2, 2020)
72. *DAB Dental PLLC v. Main Street Am. Protection Ins. Co.*, 2020 WL 7137138 (Fla. Cir. Ct. Nov. 10, 2020)
73. *Dime Fitness, LLC v. Markel Ins. Co.*, 2020 WL 6691467 (Fla. Cir. Ct. Nov. 10, 2020)
74. *S. Fla. ENT Associates, Inc. v. Hartford Fire Ins. Co.*, 2020 WL 6864560 (S.D. Fla. Nov. 13, 2020)
75. *Graspa Consulting, Inc. v. United Nat'l Ins. Co.*, 2020 WL 7062449 (S.D. Fla. Nov. 17, 2020)
76. *El Novillo Rest. v. Certain Underwriters at Lloyd's, London*, 2020 WL 7251362 (S.D. Fla. Dec. 7, 2020)
77. *SA Palm Beach LLC v. Certain Underwriters at Lloyd's*, 2020 WL 7251643 (S.D. Fla. Dec. 9, 2020)
78. *Catlin Dental, P.A. v. The Cincinnati Indem. Co.*, No. 20-CA-004555 (Fla. Circ. Ct. Dec. 11, 2020)
79. *Prime Time Sports Grill, Inc. v. DTW 1991 Underwriting Ltd.*, 2020 WL 7398646 (M.D. Fla. Dec. 17, 2020)
80. *Emerald Cost Restaurants, Inc. v. Aspen Specialty Ins. Co.*, 2020 WL 7889061 (N.D. Fla. Dec. 18, 2020)
81. *Sun Cuisine, LLC v. Certain Underwriters at Lloyd's London*, 2020 WL 7699672 (S.D. Fla. Dec. 28, 2020)
82. *Atma Beauty, Inc. v. HDI Glob. Specialty SE*, 2020 WL 7770398 (S.D. Fla. Dec. 30, 2020)
83. *Edison Kennedy, LLC v. Scottsdale Ins. Co.*, 2021 WL 22314 (M.D. Fla. Jan. 4, 2021)
84. *Counter Culture Hospitality, LLC, v. Scottsdale Ins. Co.*, 2021 WL 22314 (M.D. Fla. Jan. 4, 2021)
85. *Digit. Age Mktg. Grp., IMC. V. Sentinel Ins. Co. Ltd.*, 2021 WL 80535 (S.D. Fla. Jan. 8, 2021)

86. *Island Hotel Properties, Inc. v. Fireman's Fund Ins. Co.*, 2021 WL 117898 (S.D. Fla. Jan. 11, 2021)
87. *Mena Catering, Inc. v. Scottsdale Ins. Co.*, 2021 WL 86777 (S.D. Fla. Jan. 11, 2021)
88. *Carrot Love, LLC v. Aspen Specialty Ins. Co.*, 2021 WL 124416 (S.D. Fla. Jan. 13, 2021)
89. *Webb Dental Associates DMD P.A., v. The Cincinnati Indem. Co.*, 2021 WL 800113 (N.D. Fla. Jan. 15, 2021)
90. *Rococo Steak, LLC v. Aspen Specialty Ins. Co.*, 2021 WL 268478 (M.D. Fla. Jan. 27, 2021)
91. *First Watch Restaurants, Inc. v. Zurich Am. Ins. Co.*, 2021 WL 390945 (M.D. Fla. Feb. 4, 2021)
92. *Café La Trova, LLC v. Aspen Specialty Ins. Co.*, S.D. Fla., No. 20-22055 (Feb. 16, 2021)
93. *15 Oz Fresh & Healthy Food LLC v. Underwriters at Lloyd's London*, S.D. Fla., No. 20-23407 (Feb. 22, 2021)
94. *Town Kitchen LLC v. Certain Underwriters at Lloyd's London, et al.*, S.D. Fla., No. 20-22832-CIV-MORENO (Feb. 26, 2021)
95. *AE Mgmt., LLC v. Illinois Union Ins. Co.*, No. 20-22925-CIV, 2021 WL 827192 (S.D. Fla. Mar. 4, 2021)
96. *Pane Rustica, Inc., v. Greenwich Ins. Co.*, 2021 WL 1087219 (M.D. Fla. Mar. 22, 2021)
97. *PF Sunset View, LLC v. Atl. Specialty Ins. Co.*, No. 20-81224-CIV, 2021 WL 1341602 (S.D. Fla. Apr. 9, 2021)
98. *Café Int'l Holding Co. LLC v. Westchester Surplus Lines Ins. Co.*, S.D. Fla., No. 1:20-cv-21641-JG (May 4, 2021)
99. *MCML Holding Co., LLC v. Colony Ins. Co.*, M.D. Fla., No. 8:20-cv-2016-MSS-CPT (May 12, 2021)
100. *Yellow Strawberry CCDD, Inc. v. Cont'l Cas. Co.*, S.D. Fla., No. 0:20-cv-61754-RS (May 18, 2021)

## **Georgia**

101. *Henry's Louisiana Grill, Inc. v. Allied Ins. Co. of Am.*, 2020 WL 5938755 (N.D. Ga. Oct. 6, 2020)
102. *Johnson v. Hartford Fin. Servs. Grp., Inc.*, 2021 WL 37573 (N.D. Ga. Jan. 4, 2021)
103. *K D Unlimited Inc. v. Owners Ins. Co.*, 2021 WL 81660 (N.D. Ga. Jan. 5, 2021)

104. *Karmel Davis and Associates, Attorneys-at-Law, LLC v. Hartford Fin. Services Grp., Inc.*, No. 1:20-cv-02181, 2021 WL 420372 (N.D. Ga. Jan. 26, 2021)
105. *Gilreath Family & Cosmetic Dentistry, Inc. d/b/a Gilreath Dental Assocs. v. The Cincinnati Ins. Co.*, N.D. Ga., No. 1:20-cv-02248-JPB (Mar. 1, 2021)
106. *Rest. Grp. Mgmt., LLC v. Zurich Am. Ins. Co.*, N.D. Ga., No. 1:20-cv-04782-TWT (Mar. 16, 2021)
107. *G&A Fam. Enters. v. Am. Fam. Ins. Co.*, N.D. Ga., No. 1:20-cv-03192-JPB (May 13, 2021)

### **Illinois**

108. *Sandy Point Dental, PC v. Cincinnati Ins. Co.*, 2020 WL 5630465 (N.D. Ill. Sept. 21, 2020), *denying motion for consideration and denying leave to amend*, 2021 WL 83758 (N.D. Ill. Jan. 10, 2021)
109. *It's Nice, Inc. v. State Farm Fire and Cas. Co.*, Case No. 20 L 547, Ill. Circ. Ct. for Du Page County, Tr. of Sept. 29, 2020 Hr'g
110. *T&E Chicago LLC v. Cincinnati Ins. Co.*, 2020 WL 6801845 (N.D. Ill. Nov. 19, 2020)
111. *Bradley Hotel Corp. v. Aspen Specialty Ins. Co.*, 2020 WL 7889047 (N.D. Ill. Dec. 22, 2020)
112. *Jaewook Lee v. State Farm Fire & Cas. Co.*, No. 20 CH 4589 (Ill. Circ. Ct. Jan. 13, 2021)
113. *TJBC, Inc. v. Cincinnati Ins. Co.*, 2021 WL 243583 (S.D. Ill. Jan. 25, 2021)
114. *Bend Hotel Dev. Co., LLC v. Cincinnati Ins. Co.*, 2021 WL 271294 (N.D. Ill. Jan. 27, 2021)
115. *Crescent Plaza Hotel Owner L.P. v. Zurich Am. Ins. Co.*, N.D. Ill., No. 20 C 3463 (Feb. 18, 2021)
116. *Smeez, Inc. v. Badger Mut. Ins. Co.*, S.D. Ill., No. 3:20-cv-01132-DWD (Mar. 22, 2021)
117. *Zajas, Inc. v. Badger Mut. Ins. Co.*, S.D. Ill., No. 3:20-cv-01055-DWD (Mar. 23, 2021)
118. *Firenze Ventures LLC v. Twin City Fire Ins. Co.*, N.D. Ill., No. 20 C 4226 (Mar. 31, 2021)
119. *L&J Mattson's Co. v. The Cincinnati Ins. Co, Inc.*, N.D. Ill., No. 1:20-cv-07784 (Apr. 29, 2021)

