

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

ZURICH AMERICAN INSURANCE  
COMPANY,

*Plaintiff,*

vs.

TAVISTOCK RESTAURANTS GROUP, LLC,

*Defendant.*

Case No. 6:20-cv-01295-PGB-EJK

**COUNTER-COMPLAINT AND REQUEST FOR DECLARATORY RELIEF**

Defendant/Counter-Plaintiff Tavistock Restaurant Group, LLC, by and through undersigned counsel, states as follows for its Counterclaim and Request for Declaratory Relief against the Plaintiff/Counter-Defendant Zurich American Insurance Company:

**I. INTRODUCTION**

1. On July 21, 2020, Plaintiff/Counter-Defendant Zurich American Insurance Company (“Zurich”) filed its Complaint for Declaratory Judgment against Tavistock Restaurant Group, LLC (“Tavistock”), seeking a declaration with respect to its rights and obligations under an insurance policy it issued pertaining to claims for coverage asserted by Tavistock for losses sustained as a result of the COVID-19 pandemic (more thoroughly defined herein). (*See* Complaint, ECF No. 1)

2. Tavistock now brings this Counter-Complaint for a declaratory judgment under The Zurich Edge “All Risk” Commercial Property insurance policy (the “Policy”) that Tavistock bought from Zurich, seeking a declaration that there is in fact coverage for the business interruption

losses sustained — in the past and to be reasonably sustained in the future — as a result of SARS-CoV-2 (the virus that causes the disease COVID-19, which is sometimes called “Coronavirus”) being physically at, in, on, and around Tavistock’s premises described in the Policy, and further because of the civil authority orders issued by the Governors (and respective Departments of Health) of the states where Tavistock has physical brick-and-mortar locations.

3. The losses Tavistock sustained are clearly through no fault of its own. And the various restaurants that comprise the Tavistock Restaurant group are now threatened by SARS-CoV-2, COVID-19, and the pandemic. Due to the pandemic, Tavistock’s property has suffered “direct physical loss or damage” — under the plain and ordinary meaning of that phrase — because COVID-19 made all the restaurants unusable. Indeed, all the restaurants have drastically reduced its business operations, made several structural alterations, changes and/or repairs to its property, and strictly limited the number of patrons. Despite these measures, the risk of the presence of SARS-CoV-2 at, in, on, and around the restaurants still freely exists each and every time an employee or patron enters the premises and removes his or her mask to eat, indeed the very purpose a restaurant serves.

4. This loss is “direct.” Tavistock is asking Zurich to pay its loss of business income occasioned directly by being unable to use the property.

5. And this loss is also physical. The probability and risk of illness prevents the use of the space in no less of a way than a hurricane could render the interior space of a business unusable. Under any circumstance, the loss of functionality of the space for business purposes exists. It is the diminishment of Tavistock’s ability to use its physical space; what could once hold many now can safely hold only a few, or no one.

6. Tavistock bought business interruption insurance from Zurich to provide coverage for events just like this. In pertinent part, the Policy that Zurich issued was intended to provide coverage — and in fact does provide coverage — for losses incurred due to a “necessary Suspension” of Tavistock’s business activities at its locations, including when its businesses are forced to close due to a government order. Despite Zurich’s express promise in its Policy to cover the Tavistock’s business interruption losses when the government forces them to close, Zurich has repudiated coverage for Tavistock’s claim under the Policy.

## **II. PARTIES, JURISDICTION, and VENUE**

7. Tavistock Restaurant Group, LLC is a Florida limited liability company with its principal place of business in Orlando, Florida.

8. Tavistock encompasses both a successful chain of fast casual burrito restaurants called Freebirds World Burrito (“Freebirds”), located throughout Texas, California, Tennessee and Oklahoma, and twenty (20) luxury, high-end restaurants (“Luxury Restaurants”) located in Florida, Massachusetts, California, Illinois, Nevada, and Georgia.

9. As of March 2020, the Freebirds chain, headquartered in the Tavistock offices in Austin, Texas, had grown to fifty-nine (59) locations throughout Texas, three (3) locations in California, three (3) locations in Oklahoma, and two (2) locations in Tennessee.

10. The Luxury Restaurants include the following locations:

- a. Abe & Louie’s in Boston, MA;
- b. Abe & Louie's in Boca Raton, FL;
- c. Timpano in Ft. Lauderdale, FL;
- d. Timpano in Tampa, FL;

- e. Chroma Modern Bar + Kitchen in Orlando, FL;
- f. Park Pizza & Brewing Co. in Orlando, FL;
- g. Boxi Park in Orlando, FL;
- h. Canvas Restaurant & Market in Orlando, FL;
- i. Joe's American Bar & Grill on the waterfront in Boston, MA;
- j. Joe's American Bar & Grill in Woburn, MA;
- k. Joe's American Bar & Grill on Newbury Street, Boston, MA;
- l. Joe's American Bar & Grill in Dedham, MA;
- m. Atlantic Fish Company in Boston, MA,
- n. Coach Grill in Wayland, MA;
- o. Blackhawk Grille in Danville, CA;
- p. Cafe del Rey in Marina del Rey, CA;
- q. Napa Valley Grille in Los Angeles, CA;
- r. Zed 451 in Chicago, IL;
- s. Canonita in Las Vegas, NV; and
- t. Atlas Restaurant and The Garden Room in Atlanta, GA.

11. Both Freebirds and the Luxury Restaurants listed in the preceding paragraph are insureds under the terms of the Policy and are entitled to coverage for their business income losses due to the pandemic and the associated civil authority orders.

12. Plaintiff/Counter-Defendant Zurich American Insurance Company is an insurance company engaged in the business of selling insurance contracts to, amongst others, commercial entities such as Tavistock, in Illinois and elsewhere. Zurich is incorporated in the state of New

York and maintains its principal place of business at 1299 Zurich Way, Schaumburg, Cook County, IL 60196.

13. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant resides in this District and a substantial portion of the acts and conduct giving rise to the claims occurred within the District.<sup>1</sup>

### **III. FACTUAL SUMMARY**

#### **A. Tavistock Restaurant Group, LLC – Restaurants**

14. Tavistock operates a network with an assortment of dining concepts located across the United States including Freebirds and the Luxury Restaurants located throughout the United States.

15. Freebirds World Burrito (“Freebirds”) is a chain of Tex-Mex restaurants that started in Isla Vista, CA in 1987, and as of March 2020, had grown to sixty-seven (67) locations throughout Texas, California, Tennessee and Oklahoma an. All of the Freebirds locations have dining rooms where customers walk up and place orders inside the restaurants, choosing to either dine at the restaurant or take their food to go. A strong majority of Freebirds’ business derives from on-site dining in its dining rooms via walk-up sales.

16. The Luxury Restaurants portfolio prides itself on offering genuine hospitality to its diners, not simply good service, leaving patrons feeling connected to the restaurant because of the

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<sup>1</sup> Defendant/Counter-Plaintiff appreciates the Court’s ruling (ECF No. 54) on its Motion to Transfer. (ECF No. 40). However, Defendant/Counter-Plaintiff’s Motion to Remand currently pending before Honorable John Kness in the Northern District of Illinois, Case No. 1:20-cv-04364, is still awaiting ruling. Any statements made in this Complaint should not be deemed a waiver of its rights to contest venue based on the abstention doctrine if Judge Kness grants Defendant/Counter-Plaintiff’s Motion to Remand.

exquisite dining experience. While diners enjoy uniform dining experience at all of the restaurants, the concepts of each remain unique. The Luxury Restaurants portfolio includes legendary restaurant Abe & Louie's, whose Boston location ranks 37th on Restaurant Business' Top 100 Independents list.

17. All the Luxury Restaurants have been similarly impacted by the detrimental effects of the pandemic. The dining rooms for each of these restaurants had to close and the concepts for the most part do not translate to viable carryout or delivery service.

18. Tavistock specifically maintains "all risk" coverage with Zurich. As described below in greater detail, the Zurich Policy at issue here provides coverage for "[a]ll risks of direct physical loss of or damage from any cause unless excluded." Of import, the Zurich Policy at issue does not contain an exclusion for viruses or infectious diseases sufficient to exclude coverage.