120. *Fran Napleton Lincoln, Inc., et al. v. Motorists Commercial Mut. Ins. Co.*, Ill. Cir. Ct., Cook Cnty., No. 20 L 6767 (May 10, 2021)
121. *Image Dental, LLC v. Citizens Ins. Co. of Am.*, No. 20-cv-02759 (N.D. Ill. June 11, 2021)

### **Indiana**

122. *MHG Hotels, LLC v. Emcasco Ins. Co.*, S.D. Ind., No. 1:20-cv-01620-RLY-TAB (Mar. 8, 2021)
123. *Ind. Repertory Theatre, Inc. v. Cincinnati Cas. Co.*, No. 49D01-2004-PL-013137 (Mar. 12, 2021)
124. *Georgetown Dental, LLC v. Cincinnati Ins. Co.*, S.D. Ind., No. 1:21-cv-00383-TWP-MJD (May 17, 2021)

### **Iowa**

125. *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 491 F. Supp. 3d 455 (S.D. Iowa 2020)
126. *Whiskey River on Vintage, Inc. v. Ill. Cas. Co.*, 2020 WL 7258575 (S.D. Iowa Nov. 30, 2020)
127. *Palmer Holdings and Investments, Inc. v. Integrity Ins. Co.*, 2020 WL 7258857 (S.D. Iowa Dec. 7, 2020)
128. *Gerleman Mgmt., Inc. v. Atlantic States Ins. Co.*, 2020 WL 8093577 (S.D. Iowa Dec. 11, 2020)
129. *Lisette Enterprises Ltd. v. Regent Ins. Co.*, S.D. Iowa, No. 4:20-cv-00299-SMP-CFB (May 6, 2021)

### **Kansas**

130. *Promotional Headwear Int'l v. The Cincinnati Ins. Co.*, 2020 WL 7078735 (D. Kan. Dec. 3, 2020)

### **Kentucky**

131. *Bluegrass Oral Health Center, PLLC v. Cincinnati Insurance Co.*, W.D. Ky., No. 1:20-cv-00120-GNS (Mar. 18, 2021)
132. *Ryan P. Estes, D.M.D., P.S., P.S.C. v. Cincinnati Ins. Co.*, No. 2:20-cv-00138-WOB-CJS (E.D. Ky. June 4, 2021)
133. *Lexfit, LLC v. West Bend Mut. Ins. Co.*, No. 5:20-413-DCR (E.D. Ky. June 10, 2021)

### **Louisiana**

134. *Q Clothier New Orleans LLC v. Twin City Fire Ins. Co.*, E.D. La., No. 2:20-cv-01470-ILRL-DPC (Apr. 23, 2021)
135. *Muriel's New Orleans, LLC v. State Farm Fire & Cas. Co.*, E.D. La., No. 20-2295 (Apr. 26, 2021)
136. *Luke S Pierre, et al. v. Transportation Ins. Co.*, W.D. La., No. 6:20-CV-01660 (Apr. 29, 2021)

### **Maryland**

137. *Bel Air Auto Auction, Inc. v. Great Northern Ins. Co.*, D. Md., No. RDB-20-2892 (Apr. 14, 2021)

### **Massachusetts**

138. *SAS Int'l, Ltd. v. General Star Indem. Co.*, D. Mass., No. 1:20-cv-11864-RGS (Feb. 19, 2021)
139. *Legal Sea Foods, LLC v. Strathmore Ins. Co.*, D. Mass., No. 1:20-cv-10850-NMG (Mar. 5, 2021)
140. *Kamakura, LLC, et al. v. Greater New York Mut. Ins. Co.*, D. Mass., No. 1:20-cv-11350-FDS (Mar. 9, 2021)
141. *American Food Systems, Inc., et al. v. Fireman's Fund Ins. Co., et al.*, D. Mass., No. 1:20-cv-11497-RGS (Mar. 24, 2021)
142. *Select Hospitality, LLC v. Strathmore Ins. Co.*, D. Mass., No. 20-11414-NMG (Apr. 7, 2021)
143. *Accents of Sterling, Inc. v. Ohio Security Ins. Co.*, D. Mass., No. 1:20-cv-11005-DJC (May 25, 2021)

### **Michigan**

144. *Turek Enterprises, Inc. v. State Farm Mut. Auto. Ins. Co.*, 2020 WL 5258484 (E.D. Mich. Sept. 3, 2020)
145. *Richard Kirsch, DDS v. Aspen Am. Ins. Co.*, 2020 WL 7338570 (E.D. Mich. Dec. 14, 2020)
146. *Gavrilides Mgm't Co. v. Mich. Ins. Co.*, Case No. 20 258 CB, Mich. Cir. Ct for Ingram County, Tr. of July 1, 2020 Hr'g
147. *Three Won Three, Corp., et al. v. Property-Owners Ins. Co.*, Mich. Cir. Ct., Wayne Cnty., No. 20-011994-CB (Mar. 17, 2021)
148. *St. Julian Wine Co., Inc. v. The Cincinnati Ins. Co.*, W.D. Mich., No. 1:20-cv-00374-HYJ-RSK (Mar. 19, 2021)

149. *Brown Jug, Inc. v. Cincinnati Ins. Co.*, E.D. Mich., No. 20-CV-13003 (May 27, 2021)

### **Minnesota**

150. *Seifert et al. v. IMT Ins. Co.*, 2020 WL 6120002 (D. Minn. Oct. 16, 2020)
151. *Torgerson Properties, Inc. v. Continental Cas. Co.*, D. Minn., No. 20-2184 (PAM/KMM) (Feb. 17, 2021)
152. *Bachman's Inc. v. Florists' Mut. Ins. Co.*, D. Minn., No. 0:20-cv-02399-MJD-DTS (Mar. 16, 2021)

### **Mississippi**

153. *Real Hospitality, LLC v. Travelers Cas. Ins. Co. of Am.*, 2020 WL 6503405 (S.D. Miss. Nov. 4, 2020)

### **Missouri**

154. *BBMS, LLC v. Cont. Cas. Co.*, 2020 WL 7260035 (W.D. Mo. Nov. 30, 2020)
155. *Zwillo V, Corp. v. Lexington Ins. Co.*, 2020 WL 7137110 (W.D. Mo. Dec. 2, 2020)
156. *Ballas Nails & Spa, LLC v. Travelers Casualty Ins. Co. of Am.*, 2021 WL 37984 (E.D. Mo. Jan. 5, 2021)
157. *Levy v. Hartford Fin. Servs. Grp.*, E.D. Mo., No. 4:20-cv-00643-SRC (Feb. 16, 2021)
158. *Seoul Taco Holdings, LLC v. Cincinnati Ins. Co.*, E.D. Mo., No. 4:20-CV-1249 RLW (May 11, 2021)
159. *Planet Sub Holdings, Inc. v. State Auto Prop. & Cas. Co., Inc.*, W.D. Mo., No. 4:20-CV-00577-BCW (May 19, 2021)
160. *MMMMM DP, LLC v. Cincinnati Ins. Co.*, E.D. Mo., No. 4:20-cv-00867-SEP (May 24, 2021)

### **Nevada**

161. *Levy Ad Grp., Inc. v. Chubb Corp.*, No. 2:20-cv-00763-JAD-DJA, 2021 WL 777210 (D. Nev. Feb. 16, 2021)
162. *Egg & I, LLC v. U.S. Specialty Ins. Co.*, No. 2:20-cv-00747-KJD-DJA, 2021 WL 769658 (D. Nev. Feb. 25, 2021)

163. *Circus Circus LV, LP v. AIG Specialty Ins. Co.*, No. 2:20-cv-01240-JAD-NJK, 2021 WL 769660 (D. Nev. Feb. 26, 2021)
164. *Project Lion LLC v. Badger Mut. Ins. Co.*, D. Nev., No. 2:20-cv-00768-JAD-VCF (May 19, 2021)

### New Jersey

165. *FAFB, LLC v. Blackboard Ins. Co.*, No. MER-L-892-20 (N.J. Super. Ct., transcript of Nov. 4, 2020 oral ruling)
166. *MAC Property Group LLC v. Selective Fire & Cas. Ins. Co.*, Docket No. L-2629-20 (N.J. Super. Ct. Law Div., Camden Cty., Nov. 5, 2020)
167. *Boulevard Carroll Entm't Grp., Inc. v. Fireman's Fund Ins. Co.*, 2020 WL 7338081 (D.N.J. Dec. 14, 2020)
168. *7th Inning Stretch LLC v. Arch Ins. Co.*, No. 20-8161 (SDW) (LDW) (D.N.J. Jan. 19, 2021)
169. *Eye Care Ctr. of NJ v. Twin City Fire Ins. Co.*, 2:20-cv-05743-KM-ESK 2021, WL 457890 (D.N.J. Feb. 8, 2021)
170. *Causeway Automotive, LLC v. Zurich Am. Ins. Co.*, 3:20-cv-08393-FLW-DEA, 2021 WL 486917 (D.N.J. Feb. 10, 2021)
171. *Delaware Valley Plumbing Supply, Inc. v. Merchants Mut. Ins. Co.*, No. 1:20-cv-08257-NLH-KMW, 2021 WL 567994 (D.N.J. Feb. 16, 2021)
172. *In the Park Savoy Caterers LLC v. Selective Ins. Grp., Inc.*, No. CV 20-6869, 2021 WL 1138020 (D.N.J. Feb. 25, 2021)
173. *Body Physics v. Nationwide Ins.*, 1:20-cv-09231, 2021 WL 912815 (D.N.J. Mar. 10, 2021)
174. *Colby Restaurant Grp., v. Utica Nat'l Ins. Grp.*, 1:20-cv-05927, 2021 WL 1137994 (D.N.J. Mar. 12, 2021)
175. *Manhattan Partners, LLC, et al. v. American Guarantee & Liability Is. Co.*, D.N.J., No. 20-14342 (SDW) (LDW) (Mar. 17, 2021)
176. *Garmany of Red Bank v. Harleysville Ins. Co.*, 3:20-cv-08676-FLW-DEA, 2021 WL 1040490 (D.N.J. Mar. 18, 2021)
177. *Manhattan Partners, LLC v. Am. Guarantee & Liab. Ins. Co.*, 2021 WL 1016113 (D.N.J. Mar. 17, 2021)
178. *Dezine Six, LLC v. Fitchburg Mut. Ins. Co.*, No. 3:20-cv-07964-BRM-DEA, 2021 WL 1138146 (D.N.J. Mar. 25, 2021)
179. *Downs Ford, Inc. v. Zurich Am. Ins. Co.*, 3:20-cv-08595-BRM-ZNQ, 2021 WL 1138141 (D.N.J. Mar. 25, 2021)

180. *Carpe Diem Spa, Inc. v. Travelers Cas. Ins. Co. of Am.*, No. CV 20-14860, 2021 WL 1153171 (D.N.J. Mar. 26, 2021)
181. *Chester C. Chianese DDS LLC v. Travelers Cas. Ins. Co. of Am.*, 3:20-cv-05702, 2021 WL 1175344 (D.N.J. Mar. 27, 2021)
182. *Benamax Ice, LLC v. Merch. Mut. Ins. Co.*, No. CV 20-8069, 2021 WL 1171633 (D.N.J. Mar. 29, 2021)
183. *Quakerbridge Early Learning LLC v. Selective Ins. Co. of New England*, 3:20-cv-07798-MAS-LHG, 2021 WL 1214758 (D.N.J. Mar. 31, 2021)
184. *Podiatry Foot & Ankle Inst. P.A. v. Hartford Ins. Co. of Midwest*, 2:20-cv-20057, 2021 WL 1326975 (D.N.J. Apr. 9, 2021)
185. *Ralph Lauren Corp. v. Factory Mut. Ins. Co.*, D.N.J., No. 20-10167 (SDW) (LDW) (May 12, 2021)
186. *Manhattan Partners, LLC v. Am. Guar. & Liab. Ins. Co.*, No. 2:20-cv-14342-SDW-LDW (May 24, 2021)

### **New Mexico**

187. *Café Plaza De Mesilla, Inc. v. Cont'l Cas. Co.*, D.N.M., No. 2:20-cv-354-KWR-KRS (Feb. 16, 2021)

### **New York**

188. *Social Life Magazine, Inc. v. Sentinel Ins. Co. Ltd.*, No. 20 C 3311, S.D.N.Y., Tr. of May 14, 2020 Hr'g
189. *Michael Cetta, Inc. v. Admiral Indem. Co.*, 2020 WL 7321405 (S.D.N.Y. Dec. 11, 2020)
190. *10012 Holdings, Inc. v. Sentinel Ins. Co.*, 2020 WL 7360252 (S.D.N.Y. Dec. 15, 2020)
191. *Tappo of Buffalo, LLC v. Erie Ins. Co.*, 2020 WL 7867553 (W.D.N.Y. Dec. 29, 2020)
192. *Soundview Cinemas Inc. v. Great Am. Ins. Grp., et al.* N.Y. Sup. Ct., No. 605985-20 (Feb. 10, 2021)
193. *Visconti Bus. Serv., LLC v. Utica Nat'l Ins. Grp.*, N.Y. Sup. Ct., No. EF005750-2020 (Feb. 12, 2021)
194. *Food for Thought Caterers Corp. v. Sentinel Ins. Co., Ltd.*, S.D.N.Y., No. 20-cv-3418 (JGK) (Mar. 6, 2021)
195. *Sharde Harvey, DDS, PLLC v. Sentinel Ins. Co.*, 2021 WL 1034259 (S.D.N.Y. Mar. 18, 2021)