#### **B. The COVID-19 Virus**

19. The scientific name of the new strain of coronavirus is SARS-CoV-2.

20. In people, the disease caused by the virus is called Coronavirus Disease 2019, or COVID-19.

21. SARS-CoV-2 is a physical substance.

22. SARS-CoV-2 is a human pathogen that causes the disease COVID-19, which can be lethal.

23. SARS-CoV-2 can be present outside the human body in viral fluid particles.

24. SARS-CoV-2 spreads primarily from person to person through respiratory droplets.

25. Respiratory droplets travel into the air when people cough, sneeze, talk, shout, or sing. These droplets can then land in the mouths or noses of people who are near or they may breathe these droplets in.

26. Masks are a simple barrier to help prevent respiratory droplets from reaching others when worn over the nose and mouth.

27. It is especially important for people to wear masks when indoors with people they do not live with and when people are unable to stay at least 6 feet apart since COVID-19 spreads mainly among people who are in close contact with one another.

28. It is impossible for patrons at Tavistock's restaurants to dine at its premises (which is a restaurant's intended purpose) when wearing masks.

29. SARS-CoV-2 can and does remain capable of being transmitted and active on inert physical surfaces for a period of time.<sup>2</sup>

30. A recent study in the New England Journal of Medicine reported SARS-CoV-2 particles can remain suspended in the air for up to three hours. They can also live on various surfaces for up to 72 hours, including:<sup>3</sup>

- a. Copper: Up to 4 hours;
- b. Cardboard: Up to 24 hours;
- c. Plastic: 2 to 3 days;
- d. Stainless steel: 2 to 3 days.

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<sup>2</sup> Id.

<sup>3</sup> Id.; see also: "Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1." The New England Journal of Medicine. 16 April 2020.

31. Some commonly used items may require more frequent cleaning, as often as several times each day. These include:<sup>4</sup>

- a. Doorknobs;
- b. Elevator buttons;
- c. Light switches;
- d. Faucet handles;
- e. Publicly used telephones;
- f. Computer monitors, mice and keyboards;
- g. Countertops and conference tables; and
- h. Cafeteria tables, coffee pots and vending equipment.

32. SARS-CoV-2 can and does remain capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, touch screens, cardboard packages, food items, silverware, plates, serving trays, glasses, straws, menus, pots, pans, kitchen utensils, refrigerators, freezers, and other items of property for a period of time.

33. SARS-CoV-2 can be transmitted by way of human contact with surfaces and items of physical property on which SARS-CoV-2 particles are physically present.

34. SARS-CoV-2 has been transmitted by way of human contact with surfaces and items of physical property, such as the ones located at the insured premises covered under the Policy.

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<sup>4</sup> Id.; see also: “Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes.” Centers for Disease Control and Prevention. 28 April 2020.



35. SARS-CoV-2 has been transmitted by human-to-human contact and interaction, such as the interactions occurring at places like bars and restaurants.

36. SARS-CoV-2 can be transmitted through airborne particles emitted into the air at premises.

37. SARS-CoV-2 has been transmitted by way of human contact with airborne SARS-CoV-2 particles emitted into the air at premises in Illinois.

38. The presence of any SARS-CoV-2 particles renders items of physical property unsafe.

39. The presence of any SARS-CoV-2 particles on physical property impairs its value, usefulness, and/or normal function.

40. For this reason, the CDC suggests temporarily removing items to reduce physical property that is rendered unsafe when contaminated with SARS-CoV-2 particles that would otherwise require frequent cleaning.<sup>5</sup>

41. The presence of any SARS-CoV-2 particles causes direct physical harm to property.

42. The presence of any SARS-CoV-2 particles causes direct physical loss of or damage to property.

43. The presence of any SARS-CoV-2 particles causes direct physical damage to property, as well as damage to property.

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<sup>5</sup> Id.

44. The presence of any SARS-CoV-2 particles at the insured premises renders them unsafe, thereby impairing their value, usefulness, and/or normal function.

45. The presence of people infected with or carrying SARS-CoV-2 particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss of or damage to the property covered by the Policy.

46. The presence of people infected with or carrying SARS-CoV-2 particles at the insured premises renders them, including property located at that premises, unsafe, resulting in direct physical loss to the premises and property.