196. *Jeffrey M. Dressel, D.D.S., P.C. v. Hartford Ins. Co. of the Midwest*, 2021 WL 1091711 (E.D.N.Y. Mar. 22, 2021)
197. *6593 Weighlock v. Springhill SMC Corp.*, N.Y. Sup. Ct., No. 4799/2020 (Apr. 13, 2021)
198. *Mohawk Gaming Enterprises, LLC v. Affiliated FM Ins. Co.*, N.D.N.Y., No. 8:20-CV-701 (Apr. 15, 2021)
199. *Kim-Chee LLC, et al. v. Phil. Indem. Ins. Co.*, W.D.N.Y., No. 1:20-cv-1136 (Apr. 22, 2021)
200. *Rye Ridge Corp., et al. v. The Cincinnati Ins. Co.*, S.D.N.Y., No. 20 Civ 7132 (LGS) (Apr. 23, 2021)
201. *Sullivan Cnty. Fabrication Inc. v. Selective Ins. Co. of Am.*, No. 20 Civ. 5750 (PMH) (S.D.N.Y. May 19, 2021)
202. *Deer Mountain Inn LLC v. Union Ins. Co.*, No. 1:20-cv-00984-BKS-DJS (N.D.N.Y. May 24, 2021)
203. *Office Solution Grp. v. National Fire Ins. Co. of Hartford*, No. 1:20-cv-04736-GHW (S.D.N.Y. June 11, 2021)

### **North Carolina**

204. *Natty Greene's Brewing Co., LLC v. Travelers Cas. Ins. Co. of Am.*, No. 1:20-CV-437, 2020 WL 7024882 (M.D.N.C. Nov. 30, 2020)
205. *Summit Hospitality Grp., Ltd. v. The Cincinnati Ins. Co.*, E.D.N.C., No. 5:20-CV-254-BO (Mar. 4, 2021)
206. *Nat'l Coatings & Supply, Inc. v. Valley Forge Ins. Co.*, 2021 WL 1009305 (E.D.N.C. Mar. 16, 2021)
207. *FS Food Group LLC v. The Cincinnati Ins. Co.*, W.D.N.C., No. 3:20-cv-00588-RJC-DSC (Mar. 18, 2021)
208. *Blue Coral, LLC v. W. Bend Mut. Ins. Co.*, No. 5:20-CV-00496-M, 2021 WL 1395771 (E.D.N.C. Apr. 13, 2021)

### **Ohio**

209. *Santo's Italian Café LLC v. Acuity Ins. Co.*, 2020 WL 7490095 (N.D. Ohio Dec. 21, 2020)
210. *Family Tacos, LLC v. Auto Owners Ins. Co.*, N.D. Ohio, No. 5:20-cv-01922-JPC (Feb. 17, 2021)
211. *MIKMAR, Inc. v. Westfield Ins. Co.*, N.D. Ohio, No. 1:20-cv-01313 (Feb. 17, 2021)

212. *Ceres Enters., LLC v. Travelers Ins. Co.*, N.D. Ohio, No. 1:20-CV-1925 (Feb. 18, 2021)
213. *Brunswick Panini's, LLC v. Zurich Am. Ins. Co.*, No. 1:20CV1895, 2021 WL 663675 (N.D. Ohio Feb. 19, 2021)
214. *Panini's v. Zurich Am. Ins. Co.*, N.D. Ohio, No. 1:20CV1895 (Feb. 19, 2021)
215. *Equity Planning Corp. v. Westfield Ins. Co.*, N.D. Ohio, No. 1:20-CV-01204 (Feb. 26, 2021)
216. *Dakota Girls, LLC, et al. v. Philadelphia Indem. Ins. Co.*, S.D. Ohio, No. 2:20-cv-02035-SDM-KAJ (Mar. 8, 2021)
217. *Bridal Expressions LLC v. Owners Ins. Co.*, N.D. Ohio, No. 1:20-cv-00833-SO (Mar. 23, 2021)

### **Oklahoma**

218. *Goodwill Indus. of Cent. Okla. v. Phila. Indem. Ins. Co.*, 2020 WL 6561315 (W.D. Okla. Nov. 9, 2020)

### **Pennsylvania**

219. *Brian Handel D.M.D., P.C. v. Allstate Ins. Co.*, 2020 WL 6545893 (E.D. Pa. Nov. 6, 2020)
220. *Toppers Salon & Health Spa, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2020 WL 7024287 (E.D. Pa. Nov. 30, 2020)
221. *4431, Inc., et al. v. Cincinnati Ins. Companies*, 2020 WL 7075318 (E.D. Pa. Dec. 3, 2020)
222. *Kessler Dental Associates, P.C. v. The Dentists Ins. Co.*, 2020 WL 7181057 (E.D. Pa. Dec. 7, 2020)
223. *Newchops Rest. Comcast LLC v. Admiral Indem. Co.*, 2020 WL 7395153 (E.D. Pa. Dec. 17, 2020)
224. *Milkboy Ctr. City LLC v. Cincinnati Cas. Co.*, No. CV 20-2036, 2020 WL 7633975 (E.D. Pa. Dec. 22, 2020)
225. *ATCM Optical, Inc. v. Twin City Fire Ins. Co.*, 2021 WL 131282 (E.D. Pa. Jan. 14, 2021)
226. *Clear Hearing Solutions, LLC v. Cont'l Cas. Co.*, 2021 WL 131283 (E.D. Pa. Jan. 14, 2021)
227. *Indep. Rest. Grp. v. Certain Underwriters at Lloyd's, London*, 2021 WL 131339 (E.D. Pa. Jan. 14, 2021)
228. *Moody v. The Hartford Fin. Grp., Inc.*, 2021 WL 135897 (E.D. Pa. Jan. 14, 2021)

229. *TAQ Willow Grove, LLC v. Twin City Fire Ins.*, 2021 WL 131555 (E.D. Pa. Jan. 14, 2021)
230. *Ultimate Hearing Solutions II, LLC v. Twin City Fire Ins. Co.*, 2021 WL 131556 (E.D. Pa. Jan. 14, 2021)
231. *Zagafen Bala, LLC v. Twin City Fire Ins. Co.*, 2021 WL 131657 (E.D. Pa. Jan. 14, 2021)
232. *1 S.A.N.T., Inc. v. Berkshire Hathaway, Inc.*, 2021 WL 147139 (W.D. Pa. Jan. 15, 2021)
233. *Frank Van's Auto Tag, LLC v. Selective Ins. Co. of the Southeast*, 2021 WL 289547 (E.D. Pa. Jan. 28, 2021)
234. *Kahn, et al. v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, M.D. Pa., No. 1:20-cv-00781-JEJ (Feb. 8, 2021)
235. *Whiskey Flats, Inc. v. Axis Ins. Co.*, E.D. Pa., No. 20-3451 (Feb. 12, 2021)
236. *Windber Hosp. d/b/a Chan Soon Shiong Med. Ctr. v. Travelers Prop. Cas. Co. of Am.*, W.D. Pa., No. 3:20-cv-80 (Mar. 18, 2021)
237. *J.B.'s Variety Inc. v. Axis Ins. Co.*, No. CV 20-4571, 2021 WL 1174917 (E.D. Pa. Mar. 29, 2021)
238. *Chester Cnty. Sports Arena v. Cincinnati Specialty Underwriters Ins. Co.*, E.D. Pa., No. 2:20-cv-02021-MMB (Mar. 30, 2021)
239. *Tria WS LLC v. Am. Automobile Ins. Co.*, E.D. Pa., No. 20-4159 (Mar. 30, 2021)
240. *Shantzer v. Travelers Cas. Ins. Co. of Am.*, No. CV 20-2093, 2021 WL 1209845 (E.D. Pa. Mar. 31, 2021)
241. *Paul Glat MD, P.C. v. Nationwide Mut. Ins. Co.*, No. CV 20-5271, 2021 WL 1210000 (E.D. Pa. Mar. 31, 2021)
242. *SSN Hotel Mgmt., LLC v. Hartford Mut. Ins. Co.*, E.D. Pa., No. 20-6228 (Apr. 8, 2021)
243. *Lansdale 329 Prop, LLC, et al. v. Hartford Underwriters Ins. Co.*, E.D. Pa., No. 20-2034 (Apr. 28, 2021)
244. *Mareik Inc. d/b/a Nicole Miller Phila. v. State Farm Fire & Cas. Co.*, E.D. Pa., No. 20-2744 (May 5, 2021)
245. *RDS Vending LLC v. Union Ins. Co.*, E.D. Pa., No. 2:20-cv-03928-CMR (May 13, 2021)
246. *Isaac's Deli, Inc. v. State Auto Prop. & Cas. Ins. Co.*, E.D. Pa., No. 5:20-cv-06165-JMG (May 14, 2021)

- 247. *Hair Studio 1208, LLC v. Hartford Underwriters Ins. Co.*, E.D. Pa., No. 2:20-cv-02171-MSG (May 14, 2021)
- 248. *Star Buick GMC v. Sentry Ins. Grp.*, E.D. Pa., No. 5:20-cv-03023-JFL (May 26, 2021)
- 249. *44 Hummelstown Assocs., LLC v. Am. Select Ins. Co.*, No. 1:20-cv-02319 (M.D. Pa. June 7, 2021)

### **South Carolina**

- 250. *Coffey & McKenzie, LLC v. Twin City Fire Ins. Co.*, No. 2:20-CV-01671-BHH, 2021 WL 1310872 (D.S.C. Apr. 8, 2021)

### **Tennessee**

- 251. *1210 McGavock St. Hosp. Partners, LLC v. Admiral Indem. Co.*, 2020 WL 7641184 (M.D. Tenn. Dec. 23, 2020)
- 252. *Nashville Underground, LLC v. AMCO Ins. Co.*, No. 3:20-CV-00426, 2021 WL 826754 (M.D. Tenn. Mar. 4, 2021)

### **Texas**

- 253. *Diesel Barbershop, LLC v. State Farm Lloyds*, 2020 WL 4724305 (W.D. Tex. Aug. 13, 2020)
- 254. *Vizza Wash, LP v. Nationwide Mut. Ins. Co.*, 2020 WL 6578417 (W.D. Tex. Oct. 26, 2020)
- 255. *Sultan Hajer v. Ohio Sec. Ins. Co.*, 2020 WL 7211636 (E.D. Tex. Dec. 7, 2020)
- 256. *Terry Black's Barbecue, LLC v. State Auto. Mut. Ins. Co.*, 2020 WL 7351246 (W.D. Tex. Dec. 14, 2020)
- 257. *Steiner Steakhouse, LLC v. Amco Ins. Co.*, No. 1:20-cv-00858-LY (W.D. Tex. Dec. 30, 2020)
- 258. *Berkseth-Rojas v. Aspen Am. Ins. Co.*, 2021 WL 101479 (N.D. Tex. Jan. 12, 2021)
- 259. *Vandelay Hospitality Group LP d/b/a Hudson House v. The Cincinnati Ins. Co., et al.*, N.D. Tex., No. 3:20-cv-01348-D (Feb. 9, 2021)
- 260. *DZ Jewelry, LLC v. Certain Underwriters at Lloyds London*, No. CV H-20-3606, 2021 WL 1232778 (S.D. Tex. Mar. 12, 2021)
- 261. *Selery Fulfillment, Inc. v. Colony Ins. Co.*, 2021 WL 963742 (E.D. Tex. Mar. 15, 2021)

- 262. *Ilios Prod. Design, LLC v. Cincinnati Ins. Co.*, W.D. Tex., No. 1:20-CV-857-LY (Apr. 12, 2021)
- 263. *Aggie Invs., L.L.C. v. Cont'l Cas. Co.*, E.D. Tex., No. 4:21-CV-0013 (Apr. 20, 2021)
- 264. *PSG-Mid Cities Med. Ctr., LLC v. Cont'l Cas. Co.*, N.D. Tex., No. 3:20-CV-02477-E (May 11, 2021)
- 265. *Kennard Law, P.C. v. National Fire Ins. Co. of Hartford*, No. 4:20-cv-02534 (S.D. Tex. June 11, 2021)

### **Vermont**

- 266. *Assocs. in Periodontics, PLC v. Cincinnati Ins. Co.*, D. Vt., No. 2:20-cv-00171 (May 18, 2021)

### **Virginia**

- 267. *Skillets, LLC, et al. v. Colony Insurance Company*, E.D. Va., No. 3:20-cv678-HEH (Mar. 10, 2021)

### **Washington**

- 268. *Nguyen v. Travelers Cas. Ins. Co. of Am.*, W.D. Wash., No. 2:20-cv-00597-BJR (May 28, 2021)
- 269. *Glacial Cryotherapy LLC v. Evanston Ins. Co.*, No. 2:21-cv-00266-BJR (W.D. Wash. June 2, 2021)

### **Washington D.C.**

- 270. *Rose's 1, LLC v. Erie Ins. Exch.*, 2020 WL 4589206 (D.C. Super. Aug. 06, 2020)
- 271. *Caribe Rest. & Nightclub, Inc. v. Topa Ins. Co.*, No. 2:20-cv-03570-ODW (MRWx) (Apr. 9, 2021)

### **West Virginia**

- 272. *Uncork & Create LLC v. Cincinnati Ins. Co.*, 2020 WL 6436948 (S.D.W. Va. Nov. 2, 2020)
- 273. *Bluegrass, LLC v. State Auto. Mut. Ins. Co.*, 2021 WL 42050 (S.D.W. Va. Jan. 5, 2021)

### **Wisconsin**

- 274. *Al Johnson's Swedish Rest. & Butik, Inc. v. Soc'y Ins.*, No. 20-CV-52 (Wis. Circ. Ct. Dec. 4, 2020)

275. *Paradigm Care & Enrichment Ctr., LLC v. W. Bend Mut. Ins. Co.*, E.D. Wis., No. 20-CV-720-JPS (Mar. 26, 2021)

# ADDENDUM 2

**COVID-19 Business Interruption Insurance Cases Enforcing  
Virus Exclusion**

(Listed by State, in Chronological Order)

**Alabama**

1. *Part Two LLC v. Owners Ins. Co.*, 2021 WL 135319 (N.D. Ala. Jan. 14, 2021)
2. *Pure Fitness LLC v. Twin City Fire Ins. Co.*, 2021 WL 512242 (N.D. Ala. Feb. 11, 2021)
3. *Ascent Hosp. Mgmt. Co. v. Emps. Ins. Co. of Wausau*, N.D. Ala., No. 2:20-cv-00770-GMB (May 5, 2021)

**Arizona**

4. *Chattanooga Prof'l Baseball LLC v. Nat'l Cas. Co.*, 2020 WL 6699480 (D. Ariz. Nov. 13, 2020)
5. *Border Chicken AZ LLC v. Nationwide Mut. Ins. Co.*, 2020 WL 6827742 (D. Ariz. Nov. 20, 2020)
6. *Cibus LLC v. Eagle West Ins. Co.*, No. CV-20-00277-TUC-JGZ (DTF) (D. Ariz. Jan. 21, 2021)