47. In response to SARS-CoV-2 and the COVID-19 Pandemic, the Governors of Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia have issued multiple executive orders pursuant to the authority vested in them by their respective state Constitutions and the laws of their state.

48. Similarly, the Departments of Health in Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia, pursuant to their authority under state law, have issued multiple orders, including Stay At Home Orders.

49. The state of Illinois is a civil authority as contemplated by the Policy.

50. The state of Florida is a civil authority as contemplated by the Policy.

51. The state of Massachusetts is a civil authority as contemplated by the Policy.

52. The state of California is a civil authority as contemplated by the Policy.

53. The state of Nevada is a civil authority as contemplated by the Policy.

54. The state of Texas is a civil authority as contemplated by the Policy.

55. The state of Tennessee is a civil authority as contemplated by the Policy.

56. The state of Oklahoma is a civil authority as contemplated by the Policy.
57. The state of Georgia is a civil authority as contemplated by the Policy.
58. The Illinois Department of Health is a civil authority as contemplated by the Policy.
59. The Florida Department of Health is a civil authority as contemplated by the Policy.
60. The Massachusetts Department of Health is a civil authority as contemplated by the Policy.
61. The California Department of Health is a civil authority as contemplated by the Policy.
62. The Nevada Department of Health is a civil authority as contemplated by the Policy.
63. The Texas Department of Health is a civil authority as contemplated by the Policy.
64. The Tennessee Department of Health is a civil authority as contemplated by the Policy.
65. The Oklahoma Department of Health is a civil authority as contemplated by the Policy.
66. The Georgia Department of Health is a civil authority as contemplated by the Policy.
67. The Governor of the state of Illinois is a civil authority as contemplated by the Policy.
68. The Governor of the state of Florida is a civil authority as contemplated by the Policy.

69. The Governor of the state of Massachusetts is a civil authority as contemplated by the Policy.

70. The Governor of the state of California is a civil authority as contemplated by the Policy.

71. The Governor of the state of Nevada is a civil authority as contemplated by the Policy.

72. The Governor of the state of Texas is a civil authority as contemplated by the Policy.

73. The Governor of the state of Tennessee is a civil authority as contemplated by the Policy.

74. The Governor of the state of Oklahoma is a civil authority as contemplated by the Policy.

75. The Governor of the state of Georgia is a civil authority as contemplated by the Policy.

76. On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic.

77. Shortly thereafter, states across the country issued orders encouraging or requiring citizens to “shelter in place” or “stay at home.”

78. For example, on March 12, 2020, Nevada Governor Steve Sisolak “declare[d] an emergency and direct[ed] all state agencies to supplement the efforts to save lives, protect property, and protect the health and safety of persons in this state.” In furtherance of this effort, Governor Sisolak entered a stay-at-home order on March 17, 2020, titled the COVID-19 Risk Mitigation

Initiatives. The stated “goal of this initiative [was] to protect the health and safety of Nevadans by preventing people from coming together unnecessarily, where people who have the infection can easily spread it to others.” With this objective in mind, Governor Sisolak “directed all restaurants and bars to close their dine-in facilities to help stop the spread of COVID-19.”

79. Similarly, on March 16, 2020, Illinois Governor J.B. Pritzker issued Executive Order 2020-07 stating “it is necessary and appropriate for the state of Illinois to immediately take measures to protect the public’s health in response to this COVID-19 outbreak.” The stated goal of this order was to slow the spread of SARS-CoV-2 by minimizing in-person interaction in an environment with “frequently used services in public settings, including bars and restaurants...”

80. Similar orders were entered by Governor Ron DeSantis of Florida on March 17, 2020 (see Executive Order Number 20-68); Massachusetts Governor Charlie Baker on March 15, 2020 (Order Prohibiting Gatherings of more than 25 People and On-Premises Consumption of Food or Drink); California Governor Gavin Newsom on March 19, 2020 (Executive Order N-33-20); Texas Commissioner of Public Health John W. Hellerstedt, MD (Declaration of a Public Health Disaster in the state of Texas); Tennessee Governor Bill Lee on March 22, 2020 (Executive Order Number 17); Oklahoma Governor J. Kevin Stitt on March 24, 2020 (Fourth Amended Executive Order 2020-07); and Georgia Governor Brian Kemp on April 2, 2020 (Executive Order to Ensure a Safe & Healthy Georgia).