**California**

7. *Mark's Engine Co. No. 28 Restaurant, LLC v. The Travelers Indem. Co. of Conn.* 2020 WL 5938689 (C.D. Cal. Oct. 2, 2020)
8. *Travelers Cas. Ins. Co. of Am. v. Geragos & Geragos*, 2020 WL 6156584 (C.D. Calif. Oct. 19, 2020)
9. *Founder Inst. Inc. v. Hartford Fire Ins. Co.*, 2020 WL 6268539 (N.D. Cal. Oct. 22, 2020)
10. *Boxed Foods Co., LLC v. California Capital Ins. Co.*, 2020 WL 6271021 (N.D. Cal. Oct. 26, 2020), *as amended* (Oct. 27, 2020)
11. *W. Coast Hotel Mgmt., LLC v. Berkshire Hathaway Guard Ins. Companies*, 2020 WL 6440037 (C.D. Cal. Oct. 27, 2020)
12. *Musso & Frank Grill Co., Inc. v. Mitsui Sumitomo Ins. USA Inc. et al.*, Case No. 20STCV16681 (Super. Ct. of Calif., Los Angeles Cty., Nov. 9, 2020)
13. *Long Affair Carpet and Rug, LLC v. Liberty Mut. Ins. Co.*, 2020 WL 6865774 (C.D. Cal. Nov. 12, 2020)
14. *10E, LLC v. Travelers Indem. Co. of Conn.*, 2020 WL 6749361 (C.D. Cal. Nov. 13, 2020)

15. *Robert W. Fountain, Inc. v. Citizens Ins. Co. of Am.*, 2020 WL 7247207 (N.D. Cal. Dec. 9, 2020)
16. *Healthnow Med. Ctr., Inc. v. State Farm Gen. Ins. Co.*, 2020 WL 7260055 (N.D. Cal. Dec. 10, 2020)
17. *Franklin EWS, Inc. v. The Hartford Financial Services Group, Inc.*, Case No. 20-cv-04434 JSC (N.D. Cal. Sept. 22, 2020), *dismissing amended complaint*, 2020 WL 7342687 (N.D. Cal. Dec. 14, 2020)
18. *Mortar and Pestle Corp. v. Atain Specialty Ins. Co.*, 2020 WL 7495180 (N.D. Cal. Dec. 21, 2020)
19. *Karen Trinh, DDS, Inc. v. State Farm Gen. Ins. Co.*, 2020 WL 7696080 (N.D. Cal. Dec. 28, 2020)
20. *Palmdale Estates, Inc. v. Blackboard Ins. Co.*, 2021 WL 25048 (N.D. Cal. Jan. 4, 2021)
21. *BA LAX, LLC v. Hartford Fire Ins. Co.*, 2021 WL 144248 (C.D. Cal. Jan. 12, 2021)
22. *Roundin3rd Sports Bar LLC v. The Hartford*, No. 2:20-cv-05159-SVW-PLA (C.D. Cal. Jan. 14, 2021)
23. *Pez Seafood DTLA, LLC v. Travelers Indem. Co.*, 2021 WL 234355 (C.D. Cal. Jan. 20, 2021)
24. *Colgan v. Sentinel Ins. Co.*, No. 4:20-cv-04780-HSG (N.D. Cal. Jan. 26, 2021)
25. *Phan v. Nationwide Gen. Ins. Co.*, No. 2:20-cv-07616 (C.D. Cal. Feb. 1, 2021)
26. *Protege Rest. Partners LLC v. Sentinel Ins. Co., Ltd.*, 2021 WL 428653 (N.D. Cal. Feb. 8, 2021)
27. *John's Grill, Inc. v. Hartford Fin. Servs. Grp., Inc.*, No. CGC-20-584184 (Calif. Super. Ct., San Francisco Ct., Feb. 10, 2021)
28. *Kingray Inc. v. Farmers Grp.*, C.D. Cal., No. 5:20-cv-00963-JGB-SP (Mar. 4, 2021)
29. *Sky Flowers, Inc. v. Hiscox Ins. Co., Inc.*, C.D. Cal., No. 2:20-cv-05411-ODW-MAA (Mar. 25, 2021)
30. *Mayssami Diamond, Inc. v. Travelers Cas. Ins. Co. of Am.*, S.D. Cal., No. 3:20-cv-01230-AJB-RBB (Mar. 30, 2021)
31. *L.A. Cnty. Museum of Nat. Hist. Found. v. Travelers Indem. Co. of Conn., et al.*, C.D. Cal., No. 2:21-cv-01497-SVW-JPR (Apr. 15, 2021)
32. *French Laundry Partners, LP v. Hartford Fire Ins. Co.*, N.D. Cal., No. 20-cv-04540-JSC (Apr. 27, 2021)

### **Connecticut**

33. *LJ New Haven LLC v. AmGUARD Ins. Co.*, 2020 WL 7495622 (D. Conn. Dec. 21, 2020)

### **Florida**

34. *Mauricio Martinez, DMD, P.A. v. Allied Ins. Co. of Am.*, 2020 WL 5240218 (M.D. Fla. Sept. 2, 2020)
35. *Nahmad DDS PA, et al. v. Hartford Cas. Ins. Co.*, 2020 WL 6392841 (S.D. Fla. Nov. 2, 2020)
36. *DAB Dental PLLC v. Main Street Am. Protection Ins. Co.*, Case No. 20-CA-5504 (Fla. 13th Jud. Circ. Ct., Hillsborough County, Nov. 10, 2020)
37. *Dime Fitness, LLC v. Markel Ins. Co.*, 2020 WL 6691467 (Fla. Cir. Ct. Nov. 10, 2020)
38. *Edison Kennedy, LLC v. Scottsdale Ins. Co.*, 2021 WL 22314 (M.D. Fla. Jan. 4, 2021)
39. *Digit. Age Mktg. Grp., IMC. v. Sentinel Ins. Co. Ltd.*, 2021 WL 80535 (S.D. Fla. Jan. 8, 2021)
40. *Mena Catering, Inc. v. Scottsdale Ins. Co.*, 2021 WL 86777 (S.D. Fla. Jan. 11, 2021)
41. *Tanq's, Inc. v. Scottsdale Ins. Co.*, M.D. Fla., No. 6:20-cv-02356-ACC-GJK (Apr. 16, 2021)

### **Georgia**

42. *G&A Fam. Enters. v. Am. Fam. Ins. Co.*, N.D. Ga., No. 1:20-cv-03192-JPB (May 13, 2021)

### **Illinois**

43. *It's Nice, Inc. v. State Farm Fire and Cas. Co.*, No. 20 L 547, Ill. Circ. Ct. for Du Page County, Tr. of Sept. 29, 2020 Hr'g
44. *AFM Mattress Co. v. Motorists Commercial Mut. Ins. Co.*, 2020 WL 6940984 (N.D. Ill. Nov. 25, 2020)
45. *The Riverwalk Seafood Grill, Inc. v. Travelers Casualty Ins. Co. of Am.*, 2021 WL 81659 (N.D. Ill. Jan. 7, 2021)
46. *Jaewook Lee v. State Farm Fire & Cas. Co.*, No. 20 CH 4589 (Ill. Circ. Ct. Jan. 13, 2021)
47. *Steve Foley Cadillac, Inc., et al. v. New York Marine & General Ins. Co., et al.*, Ill. Cir. Ct., Cook Cnty., No. 20-L-6774 (Feb. 19, 2021)

48. *Mashallah, Inc. v. W. Bend Mut. Ins. Co.*, N.D. Ill., No. 20 C 5472 (Feb. 22, 2021)
49. *Siren Salon, Inc. v. Liberty Mut. Ins. Co.*, N.D. Ill., No. 1:20-cv-03108 (Mar. 22, 2021)
50. *Dental Experts, LLC, et al. v. Mass. Bay Ins. Co.*, N.D. Ill., No. 20 C 5887 (May 1, 2021)
51. *M&E Bakery Holdings, LLC v. Westfield Nat. Ins. Co.*, N.D. Ill., No. 20 C 5849 (May 7, 2021)
52. *Fran Napleton Lincoln, Inc., et al. v. Motorists Commercial Mut. Ins. Co.*, Ill. Cir. Ct., Cook Cnty., No. 20 L 6767 (May 10, 2021)
53. *Image Dental, LLC v. Citizens Ins. Co. of Am.*, N.D. Ill., No. 20-cv-02759 (June 11, 2021)

### **Indiana**

54. *MHG Hotels, LLC, et al. v. Emcasco Ins. Co., Inc. et al.*, S.D. Ind., No. 1:20-cv-01620-RLY-TAB (Mar. 8, 2021)

### **Iowa**

55. *Whiskey River on Vintage, Inc. v. Ill. Cas. Co.*, 2020 WL 7258575 (S.D. Iowa Nov. 30, 2020)
56. *Palmer Holdings and Investments, Inc. v. Integrity Ins. Co.*, 2020 WL 7258857 (S.D. Iowa Dec. 7, 2020)
57. *Gerleman Mgmt., Inc. v. Atlantic States Ins. Co.*, 2020 WL 8093577 (S.D. Iowa Dec. 11, 2020)
58. *Lisette Enters. v. Regent Ins. Co.*, S.D. Iowa, No. 4:20-cv-00299-SMP-CFB (May 6, 2021)

### **Kentucky**

59. *J&H Lanmark, Inc. v. Twin City Fire Ins. Co.*, E.D. Ky., No. 5:20-333-DCR (Mar. 10, 2021)

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60. *Q Clothier New Orleans LLC, et al. v. Twin City Fire Ins. Co., et al.*, E.D. La., No. 2:20-cv-01470-ILRL-DPC (Apr. 23, 2021)
61. *Muriel's New Orleans, LLC v. State Farm Fire & Cas. Co.*, E.D. La., No. 20-2295 (Apr. 26, 2021)

### **Massachusetts**

62. *Accents of Sterling, Inc. v. Ohio Security Ins. Co.*, D. Mass., No. 1:20-cv-11005-DJC (May 25, 2021)

### **Michigan**

63. *Gavrilides Mgm't Co. v. Mich. Ins. Co.*, Case No. 20 258 CB, Mich. Cir. Ct for Ingram County, Tr. of July 1, 2020 Hr'g
64. *Turek Enterprises, Inc. v. State Farm Mut. Auto. Ins. Co.*, 2020 WL 5258484 (E.D. Mich. Sept. 3, 2020)
65. *Salon XL Color & Design Grp., LLC v. West Bend Mut. Ins. Co.*, 2021 WL 391418 (E.D. Mich. Feb. 4, 2021) (Note: Contains unfavorable holdings on other issues)
66. *Dye Salon, LLC v. Chubb Indem. Ins. Co.*, 2021 WL 493288 (E.D. Mich. Feb. 10, 2021)
67. *Stanford Dental, PPLC v. Hanover Ins. Grp., Inc.*, 2021 WL 493322 (E.D. Mich. Feb. 10, 2021)
68. *Three Won Three, Corp. v. Property-Owners Ins. Co.*, Mich. Cir. Ct., Wayne Cnty., No. 20-011994-CB (Mar. 17, 2021)

### **Minnesota**

69. *Seifert et al. v. IMT Ins. Co.*, Case No. 20-1102 (D. Minn. Oct. 16, 2020)

### **Mississippi**

70. *Real Hosp., LLC v. Travelers Cas. Ins. Co. of Am.*, 2020 WL 6503405 (S.D. Miss. Nov. 4, 2020)

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71. *Zwillo V, Corp. v. Lexington Ins. Co.*, Case No. 4:20-00339-CV-RK (W.D. Mo. Dec. 2, 2020)
72. *Ballas Nails & Spa, LLC v. Travelers Casualty Ins. Co. of Am.*, 2021 WL 37984 (E.D. Mo. Jan. 5, 2021)
73. *Levy v. Hartford Fin. Servs. Grp.*, E.D. Mo., No. 4:20-cv-00643-SRC (Feb. 16, 2021)

### **Nevada**

74. *Project Lion LLC, et al. v. Badger Mut. Ins. Co.*, D. Nev., No. 2:20-cv-00768-JAD-VCF (May 19, 2021)

## **New Jersey**

75. *FAFB, LLC v. Blackboard Ins. Co.*, No. MER-L-892-20 (N.J. Super. Ct., transcript of Nov. 4, 2020 oral ruling)
76. *N&S Rest. LLC v. Cumberland Mut. Fire Ins. Co.*, 2020 WL 6501722 (D.N.J. Nov. 5, 2020)
77. *MAC Property Group LLC v. Selective Fire & Cas. Ins. Co.*, Docket No. L-2629-20 (N.J. Super. Ct. Law Div., Camden Cty., Nov. 5, 2020)
78. *Mattdogg, Inc. v. Phila. Indem. Ins. Co.*, Docket No. L-820-20 (N.J. Super. Ct., Mercer Cty., Nov. 17, 2020)
79. *Boulevard Carroll Entm't Grp., Inc. v. Fireman's Fund Ins. Co.*, 2020 WL 7338081 (D.N.J. Dec. 14, 2020)
80. *7th Inning Stretch LLC v. Arch Ins. Co.*, No. 20-8161 (SDW) (LDW) (D.N.J. Jan. 19, 2021)
81. *Eye Care Ctr. of N.J. v. Twin City Fire Ins. Co.*, 2021 WL 457890 (D.N.J. Feb. 8, 2021).
82. *Causeway Automotive, LLC v. Zurich Am. Ins. Co.*, 2021 WL 486917 (D.N.J. Feb. 10, 2021)
83. *Del. Valley Plumbing Supply, Inc. v. Merchs. Mut. Ins. Co.*, D.N.J., No. 1:20-cv-08257-NLH-KM (Feb. 16, 2021)
84. *Body Physics v. Nationwide Ins.*, D.N.J., No. 1:20-cv-09231-RMB-AMD (Mar. 10, 2021)
85. *Colby Rest. Grp. v. Utica Nat'l Ins. Grp.*, D.N.J., No. 1:20-cv-05927-RMB-KMW (Mar. 12, 2021)
86. *Garmany of Red Bank, Inc. v. Harleysville Ins. Co.*, D.N.J., No. 20-8676 (FLW) (DEA) (Mar. 18, 2021)
87. *Downs Ford, Inc. v. Zurich Am. Ins. Co.*, D.N.J., No. 3:20-cv-08595-BRM-ZNQ (Mar. 25, 2021)
88. *Dezine Six, LLC v. Fitchburg Mut. Ins. Co.*, D.N.J., No. 3:20-cv-07964-BRM-DEA (Mar. 25, 2021)
89. *Benamax Ice, LLC v. Merchant Mut. Ins. Co.*, D.N.J., No. 20-8069 (Mar. 29, 2021)
90. *Quakerbridge Early Learning LLC v. Selective Ins. Co. of New England*, D.N.J., No. 3:20-cv-07798-MAS-LHG (Mar. 31, 2021)
91. *Stern & Eisenberg, P.C. v. Sentinel Ins. Co.*, D.N.J., No. 20-11277 (RMB/KMW) (Apr. 14, 2021)

92. *Beach Glo Tanning Studio Inc. v. Scottsdale Ins. Co.*, D.N.J., No. 3:20-cv-13901-BRM-ZNQ (May 28, 2021)