81. Other state and local governmental authorities and public health officials around the country further acknowledge that SARS-CoV-2 and the COVID-19 Pandemic cause direct physical loss of and damage to property. For example:

- a. The state of Colorado issued a Public Health Order indicating that “COVID-19... physically *contributes to property loss, contamination, and damage*...” (Emphasis added);
- b. The city of New York issued an Emergency Executive Order in response to COVID-19 and the Pandemic, in part “because the virus *physically is causing property loss and damage*.” (Emphasis added);
- c. Broward County, Florida issued an Emergency Order acknowledging that COVID-19 “*is physically causing property damage*.” (Emphasis added);
- d. The state of Washington issued a stay at home Proclamation stating the “COVID-19 pandemic and its progression... remains a public disaster affecting life, health, [and] *property*...” (Emphasis added);
- e. The state of Indiana issued an Executive Order recognizing that COVID-19 has the “propensity to *physically* impact surfaces and personal *property*.” (Emphasis added);
- f. The city of New Orleans issued an order stating “there is reason to believe that COVID-19 may spread amongst the population by various means of exposure, including the propensity to attach to surfaces for prolonged period of time, thereby spreading from surface to person and *causing property loss and damage* in certain circumstances.” (Emphasis added);
- g. The state of New Mexico issued a Public Health Order acknowledging the “threat” COVID-19 “poses” to “*property*.” (Emphasis added);
- h. The State of Illinois’ March 20, 2020 executive order providing that food cannot be eaten at the site where provided because of “the virus’s propensity to *physically impact surfaces and personal property*.” (Emphasis added);
- i. North Carolina issued a statewide Executive Order in response to the Pandemic not only “to assure adequate protection for lives,” but also to “assure adequate protection of... *property*.” (Emphasis added); and

- j. The city of Los Angeles issued an Order in response to COVID-19 “because, among other reasons, the COVID-19 virus can spread easily from person to person and it is *physically causing property loss or damage* due to its tendency to attach to surfaces for prolonged periods of time.” (Emphasis added).

### **C. Tavistock’s Businesses Closed by Acts of Civil Authority**

82. Tavistock was required to shutdown dine-in operations at its restaurants effectively ceasing and/or significantly reducing operations at all its locations. Moreover, the phased reopening that is currently permitted by numerous government agencies – and which varies by specific jurisdiction – still makes it impossible for most of Tavistock’s restaurants to operate at a net profit. Consequently, Tavistock suffered, and will continue to suffer, significant losses from the closures of its dining rooms and related losses from the Pandemic.

83. The civil authority orders, including, but not limited to the Stay-At-Home orders currently in effect in Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia, prohibit access to Tavistock’s premises described in the Policy.

84. “Civil Authority” actors in Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia have issued, and continue to issue, authoritative orders governing Tavistock’s businesses, in response to SARS-CoV-2 and the COVID-19 Pandemic, the effect of which have required and continue to require Tavistock to cease and/or significantly reduce operations at, and that have prohibited and continue to prohibit access to, the premises described in the Policy.

85. SARS-CoV-2 and the COVID-19 Pandemic are physically impacting public and private property in throughout the country, including in Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia.

86. SARS-CoV-2 and the COVID-19 Pandemic have caused and continue to cause direct physical loss of and damage to property.

87. People in Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia have been diagnosed with SARS-CoV-2.

88. People in Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia have, and have had, SARS-CoV-2 but have not been diagnosed.

89. People in Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia have SARS-CoV-2 particles on or about their person and personal property.

90. Properties and premises throughout Illinois, Florida, Massachusetts, California, Nevada, Texas, Tennessee, Oklahoma, and Georgia contain the presence of SARS-CoV-2 particles on surfaces and items of property.

91. Tavistock has sustained direct physical loss and/or damage to its premises described in the Policy as a result of the Pandemic.

**D. The Zurich Edge “All Risk” Commercial Property Policy**

92. As a part of its prudent business practices, Tavistock procured insurance coverage from Zurich.

93. In exchange for a very substantial premium, Zurich sold Tavistock policy number MLP 0140282-05, effective from November 21, 2019 to November 21, 2020. A copy of the Policy is attached as Exhibit A.



94. Beginning with its introduction in 2008, Zurich marketed its Edge policy form as offering uniquely “broader coverage and greater flexibility.” Zurich’s CEO made this announcement and lauded the clarity of the form.<sup>6</sup>

95. The Policy utilizes, in part, policy forms and language published by the The Insurance Services Office, Inc. (“ISO”), as reflected by the ISO copyright designation at the bottom of numerous pages of the Policy.

96. Specifically, the Policy includes copyrighted material of ISO Properties, Inc., as part of its Disclosure of Important Information Relating to Terrorism Risk Insurance Act.

97. Prior to the effective date of the Policy, ISO also published and made available for use a standard virus exclusion form.

98. Zurich chose not to include the ISO standard virus exclusion form in the Policy.

99. Rather, Zurich included a “Contamination” exclusion in the Policy, which only excludes coverage for any *costs* due to the actual presence of “contamination” causing “direct physical loss or damage.”

100. “Virus” is not included within the definition of “contaminant” as defined within the Policy.

101. The Policy provides coverage for property losses, including “Time Element” losses (a.k.a., business interruption losses), amongst others.

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<sup>6</sup>[http://www.zurichservices.com/zus/zna\\_config.nsf/pages/9123da88864cd81485257433006ed710!OpenDocument&Click=](http://www.zurichservices.com/zus/zna_config.nsf/pages/9123da88864cd81485257433006ed710!OpenDocument&Click=)

102. The insuring clause in the Policy provides in relevant part that the Policy “[i]nsures against direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property, at an Insured Location. . .”

103. The phrase “Covered Cause of Loss” is defined as “[a]ll risks of direct physical loss of or damage from any cause unless excluded.”

104. The policy contains a section entitled “Time Element Coverages” which insures Tavistock’s gross earnings.

105. Within that section, coverage is extended for “Extra Expense” which covers the cost to resume normal business operations.

106. The policy also contains what are described as “Special Coverages.” These include items such as “Civil or Military Authority,” “Contingent Time Element,” “Decontamination Costs,” “Ingress/Egress,” and many others.

107. “Civil or Military Authority” coverage insures the Time Element Loss (gross earnings) resulting from “the necessary Suspension of the Insured’s business activities at an Insured Location if the Suspension is caused by order of civil or military authority that prohibits access to the Location. That order must result from a civil authority’s response to direct physical loss of or damage caused by a Covered Cause of Loss to property not owned, occupied, leased or rented by the insured” and within one mile of an insured location.

108. The phrase “civil or military authority,” or any variation thereof, is not defined in the Policy.

109. “Contingent Time Element” coverage covers the gross earning loss “directly resulting from the necessary Suspension of the Insured’s business activities at an Insured Location

if the Suspension results from the direct physical loss of or damage caused by [any non-excluded cause] to Property . . . at Direct Dependent Time Element Locations, Indirect Dependent Time Element Locations, and Attraction Properties located worldwide . . . .”

110. “Decontamination Costs” are covered to the sublimit where a law or ordinance regulating contamination results in increased cost of decontamination.

111. While the Policy was in force, Tavistock sustained, and continues to sustain, losses due to SARS-CoV-2 at, in, on, and/or around Tavistock’s premises described in the Policy.

112. While the Policy was in force, Tavistock sustained, and continues to sustain, losses due to the spread of SARS-CoV-2 in the community.

113. While the Policy was in force, Tavistock sustained, and continues to sustain, loss due to the civil authority orders issued by the Governors of the states where it has physical brick-and-mortar locations, and the respective Departments of Health addressing COVID-19 and the Pandemic.