### **New York**

93. *Michael J. Redenburg, Esq. PC v. Midvale Indem. Co.*, 2021 WL 276655 (S.D.N.Y. Jan. 27, 2021)
94. *Sullivan Cnty. Fabrication Inc. v. Selective Ins. Co. of Am.*, S.D.N.Y., No. 20 Civ. 5750 (PMH) (May 19, 2021)
95. *100 Orchard Street, LLC v. Travelers Ind. Ins. Co. of Am.*, S.D.N.Y., No. 20-CV-8452 (JMF) (June 8, 2021)
96. *Office Solution Grp. v. Nat'l Fire Ins. Co. of Hartford*, S.D.N.Y., No. 1:20-cv-04736-GHW (June 11, 2021)

### **North Carolina**

97. *Natty Greene's Brewing Co., LLC v. Travelers Cas. Ins. Co. of Am.*, 2020 WL 7024882 (M.D.N.C. Nov. 30, 2020)

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98. *Santo's Italian Café LLC v. Acuity Ins. Co.*, 2020 WL 7490095 (N.D. Ohio Dec. 21, 2020)
99. *Eye Specialists of Delaware v. Harleysville Worchester Ins. Co.*, No. 20 CV 6386 (Ohio Ct. of Comm. Pleas, Franklin Cty., Feb. 1, 2021)
100. *Family Tacos, LLC v. Auto Owners Ins. Co.*, N.D. Ohio, No. 5:20-cv-01922-JPC (Feb. 17, 2021)
101. *MIKMAR, Inc. v. Westfield Ins. Co.*, N.D. Ohio, No. 1:20-cv-01313 (Feb. 17, 2021)
102. *Ceres Enters., LLC v. Travelers Ins. Co.*, N.D. Ohio, No. 1:20-CV-1925 (Feb. 18, 2021)
103. *Panini's v. Zurich Am. Ins. Co.*, N.D. Ohio, No. 1:20CV1895 (Feb. 19, 2021)
104. *Nail Hook Inc. v. Hiscox Ins. Co., Inc., et al.*, Ohio Ct. Com. Pleas, No. CV-20-933244 (Feb. 24, 2021)
105. *Equity Planning Corp. v. Westfield Ins. Co.*, N.D. Ohio, No. 1:20-CV-01204 (Feb. 26, 2021)
106. *Gervasi 1700, LLC v. Nat'l Trust Ins. Co., et al.*, Ohio Ct. Comm. Pleas, No. 2020 CV 00818 (Apr. 23, 2021)

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107. *Goodwill Indus. of Cent. Okla. v. Phila. Indem. Ins. Co.*, Case No. CV-20-511-R (W.D. Okla. Nov. 9, 2020)

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108. *Wilson v. Hartford Cas. Co.*, 2020 WL 5820800 (E.D. Pa. Sept. 30, 2020)
109. *Brian Handel D.M.D., P.C. v. Allstate Ins. Co.*, 2020 WL 6545893 (E.D. Pa. Nov. 6, 2020)
110. *Toppers Salon & Health Spa, Inc. v. Travelers Prop. Cas. Co. of Am.*, 2020 WL 7024287 (E.D. Pa. Nov. 30, 2020)
111. *Kessler Dental Associates, P.C. v. The Dentists Ins. Co.*, 2020 WL 7181057 (E.D. Pa. Dec. 7, 2020)
112. *Newchops Rest. Comcast LLC v. Admiral Indem. Co.*, 2020 WL 7395153 (E.D. Pa. Dec. 17, 2020)
113. *ATCM Optical, Inc. v. Twin City Fire Ins. Co.*, 2021 WL 131282 (E.D. Pa. Jan. 14, 2021)
114. *Moody v. The Hartford Fin. Grp., Inc.*, 2021 WL 135897 (E.D. Pa. Jan. 14, 2021)
115. *TAQ Willow Grove, LLC v. Twin City Fire Ins.*, 2021 WL 131555 (E.D. Pa. Jan. 14, 2021)
116. *Ultimate Hearing Solutions II, LLC v. Twin City Fire Ins. Co.*, 2021 WL 131556 (E.D. Pa. Jan. 14, 2021)
117. *Zagafen Bala, LLC v. Twin City Fire Ins. Co.*, 2021 WL 131657 (E.D. Pa. Jan. 14, 2021)
118. *Frank Van's Auto Tag, LLC v. Selective Ins. Co. of the Southeast*, 2021 WL 289547 (E.D. Pa. Jan. 28, 2021)
119. *Kahn v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 2021 WL 422607 (M.D. Pa. Feb. 8, 2021)
120. *Fuel Recharge Yourself, Inc. v. Amico Ins. Co.*, 2021 WL 510170 (E.D. Pa. Feb. 11, 2021)
121. *Whiskey Flats Inc. v. Axis Ins. Co.*, 2021 WL 534471 (E.D. Pa. Feb. 12, 2021)
122. *Windber Hosp. d/b/a Chan Soon Shiong Med. Ctr. v. Travelers Prop. Cas. Co. of Am.*, W.D. Pa., No. 3:20-cv-80 (Mar. 18, 2021)
123. *SSN Hotel Mgmt., LLC v. The Hartford Mut. Ins. Co.*, E.D. Pa., No. 20-6228 (Apr. 8, 2021)

124. *Mareik Inc. d/b/a Nicole Miller Philadelphia v. State Farm Fire & Cas. Co.*, E.D. Pa., No. 20-2744 (May 5, 2021)
125. *RDS Vending LLC v. Union Ins. Co., et al.*, E.D. Pa., No. 2:20-cv-03928-CMR (May 13, 2021)
126. *Star Buick GMC, et al. v. Sentry Ins. Grp.*, E.D. Pa., No. 5:20-cv-03023-JFL (May 26, 2021)
127. *44 Hummelstown Assocs., LLC v. Am. Select Ins. Co.*, M.D. Pa., No. 1:20-cv-02319 (June 7, 2021)

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128. *1210 McGavock St. Hosp. Partners, LLC v. Admiral Indem. Co.*, 2020 WL 7641184 (M.D. Tenn. Dec. 23, 2020)

### **Texas**

129. *Diesel Barbershop, LLC v. State Farm Lloyds*, 2020 WL 4724305 (W.D. Tex. Aug. 13, 2020)
130. *Vizza Wash, LP v. Nationwide Mut. Ins. Co.*, 2020 WL 6578417 (W.D. Tex. Oct. 26, 2020)
131. *Independence Barbershop LLC v. Twin City Fire Ins. Co.*, 2020 WL 6572428 (W.D. Tex. Nov. 4, 2020)
132. *Sultan Hajer v. Ohio Sec. Ins. Co.*, 2020 WL 7211636 (E.D. Tex. Dec. 7, 2020)
133. *Frosch Holdco, Inc. v. Travelers Indem. Co.*, No. 4:20-CV-1478 (S.D. Tex. Feb. 11, 2021)

### **Virginia**

134. *L&L Logistics & Warehousing Inc. v. Evanston Ins. Co.*, E.D. Va., No. 3:20-cv-00324-REP (Apr. 13, 2021)

### **Washington**

135. *Nguyen v. Travelers Cas. Ins. Co. of Am., et al.*, W.D. Wash., No. 2:20-cv-00597-BJR (May 28, 2021)
136. *Glacial Cryotherapy LLC v. Evanston Ins. Co.*, W.D. Wash., No. 2:21-cv-00266-BJR (June 2, 2021)