114. Tavistock submitted a timely insurance claim to Zurich.

115. Zurich has denied Tavistock’s claim. See Exhibit B.

**COUNT I: DECLARATORY JUDGMENT**

116. The allegations contained in the foregoing paragraphs are hereby incorporated by reference.

117. There is a dispute about whether Tavistock is entitled to coverage under the Policy for its losses sustained and to be sustained in the future. Accordingly, Tavistock is entitled to declaratory relief from this Court pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

118. Tavistock is entitled to and demands a declaration that:

- a. Tavistock sustained direct physical loss of or damage to property at its premises described in the Policy as a result of SARS-CoV-2, COVID-19 and/or the COVID-19 Pandemic;
- b. SARS-CoV-2 and/or COVID-19 is a covered cause of loss under the Policy;
- c. The COVID-19 Pandemic is a covered cause of loss under the Policy;
- d. The losses incurred by Tavistock as the result of the orders issued by the Governors of Illinois, Florida, Massachusetts, California, Nevada, Texas and Georgia, and the respective Departments of Health for those states, are covered losses under the Policy;
- e. Zurich has not and cannot prove the application of any exclusion or limitation to the coverage for Tavistock's losses alleged herein;
- f. Tavistock is entitled to coverage for its past and future Time Element loss(es), Contingent Time Element, and Extra Expense, resulting from SARS-CoV-2, COVID-19 and/or the COVID-19 Pandemic for the time period set forth in the Policy;
- g. Tavistock is entitled to coverage for loss(es) due to the actions of Illinois civil authorities, including the Governor of Illinois and the Illinois Department of Health;
- h. Tavistock has coverage for any substantially similar civil authority order in the future that limits or restricts the access to Tavistock's places of businesses and/or their operations; and
- i. Any other issue that may arise during the course of litigation that is a proper issue on which to grant declaratory relief.

119. Tavistock does not seek a determination of its damages resulting from SARS-CoV-2, COVID-19 or the COVID-19 Pandemic. If there is a dispute between the parties as to the amount of the loss, the Policy provides that such a dispute should be resolved by **Appraisal**:

#### APPRAISAL

If the Insured and the Company fail to agree on the value of the property or the amount of loss, each will, on the written demand of either, select a

competent, disinterested, and impartial appraiser, who has no direct or indirect financial interest in the claim. Each will notify the other of the appraiser selected within 20 days of such demand. The Insured may not invoke appraisal unless it has first fully complied with all provisions of this Policy, including Duties in the Event of Loss or Damage and has provided the Company with a signed and sworn statement of loss.

The appraisers will first select a competent, disinterested and impartial umpire. If the appraisers fail to agree upon an umpire within 15 days then, on the request of the Insured or the Company, a judge of a court of record in the jurisdiction in which the appraisal is pending will select the umpire. The appraisers will then appraise the value of the property or the amount of loss. They will state separately, the actual cash value and replacement cost value, as of the date of loss and the amount of loss, each item of physical loss or damage or, if for Time Element loss, the amount of loss for each Time Element Coverage of this Policy.

If the appraisers fail to agree, they will submit their differences to the umpire. An award stating separately the actual cash value and replacement cost value, as of the date of loss and the amount of loss, for each item of physical loss or damage or, if for Time Element loss, the amount of loss for each Time Element Coverage of this Policy agreed to in writing by any two will determine the amount of loss.

Once there is an award, the Company retains the right to apply all policy terms and conditions (including but not limited to deductibles, exclusions, and Limits of Liability) to the award. The Company further retains its right to deny the claim in whole or in part.

The Insured and the Company will each pay its chosen appraiser and bear equally the other expenses of the appraisal and umpire.

120. Tavistock prays for declaratory relief from the Court that Zurich must resolve any dispute about the amount of loss via Appraisal. Tavistock also requests the Court appoint the umpire if the appraisers cannot agree.

121. Tavistock prays for any further relief the Court deems proper, including attorney fees, interest, and costs as allowed by law or in the exercise of the Court's equitable jurisdiction.

WHEREFORE, Defendant/Counter-Plaintiff seeks judgment against Plaintiff/Counter-Defendant Zurich American Insurance Company, as set forth above, plus interest, costs, and attorney fees as allowed by law.

Dated: March 31, 2021

Respectfully submitted,

/s/ John F. Romano

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via electronic filing using the CM/ECF system with the Clerk of the Court on March 31, 2021, which sent e-mail notification of such filing to all CM/ECF participants.

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